

annual report

INSPECTORATE OF PROSECUTION IN SCOTLAND

2015-2016



**Safer
Scotland**
Scottish
Government

TO THE RIGHT HONOURABLE JAMES WOLFFE QC
THE LORD ADVOCATE

The Eleventh Annual Report to the Scottish Parliament

November 2016

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HM CHIEF INSPECTOR
INSPECTORATE OF PROSECUTION IN SCOTLAND

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FOREWORD

This is my third annual report and, in keeping with my previous reports, there is a theme of constant change.

This year has seen the appointment of David Harvie as Crown Agent, the civil service head of Crown Office and Procurator Fiscal Service (COPFS), and James Wolffe QC and Alison Di Rollo QC, installed as the Lord Advocate and Solicitor General respectively. I wish them all the best in their new roles and look forward to a constructive and productive working relationship.



In November 2015, following feedback gathered through office visits, people surveys and a major consultation exercise, COPFS launched “Shaping the Future” – a programme to review their structures and how COPFS manages the delivery of their core business, namely Initial Case Processing, Summary and Sheriff and Jury, serious casework and corporate services work.

The programme concluded in August 2016 and resulted in a re-design of COPFS leadership and management structures and their business model. The outcome is a model structured around the four key functions of COPFS work:

- Local Court – This function will deliver a local prosecution service dealing with both summary and sheriff and jury business throughout Scotland. It has six geographic business units aligned with Sheriffdoms and local Criminal Justice Boards. Each Unit is underpinned by a leadership structure designed to provide visible leadership on a geographical basis;
- The National Initial Case Processing (ICP) Unit – This has responsibility for initial decisions on what action to take, including whether to prosecute or not, for all summary cases across the country. It forms part of the national local court function reflecting the close relationship between ICP and the teams preparing and prosecuting cases in local courts;
- Serious Casework – This function comprises a number of specialist units, including Appeals Unit; Civil Recovery Unit; Criminal Allegations Against the Police; Health and Safety Division; International Co-operation Unit; Road Traffic Fatalities Unit; Scottish Fatalities Investigations Unit; Serious and Organised Crime Unit; and Wildlife and Environmental Crime Unit. The High Court Unit also falls within the serious casework function. This unit deals with High Court cases in four teams based in Edinburgh, Glasgow, Dundee and Aberdeen and includes specialist sexual offences teams and homicide and major crime teams; and
- Operational Support – This function includes Policy and Engagement Division and a number of corporate services including Estates; Finance Division; Human Resources; Information Systems Division; Procurement; and business transformation activities.

The new model aims to address issues that were raised in the consultation process, such as a lack of visibility of senior managers, the absence of local accountability and flexibility and the dilution of effective relationships with criminal justice stakeholders, while simultaneously retaining the benefits of the specialist approach harnessed in the Federation structure.

Through public reporting and scrutiny, effective inspection can support programmes of change and improvement made by organisations to assist their service delivery by identifying where service performance is at risk or failing and identifying opportunities for further efficiencies and

improvements to be made. It can also promote accountability and increase public confidence in the quality of services provided.

Taking account of the increase in complex historical sexual abuse cases and that cases involving sexual crimes now represent the majority of the COPFS High Court workload, we have recently embarked on a review of the investigation and prosecution of serious sexual crimes. This will also provide an opportunity to assess the effectiveness of the new functional approach to dealing with High Court cases.

Scrutiny organisations also have a critical role in supporting improved outcomes and encouraging more citizen-focused public services. In the inspections we conducted this year, we focused on whether the service provided by COPFS met the needs and expectations of the service users, whether as victims, witnesses, accused persons or bereaved nearest relatives.

Consideration of the responsiveness of COPFS to user needs and how COPFS uses customer feedback to learn and improve its service was a central theme of our thematic report on complaints handling and feedback.¹

In recent years, the length of time taken between the date of death and the start of a Fatal Accident Inquiry (FAI) has attracted considerable criticism. For those bereaved by sudden or unexplained death, involvement with the procurator fiscal service and an unfamiliar justice system, occurring at a time of significant personal crisis or distress, can be bewildering and concerning. Whilst it is important to ensure there is a thorough and professional investigation, protracted investigation and unexplained delay is likely to undermine public confidence in COPFS and, potentially, in the FAI process. Our thematic report on FAIs² sought to identify reasons for such delays and identified a number of areas where the services offered to bereaved relatives and the public could be improved in this important area of work.

