

Thematic Report on the Management of Time Limits



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INTRODUCTION

The aim of this inspection was to review and assess the effectiveness of the Crown Office and Procurator Fiscal Service (COPFS)¹ management of statutory time limits in serious cases. Time limits in criminal proceedings provide a vital safeguard for accused persons. It is a right that the courts have rigorously upheld.

Scotland has one of the tightest time limit regimes among comparable jurisdictions and responsibility for complying with time limits rests with COPFS. Failure to adhere to statutory time limits has serious consequences:

- If the accused has been remanded in custody and the relevant time limit expires, the accused will be released on bail.² Remand in custody is a means of managing the risk that an accused person presents, to individuals, to the community and/or to the administration of justice. Releasing such a person on bail, therefore, potentially places people in danger or creates a risk that s/he may try to interfere with or evade justice.
- For accused persons released on bail, failure to comply with relevant time limits brings proceedings to an end and the accused person will be free for all time from those charges.

As well as the consequences described for victims, witnesses and the community, any failure resulting in a case becoming time-barred³ is likely to undermine public confidence in the COPFS and, potentially, in the criminal justice system as a whole.

The focus of this inspection is the management of time limits that apply to serious cases prosecuted under solemn procedure (“solemn cases”), that is cases prosecuted in the High Court or in the Sheriff Court before a jury. Time limits apply to all solemn cases prosecuted in Scotland.

Approximately 5,300 serious cases are prosecuted each year.⁴ It is noteworthy and to the credit of COPFS that, with a few exceptions, they are managed within the tight time limits that apply in Scots law.

Recently, however, there has been an increase of serious cases and a marked change in the profile of such cases, with a significant increase of sexual crimes. Solemn cases have also become more complex as new sophisticated investigation techniques have evolved to combat crime. These developments have impacted on the prosecution service and staff resources.

With increasing pressure on COPFS resources, it is imperative that the systems employed to ensure compliance with time limits are effective, comprehensive and robust. This review makes a number of recommendations that are designed to achieve that overarching purpose.

1 The independent public prosecution service in Scotland.

2 Release from custody of an accused person until the trial or next court hearing.

3 Term used to describe a case that cannot proceed due to the expiry of the statutory time limit.

4 Source: COPFS: Statistics on Case Processing 2011-2014.

KEY FINDINGS

1. There is strong cultural awareness within COPFS of the importance of ensuring that solemn cases are progressed and prosecuted within statutory time limits.
2. Approximately 5,300 serious cases are prosecuted each year. However, whilst COPFS has a strong track record of compliance with statutory time limits, the combination of an increasing volume of serious cases, the changing profile of serious offending and the greater complexity of such cases, all in the context of reducing budgets, has impacted on its ability to progress High Court cases expeditiously. This increases the risk that cases may be lost if time limits are not managed effectively.
3. Managing time limits has become more complex as the criminal landscape has changed over recent years. For example:
 - Crime has become increasingly global resulting in more crimes being reported that transcend territorial boundaries, as well as the evolution of ever more sophisticated means of committing and detecting crime. This brings challenges for investigators and prosecutors working to strict time limits;
 - There has been an increase in the overall volume of serious crime reported by the police as well as a marked change in the profile of such cases, including a substantial increase in reports of sexual crime;
 - Multiple-accused prosecutions, often with different time limits for different accused, are more common, as are accused persons with a number of cases proceeding simultaneously all with different time limits; and
 - The different procedural regimes that apply to cases prosecuted in the High Court and Sheriff Courts provide an additional complication.
4. All these factors, when set in the context of budgetary reductions pose significant challenges for COPFS in the management of its solemn business.
5. Against this background, we found that, whilst adherence to time limits is a high priority and it is generally recognised that all those involved in the prosecution of a case share the responsibility to manage this, there is a lack of clarity about who has responsibility for ensuring that time limits are accurately recorded at each stage of proceedings. Further, the systems employed for recording and monitoring time limits are varied and inconsistent.
6. There is no national system for managing time limits and so a plethora of auditing and monitoring arrangements has evolved, in the form of numerous spreadsheets, check lists, reports run from different COPFS management information systems and reports issued from the national Management Information Unit (MIU).⁵ This proliferation of checking mechanisms often results in unnecessary duplication of work and effort at different stages of the progress of a case. Further, some systems calculate time limits electronically and others manually, which raises a risk of discrepancies arising.
7. Digital advancements provide the opportunity to simplify and streamline some of the processes and procedures to assist with the management of time limits.
8. Whilst there is general awareness of the importance of cases progressing within statutory time limits, there is a lack of understanding on the part of some staff of the legal consequences of failing to do so.

⁵ A Unit that provides statistical analysis and information.

9. Other than some basic information on time limits delivered at the Case Preparer's course, designed for all involved in preparing Sheriff and Jury cases for prosecution, there is no training programme for solemn legal or administrative staff on the legal requirements or the management of time limits. Training on this crucial aspect of the prosecution process is primarily delivered through "on-the-job" learning. The Knowledge Bank⁶ contains some guidance, but it is piecemeal and spread across a number of different guidance manuals. There is no single guidance source or aide memoire explaining the law and relevant authorities.

Recommendations

1. COPFS should introduce a formal reporting regime for solemn cases that fail to comply with statutory time limits.
2. COPFS should explore with the Criminal Courts Rules Council,⁷ the possibility of amending Court rules relating to the service of indictments to enable service by means of electronic transmission to the accused person's legal representative.
3. COPFS should implement monthly reconciliation of all High Court cases between the High Court Unit at Crown Office and the Federation High Court Hubs.
4. COPFS should issue guidance requiring the review by the Solemn Legal Manager (SLM) of any solemn case in which additional charges and/or information is received that potentially changes the character of the case and thus the appropriate forum⁸ for prosecution and applicable time limits. If there has been an initial instruction by Crown Counsel,⁹ such cases should be re-submitted for further consideration.
5. COPFS should formalise procedures to check the accuracy of the calculation of time limits at the start of the life of a case. The calculation should be checked with the information recorded by the Scottish Court Service (SCS) and verified by the SLM. Any subsequent amendment of the time limit should be entered on the COPFS case management system and similarly checked by the SLM.
6. COPFS should amend the Sheriff and Jury Case Preparation Living Document to include the following data:
 - The time limit for proceeding in the High Court for any cases considered borderline between Sheriff and Jury and High Court;
 - Where appropriate, the summary time limit for any statutory offences; and
 - Any amended time limits.
7. COPFS should include a dedicated sheet within the Sheriff and Jury court folder detailing all relevant time limits which is updated following each court hearing.
8. COPFS should ensure that in all High Court and Sheriff and Jury cases that have been conjoined or where a sentence has interrupted the time limit, the new time limit for each case is reviewed by the SLM and recorded on the system and on the court files.

6 COPFS information database containing legal and non-legal guidance.

7 A body established under s304 of the Criminal Procedure (Scotland) Act 1995 to review the procedure and practices of the courts exercising criminal jurisdiction in Scotland and assist the High Court in the discharge of its court procedural rule-making function.

8 Level of court proceedings.

9 Crown Counsel are appointed by the Lord Advocate to prosecute all cases in the High Court and present appeals in the Appeal Court.

9. COPFS should develop a comprehensive training package on the Management Information Book (MI Book) for delivery to all solemn managers.
10. COPFS should develop a national uniform and comprehensive suite of management information to facilitate the effective management of the progress of solemn cases and time limits. This should include key indicators including those data integrity reports that provide a check of data essential for the accurate recording of time limits. A standard template for the collation of such information should be introduced.
11. COPFS should ensure that the roles and responsibilities of those attending senior management¹⁰ meetings to monitor the progress of solemn cases are clearly defined and that there are contingency arrangements to deal with the absence of key personnel who attend such meetings.
12. COPFS should introduce mandatory training on all aspects of time limits for all legal and administrative staff involved in the investigation, preparation and management of solemn cases.
13. COPFS should introduce a new milestone to indict all High Court bail cases seven days prior to the expiry of the 10 month time limit.

