



annual report

INSPECTORATE OF PROSECUTION IN SCOTLAND

2010-2011



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annual report

INSPECTORATE OF PROSECUTION IN SCOTLAND 2010-2011

TO THE LORD ADVOCATE

I HAVE THE HONOUR TO
SUBMIT MY SIXTH ANNUAL
REPORT TO THE SCOTTISH
PARLIAMENT.

SEPTEMBER 2011

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

LAID BEFORE THE SCOTTISH
PARLIAMENT BY THE LORD
ADVOCATE in pursuance of s79(8)
of the Criminal Proceedings etc.
(Reform) (Scotland) Act 2007

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FOREWORD

To the Right Honourable Frank Mulholland QC The Lord Advocate

This is my fourth 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 to 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.

As anticipated in my previous Annual Report the past 12 months have produced cases and issues of considerable importance to the prosecution service in Scotland. Since my last report the Supreme Court has issued its decision in the Cadder case with the huge impact that has had on current and future cases in Scotland. At the time of writing the decision of the Supreme Court is awaited in the Cadder sequel cases.

The UK Government Spending Review has had an impact on budgets for the current year (see Budget section) and is likely, at the time of writing, to have a significant impact in the three years to come. I am pleased to report, however, that for the year 2010/11 we were well within our budget.

The year 2010/11 saw the publication of three thematic reports. The first of these, which was a major undertaking, in conjunction with Her Majesty's Inspectorate of Constabulary (Scotland), was on Victims in the Criminal Justice System. It is intended that this would be the first of a series of four such reports on the treatment of victims. Victims and their place in the criminal justice system continues to be a high-profile issue and subject to Ministerial commitments both in the Crown Office and in Justice Division.

A second thematic report was published on Learning and Development within the Crown Office and Procurator Fiscal Service. Considerable investment has been made in recent years on learning and development and the creation of the Scottish Prosecution College in Glasgow. The time seemed right to review the arrangements.

The third thematic report was on Community Engagement. The Inspectorate had been created in the wake of the Chhokar case and our earlier work was devoted to race themes both on a thematic basis and an office by office inspection process. In addition, your predecessor as Lord Advocate had encouraged the

Crown Office and Procurator Fiscal Service to get involved in communities and this report examined how this was being achieved throughout Scotland and identified good practice. The report was published to the background of budget cuts. However, more than ever it seemed appropriate to examine the liaisons which community engagement could deliver on an efficient and economical basis.

All three thematic reports contained recommendations (and suggestions for improvement). Each is examined in more detail in the Annexes attached hereto.

Following the Crerar Review (and earlier work on inspection and regulation reform) the Inspectorate of Prosecution continues to take an evidence based approach and user focus in the production of reports. Selection of topics is risk based and proportionate.

Self assessment has declined somewhat in popularity since my last report and there have been calls for increased independent scrutiny in some quarters. However, I intend to continue, in partnership with Crown Office and Procurator Fiscal Service colleagues, to assist in developing reliable and informative in house self assessment methods. This was a role contemplated in the public consultation document for the Inspectorate eight years ago on its creation.

Inspection, in my opinion, is about three things:

- Accountability
- Quality assurance (where appropriate)
- Catalyst for improvement

The external independent reports I submit to you are focused on delivering under all three of these headings.

I intend to continue in this vein in the year to come.



Joseph T O'Donnell
HM Chief Inspector
September 2011

1. STAFF AND ACCOMMODATION

The staff of the Inspectorate during the period of this report consisted of the Chief Inspector, two Senior Depute Legal Inspectors, a Management Inspector and a Personal Assistant.

Although the number of staff is modest (equivalent to 3.3 full-time staff) it is bolstered throughout the year as necessary by the recruitment of ad hoc inspectors to carry out specific tasks, particularly in relation to the examination of casework. These ad hoc inspectors are recruited for their particular knowledge and experience of the criminal justice system and the operation of the Crown Office and Procurator Fiscal Service in particular. They add flexibility to the staffing arrangements. They are a valuable, cost-effective additional resource at a time when budgets are under extreme pressure.