Michelle Macleod.

Michelle Macleod
HM Chief Inspector
November 2016

¹ Discussed at Chapter 2.

² Discussed at Chapter 2.

CHAPTER 1: ABOUT US

The Inspectorate of Prosecution in Scotland (IPS) was established in 2003 and placed on a statutory footing in 2007 by the Criminal Proceedings etc. (Reform) (Scotland) Act 2007. The Act requires the Inspector “acting independently of any other person” to secure the inspection of the operation of COPFS and make recommendations that will contribute to the improvement of COPFS and enhance public confidence. It provides that the Lord Advocate may require the Inspector to submit a report on any particular matter connected with the operation of the Service.

Vision

The Inspectorate's vision is to enhance the effectiveness of and to promote excellence in the prosecution service in Scotland through professional and independent inspection and evaluation.

Values

The core values of the Inspectorate are:

Independence – to provide impartial and objective advice and support.

Professionalism – to undertake inspections with integrity, rigour, competency and consistency.

Equalities

The Inspectorate is committed to promoting equality and diversity. To this end we consider any impact our inspections and recommendations may have on individuals, groups and communities. In particular, we carry out Equality Impact Assessments, focusing on the potential impact of our work on those with protected characteristics.³ The Inspectorate attends the COPFS Equality Advisory Group (EAG) as an observer. The EAG was established in 2003 and consists of COPFS staff and external members with a remit "to provide independent and informed advice to COPFS in relation to the impact of existing and future policies and practices on diversity and the promotion of equality and fairness in service delivery and employment".

Our Approach

Our approach to inspection is to encourage an inclusive and participative process designed to secure improvement across the system, acting as an impartial and professional 'critical friend'. In addition to identifying areas for improvement, it is important to highlight and promote examples of good practice, so that they can be adopted elsewhere.

It is important that the work of the Inspectorate is relevant to the issues impacting on our communities. In common with other inspectorates, IPS inspection activity has evolved to developing programmes aiming inspection resource where risks to services are greater using sector risk profiles (from inspections) and sector intelligence (such as performance data and stakeholder feedback).

There are a number of different types of inspection work that can be undertaken by the Inspectorate. These include:

³ As defined in the Equalities Act.

Thematic Reviews

We will continue to use thematic reviews which look holistically at services end to end. These can be focused on specific types of case work or business approaches. We will highlight good practice and make recommendations designed to drive improvement and enhance quality.

Follow-up Reports

The main way in which inspectorates have impact is through their published reports and recommendations. For maximum impact and value from inspection findings, a robust follow-up process is a critical part of an effective inspection regime. Since 2014, the Inspectorate has embarked on a rolling programme of follow-up reports to monitor the progress of COPFS implementation of our recommendations and to evaluate the effectiveness and outcomes of measures implemented. Follow-up reports will continue to form part of our inspection cycle.

Functional Inspections

We will review the effectiveness and efficiency of the new functional model of working, recently introduced across COPFS.

Collaborative Inspection

It is recognised that some issues are best addressed by a multi-agency or partnership approach. IPS has previously conducted joint inspections with Her Majesty's Inspectorate of Constabulary in Scotland (HMICS). The Inspectorate also liaises with Audit Scotland and the other inspection bodies within the criminal justice system to ensure there is no duplication of work and that inspection work is undertaken in a collaborative and complementary way.

This year IPS worked with HMICS to consider the possibility of a joint collaborative inspection on how offenders with mental health problems are dealt with in the criminal justice system. Recognising that a significant percentage of offenders have mental health problems, there would be benefit in exploring themes such as information sharing, the use of early interventions and diversions, and to identify any gaps in service provision, examples of best practice and what achieves the best outcomes.

Due to difficulties in identifying a cohort of persons with mental health problems that could be tracked throughout the criminal justice system, we have concluded that it is not feasible to conduct a joint inspection at this time. We have, however, identified what would be required to enable such an inspection to take place and it is intended that this work will be re-visited as part of IPS' future work programme.