¹⁰ Band G and above.

BACKGROUND

Aim

10. The aim of this inspection was to review and assess the effectiveness of COPFS management of statutory time limits in serious cases having particular regard to:
 - The effectiveness of procedures, processes and systems aimed at ensuring compliance with time limits for initiating proceedings in both bail and custody solemn cases
 - Governance and accountability arrangements
 - The integrity of management information tools
 - Audit and reconciliation processes

What are time limits?

11. Time limits regulate the maximum length of time that can elapse between the first time a person appears in court charged with an offence and the start of their trial on that charge. Different time limits apply depending on whether an accused person is in custody or on bail. Time limits are also an important means of ensuring compliance with the requirements under Articles 5 and 6 of the European Convention on Human Rights: that an individual should not be deprived of their liberty for longer than reasonably necessary to bring them to trial; and that trials be brought within a reasonable time.
12. Time limits have been part of Scots law for at least three centuries.¹¹ They act as a compulsion on the prosecution to proceed efficiently and confer a right of finality on those against whom proceedings have been brought.
13. The overriding strategic purpose of COPFS is to secure justice for the people of Scotland.¹² Central to that aim is the expeditious prosecution of serious crime, with due regard to the interests of justice, and within time limits which are among the tightest in comparable jurisdictions across the world. In many other jurisdictions, including England and Wales, there is no time limit for cases where accused persons are not in custody.
14. Failure to adhere to statutory time limits has serious consequences:
 - If the accused has been remanded in custody and the relevant time limit expires, the accused will be released on bail. Remand in custody is a means of managing the risk that an accused person presents, to individuals, to the community and/or to the administration of justice. Releasing such a person on bail, therefore, potentially places people in danger or creates a risk that s/he may try to interfere with or evade justice.
 - For accused persons released on bail, failure to comply with relevant time limits brings proceedings to an end and the accused person will be free for all time from those charges.
15. The responsibility for complying with statutory time limits rests with COPFS. As well as the consequences described for victims, witnesses and the community, any failure resulting in a case becoming time-barred is likely to undermine public confidence in the COPFS and, potentially, in the criminal justice system as a whole.

11 Criminal Procedure Act 1701.

12 Strategic Plan 2015-2018.

16. We found that there is significant awareness within COPFS of the importance of adhering to time limits. The priority given to complying with time limits and the confidence in the management of time limits is perhaps best demonstrated by the absence of any system for reporting cases where the time limit has expired to Crown Office,¹³ as such an occurrence is not contemplated. In contrast, the Crown Prosecution Service in England and Wales (CPS) has a detailed reporting regime for failures to comply with custody time limits. The reports must detail actions that have been taken to address the cause of the failure. This was formalised following reports by Her Majesty's Crown Prosecution Service Inspectorate¹⁴ (HMCPSI) and is intended to reinforce a cultural change whereby CPS prosecutors take responsibility for the calculation of and compliance with time limits at an early stage.
17. A similar approach should be adopted by COPFS to ensure that there is an accurate record of solemn cases that fail to comply with statutory time limits to enable the cause of the failure to be identified and actions taken to avoid repetition.

Recommendation 1

COPFS should introduce a formal reporting regime for solemn cases that fail to comply with statutory time limits.

Methodology

Evidence was obtained from a range of sources, including:

- Interviews with key individuals from COPFS
- A review of relevant departmental protocols and guidance
- Analysis of current statistics, trends and age profile of cases
- A review of existing databases and management information systems
- Visit and interviews with those responsible for managing time limits in England and Wales

13 The Headquarters of COPFS.

14 *Report on the Thematic Review of Custody Time Limits*, published September 2002 and *Report on the handling of custody time limits* by the CPS, published March 2010.

INVESTIGATION AND PROSECUTION OF SERIOUS CRIME

Legal obligations

Criminal procedure

18. The statutory provisions regulating time limits are contained in the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”).
19. There are two types of criminal procedure – “solemn” and “summary”. In summary procedure, a trial is held in the Sheriff or Justice of the Peace Court before a judge without a jury.¹⁵ In solemn procedure the trial, whether in the High Court or the Sheriff Court, is held before a judge sitting with a jury of 15 people.
20. More serious cases are dealt with under solemn procedure (“solemn cases”) and are prosecuted in the name of the Lord Advocate.¹⁶ The focus of this inspection is the management of solemn cases.

Solemn proceedings

21. Solemn proceedings generally commence with the accused person appearing in court “on petition” or being “placed on petition”. The petition is the initiating warrant in such proceedings and sets out the nature of the criminal allegations. When the accused first appears at court, the most likely outcome is that s/he will be “committed for further examination” (CFE). The accused will then either be released on bail or remanded in custody. If remanded, the accused must be brought back to court within eight days, when the most likely outcome is that s/he will be fully committed (FC) for trial. Again s/he may either be released on bail at that point or remanded in custody, pending trial.¹⁷
22. Time limits apply from the point at which the accused is either CFE’d on bail or FC in custody.¹⁸ Time limits apply to every charge for each accused. There are procedural differences between solemn proceedings in the High Court and Sheriff Courts. **Annex A** provides flowcharts of the time limits that apply to solemn proceedings.¹⁹ The end of the time limit is commonly referred to as the “time bar”.

High Court

23. The High Court is the Supreme Criminal Court in Scotland and deals with the most serious cases. Time limits for cases prosecuted in the High Court are different for accused persons on bail and those who are remanded, as follows:

Custody

24. If an accused person is remanded in custody, the prosecution must serve an indictment – the document narrating the charges, witnesses and productions for the case – on the accused or the accused’s legal representative within 80 days of FC.²⁰ The indictment provides the accused with notice of a preliminary hearing (PH). The purpose of the PH²¹

15 In Glasgow, there are also Stipendiary Courts and Stipendiary Magistrates. Stipendiary Magistrates are legally qualified and have the same sentencing powers as a Sheriff in summary proceedings.

16 S64 of the Criminal Procedure (Scotland) Act 1995. The prosecution service is headed by the Lord Advocate assisted by the Solicitor General collectively known as the Law Officers.

17 Criminal Procedure Act 1701 (c.6); see also *Herron v A.B.C. & D.*, 1977 S.L.T.(Sh.Ct.) 24.

18 S65 of the Criminal Procedure (Scotland) Act 1995.

19 S65 of the Criminal Procedure (Scotland) Act 1995.

20 S65 (4)(a) of the Criminal Procedure (Scotland) Act 1995.

21 S72 of the Criminal Procedure (Scotland) Act 1995.

is to determine the state of preparation of the defence and the prosecution and ensure outstanding issues are resolved before trial. The PH must be held within 110 days of FC²² and not less than 29 clear days after service of the indictment.²³ The trial is fixed by the court at the PH²⁴ and must commence within 140 days of FC.²⁵

25. Failure to adhere to the 80, 110 or 140 day custody time limits results in the accused being granted bail and released from custody.²⁶

Bail

26. If an accused person is CFE'd on bail the prosecution must serve an indictment on the accused or their legal representative no later than 10 months after the date of the accused's first appearance at court²⁷ and not less than 29 days prior to the PH.²⁸ The PH must be held within 11 months of CFE²⁹ and the trial must commence within 12 months.³⁰
27. As earlier noted, time limits in solemn custody cases run from the date of the FC, whereas time limits in bail cases run from the date of the CFE.
28. In all cases, if the 11 and 12 month bail time limits are not complied with, the proceedings come to an end and the accused can never be prosecuted on those charges.³¹

Sheriff Court

29. The Sheriff Court at solemn level deals with serious cases in which a sentence of up to five years' imprisonment is the likely outcome. Again time limits are different for accused persons on bail and those who are remanded, as follows:

Custody

30. As in High Court cases, if an accused person is remanded in custody, the prosecution must serve an indictment on the accused or their legal representative within 80 days of FC.³² The indictment in Sheriff solemn cases provides the accused with notice of a trial sitting³³ at which their case will be heard.
31. The equivalent of the PH in Sheriff and Jury proceedings is the first diet.³⁴ The first diet must take place not less than 15 clear days after service of the indictment and not less than 10 clear days before any trial.³⁵ The trial must commence within 110 days of full committal.³⁶

22 S65(4)(aa)(i) of the Criminal Procedure (Scotland) Act 1995.

23 S66(6)(b) of the Criminal Procedure (Scotland) Act 1995.

24 S72A(1) of the Criminal Procedure (Scotland) Act 1995.

25 S65(4)(aa)(ii) of the Criminal Procedure (Scotland) Act 1995.

26 S65(4)(a) and (aa) of the Criminal Procedure (Scotland) Act 1995.

27 S65(1) and s66(6)(b) of the Criminal Procedure (Scotland) Act 1995.

28 S66(6)(6)(b) of the Criminal Procedure (Scotland) Act 1995.

29 S65(1)(a), unless the hearing has been dispensed with under s72B of the of the Criminal Procedure (Scotland) Act 1995.