The Inspectorate continues to occupy premises at Legal House, Gorbals Street, Glasgow. As ever this central location puts the Inspectorate within easy travelling distance of a significant number of Procurator Fiscal Offices. In addition, video-conferencing technology was installed during the year and this has already proved invaluable in contacting offices and criminal justice partners in remote parts of Scotland. This will provide long term savings on travel and other costs.

2. LORD ADVOCATE'S ADVISORY GROUP

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

Its primary function as ever 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 four months under the Chairmanship of the Lord Advocate's Legal Secretary.

The Group continues to have as an invited member the Director of Public Prosecutions for England and Wales who heads up the Crown Prosecution Service. I am delighted to report that, in addition, Mr James Hamilton, the Director of Public Prosecutions for the Republic of Ireland, also accepted an invitation to be a member of the Group. Having the Directors of two external prosecution systems provides a useful external perspective for the Inspectorate, its work and its manner of operation.

The Group as a whole continues to provide invaluable advice on the work programme of the Inspectorate and furnish feedback on its published reports.

3. INSPECTION REFORM AND THE PUBLIC SERVICES REFORM (SCOTLAND) ACT 2010

The bringing into force of the Public Services Reform (Scotland) Act 2010 continues to have an impact on the Inspectorate. Similarly, the Crerar Review continues to play a prominent role in the development of the work programme etc.

In March 2011 the Scottish Government published a document on progress three years on from the Crerar Review.

Various inspectorates and other bodies were invited to submit information on changes since Crerar was published.

The Inspectorate of Prosecution highlighted six particular post-Crerar areas including a move towards concentrating on a smaller number of high-risk topics for inspection and a continued emphasis on joint working to enable multi-agency holistic reports to be prepared.

In addition, the Justice Audit and Inspection Forum continues to meet consisting of all the main criminal justice inspectors in Scotland with the aim among other things to co-ordinate, where appropriate, work programmes.

4. EQUALITIES ACT

The Inspectorate came into being as a result of an equality issue and it is appropriate therefore that the Equalities Act remains as a focus for inspection work.

As highlighted in last year's report the Bill became an Act on 8 April 2010 with most of the main provisions coming into force in October 2010.

This applied to the general duty to show due regard the need to:

- Eliminate unlawful discrimination, harassment and victimisation
- Advance equality of opportunity between different groups
- Foster good relations between different groups

In Scotland, although draft specific duties have been prepared, these have not yet been passed by the Scottish Parliament. The Equality and Human Rights Commission has, however, produced interim guidance.

Responsibility for enforcing the public sector equality duty rests with the Commission which encourages voluntary compliance.

In January 2011 the Chief Inspector gave evidence to the Inquiry Panel for Disability-Related Harassment set up by the Commission. The report is due in September 2011.

In common with all other bodies the Inspectorate has to prepare an Equality Impact Assessment in doing its work. The Inspectorate maintains close links with Crown Office and other equality and diversity groups including the Crown Office Equality Advisory Group which gives advice to the Crown Office and Procurator Fiscal Service on policy initiatives, the Working Group on Interpreting and Translation and the Crown Office Strategy Group on Diversity.

5. COMPLETED WORK

This report covers the period of one year to the end of May 2011.

During this period a further three thematic reports were completed and published.

The first of these was a joint thematic report (in conjunction with Her Majesty's Inspectorate of Constabulary (Scotland)) on the treatment of victims in the criminal justice system. It is intended to publish four of these joint thematics, the final report being devoted to the investigation and prosecution of sexual offences including in particular the operation of the new law on rape (the Sexual Offences (Scotland) Act 2009). This is detailed in Annex A.

The second thematic was a review of Learning and Development in Crown Office and Procurator Fiscal Service including the operation of the new Scottish Prosecution College in Glasgow. This is detailed in Annex B.

The third was on the topic of Community Engagement. This was a topic promoted by your predecessor as Lord Advocate and is detailed in Annex C.

6. CURRENT AND FUTURE WORK PROGRAMME

The future work programme continues to be influenced by the Crerar Review and by the operation of the Public Services Reform (Scotland) Act.

As indicated in last year's Annual Report the Inspectorate is moving away from Area/Office inspections towards more targeted thematic reports, usually in conjunction with criminal justice partners.

The current work includes a report on knife crime which is a topic of considerable media and political focus. The second report on the treatment of victims in the criminal justice system, in conjunction with Her Majesty's Inspectorate of Constabulary (Scotland), will shortly be published dealing with cases which proceed at a summary level (ie before a Sheriff or Justice sitting alone).

