



annual report

INSPECTORATE OF PROSECUTION IN SCOTLAND

2008-2009



safer
scotland
SCOTTISH GOVERNMENT



annual report

INSPECTORATE OF PROSECUTION IN SCOTLAND 2008-2009

TO THE LORD ADVOCATE
I HAVE THE HONOUR TO SUBMIT MY
FOURTH ANNUAL REPORT TO THE
SCOTTISH PARLIAMENT.

OCTOBER 2009

JOSEPH T O'DONNELL
HM CHIEF INSPECTOR
INSPECTORATE OF PROSECUTION IN
SCOTLAND

LAID BEFORE THE SCOTTISH
PARLIAMENT BY THE LORD ADVOCATE
in pursuance of Section 79(8) of the
Criminal Proceedings etc. (Reform)
(Scotland) Act 2007

SG/2009/188

OCTOBER 2009

© Crown copyright 2009

ISBN: 978-0-7559-8175-5

This document is also available on the Scottish Government website: www.scotland.gov.uk

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

Produced for the Scottish Government by RR Donnelley B62083 10/09

Published by the Scottish Government, October 2009

The text pages of this document are printed on recycled paper and are 100% recyclable

FOREWORD

To the Right Honourable Elish Angiolini QC The Lord Advocate

This is my second report as Her Majesty's Chief Inspector of Prosecution in Scotland since the office was established as a statutory one in April 2007 by the Criminal Proceedings etc. (Reform) (Scotland) Act 2007.

My duty in terms of the legislation is to secure the inspection of the Crown Office and Procurator Fiscal Service and submit to you, the Lord Advocate, a report on any particular matter connected with the operation of the Crown Office and Procurator Fiscal Service which you refer to me.

The year 2008-2009 saw the completion of two further Area inspection reports. The Area inspection programme was designed to cover a wide range of topics such as bail, disclosure, treatment of witnesses, casework, community engagement etc and was intended to be risk based and adaptable to change.

The two Area reports were for Ayrshire and Highlands & Islands. As ever considerable emphasis was placed on case review. Inspection, in my opinion, is about improvement, quality assurance and accountability and the case review examines how policy had been put into practice with views sought from a wide range of criminal justice partners and "system users". As before, thanks to assistance from the Witness Service, contact was made with a significant number of witnesses at court for real world feedback on their experience of coming to court. This has the benefit of providing feedback on our earlier joint (with the Witness Service) Thematic Report on the Provision of Services to Witnesses published in 2006.

In addition to the two Area reports a thematic report on the use of enhanced Fiscal Fines was completed. Enhanced Fiscal Fines (as part of Summary Justice Reform) produced considerable political and media interest. The report took a strong evidence-based approach to the work as opposed to anecdotal and examined the issue of 1,500 Fiscal Fines and looked at compliance with Crown Office policy and guidance. The overarching conclusion was that the vast majority of Fiscal Fines issued had been proportionate and in accordance with the intended aims of the new provisions.

As a consequence of the recommendations of the Crerar Review on inspection reform (published in September 2007) the fifth Area inspection which is currently taking place (for Lanarkshire) is using a mixture of self assessment and normal Inspectorate methodology. Consultation with Crown Office colleagues in Strategy and Delivery Division has resulted in Lanarkshire being treated as a "pilot" for the casework inspection section to be done "in-house" by Crown Office and Procurator Fiscal Service staff. The Inspectorate examining a sample of the in-house cases to ensure rigorous self assessment has taken place and a comprehensive picture of the cases is presented. Depending on the outcome of this pilot future Area inspections may be modified to include this aspect of self assessment.

This report contains comment on the Equalities Bill and the Public Services Reform Bill. The latter in particular has potentially significant implications for inspectorates and its passage through the Scottish Parliament will be closely monitored. Recent events in the financial services world and in social work have underpinned the need for robust and effective inspection and regulatory regimes.