30 S65(1)(b) of the Criminal Procedure (Scotland) Act 1995.

31 S65(1A)(a) and (b) of the Criminal Procedure (Scotland) Act 1995.

32 S65(4)(a) of the Criminal Procedure (Scotland) Act 1995.

33 A designated period of time during which a number of cases are listed for trial.

34 S71 of the Criminal Procedure (Scotland) Act 1995.

35 S66(6)(a) of the Criminal Procedure (Scotland) Act 1995.

36 S65(4)(b) of the Criminal Procedure (Scotland) Act 1995.

32. Failure to serve an indictment within 80 days or to commence the trial within 110 days, results in the accused being granted bail and released from custody.³⁷

Bail

33. If the accused is CFE'd on bail, the trial must commence within 12 months of CFE.³⁸ An indictment must be served 29 clear days before the first day of the trial.³⁹
34. As in High Court cases, if bail time limits are not complied with, the proceedings come to an end and the accused can never be prosecuted on those charges.⁴⁰

Interruption of time limits

35. Statutory time limits are "interrupted" in the following circumstances:
- **an intervening sentence of imprisonment**
Where an accused has been remanded in custody and a sentence of imprisonment is imposed on the accused in another case, subject always to trial commencing within 12 months of CFE.⁴¹ If there is such an intervening sentence, the clock does not start to run again until the prisoner's earliest release date ("the ERD").⁴² Time limits are also interrupted if a prisoner released on licence⁴³ has their licence revoked.⁴⁴
 - **failure to appear**
If a warrant is granted for a failure of an accused person to appear at a court hearing in the case. Once arrested on the warrant, an accused can be remanded and subject anew to the operation of the 110 and 140 day rules.⁴⁵

Extension of time limits

36. Time limits can be extended in advance of their expiry,⁴⁶ or retrospectively.⁴⁷
37. In any application for an extension, the test is whether the prosecution has shown sufficient cause to justify the extension sought. If the prosecution satisfies that test, the second stage is for the court to decide whether or not to exercise its discretion in favour of the prosecution in all the circumstances.⁴⁸ The prosecutor must therefore be prepared to address the court in detail on the procedural history of the case and provide a full explanation for the reason why an extension is necessary and why it is in the interests of justice that the application should be granted. The grant or refusal of any application for extension may be appealed to the High Court.⁴⁹

37 S65(4)(a)and(b) of the Criminal Procedure (Scotland) Act 1995.

38 S65(1)(b) of the Criminal Procedure (Scotland) Act 1995.

39 S66(6)(a)(ii) of the Criminal Procedure (Scotland) Act 1995.

40 S65(1A) (a) and (b) of the Criminal Procedure (Scotland) Act 1995.

41 S65(1)(b) of the Criminal Procedure (Scotland) Act 1995.

42 *Brown v HMA* 1988 SCCR 577, *Lockhart v Robb* 1988 SCCR 381 (Sh.Ct).

43 Released from prison at an earlier date than the full period of the sentence subject to certain conditions.

44 S17 of the Prisoners and Criminal Proceedings (Scotland) Act 1993.

45 S102A(13) of the Criminal Procedure (Scotland) Act 1995.

46 In computing the timescale of any extension, the extended period runs from the expiry of the original 12 month period, not from the date upon which the motion for extension is made.

47 *HM Advocate v Lauchlan* 2010 SCCR 347.

48 *HMA v Fitzpatrick* 2002 SCCR 758.

49 S65(8) of the Criminal Procedure (Scotland) Act 1995.

Service of indictments

38. After the initial court procedures, the service of the indictment dictates the timetable for all subsequent proceedings. The form and manner of service is governed by rules set out in the Act of Adjournal (Criminal Procedure Rules) 1996.⁵⁰ The rules provide that service of an indictment is established if a copy of the indictment is served by an officer of law⁵¹ by one of the following methods:⁵²
- delivering it personally to the accused;
 - leaving it with a member of the accused's family or a resident at the bail address provided to the court;
 - If the accused is not in custody, fixing an indictment notice⁵³ to the door of the accused's bail address or, if there is no bail address, any premises which the constable reasonably believes to be the accused's dwelling house or place of business; or
 - delivered to the legal representative engaged by the accused, or to an employee or partner there, in person at their place of business, during business hours, or by recorded delivery post.⁵⁴
39. Failure to serve an indictment properly brings any subsequent proceedings on that indictment to an end.⁵⁵
40. The provisions enabling service on legal representatives,⁵⁶ assisted in simplifying service provisions, but the requirement to deliver it in person to an employee or partner at their place of business during business hours can be problematic. In an increasingly digital working environment, many solicitors' offices are unmanned for long periods of time and some prefer to use PO boxes.
41. The prosecution is often required to serve the indictment within a tight timescale to meet the time limit. If it cannot be served on a legal representative for any reason it may need to be couriered to a prison for service or delivered personally by a police officer to the accused or the accused's bail address. Reliance on third parties such as police and prison officers to serve documents is not ideal. It can create unexpected demands on police resources and there have been cases where service has not been conducted in accordance with the legal requirements resulting in the prosecution having to apply to the court for an extension to the time limit. If granted, the prosecution has the additional work of revising the indictment and associated documents prior to re-serving them.
42. To assist in addressing these issues and to maximise the use of digital working, we consider that it would be more cost effective and efficient to serve indictments and associated documentation by sending them electronically to the legal representative of the accused. To comply with legal requirements, it is incumbent on the prosecution to provide proof of service of the indictment. COPFS currently discloses information to the legal representative of the accused through a secure website. The website provides an indelible electronic audit trail showing when the information was made available for download by the

50 Rules 2.2 and 2.2A Act of Adjournal (Criminal Procedure Rules) 1996.

51 As defined by S307 (1) of the Criminal Procedure (Scotland) Act 1995. Includes police and prison officers.

52 S66 of the Criminal Procedure (Scotland) Act 1995 and Rules 2.2 and 2A of the Act of Adjournal (Criminal Procedure Rules) 1996.

53 S66(4)(b). The notice specifies the date on which it was affixed, which police station the accused may collect the copy indictment from and calls on the accused to answer the indictment at a specified diet.

54 S66(6)(C)(a) and (b) and Rule 2.2A of the Act of Adjournal.

55 Failure to serve the indictment timeously, for example without giving the requisite 29 clear days notice, is not fatal but it may give rise to a civil claim and would entitle the accused to bail.

56 Introduced on 1 February 2005.

prosecution and when it was received and downloaded by the defence. Other than where an accused is unrepresented, this vehicle could also be used to transmit an indictment to the legal representative of an accused, reducing the expense of using couriers and work for other agencies.