Work is also currently proceeding on how the Procurator Fiscal Service prepares summary cases and this will involve engagement with a wide range of criminal justice partners and an examination of a number of individual cases spread across offices throughout Scotland. This is a major undertaking for the Inspectorate.

A number of initiatives are progressing in this area including 'Making Justice Work' and 'Getting People to Court' as well as an internal Crown Office review of case preparation. The Inspectorate's report will concentrate on the role of the Procurator Fiscal Service and the methods used to ingather and present the necessary evidence. The question of 'churn' (or repeated adjournments) will be addressed.

The Chief Inspector continues to sit on the UK Heads of Inspectorates Forum which meets every six months throughout the UK and is an invaluable forum for the exchange of ideas on inspection and its methodology. It also reflects current thinking both north and south of the border on inspection, regulation and complaint handling reform.

7. FREEDOM OF INFORMATION

The Inspectorate had its own publication scheme for freedom of information issues which had been approved by the Information Commissioner in January 2009. This expired in May 2011 and has now been replaced by the Commissioner's own standard publication scheme. Information on this is available on our public website.

During the year to the end of May 2011 ten requests were made under the Act for information and these were all dealt with in the appropriate statutory time limit.

The Chief Inspector used to be a member of the Scottish Public Information Forum which held its meetings in public and invited comments from members of the public on freedom of information issues. However, this has recently fallen into disuse.

8. BUDGET

The Inspectorate's budget for 2010-11 was £350,000.

The expenditure was as follows.

Staff salaries 250,991.96

Admin expenses 53,010.00

Total **£304,001.96**

In terms of the Public Services Reform (Scotland) Act 2010 there are duties now to publish certain information. These are to provide information in connection with the following matters:

- Public relations
- Overseas travel
- Hospitality and entertainment
- External consultancy

The only category in which the Inspectorate expended any money was on overseas travel. A member of the Inspectorate staff attended the International Association of Prosecutors annual meeting in The Hague. The total cost of this was £1,675.00.

The budget for 2011/12 is £320,000 following the budget revisions which took place in 2010.

Following last year's Scottish Government restructuring the Inspectorate moved from Economy to Governance and Communities. The budget is now part of the Parliamentary Business and Government Strategy Portfolio under the control of the Minister for Parliamentary Business. The outcome of the 2011 Spending Review is currently awaited.

ANNEX A

VICTIMS IN THE CRIMINAL JUSTICE SYSTEM

In 2001 the Scottish Government launched the document 'The Scottish Strategy for Victims'. It reflected developments in this field in Scotland, Europe and internationally including the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

The Strategy had three main objectives:

1. To ensure information provision to victims (both in respect of the criminal justice system generally but also concerning the case in which they are involved).
2. To ensure provision of emotional and practice support to victims.
3. To achieve greater participation by victims in the criminal justice system.

Both the police and the Crown Office and Procurator Fiscal Service committed to the strategy which provided the baseline for the inspection which was undertaken in conjunction with Her Majesty's Inspectorate of Constabulary (Scotland).

The report involved extensive consultation with criminal justice partners and others and received invaluable help on casework from Victim Support Scotland and Women's Aid (and ASSIST).

The overall conclusion was that most stakeholders considered that over the lifetime of the strategy victims had become more central to consideration within the criminal justice system although there was a perception that the pace of improvement had slowed in recent years and the focus on victims as opposed to witnesses had lessened.

This first report focused on victims of summary crime which did not result in court proceedings and included cases where no proceedings were taken. This would be for various reasons such as direct measures including fiscal fines and others. Statistics showed that this first report covered more than 50% of the victims of reported crime in Scotland. A particular focus of the report was victims of domestic abuse.

One of the findings was a predisposition to consider victims in terms of the court process and their role as potential witnesses rather than as victims in their own right. This attitude was exemplified by lead managers in both the police and Crown Office and Procurator Fiscal Service having victims and witnesses as joint rather than separate portfolios. There was an apparent and unsurprising focus in both organisations on vulnerable victims and victims of more serious crimes although this produced a sharp contrast to provision for victims in 'lesser' categories.