CHAPTER 2 – OUR INSPECTIONS

This report covers the period from November 2015 to November 2016. During this period we published our thematic report on complaints handling and feedback and a thematic report on Fatal Accident Inquiries.

Thematic Report on Complaints Handling and Feedback

A thematic report on COPFS complaint handling and feedback was published in December 2015 (<http://www.gov.scot/Publications/2015/12/1001>).

The way in which an organisation handles complaints shows how much it values service users and good customer relations. Meeting dissatisfaction with a positive response and using customer feedback to improve service is crucial to any successful organisation.

An effective complaints system has three key benefits:

1. It resolves issues quickly and cost-effectively;
2. It increases public/customer confidence in the organisation; and
3. It provides information that can drive improvements in service delivery

We found that the complaints handling staff in the Response and Information Unit (RIU), a national specialist unit that handles complaints and feedback, were helpful and skilled and there was a genuine willingness and commitment from the Head of Policy, managers and staff in RIU to improve the complaints handling process. We rated the response from RIU to be excellent or good in 80% of replies.

However, we found that there was less evidence of buy-in from the wider organisation about the need to learn from complaints and to resolve complaints at the point of service delivery.

In addition, whilst there was some evidence of complaints influencing policies and procedures, learning from complaints to support improvement and delivery of service was not systematic. There was no register of themes, actions taken, lessons learnt and outcomes.

We made 15 recommendations designed to strengthen and improve the complaints process and promote a culture that values complaints and commits to learning from them.

We were pleased to report that COPFS accepted all of our recommendations.

Thematic report on Fatal Accident Inquiries

A thematic report on Fatal Accident Inquiries (FAIs) was published in August 2016 (<http://www.gov.scot/about/public-bodies/ipis/reps>).

FAIs provide a public airing of the circumstances of a death which allows bereaved relatives to hear what happened from those directly involved and to ensure that reasonable measures to prevent a recurrence are identified. FAIs have played a crucial role in driving up safety standards across a range of working environments and provided scrutiny on the way authorities have dealt with deceased persons while in custody.

In recent years, the length of time taken between the date of death and the start of an FAI has attracted considerable criticism. Whilst it is important to ensure there is a thorough investigation,

unexplained delays undermine the confidence of bereaved relatives and the public in COPFS. This inspection sought to identify reasons for such delays.

We found that deaths investigations conducted in procurator fiscal offices prior to the creation of the Scottish Fatalities Investigation Unit (SFIU), a specialist unit responsible for investigating all deaths, were characterised by lengthy periods of inactivity and protracted and often unfocused investigations resulting in unexplained delays in a significant number of cases.

In 2012 the SFIU assumed responsibility for investigating all non-suspicious deaths. Since 2012 the time taken between the date of death and the start of an FAI has significantly reduced and there has been a marked improvement in the service provided by COPFS.

While cases are being progressed more quickly, and staff are helpful and committed to providing a high quality service, we identified a number of areas where there is scope for further improvement to expedite investigations and provide a better service to bereaved relatives.

A lack of understanding of the purpose of an FAI has also led to delays and, in some cases, the involvement of unnecessary witnesses. To assist nearest relatives and other interested parties and to provide clarity on the purpose and scope of an FAI, COPFS requires to set out, in an understandable format, the circumstances of the death and the issues that require to be further explored in the public interest at the FAI, prior to the first court hearing.

The report made 12 recommendations designed to expedite the investigation and preparation of Fatal Accident Inquiries and improve the service offered to bereaved relatives and the public.

COPFS has accepted all of our recommendations.

Current and Future Programme

- Follow-up report on the management of time limits.
- Taking account of the increase in complex historic sexual abuse cases and that cases involving sexual crimes now represent over 70% of all High Court workload, we have recently embarked on a review of the investigation and prosecution of serious sexual crimes.
- Follow-up report on complaints handling. As part of the follow-up review, we will include a review of the Victims' Right of Review. The Right of Review was introduced in July 2015. It provides victims with a statutory right to review a decision not to prosecute or a decision to stop or discontinue a case.⁴ It is important to assess the procedures and policies implemented by COPFS are effective and fulfil the right provided.

The programme is kept under review and altered as necessary to respond to any new challenges or developments which provide identifiable risks for COPFS and the wider criminal justice system.