43. This would accord with the intention to use digital solutions wherever possible to deliver and improve the quality of services within the justice sector as outlined in the Scottish Government's Digital Strategy for Justice in Scotland.⁵⁷

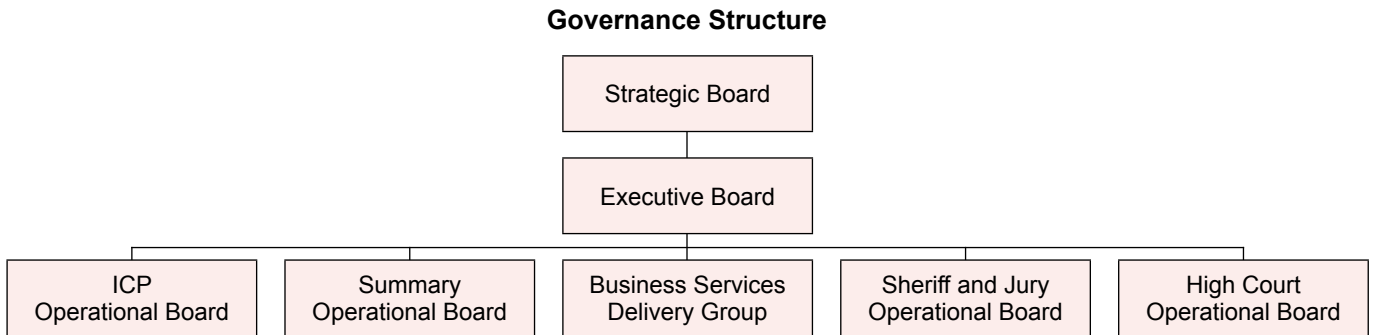
Recommendation 2

COPFS should explore with the Criminal Courts Rules Council, the possibility of amending court rules relating to the service of indictments to enable service by means of electronic transmission to the accused person's legal representative.

⁵⁷ *The Digital Strategy for Justice in Scotland*: Published August 2014.

LEADERSHIP AND GOVERNANCE STRUCTURES

44. The overarching purpose of COPFS is to secure justice for the people of Scotland. Achieving operational effectiveness in serious cases and ensuring compliance with time limits is an integral part of that aim. There are a number of performance targets that act as drivers to ensure that cases are dealt with expeditiously. There is a well-defined governance structure providing clarity of roles and responsibilities.



45. COPFS delivers its business via four Federations: three geographical Federations – the East, West and North; and a National Federation which includes a number of specialist units including the Health and Safety Division, International Co-operation Unit and the High Court Unit (HCU). Within the Federations there was a move to functional working aimed at introducing a greater degree of specialisation when dealing with core operational work.⁵⁸ Each of the core functions is overseen by an Operational Board headed up by a member of the Senior Civil Service as the functional lead. The remits of the High Court and Sheriff and Jury operational boards include day-to-day responsibility for the effectiveness and quality of High Court and Sheriff and Jury business and the management of the risks associated with such delivery. Solemn cases are investigated and prepared for court in High Court and Sheriff and Jury teams known as hubs.
46. The risk of failing to comply with time limits is a key COPFS corporate risk, which is reflected in the risk registers of each of the High Court and Sheriff and Jury business areas. A number of controls have been put in place to assist in managing the risk including: a monitoring regime of management information; reviewing existing processes to ensure maximum efficiency, consistency and uniformity across COPFS; identification of best practice; and moving work between Federations to achieve maximum efficiency. To assist the Operational Boards, a standardised “health check” report is compiled each month providing an analysis of performance in keys areas in each Federation.
47. The Operational Boards are accountable to the COPFS Executive Board.⁵⁹ In addition to the Operational Boards, the Executive Board is supported by the Business Services Group which is responsible for the delivery of a number of corporate services.
48. The Executive Board is charged with implementing the vision and delivering the priorities set by the COPFS Strategic Board⁶⁰ and is accountable for key targets and standards of delivery of the COPFS strategic objectives.
49. The Executive Board reports in turn to the COPFS Strategic Board. It provides strategic direction to COPFS and sets priorities to be delivered effectively and efficiently within the available resource.

58 Initial decision-making, Summary, High Court and Sheriff and Jury business.

59 Comprises of the Crown Agent and the four Federation Heads. The Chairs of the Operational Boards attend as required.

60 Comprises of the Law Officers and the Crown Agent. The Chair of the Audit and Risk Committee, the Chair of the Equality Advisory Group and the Senior Executive team (the four Federation Heads) also attend.

PROCESSES AND PROCEDURES

How are time limits managed?

50. After an accused person has appeared on petition, the case is allocated to a case investigator in a specialised solemn hub in the relevant geographical Federation. The investigator is responsible for preparing the case for court, including instructing any further investigation required. Different processes apply to the preparation and management of cases depending on whether they are prosecuted at High Court or at Sheriff and Jury level.

High Court cases

51. Within Crown Office the High Court Unit (HCU) is a specialised unit that monitors and undertakes a quality assurance role for High Court cases. The HCU is notified by the Federation High Court hubs of all new cases likely to proceed in the High Court and allocates a date by which the case should be submitted for consideration to the Unit. In certain categories of case, an initial view on sufficiency of evidence and the likely forum⁶¹ for the case must be obtained from Crown Counsel prior to the accused appearing in court. For example, all criminal reports containing charges of sexual crimes are submitted to a specialist unit – the National Sexual Crimes Unit (NSCU) – for such an instruction.
52. Following a recent review, the format and preparation of High Court cases has been revised.
53. The most significant change is the introduction of an Investigative Agreement (IA) between an allocated Advocate Depute and the case investigator. High Court cases are time consuming and often complex. They can involve thousands of statements and productions. The IA is a “blueprint” for the investigation of a case. It sets out, at an early stage a strategy agreed between the case investigator and the Advocate Depute for the investigation and presentation of the case. It outlines the key matters of relevance to the prosecution, including the charges to be investigated with a view to prosecution, how those will be proven and how the evidence will be presented.
54. Prior to the review, only a minority of cases were considered in detail by an Advocate Depute at the start of the preparation of the case. As a consequence, the focus of the Advocate Depute was engaged at the later stages of the preparation of the case, often just prior to the case being indicted. The intention of early collaborative engagement is to prevent unnecessary work being undertaken and to avoid requests for additional work after the case is reported to the HCU, expediting the indictment process.
55. Once a case investigator has completed his/her work on a case, the case is submitted to the HCU. There is a team of specialised legal staff in the HCU who work with the case investigator to ensure that all evidential, legal and presentational aspects of the case are fully addressed. Each case is considered by Crown Counsel who make a final decision on whether the case should be prosecuted, on what charges and in which forum. The time required to fully consider the case at this stage depends on the complexity of the case and other factors such as the number of accused and the number of complainers. To provide sufficient time to consider all issues in detail and allow a smooth through flow of work, cases should be submitted to the HCU by the date initially allocated to the hub. However, compliance with allocated submission dates is variable.

61 High Court or Sheriff and Jury.

Identification and notification of High Court cases

56. The Review also introduced the “pathway document”.⁶² This is an electronic living document created for every potential High Court case that is intended to capture the key milestones and processes in the life of a case in a single location.
57. As part of the process of populating the pathway document, each potential new High Court case requires to be notified to the HCU. The mechanism for this is the completion of the “Notification of new case to High Court Unit” section of the pathway document. The notification is completed by the SLM and submitted by email to the HCU. There are different timescales for submitting the notification depending on the nature of the offence, the likely timescale for any subsequent trial and whether the case has any particular sensitivities. In general, for custody cases it should be submitted within 7 days of full committal and in bail cases within 21 days of first appearance on petition.
58. As a management tool, to assist in ensuring that all High Court cases are intimated to the HCU, MIU provide regular reports to solemn managers highlighting cases that have been identified as High Court but where there has been no such notification. Despite frequent reminders being issued by MIU, action to remedy such oversights is not always prioritised within the hubs.
59. The benefit of the notification to the HCU of new High Court cases is that it provides an independent check of the progress of the case and the HCU can alert a hub to any case approaching its time limit. This independent check is a critical safeguard for High Court cases although it can only operate as such if the notification process is followed rigorously in each case and the proposed forum is correctly identified at the outset.
60. While both the HCU and the Federations monitor the progress of High Court cases, there is no formal reconciliation between the HCU and the Federations. Such a process would quickly identify cases that had not been notified to the HCU and would provide a check and reassurance that both the Federations and the HCU were fully sighted on all High Court cases.