I support the principle that service providers should take primary responsibility for the quality of their services and seek to improve them and I am happy to utilise the results of self assessment as part of the data gathering to inform inspection work. This could never in my opinion, however, be the totality of quality assurance. This is especially true in high risk areas where there is a growing consensus that the public, Government and even service providers all want a strong, profession-based and independent assurance of service quality. Professor Crerar himself recognises the dangers of over reliance on self assessment and that it can be self delusionary and scrutiny bodies need to make sure there are very robust systems embedded and in many cases there are not.

Joint working (a feature of the Crerar Report's recommendations) with other inspectorates and other bodies continues and a report will shortly be published in conjunction with Her Majesty's Inspectorate of Constabulary (Scotland) on the Proceeds of Crime Act 2002.

I would like to thank the considerable number of individuals and bodies who gave freely of their time and expertise in the production of this year's various reports. Contact is made with a vast array of criminal justice partners and other organisations and without exception such individuals and bodies have responded to requests for assistance and comment. Indeed in some cases the Inspectorate has been approached by individuals and bodies wishing to contribute.

The overarching aim of the Inspectorate is to contribute to making improvements in service delivery, making the Crown Office and Procurator Fiscal Service more accountable and enhancing public confidence. The forthcoming year will, as ever, no doubt prove to be a challenging one and I will ensure that the Inspectorate plays its part in the development of inspection and provide you with robust, value-adding reports on the operation of the Crown Office and Procurator Fiscal Service.



Joseph T O'Donnell
HM Chief Inspector
June 2009

1 STAFF AND ACCOMMODATION

The staff of the Inspectorate currently consists of the Chief Inspector, a Principal Legal Inspector, a Legal Inspector, a Management Inspector and a Personal Assistant. Three of these are currently part-time posts.

During the course of the year the Principal Inspector left the Inspectorate and was replaced by a secondee from the Crown Office and Procurator Fiscal Service. Continued use is made of *ad hoc* legal inspectors who have extensive experience and are used to carrying out legal research and compliance audits, particularly in relation to the thematic work. This as before adds considerable flexibility to the staffing arrangements and is a valuable cost effective additional resource.

The Inspectorate continues to occupy premises at Legal House, Gorbals Street, Glasgow. The location puts the Inspectorate within easy travelling distance of over half the Procurator Fiscal Offices in Scotland.

2 LORD ADVOCATE'S ADVISORY GROUP

The Lord Advocate's Advisory Group was established in 2006 and consists of a number of *ex officio* members, invited members and two lay members recruited by public advertisement.

Its primary function is to provide advice on the work programme of the Inspectorate and to keep under review the working relationship between the Inspectorate and the Crown Office and Procurator Fiscal Service.

The Group meets every 4 months.

During the course of the year the previous Director of Public Prosecutions for England and Wales resigned from his post and an invitation was sent to his successor. Having the head of a "foreign" criminal prosecution service which is itself subject to an inspection regime is a useful addition to the Group.

The Group as a whole provides invaluable advice on the work programme and is very much in keeping with the spirit of some of the provisions of the Public Services Reform (Scotland) Bill particularly in the proposed sections concerning "user focus" referred to later in this report.

3 INSPECTION REFORM AND PUBLIC SERVICES REFORM (SCOTLAND) BILL

This Bill (published May 2009) has considerable potential implications for the Inspectorate.

The Bill followed in the wake of the publication of the Crerar Review (September 2007) whose remit was to evaluate the current systems of regulation, audit and inspection (ie external scrutiny) and complaints handling and to make recommendations on a framework for the future external scrutiny of public services.

In its response to the report The Scottish Government announced in January 2008 that it would work with the Parliament and stakeholders to make improvements. Further responses were made by The Scottish Government culminating in May 2009 in the response to the five action groups which had been established to take forward the report's recommendations. The Government indicated it was committed to reducing the number of scrutiny bodies and its response had a number of specific proposals with an overall aim of delivering a package of structural reform by 2011.

One issue identified from the response was the need for more active involvement of the public in scrutiny and particularly system "users". The need for independence in scrutiny was also recognised, both independence from those providing the services and from political interference. Scottish Ministers welcomed the reports of the five action groups and set out a response to each recommendation.