The strategy itself was found by contributors to still be relevant 10 years after its first launch and the three strands correctly focused.

We considered greater clarity was required to identify which agencies had primary responsibility for victims' needs under the three separate strands.

We found that there was good general information available to victims through websites although awareness seemed disappointingly low.

We found that in too many circumstances victims had low levels of knowledge and understanding about what was happening in their particular case. We supported the view of Victim Support Scotland and others that victims had a right to be informed each time a significant decision about their case was made.

In total 10 recommendations were made including that the Crown Office and Procurator Fiscal Service and police forces reach agreed protocols about which agency provides information at different stages of a case to ensure all victims have basic information about the progress of the case in which they are involved and who to contact for further information.

Additionally, we recommended that police forces, the Crown Office and Procurator Fiscal Service and the Scottish Government should ensure that their approach to dealing with victims recognises that the majority of victims' cases will not proceed to court and will not therefore receive the focus and support that the status of being a witness attracts.

At the time of writing this report several of the recommendations had been implemented and others were works in progress.

ANNEX B

LEARNING AND DEVELOPMENT

A management review report published in February 2002 (*The Pryce-Dyer Report*) found that there was a low level of investment in training in the Crown Office and Procurator Fiscal Service. Using the then Scottish Executive as a comparator it was noted that 0.75% of the Crown Office and Procurator Fiscal Service budget was dedicated to training compared with 2.7% of the Scottish Executive budget. Staff in the Crown Office and Procurator Fiscal Service could expect only two days training in comparison to five in the Scottish Executive.

The Pryce-Dyer Report (not surprisingly) recommended that the Training Unit be strengthened to support a significant improvement in the level and coverage of training across the organisation and represented appropriately on the Management Board by the Human Resources Director. This and other recommendations have been implemented and a formal Learning and Development Strategy has been devised by the Crown Office and Procurator Fiscal Service to focus its aims and objectives. In recent years there has been a shift of emphasis from training to learning and development.

In 2007 Training Division moved from its base in Edinburgh to the new Scottish Prosecution College in Glasgow and in 2008, signalling this change in emphasis, the name of the division was changed to Learning and Development.

There has been an increase in investment in learning and development since the 2002 *Pryce-Dyer Report* and now represents just over 1% of the Crown Office and Procurator Fiscal Service budget.

Given that backdrop it was considered timely to inspect the provision of training and/or learning and development and to take stock of changes and improvements.

We would like to again record our thanks to the Senior Management at Learning and Development for their willingness and active co-operation in the production of this report. Their willingness to consider suggestions for improvement was refreshing.

Overall, the inspection found that the corporate structure of the Crown Office and Procurator Fiscal Service allowed consideration of training and learning and development at the highest level. Corporate leadership still remained, as recommended, with the Director of Human Resources who sat on the Management Board, the Area Fiscals' Group and other groups. As a result the Director of HR was well placed to obtain a strategic view of the training and

development needs of the staff in the service and this was cascaded to the Head of Learning and Development and so on through the development team.

We found that this corporate commitment was reflected in staff attitudes. Staff felt that the commitment was being put into practice albeit there was some complaints about staff not being allowed sufficient time to attend courses or to prepare for them.

We recognise the competing priorities in the workplace but found it encouraging to note that there was the provision of additional resources for managers by way of the new manager's toolkit (available online) and developments such as coaching and mentoring.

A Learning and Development Strategy had been published in 2009 and this acknowledged the importance of alignment of learning and development activities with the organisation's aims.

We found that in order to ensure that Learning and Development Division was aligned with the business needs and strategic aims of the organisation it relied on its links with stakeholders. This was done by various means through, for example, course sponsors, through the Learning and Development Steering Group and through Area liaison. It was felt that some of these required some strengthening to ensure effectiveness.

Each member of staff has a personal development plan. However, we found that these were not necessarily referred to Learning and Development and, even where they were, they were not used to inform future planning.

The range of courses and e-learning packages available through Learning and Development was greater than at any time in the past and the prospectus continued to expand to provide a greater choice of training courses and other learning opportunities for staff.

We made some recommendations in relation to the arrangements for mandatory induction courses and noted that some courses such as the treatment of victims, next of kin and domestic abuse and on deaths were opt in rather than mandatory.