Recommendation 3

COPFS should implement monthly reconciliation of all High Court cases between the High Court Unit at Crown Office and the Federation High Court Hubs.

Sheriff Court

61. Solemn cases in the Sheriff Court are prosecuted on behalf of the Lord Advocate by Procurator Fiscal Deputes. The procedures for dealing with Sheriff and Jury cases differ in some aspects from those prosecuted in the High Court.
62. Once an accused has appeared in court and the case has been identified as a potential Sheriff and Jury case, the case is allocated to a case investigator within one of the Federation Sheriff and Jury hubs. Unlike High Court cases there is no notification of the case to the HCU. The investigator produces an electronic document known as the Case Preparation Living Document (CPLD). The CPLD captures all the evidence and information gathered during the investigation and preparation of the case along with all key processes and recommendations. The recommendations are approved by the SLM.

62 There are two pathway documents – one for Sexual offences and one for Homicides and Serious Crime.

63. At the conclusion of the investigation, the CPLD is sent electronically to the HCU in Crown office and reviewed by Crown Counsel. In most cases, Crown Counsel concur with the recommendation and the case is returned to the Sheriff and Jury hub to be indicted. However, there are some cases where Crown Counsel take a different view on forum and instruct that the case is prosecuted in either the High Court or the summary court or, indeed, that there should be no further court proceedings. Decisions at a late stage to prosecute in a different forum from that initially identified can pose difficulties.

Forum for prosecutions

64. There are a number of legitimate reasons why it may be appropriate to prosecute in a different forum. For example, it may transpire during the investigation of the case that the injuries sustained by the victim were more serious than originally understood and that prosecution in the High Court is warranted. Or investigation may reveal that the conduct of the accused was less culpable than had initially been indicated and that summary proceedings are more appropriate.⁶³
65. The reason that late decisions to proceed in a different court are problematic is primarily the different time limits that apply. In general, an indictment for a High Court case has to be served two weeks earlier than in a solemn sheriff case. In summary proceedings, there are certain statutory offences where the time limit is specified by law and runs from the date of the **offence** rather than the appearance of the accused at court. Common examples are offences under the Misuse of Drugs Act 1971, the Road Traffic Act 1988 and some sexual crimes.
66. The distinction between time limits that apply to the High Court and Sheriff and Jury proceedings will be removed following the implementation of the Criminal Justice (Scotland) Bill 2013 that was introduced to the Scottish parliament in June 2013. It will enact a number of provisions that flow from a report by Sheriff Principal Bowen⁶⁴ making recommendations to improve the efficient and effective operation of Sheriff and Jury business. It includes a provision to change the Sheriff and Jury time limits to match those in the High Court. The alignment of the time limits will remove an unnecessary complication when dealing with solemn cases and simplify the movement of cases between the High Court and Sheriff Courts.

Change in character or circumstances of the offence

67. In an attempt to minimise difficulties arising from late decisions to alter forum, there are systems in place to clarify the appropriate level of proceedings at the beginning of the investigation:
- As noted, all reports containing charges of sexual offences are considered by NSCU prior to the accused appearing at court and an instruction on forum issued.
 - There are a series of case marking guidelines and instructions designed to assist with determining forum for all other significant crimes.
 - For other cases where there may be uncertainty regarding the appropriate level of proceedings, an abbreviated report can be sent to the HCU following the first appearance of the accused at court requesting advice on whether the conduct would justify proceeding in the High Court or the Sheriff Court.

63 Prosecutions held in the Sheriff or Justice of the Peace Court before a judge without a jury.

64 The Independent Review of Sheriff and Jury Procedure by Sheriff Principal Edward F Bowen CBE TD QC.

68. It is not uncommon, however, to receive additional information during the investigation that changes the character of the case. For example, the police may obtain additional information from a new witness or the complainer that results in the offence or offences being viewed as being more serious than when initially reported. Developments in law can also have a bearing on the appropriate level of proceedings.
69. If there is a change of circumstances during the investigation, the different time limits in solemn proceedings can cause difficulties. In a recent case involving sexual offences, the initial instruction was to place the accused on petition with a view to prosecuting the accused in the Sheriff Court before a jury. During the preparation of the case, the police submitted additional statements containing allegations of a more serious sexual offence. The case was reported to the HCU at the completion of the investigation with a recommendation that case should be prosecuted in the Sheriff Court on the basis that there was insufficient evidence to prove the more serious allegations. However, taking account of recent developments in the law,⁶⁵ Crown Counsel took the view that there was sufficient evidence to prosecute the more serious charges and that the prosecution should proceed in the High Court. The preferable course of action was to prosecute all of the offences together in the High Court. However, due to the expiry of the 10-month time limit to serve an indictment, it was not possible to prosecute the original offences in the High Court. The result, which was less than satisfactory, was to prosecute the accused in the High Court for the offences that were not time barred and to prosecute the remaining offences in the Sheriff Court.

Recommendation 4

COPFS should issue guidance requiring the review by the Solemn Legal Manager (SLM) of any solemn case in which additional charges and/or information is received that potentially changes the character of the case and thus the appropriate forum for prosecution and applicable time limits. If there has been an initial instruction by Crown Counsel, such cases should be re-submitted for further consideration.

70. Difficulties can also arise if it is decided that the circumstances of the case are not sufficiently serious to merit solemn proceedings and a decision is taken at a late stage to proceed on summary complaint. This is demonstrated by a case where the accused was originally placed on petition for drug offences on 17 December 2012 which were alleged to have been committed on 29 October 2012 with the expiry of the Sheriff and Jury time limit being 17 December 2013. After investigation, it was decided that it would be more appropriate to prosecute the case on summary complaint. A summary complaint was prepared and a court hearing was scheduled for 13 December 2013 prior to the expiry of the 12-month time limit. It was overlooked that the summary time limit runs from the date when the offence was committed and not from when the accused appears in court. As the offence had been committed on 29 October 2012, the proceedings were time barred and the case could not proceed.

Conjoining cases

71. Another area where difficulties can arise is when a number of cases for an accused are conjoined. It is not uncommon for accused persons to appear in court on different charges that relate to different incidents occurring on different dates. In such circumstances, the logical and most efficient course of action, subject to any legal restrictions, is to gather all outstanding charges into a single case. This enables all the charges to be dealt with at one trial. This is commonly referred to as “rolling up” cases. In doing so, the prosecutor must take care to ensure that the case proceeds in accordance with the charge with the earliest time limit. This is not always straightforward particularly if a period of time has

⁶⁵ MR v HMA, 2013 SCCR 190, HMCA v HMA[2014]HCJAC 41.

elapsed between the cases or if the accused was granted bail on one case but remanded on another as in the case highlighted below.

72. The case commenced with the accused appearing on petition for a number of offences including allegations of assault and being remanded in custody. The case was subsequently indicted to a first diet and trial. The trial was adjourned on three occasions due to witness difficulties and on the third occasion the accused was granted bail. At that stage the relevant time limit reverted to 12 months after the date of the accused's first appearance at court.
73. On a subsequent date the accused was remanded in custody on a charge of murder. The charges on the previous petition were conjoined with the murder charge and an indictment containing all charges was served on the accused. During the proceedings, there was an application to the court to extend the time limit which was granted with the custody time limit that applied to the murder charge being extended. There followed a number of procedural hearings at the High Court at which the time limit for the murder charge was further extended. It was, however, overlooked that the time limit for the assault charges had a different expiry date and were not extended. Ultimately, the accused was found guilty of murder. The case does, however, highlight the importance of having an accurate record of the time limit that applies to each charge when conjoining cases.