The publication of the Bill in May 2009 contains the proposed legislative changes in implementation of some of these recommendations with the overarching purpose of simplifying and improving the landscape of Scottish public bodies to deliver more effective, co-ordinated government.

Of immediate relevance to the Inspectorate are the provisions in Part 2 allowing Scottish Ministers by order to restructure the discharge of public functions by bodies (listed in Schedule 3) by transferring functions, abolishing functions, modifying functions and conferring new functions. The power may also be exercised to amend the constitution of or abolish the bodies listed in the schedule.

Part 6 of the Bill imposes a duty on listed scrutiny authorities to secure continuous improvement in user focus in the exercise of their scrutiny functions and to demonstrate improvements.

"User focus" is defined as the involvement of users of scrutinised services in the design and delivery of scrutiny functions in relation to those services and the governance of the listed scrutiny authorities. Users are widely defined including possible future users and includes the person providing the service.

Regard is to be had to any guidance in relation to the duty provided by Scottish Ministers which in the event of a clash is to take precedence over any other arrangements.

There is also a duty on scrutiny bodies to co-operate and co-ordinate activity.

None of these issues are particularly new, the 10 "principles of inspection" widely used by inspection bodies include taking a user perspective and the encouragement of self assessment which was another strong theme of the Crerar Review.

From its inception in 2003 the Inspectorate of Prosecution has taken an evidence-based approach to the work and consulted widely with service users.

In our first Thematic Report on the Crown Office's Response on Race Issues extensive consultation was undertaken with the assistance of the Commission for Racial Equality and Racial Equality Councils and others. Non-English speaking witnesses were interviewed at court and questionnaires were widely used to obtain feedback from interpreters.

In the Deaths Thematic considerable contact and input was received from the next of kin of persons whose deaths were reported to the Procurator Fiscal and in Area inspection reports extensive use is made of feedback from witnesses in attendance at court and other users and partners.

These proposals would not, therefore, involve any fundamental change in approach but keep the focus of inspection on how the service is perceived to be delivering by those who use it as well as examination of case files for outcomes. One potential challenge for criminal justice inspectorates will be how to consult and get input from accused persons who of course fall within the definition of "service users".

Currently considerable joint work is done with other criminal justice partners especially Her Majesty's Inspectorate of Constabulary (Scotland) and three joint reports have been completed. Further joint work is planned in 2009 and 2010.

Our English Inspectorate colleagues have already developed joint planning of inspection and sharing of data.

The progress of the Bill will be watched with considerable interest.

4 EQUALITIES BILL

The UK Government recently published its Equality Bill following an extensive consultation period.

The Bill has potential impact on the Inspectorate in a number of ways.

Firstly, it will apply to the Inspectorate as much as any other public body.

Secondly, there were initial suggestions that Inspectorates should have an enforcement/policing role. The UK Government's consultation exercise showed that a number of inspectorates had established good working links with the former equality commissions.

Nearly 200 responses were received on the role of inspectorates during the consultation period and the majority felt that they should be involved in "assessing compliance" with the public sector duties. In the criminal justice sphere the consensus was that inspection for equality was part of the general duty to ensure equality issues were properly integrated in inspection frameworks with a possible specific focus on equality issues from time to time in thematic reports.

It was generally considered as inappropriate to rely on inspectorates for wide ranging and comprehensive monitoring of compliance and enforcement. The Scottish Government made clear its belief that audit and inspection bodies had a crucial role to play in pushing forward the equality agenda.

The current position is that the UK Government believes that inspectorates have an important role to play in looking at how bodies are performing on equality and the equality duty and examining how public bodies engage with key stakeholders, using evidence so gathered in policy making. They will not have a direct policing role. Enforcement of the general equality duty will be by judicial review or through the Equality and Human Rights Commission. Enforcement of any specific duties will be through the Equality and Human Rights Commission only.

The Inspectorate of Prosecution was created in the wake of concerns about race issues and the prosecution service. As a result in the early work of the Inspectorate, including a general thematic on race issues, considerable contact was made with and assistance received from the then Commission for Racial Equality and Racial Equality Councils.