⁴ Section 4 of the Victims and Witnesses (Scotland) Act 2014 introduced the right of a victim to review in July 2015.

CHAPTER 3 - CONTINUOUS IMPROVEMENT AND DIGITAL INNOVATION

The principal responsibility for improving public services rests with COPFS. This requires strong leadership and a culture and commitment to support the delivery of improvement in practice. In an increasingly digital world, where public expectations continue to drive up standards of customer service, organisations need to constantly assess how they can deliver the business better and in a more responsive manner. COPFS is currently exploring a number of ways to use new technological advances to improve its service delivery, as part of its continuous improvement programme.

We highlight below a number of ongoing and new initiatives aimed at driving improvement and realising efficiencies.

Management Development Programme

In the 2014-15 Annual Report we reported that COPFS had launched a new Management Development Programme (MDP) aimed at increasing the skill and confidence of its leaders and managers. The programme was to be delivered over a 13 month period, through a variety of learning tools including e-learning modules, workshops and action learning sets.

Update

The MDP was initially rolled out to those working in the Sheriff and Jury function in May 2015 and thereafter to staff in dealing with summary business, the Serious Casework Division and High Court. This was completed in April 2016. The final roll-out of the MDP is now taking place for staff working in Corporate Services Group and in Initial Case Processing, with a projected completion date of October 2017. On completion the programme will have provided training in essential management skills to over 300 managers within COPFS. COPFS also worked collaboratively with the Police Investigations and Review Commissioner (PIRC), with 16 managers from the PIRC participating in the programme.

Evaluation of the MDP will be continuous applying a multi-faceted approach utilising questionnaires, online surveys, one to one discussions and action learning sets. The action learning sets will also provide an opportunity for managers to share experiences and good practice of the application of skills in the operational environment.

Review of Specific Crimes

Managers have continued to review specific categories of crimes that have been identified as sensitive or problematic due to the nature of the offence. This has been facilitated through the use of an IT application which allows access to the database and any relevant case information and documentation in a user friendly way, avoiding the need to locate and access hard copy files which can be time consuming and labour intensive.

For instance, monthly reviews of stalking cases have continued in order to identify, for example, any deficiencies in police reporting, non-compliance with prosecution policy or particular difficulties/sensitivities as well as best practice. Two discrete reviews were also conducted in relation to domestic abuse cases using the same application.

Independent Review Panel on Domestic Abuse and Sexual Crime (IRP)

The effective prosecution of domestic abuse and sexual violence is a strategic priority for the Crown Office and Procurator Fiscal Service. To demonstrate that its policies and practices are fair, sensitive and robust, during 2015-16 COPFS introduced a review of cases by an independent panel consisting of organisations that represent the interests of victims and witnesses, including Scottish Women's Aid (SWA), Rape Crisis, Victim Support Scotland (VSS) and Children 1st.

The purpose of the Independent Review Panel is to review domestic abuse and sexual offence case files to assess:

- The way in which COPFS interacts with victims and witnesses and to make any appropriate recommendations on the individual cases looked at to improve COPFS service to victims and witnesses;
- To test and challenge COPFS policies and practices to ensure operational effectiveness in all cases;
- To make recommendations for improvement based on the review and scrutiny of the cases; and
- To raise awareness and understanding of the decision making processes of COPFS.

There have been three IRPs to date. Cases are randomly selected although the particular interest of those attending is taken into account. The panel can examine, query and challenge any aspect of the cases including the decision making, content of correspondence and highlight areas where practices could be improved. For example, as a result of recommendations from the IRP, Victim Information and Advice (VIA) staff now receive training on domestic abuse and the domestic abuse training course includes an input on the impact that domestic abuse has on children. All action points arising from the IRPs are anonymised and shared with the panel and those impacted by the actions. We will consider the work of the IRPs and any outcomes as part of our forthcoming review on the investigation and prosecution of sexual crimes.

Digital Innovations

Case Management Applications

In the 2014-15 Annual Report we reported that COPFS had developed a front end application designed to simplify and automate a number of existing processes which would reduce the potential for human error and provide access to information, to allow decisions to be taken without obtaining hard copy papers.

This IT application is now a "proved concept" with the introduction of a number of bespoke applications to simplify processes.