Interruption of time limit

74. As noted earlier⁶⁶ custody time limits are interrupted if a sentence of imprisonment is imposed on the accused, subject to the trial being commenced within 12 months of the first appearance of the accused at court. The general policy adopted by COPFS is to progress cases in accordance with the time limits that apply to the case rather than working to an extended time limit resulting from the imposition of a sentence of imprisonment. We agree with this approach. The interruption may provide the prosecutor with valuable additional time to prepare in a particular complex case. There are, however, potential pitfalls to guard against.
75. The time limit is interrupted until the earliest release date ("the ERD") from prison. The calculation of the ERD is the responsibility of the Scottish Prison Service (SPS). The ERD is essential to calculate any new time limit but we received feedback that there were inconsistent practices across the hubs in obtaining and recording such information. Some hubs seek written confirmation from SPS of the ERD whereas in other hubs there are more ad hoc arrangements. In most hubs the information is noted on the case papers or there is a note added to a note field on a spreadsheet rather than added to the case management system.
76. Recognising that there could be a more consistent approach to the provision and recording of such information, there has been recent discussion between SPS and COPFS to improve current practices.

Good Practice

COPFS should obtain written confirmation from SPS of the ERD when the time limit is interrupted by a period of imprisonment.

⁶⁶ Page 12, Paragraph 35.

77. The legal implications of a sentence interrupting the time limit also need to be understood. Time limits are only interrupted if an accused person is remanded in custody. In a case, where the accused appeared on petition and was granted bail and subsequently sentenced to a period of imprisonment, the time limit was erroneously re-calculated taking account of the intervening sentence. The error was not recognised until after the time limit had expired and the case could not proceed.
78. The above examples demonstrate the importance of accurate recording of time limits.

Recording of data

79. Within each of the Federations there are differing approaches to checking the accuracy and reliability of data. Given that the clock starts running from either the first or second appearance of the accused in court, it is critical that these dates are accurate. In the majority of cases the COPFS computer-based case-tracking and management system known as PROMIS is populated with these dates by the Scottish Court Service through an electronic transfer of information. Thereafter, PROMIS automatically works out the time limit. There are, however, some instances when the information does not transfer and the data is manually added by staff in COPFS taken from the handwritten court minutes. In some hubs, the data is checked using the SCS court enquiry database⁶⁷ or certified court minutes. The SCS database is available to COPFS and provides an independent check on the procedural history and current status of cases.
80. We found hubs, however, where there is a lack of clarity on who is responsible for checking the accuracy and reliability of data. In many cases data is checked by more than one person at each stage of the process whereas in other areas it is assumed by the case investigator or administrative manager that the data is checked by others such as the SLM. There are also different tools used to calculate the actual time limits with some hubs using the electronic calendar on the COPFS intranet and others using electronic spreadsheets to populate the dates. Most electronic spreadsheets deduct a day from the correct calculation with the result that the calculation differs by a day depending which method is used, which is not helpful.
81. While there is no denying the effort solemn staff puts into monitoring time limits, the process of inputting, amending and monitoring requires to be underpinned by a standardised, streamlined, and systematic approach. The Appeal Court has held that administrative errors do not excuse failure to comply with procedural requirements⁶⁸ and has emphasised the importance of scrupulous adherence by the Crown to such requirements, including time limits.⁶⁹
82. To provide certainty and clarity, as a minimum there should be a formalised check of the following data:
- Date of initial appearance (CFE) and appearance at Full Committal (FC);
 - Information on forum – whether it is a High Court or Sheriff and Jury case;
 - Calculation of the appropriate time limit applicable to each accused. Where the time limit is not automatically calculated by PROMIS, the electronic calculator provided on the intranet should be used to ensure that all staff are working to the same calendar; and
 - Notification of new High Court cases within the pathway document.

67 Scottish Court Service Court Case Enquiry.

68 Lyle v HMA 1991 SCCR 599.

69 Early v HMA 2006 SCCR 583 at (Para 30).

Recommendation 5

COPFS should formalise procedures to check the accuracy of the calculation of time limits at the start of the life of a case. The calculation should be checked with the information recorded by the Scottish Court Service (SCS) and verified by the SLM. Any subsequent amendment of the time limit should be entered on the COPFS case management system and similarly checked by the SLM.

83. All case files have the earliest time bar for the case highlighted on the front of the file and it is recorded on the pathway document and the CPLD.
84. What is not readily apparent is the following:
 - The time limit for proceeding in the High Court for any cases considered borderline between Sheriff and Jury and High Court to ensure that there is sufficient time built into the process to accommodate a change of forum;
 - Where appropriate, the summary time limit for any statutory offences; and
 - Any amended time limits.
85. There are also different styles of Sheriff and Jury court folders. Some hubs include a specific page containing details of all relevant time limits whereas others simply incorporate the court minutes. Given that the intention of the CPLD is to provide a living document that is updated following all court hearings, the Sheriff and Jury court folder should be updated with a refreshed copy of the CPLD time limits sheet following each court hearing.

Recommendations 6, 7 and 8

COPFS should amend the Sheriff and Jury Case Preparation Living Document to include the following data:

- The time limit for proceeding in the High Court for any cases considered borderline between Sheriff and Jury and High Court;
- Where appropriate, the summary time limit for any statutory offences; and
- Any amended time limits.

COPFS should include a dedicated sheet within the Sheriff and Jury court folder detailing all relevant time limits which is updated following each court hearing.

COPFS should ensure that in all High Court and Sheriff and Jury cases that have been conjoined or where a sentence has interrupted the time limit, the new time limit for each case is reviewed by the SLM and recorded on the system and on the court files.

Tracking cases

86. In Scots law, an accused person is required to attend at a court within the jurisdiction where the crime was committed. There are 43 Sheriff Courts in Scotland. Within the new Federation structure, solemn cases are investigated and prepared in High Court and Sheriff and Jury hubs which are based in 13 locations. There will, therefore, inevitably be cases where the accused and prosecutor appear in a jurisdiction that is remote from the relevant solemn hub responsible for the investigation and preparation of the case.
87. In most areas, where the accused appears in a jurisdiction where there is no solemn hub, the practice is, following the court appearance, to physically transfer the case papers to the appropriate hub from the local Procurator Fiscal's office. In addition to the delay that arises from the transportation of cases – which was commented on by a number of people – the need to track the case files adds another layer of monitoring. This is illustrated by

a case that had been identified as a potential High Court case and accordingly after the accused had appeared in court, it was anticipated that the case file would be sent to the High Court Hub. The file, however, was not received and on investigation, it transpired that it had erroneously been recorded as a Sheriff and Jury case and sent to the Sheriff and Jury Hub. While the error was quickly rectified, the case investigator lost valuable time in preparing the case, which is best avoided given the tight timescales.

88. We found that in some hubs, rather than transport the files the hub responsible for preparing the case compiled the case file from the electronic case system. This is achievable as COPFS now scans all relevant information pertaining to a case including the court minutes, into the electronic case file. The local prosecutor appearing in court simply printed the necessary documentation for the initial court appearance from the electronic system. In due course it is envisaged that the prosecutor in court will be able to retrieve this information from a tablet device.⁷⁰ This practice avoids any delay through transporting papers and should minimise the capacity for any misunderstanding between the local office and the relevant hub.

Good Practice

Solemn hubs should compile case files from the electronic case system rather than transport hard copy papers between local offices and the solemn hubs.

Monitoring time limits

89. The consequences of failing to adhere to time limits have resulted in a strong focus on time limits within COPFS. This has led to a plethora of monitoring arrangements that are constantly being adapted and amended to take account of new requirements or new formats and has resulted in an ever expanding industry of differing forms of monitoring arrangements and the development of different management tools.