We found the facilities at the Prosecution College very good although there were some space issues.

So far as evaluation of courses was concerned these were measured in terms of instant reaction and understanding only. This did not provide meaningful feedback to managers on the effectiveness of the training. It is acknowledged that evaluation of training is a very difficult area.

In total we made 28 recommendations which were designed to be supportive of and build on existing strengths.

Our understanding is that all 28 recommendations were accepted and this has been reflected in some of the senior management minutes we have seen.

ANNEX C

COMMUNITY ENGAGEMENT

We defined community engagement as the method of involving people in decisions that affect them and allows matters of individual or wider public concern or priorities to become known. This enables organisations to focus on what customer's needs are and how to respond to these. This input can then be reflected in policy, strategy and practice and can help to increase awareness of and confidence in services provided.

We were well aware that community engagement was a very broad term and could take many forms. The Office of Government Commerce described community engagement as “communicating with everyone in the local area”. More simply it is the process of involving people in decisions that affect them.

Community engagement has a particular significance for the Crown Office and Procurator Fiscal Service. Its first published aim is “to serve the public interest” and the Prosecution Code states that “in considering reports the prosecutor must consider what action is in the public interest”. Assessment of the public interest often includes consideration of competing interests including the interest of the victim, the accused and the wider community.

We took the view that community engagement although including diversity issues was wider than that and the methodology used included consultation with a wide range of key leaders and also the holding of focus groups throughout various parts of the country.

The main finding of our report was that the Crown Office and Procurator Fiscal Service was deeply committed to ensuring that communities and the wider general public are engaged.

We did find some duplication and overlap between the roles held by portfolio leaders in community engagement and ‘diversity’.

We recognised the very wide geographical spread of the organisation from large centres such as Glasgow to remote island communities and that therefore different approaches to community engagement would be necessary.

We did find that some Fiscal Areas were more proactive than others and common methods of contact included working groups, multi-agency events, contact with individual groups and communities, raising funds for charity, involvement in various initiatives targeted at specific groups, participation in court open days, speaking at conferences, liaison with schools and offering work placements etc.

The results from our focus groups were particularly interesting and reflected previous evidence from other inspections that the public although very interested in the work of the Procurator Fiscal Service was quite ignorant of what the organisation actually did. This was despite efforts by the Crown Office and Procurator Fiscal Service to ensure the services available were advertised through the media and the use of websites including a newly launched customer feedback policy. One of our suggestions was that the Crown Office and Procurator Fiscal Service should give consideration to introducing social media such as Twitter.

Another aspect of feedback from the focus groups was that communities like feedback on outcomes and achievements and that greater use of the media could be used to get this information across.

We anticipated pressure on community engagement as a result of the tightening of budgets and the redeployment of staff to core business which could easily result in engagement with communities taking a back seat. We do, however, argue that in such times it is important to make sure that the right services are being delivered and there may be opportunities to save money through partnership working and by reducing duplication of work. We also acknowledge the fact that much of this work was done on staff's own free time.

Feedback on some staff was excellent and, as ever, reflected the dedication of the individuals involved. We did find, however, some gaps especially in relation to community groups which support women, gender and learning disabilities.

A commitment was made in the Crown Office and Procurator Fiscal Service's Strategic Plan 2009-12 that:

"Procurators Fiscal will know their community and be known in the community."

And a priority for the 2010-11 Business Plan was to:

"Engage further with local communities and to work with and influence local partners in order to increase understanding of the role of the public prosecutor and to improve public perception of Crown Office and Procurator Fiscal Service."

The results of this review have shown that the Crown Office and Procurator Fiscal Service is committed to engaging with the communities. Work was being carried out both corporately and in each Fiscal Area to address the points above.

However, we do recommend that some adjustments and responsibilities in process should be made along with the introduction of new methods of engagement and improved recording, measurement and assessment of outcomes.

We felt that with these changes the Crown Office and Procurator Fiscal Service would take steps closer to meeting the Scottish Government National Outcomes in particular: 'Improved Life Chances'; 'Making us Safer'; 'Creating stronger and more supportive communities' and 'Ensuring better public services'.

In total we make 14 detailed recommendations as an aid to improvement.

The report was welcomed by the Crown Office and Procurator Fiscal Service and the terms and recommendations accepted.



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