Although the focus now is wider than simply race issues, inspecting for race and other equality issues is built into both Area and Thematic Reports where appropriate and this approach seems to be the one currently favoured in the context of the Equalities Bill.

In addition the Chief Inspector continues to be a member of the Crown Office Equality Advisory Group, the joint Crown Office and Association of Chief Police Officers in Scotland (ACPOS) Group on equality issues and the Working Group on Interpreting and Translation (WGIT). Again membership of these groups assists with monitoring of previous recommendations in Thematic Reports.

5 COMPLETED WORK

This report covers the period of one year to the end of May 2009.

During this period two further comprehensive Area inspection reports were completed, namely those of Ayrshire and Highlands and Islands. These are dealt with in more detail in Annex B.

In addition thematic work continued with the publication of a thematic report on the use of Fiscal Fines.

As reported in last year's Annual Report the enhanced use of Procurator Fiscal Fines had been the subject of much media focus and this inspection gave an independent view on the operation of the new system based on an extensive examination of cases across the whole country.

As in previous years, efforts are made to do joint work in conjunction with criminal justice partners which in the past have included Her Majesty's Inspectorate of Constabulary, the Commission for Racial Equality, Victim Support Scotland and the Witness Service.

A joint thematic report in conjunction with Her Majesty's Inspectorate of Constabulary (Scotland) will shortly be published on the arrangements employed by police forces and the Procurator Fiscal Service for implementation of the Proceeds of Crime Act 2002 in Scotland.

The Serious Organised Crime Taskforce consisting of the Justice Minister, the Lord Advocate and various other criminal justice partners published in June 2009 a strategy for tackling serious organised crime in Scotland and the completed joint report of the two inspectorates will hopefully assist in the development of strategy and practice in relation to the use of the 2002 Act.

The Chief Inspector made a personal contribution to Lord Cullen's Review of Fatal Accident Inquiry Legislation (published in June 2009) the consultation paper had contained reference to our Thematic Report on Deaths. In addition it is expected that assistance will be given to Sheriff Principal Bowen's Review of Sheriff and Jury Procedures.

6 FUTURE WORK PROGRAMME

The future work programme (and the current work programme) has been influenced by the Crerar Review, thematic reports either singly or jointly with other bodies will continue to be a feature of future work.

The Crerar Review emphasised the importance of self assessment for organisations as a tool for improvement and as previously stated recommended that inspectorates assist in the development of these with the bodies inspected to produce robust self assessment regimes. Self assessment is an important part of improvement but not the only part and other factors have to be taken into account. These have to be honest and rigorous to be worthwhile. Following the publication of the Crerar Review there came the collapse of the banking sector and criticism of banking regulators and also in other areas such as social work.

Nevertheless, work has been continuing to develop robust self assessment methodologies in conjunction with Crown Office and Procurator Fiscal Service personnel. Two members of the staff of the Inspectorate became qualified assessors and received qualifications from Quality Scotland. As a result, methodology in Area inspection is being developed with Crown Office personnel to include self assessment activity in the examination of individual cases. This will be assessed at the end of this particular inspection with a view to rolling out similar models of inspection for the remaining six Procurator Fiscal Areas.

In addition to the Area inspection work a thematic report on the use of Compensation Offers and Combined Compensation and Fiscal Fines Offers under Summary Justice Reform is currently being undertaken and is likely to be published in October 2009. Again, as with the thematic on Fiscal Fines, the inspection will focus on actual casework comparing policy with practice.

Further work towards the end of 2009 and into 2010 is likely with Her Majesty's Inspectorate of Constabulary on Sexual Offences with particular reference to the recently passed Sexual Offences (Scotland) Bill (with its statutory definition of rape) and a review of implementation of the major Crown Office and Procurator Fiscal Service review of the handling of sexual offences generally.

7 FREEDOM OF INFORMATION

Following the placing of the Inspectorate on a statutory basis by the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 the general coverage of Freedom of Information issues by the Scottish Government's Publication Scheme was replaced by the Inspectorate's own scheme. Details of this were placed on the Inspectorate's website. The scheme was approved by the Commissioner's Office in January 2009.