Management tools

90. Details of all criminal cases are entered onto PROMIS. The COPFS Management Information Unit (MIU) generates a series of reports from PROMIS at regular intervals and circulates these to managers to support their management of a number of processes/procedures. These include reports critical to the management of time limits, highlighting, for example, cases where a time limit date has not been entered, where there is no data to indicate if it is a High Court or Sheriff and Jury case and cases that have been identified as High Court but no notification has been sent to the High Court Unit. The purpose of these reports is to make sure that gaps and errors in information in PROMIS are corrected by administrative staff.
91. Data derived from PROMIS is also used to populate the COPFS Management Information Book (MI Book) which provides a range of management information in a readable format.
92. In addition, each Federation uses spreadsheets to record and track data for various purposes. There is, however, no uniform approach to monitoring time limits.
93. The need for fail-safe monitoring systems has, in the absence of a uniform national system spawned an industry of auditing and monitoring arrangements in the form of a variety of spreadsheets, check lists and reports using data from a variety of sources. Within different Federations and even in different hubs within the same Federation, information is collated from different sources and recorded in different ways and there are variations on the type

⁷⁰ Following a successful proof of concept on the use of tablet devices in court, COPFS intends to roll out a bespoke tablet that will enable prosecutors to access case papers in court on screen.

of data that is being monitored. The monitoring generates a number of “health check” reports that are adapted for various management meetings. The collation of data for such reports demands a significant proportion of managers’ time and often results in duplicate effort being expended at various stages of the progress of the case. In addition, the combination of some systems electronically calculating the time limits with others relying on manual inputting provides the potential for discrepancies and a risk of error.

94. Common to each Federation is that data is analysed on a regular basis at senior management meetings. The purpose of these meetings is to monitor the progress of cases, in particular those approaching the expiry of the time limit, to identify trends in solemn workload and to plan current and future business. These meetings are pivotal to the effective monitoring of solemn cases but clarity on the roles and responsibilities of those that attend such meetings and adequate contingency arrangements are essential as highlighted by the following case where the time limit expired prior to it being submitted to Crown Counsel for a final instruction. The case was dealt with as a potential Sheriff and Jury case. It had evidential difficulties that required additional investigation and work to be undertaken. Due to a combination of circumstances, including the absence of a key solemn manager at the time that the case was due to be reported, the case was not reported within the requisite time limit. Ultimately, it was determined that there was insufficient evidence for a prosecution but the investigation into the failure to adhere to the time limit exposed a lack of clarity regarding the role of various managers in monitoring workloads and adequate contingency planning to deal with unexpected absences.
95. Most senior management meetings use a combination of data sources, including MI Book, Federation spreadsheets and, for High Court cases, some derive information from a database compiled by the High Court Unit. The meetings focus on a number of key indicators including the number of new petitions, cases that have not been allocated to case investigators for preparation, the number of High Court and Sheriff and Jury cases that are not indicted by nine months and eight months respectively and cases awaiting Crown Counsel’s instructions.
96. In general, the regular reports circulated by MIU (referred to at paragraph 90) are not considered at these meetings, because they are regarded as part of the administrative process and so primarily read and dealt with by business or administrative managers. However, fundamental to an effective system is that PROMIS data used to populate the various reports considered at management meetings is complete and accurate. As a minimum, accurate information about custody/bail status and relevant time bars must be available. It therefore makes sense that the relevant MIU reports are considered as part of the indicators examined at the management meetings.
97. The reliance on different sources of management information arises, in part, because MI Book, at present, does not contain all the data necessary to provide a complete picture and, in part, due to a lack of confidence on the part of some managers in the reliability of data it contains/holds. Most hubs prefer to rely on their own spreadsheets, notwithstanding the attendant risk of human error.
98. The lack of confidence in MI Book is fuelled by a number of misconceptions regarding the availability of data there, reinforced by a lack of knowledge on the part of many managers of how to extract data from it. For example, it was often stated that the MI Book did not contain data on cases after they were submitted to Crown Office and that it was unable to distinguish between High Court and Sheriff and Jury cases after the accused appeared in court. Both these assertions are incorrect.

99. Such misconceptions have arisen due to lack of structured training on the use of the MI Book and to a lack of awareness of enhancements that have been made to it. Despite MI book being one of primary sources of management information, many solemn managers – both administrative and legal – said that they are not confident in using it and many expressed a desire for training.

Recommendation 9

COPFS should develop a comprehensive training package on the Management Information Book (MI Book) for delivery to all solemn managers.

100. Being able to extract data from a single source, MI Book, is the ideal solution. However, certain information relevant to time bar management, for example, data on the number of cases allocated to each case investigator, is not recorded in PROMIS and is therefore unavailable in MI Book. For that reason, even if deployed correctly in its present form, it is necessary to supplement it with other sources of information.
101. As we have highlighted, time-limit monitoring information is collated in a number of different ways, principally in spreadsheet format. COPFS staff are adept at compiling and using spreadsheets. Spreadsheets are accessible visual aids and are easy to manipulate to highlight particular strands of information. However, as we have also highlighted, a variety of spreadsheets is used across the Federations, some of which are populated automatically from PROMIS and some relying on manual input. To provide consistency and to streamline the existing processes, a standard time-limit monitoring spreadsheet should be developed for use across COPFS solemn hubs.
102. COPFS has, during the course of our review, recognised the limitations of the current time-limit monitoring arrangements and has commissioned a project designed to enable all time limit information to be stored in MI Book and populate a standard spreadsheet. The intention is that data input to PROMIS will automatically populate a standardised spreadsheet and, similarly, that data entered onto the spreadsheet will update PROMIS. The intended outcome is that all data in PROMIS and on the spreadsheets will be available in and easily accessible from MI Book. Data will therefore only need to be input once and the MI book will be the sole repository for all time-limit data. This will streamline the process and be a significant advance on current arrangements and so is an extremely welcome development.

Recommendations 10 and 11

COPFS should develop a national uniform and comprehensive suite of management information to facilitate the effective management of the progress of solemn cases and time limits. This should include key indicators including those data integrity reports that provide a check of data essential for the accurate recording of time limits. A standard template for the collation of such information should be introduced.

COPFS should ensure that the roles and responsibilities of those attending senior management meetings to monitor the progress of solemn cases are clearly defined and that there are contingency arrangements to deal with the absence of key personnel who attend such meetings.

TRAINING

103. While there is no doubt that the importance of meeting time limits is understood at all levels within COPFS, there is a gap in the knowledge of some staff about the consequences of failing to adhere to certain time limits and a lack of clarity on aspects of the law relating to time limits.
104. Time limits are covered as part of the induction process for all new Advocate Deputes. However, with the exception of some basic information on time limits delivered at the Case Preparers course, designed for all involved in preparing Sheriff and Jury cases for prosecution, time limits are not covered in any detail in any training delivered to COPFS staff at the COPFS Prosecution College.⁷¹
105. Furthermore, while there is some guidance in the Knowledge Bank on the legal obligations relating to time limits, it is piecemeal, contained in a number of different guidance manuals, including Case Marking Instructions, the Book of Regulations and Crown Office Circulars. There is no single guidance source or aide memoire explaining the law and relevant authorities.
106. Given the fundamental importance of understanding time limits and the relevant law, such training should be mandatory for all members of staff involved in the preparation and investigation of solemn cases. It should cover the law, consequences and complexities of time limits with particular emphasis on the importance of data integrity, the recording of dates that are likely to impact or affect time limits in each case, how cases should be conjoined, the recording of extensions to the time limit and an awareness of the various reports that should be monitored. For legal staff, there should be an additional emphasis on legal arguments for extending time limits, in particular what does and does not constitute a legitimate ground for seeking an extension, appealing decisions on time limits and their role in monitoring the accuracy of time limits.
107. Such training should be supplemented by comprehensive guidance on the Knowledge Bank.

Recommendation 12

COPFS should introduce mandatory training on all aspects of time limits for all legal and administrative staff involved in the investigation, preparation and management of solemn cases.