One example is an application known as the National Enquiry Advice Service (NEAS) that was designed to enable all correspondence and witness excusals sent to one office to be accessed and dealt with by an experienced depute based elsewhere. This was piloted in two offices. While the pilot identified some practical issues arising from a lack of local knowledge and practices, it did prove the viability as a proof of concept of the NEAS.

The ability to deal with particular types of work remotely introduces flexibility and an element of resilience for COPFS, with the staff in offices able to assist other offices at peak periods and to allow business to be dealt with more efficiently when, for example, a member of staff in a small office is absent for any particular reason without having to physically move the papers. One particular example is that cases of a particular nature e.g. stalking may be either prepared or

checked remotely by those with a specialist training in this area. Following the successful proof of concept, sheriffdom managers are currently ascertaining the best use that can be made of the service.

The use of such applications provides a more cost effective way of making any necessary changes and improvements with the changes being restricted to the discrete area of business affected, rather than wholesale system change being required.

Computer Tablets

The development of computer tablets for use in court has taken longer than anticipated due to technical issues that required to be resolved. While this has delayed the roll-out, it has enabled increased functionality to be built into the computer tablets, resulting in a more sophisticated and improved product than the initial version.

The next step is to commence user testing in real time in two procurator fiscal offices. It is envisaged that prosecutors will be able to download case files for court onto the device using a secure connection. An IT application named "Case Management in Court" has been developed which will enable deutes to access all documents held in the case directory.

The use of computer tablets in court represents a cultural change for prosecutors. While the application has been designed to be intuitive and replicate hard copy cases files, it is recognised that the pace of adaptability will vary between prosecutors. The overarching objective is to improve the delivery of the presentation of the case but there are a number of anticipated ancillary benefits such as reducing the need for hard copy files and greatly simplifying updating files before and after court, creating efficiencies for the administrative staff. We look forward to assessing the impact and benefits of this innovative way of working.

ISD Corporate Applications

The Corporate Applications project seeks to transform digitally the way in which COPFS carries out its corporate administration processes. It aims to improve the way COPFS accesses, processes and shares corporate information across the organisation.

The applications will allow corporate information and processes such as staff data, travel and subsistence expenses, absence records and performance appraisal to be managed more effectively by inter-linking COPFS systems using digital age techniques. The intention is to provide a suite of products providing corporate information, applications, tools and processes accessed through a web portal. The first application will enable any change in status or location updated by a member of staff to automatically populate other relevant fields.

The applications should save money and time by streamlining systems and requiring less manual and hard-copy transactions.

ANNEX A

Finance

The Inspectorate's budget for 2015-16 was £320,000.

The expenditure was as follows:

Staff costs*	258,245.03
Subsistence and motor mileage	200.44
Printing and binding	5,882.28
Travel and accommodation	3,991.66
Hospitality	61.50
Conference fees	153.10
Other running costs	<u>12,086.64</u>
Total	<u>£280,620.65</u>

*No member of staff earned in excess of £150,000.

Staff and Accommodation

The staff of the Inspectorate during the period of the report consisted of the Chief Inspector, a Principal Inspector, a Legal Inspector, a Business Inspector, a Personal Assistant and one Associate Inspector on a fixed-term contract.

Freedom of Information (FOI)

We publish FOI information and all our reports on our website.

During the period to the end of October 2016, nine Freedom of Information requests were received – all were responded to within the required timescale.

Complaints Process

Our Complaints Handling Procedure is published on our website and seeks to resolve any dissatisfaction as quickly as possible and where necessary to conduct thorough, impartial and fair investigations of complaints. Our Complaints Handling Procedure does not extend to individual complaints about operational decisions relating to specific cases. These should be addressed to Crown Office and Procurator Fiscal Service.

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About the Inspectorate of Prosecution in Scotland

IPS is the independent inspectorate for the Crown Office and Procurator Fiscal Service. COPFS is the sole prosecuting authority in Scotland and it also responsible for investigating sudden deaths and complaints against the police which are of a criminal nature.

IPS operated on a non-statutory basis from December 2003. Since the coming into effect of the Criminal Proceedings etc (Reform) (Scotland) Act 2007 Sections 78 and 79 in April 2007 the Inspectorate has been operating as a statutory body.

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