Although a number of requests for information and advice are received throughout the year only one Freedom of Information Act request was received and dealt with within the statutory time limits.

During the year the Chief Inspector accepted an invitation to sit on the Scottish Public Information Forum which holds its meetings in public and invites comments from members of the public.

8 BUDGET

The Inspectorate's budget for 2008-2009 was £350,000.

Expenditure was as follows:

Staff salaries	£248,076.86
Admin expenses (Note 1)	£ 74,187.50
	<u>£322,264.36</u>

Note 1 – This contains some salary costs for seconded staff.

ANNEX A

THEMATIC REPORTS

Summary Justice Reform Thematic Report on the Use of Fiscal Fines

In common with current thinking on inspection the Inspectorate of Prosecution in Scotland takes a risk-based approach to choice of topics. Summary Justice Reform generally represented a major step change in the criminal justice system and enhanced powers to Procurators Fiscal to issue Fiscal Fines was identified as a suitable topic for consideration once the system had bedded in.

Following the introduction of enhanced Fiscal Fines there was much media focus on their use and the Lord Advocate in answering concerns raised by the Members of the Scottish Parliament on 26 June 2008 indicated that the Inspectorate of Prosecution would be carrying out an independent inspection on the implementation of the new powers.

The methodology used was to take an exclusively evidence-based approach to the work. A random selection of Fiscal Fines was selected from each of the 11 Crown Office and Procurator Fiscal Service Areas in Scotland. This related to cases in September 2008 and meant that six months had elapsed from the commencement of the new system.

The cases were picked by the Inspectorate team to cover all the available levels of Fiscal Fine and all types of case.

In total about 1,500 cases were examined in detail and the decisions made in these cases were compared to Crown Office and Procurator Fiscal Service guidance. This guidance remains confidential but the Inspectorate had access to it.

Any apparent breaches of policy were taken up with the issuing office for any comments they had.

Most of the media concerns raised about the use of enhanced Fiscal Fines centred on assault. Fiscal Fines for assault were not new and had been in operation since 1987. However, public perception and confidence are important and we therefore looked closely at the assault cases thrown up in our random selection. 142 charges of assault were examined and we asked for additional information on 25 of these. From the 142 examined in only five, after consultation, did we take issue with the use of the Fiscal Fine looking at the nature of the assault. In October 2008 the guidance for staff was amended and the five cases we identified as being inappropriate would now be excluded by the new guidance.

Overall, we found that the vast majority of Fiscal Fines were appropriate and proportionate. We did, however, make three recommendations: Firstly, in relation to the hierarchy of the guidance suggesting that where there was any possible conflict in the guidance then the matter should be clarified. Secondly, we recommended a relaxation of the self-imposed rule by the Crown Office that a Fiscal Fine could not be issued in certain circumstances where an offender was subject to certain court orders and finally we recommended that the current in-house monitoring of all Fiscal Fines issued for assault should be retained, at least for the time being.

The Lord Advocate accepted all three of the recommendations and the report highlights the value of an evidence-based approach to inspection work rather than reliance on anecdotal stories.

The full report can be accessed online at the following address:

<http://www.scotland.gov.uk/Topics/Justice/ipis/reps>.

ANNEX B

AREA INSPECTION REPORTS

In accordance with the Inspectorate's Business Plan a further two Area inspection reports were published during the course of the year.

The full text of these can be read at: <http://www.scotland.gov.uk/Topics/Justice/ipis/area-reports>.

In contrast to previous Office inspections which were race-themed the Area inspections cover a wide variety of criminal justice topics including case decision making, compliance with marking policy, drafting of charges, bail decisions, disclosure, service to victims and management issues including management of change, training, performance etc.

In keeping with an evidence-based approach an examination of a sample of cases covering all aspects of the work would be an essential part of the process and give information on the quality of work in the District, Sheriff and High Courts. A wide selection of partners and users of the system would be consulted.

The approach was always intended to be flexible enabling any particular issue to be emphasised and would be in accordance with a risk-based approach. Disclosure and bail decisions continue to be a major feature of this.

AYRSHIRE AREA INSPECTION REPORT

This report was published in June 2008. The Ayrshire Area covers approximately one quarter of the territory covered by Strathclyde Police and straddles two Sheriffdoms. It accounts for about 7.5% of total Crown Office and Procurator Fiscal Service caseload. It has two Procurator Fiscal Offices situated at Ayr and Kilmarnock.

As part of the case review 180 recently closed cases were selected.

The review of these cases showed an overall high degree of adherence to Crown Office and Procurator Fiscal Service policy and guidelines.

We examined a number of pre-reform Fiscal Fines and in virtually all of these there was compliance with the then guidance which as we stated in the report augured well for future implementation of reform.

We found that bail decisions were properly taken and that disclosure was not an issue although there was some evidence of timings not being complied with because of late delivery of statements by the police.

In relation to the service to victims and witnesses a number of outside agencies reported good relationships with the Procurator Fiscal Offices. The Victim Information and Advice Division (VIA) being described by one partner as providing a "great" service and that VIA had made a positive difference to the whole process for the victim.

Feedback from a wide range of criminal justice partners was very positive although there was some criticism of a perceived reduction in the quality of preparation for court, partly believed to be due to the lack of experience of certain front-line staff.

As part of the process to take an evidence-based approach with the assistance of the Witness Service 78 completed questionnaires were received back from witnesses who had actually attended at court.

The conclusions from the survey were positive in that the majority of witnesses received adequate notice to attend court and information on being a witness. Most were advised of what was happening in court on a regular basis and pre-trial court visits were arranged when requested. There were negative comments on courtesy from two witnesses but overall the analysis showed that a good service was provided to witnesses who actually attended at court.

The general conclusion for Ayrshire was that overall, despite some staff shortages and vacancies, the Area performed well especially in key areas. Performance against targets was very good.

HIGHLANDS AND ISLANDS AREA INSPECTION REPORT

The report on Highlands and Islands was published in December 2008.

The Highlands and Islands Area accounts for about 4.8% of the Crown Office and Procurator Fiscal Service caseload.

It has the largest number of District Offices of any Area in Scotland (nine in total) with the office at Inverness dealing with approximately 49% of the Area's business.

The inspection of Highlands and Islands posed some logistical problems for the Inspectorate with the large number of offices and had an implication for our case review. As a result the largest number of cases ever examined (350) were selected to reflect a reasonable sample of cases across the whole spectrum in each office.

So far as actual casework is concerned the overall conclusion was that cases were dealt with in accordance with policy with evidence of good preparation for trials and efforts made to minimise inconvenience to witnesses.

Compliance with disclosure rules was generally good as were decisions made on bail.

As with previous Area inspections with the assistance of the Witness Service some feedback was obtained from witnesses actually in attendance at court. The courts covered were Inverness, Tain and Dingwall.

All witnesses reported they had received adequate notice to attend court and were given adequate information and all received information on progress while in the court building. Pre-court visits were arranged where requested. Two, however, felt that their request to be excused was not dealt with particularly well.

Victims and witnesses organisations were again widely consulted and generally the feedback was positive although some concern was expressed about issues such as bail and the exchange of information. Victim Support were in particular positive in their feedback on relations with the Procurator Fiscal Offices in the Area and there were various examples of close working between the two organisations.

Relations with criminal justice partners more generally including the Bench, the Police and the Court Clerks were positive. One aspect in which the Area was particularly effective was in the arena of equality and diversity and the Area Diversity Team had established a strategy for consulting with the local community and continued to look for ways to effectively engage with the communities in the Highlands and Islands.

The general conclusion was that overall the Area performed to a high standard particularly in the area of target achievement. The widespread geographical nature of the Area did impose some strains with cover being difficult to provide at short notice in the event of illness etc. Efforts were being made however to address this particular problem.



© Crown copyright 2009

ISBN: 978-0-7559-8175-5

This document is also available on the Scottish Government website:
www.scotland.gov.uk

RR Donnelley B62083 10/09

w w w . s c o t l a n d . g o v . u k