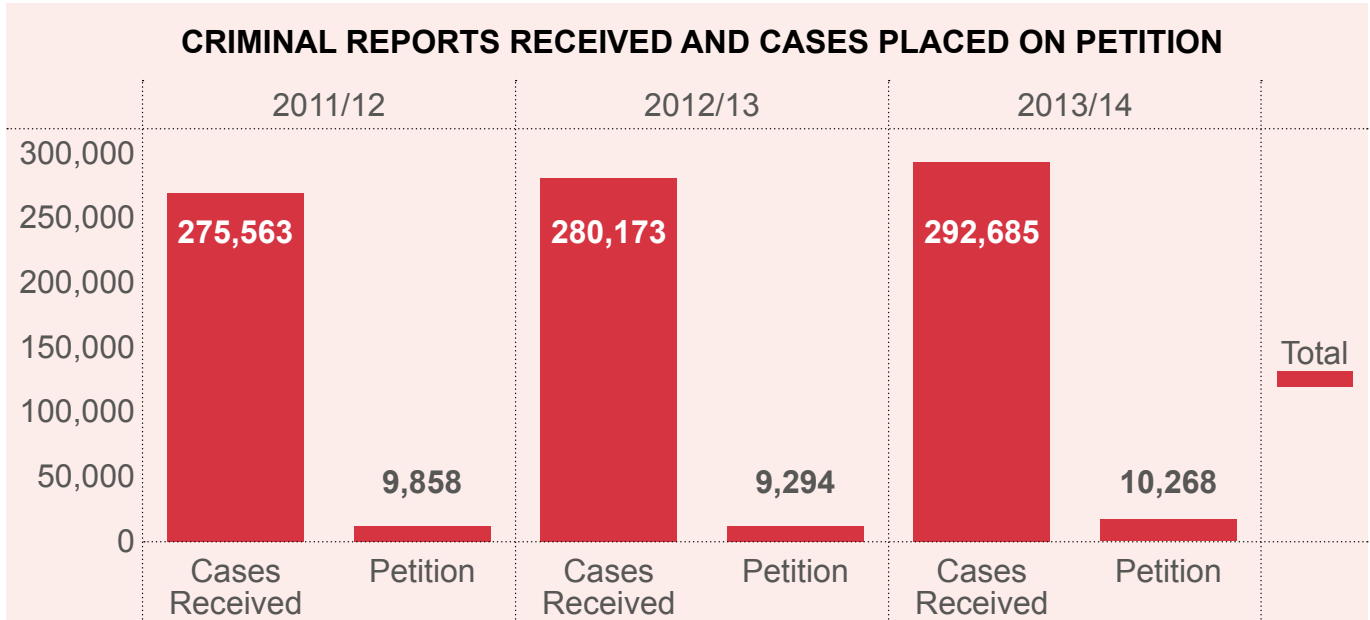
⁷¹ A bespoke training facility for prosecutors.

SOLEMN WORKLOAD

Criminal reports

108. Chart 1⁷² illustrates the number of criminal reports received and cases placed on petition over the period 2011/12 to 2013/14:⁷³

Chart 1



109. The figures show a 6% increase in criminal reports received over the three-year period with the number of cases placed on petition increasing by 4%. Figures relating to the first six months of 2014/15 show a slight fall in cases received but a continuing trend of more cases being placed on petition.

Pre-petition cases

110. In addition to cases where proceedings have been commenced, there has been an increase in the number of cases categorised as ‘pre-petition’ cases. These are cases where it is necessary to undertake further inquiries to determine whether there is sufficient evidence to commence criminal proceedings and whether such proceedings are in the public interest.

111. In 2012/13 there were 590 pre-petition cases of which 81% contained charges of sexual crimes. This increased in 2013/14 to 747 cases of which 80% contained charges of sexual crimes. In the first six months 2013/14, there are 289 such cases of which 60% contain charges of sexual crimes.⁷⁴

112. The figures highlight the high percentage of pre-petition cases concerned with sexual crimes. Such cases entail detailed and extensive investigation and often numerous meetings with victims and essential witnesses. In many cases, it is necessary to obtain and review medical (including psychiatric and psychological records), education and social work records. These cases are often time-consuming and involve difficult legal issues.

72 Source – COPFS management information July 2014.

73 Excludes National Federation cases. The number of cases placed on petition and those prosecuted each year will not equate as some cases against the same accused will be linked and taken forward as one case and following investigation some cases will be discontinued due to insufficient evidence or because proceedings are no longer deemed to be in the public interest or summary proceedings are considered to be more appropriate. There is also a time lag between receipt of a case and final disposal.

74 Source – COPFS management information.

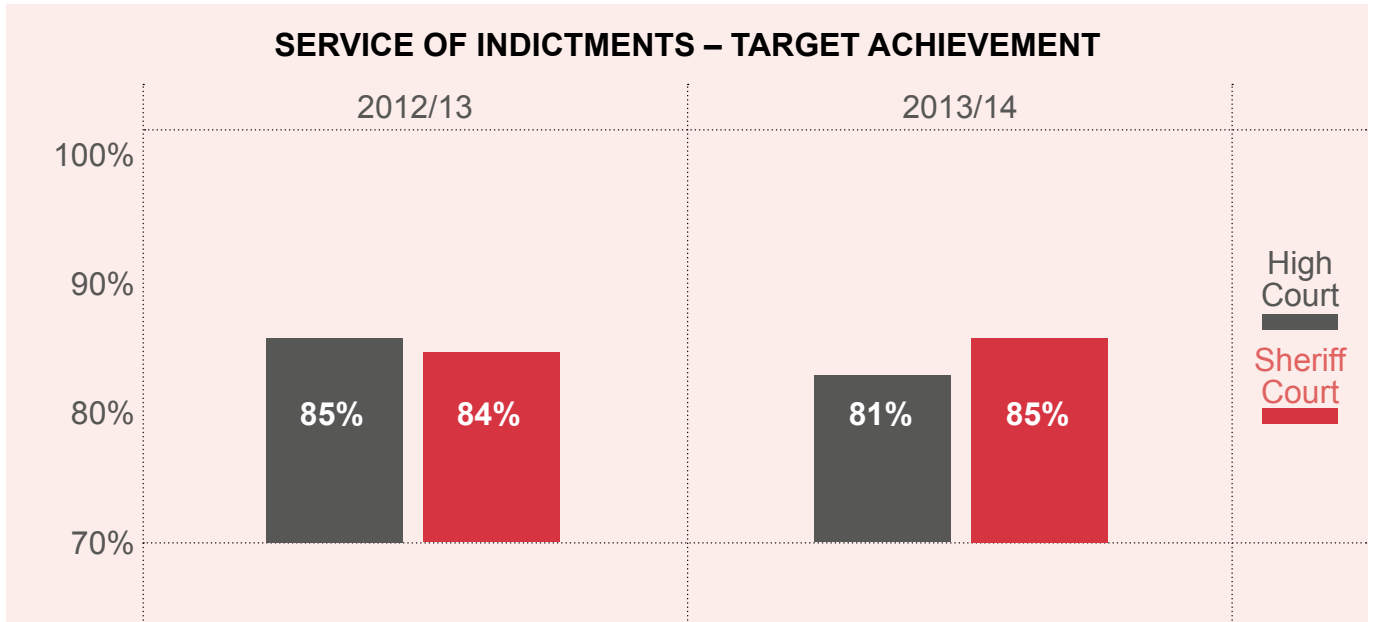
Current workload

113. Over the last three years the number of petition cases actively being investigated and progressed at any time has steadily increased from 3,639 cases in 2012/13 to 4,207 in 2013/14 and to 4,951 in 2013/14, representing a 27% increase.⁷⁵

Performance targets

114. The published COPFS performance target for High Court cases is to serve 80% of indictments within nine months of first appearance on petition and for Sheriff and Jury cases to serve 80% of indictments within eight months. Chart 2⁷⁶ illustrates COPFS target compliance for 2012/13 and 2013/14.⁷⁷

Chart 2



115. COPFS has to date achieved their published targets but at time of publication,⁷⁸ while the performance target for Sheriff and Jury cases in the year to date is being achieved with 81% of cases being indicted within target, only 66% so far of High Court cases have been indicted within target.

116. There are a number of factors responsible for the recent decline in the performance of the High Court target:

- There has been an increase in the overall volume of serious crime reported by the police.
- Crime has become increasingly global resulting in more crimes being reported that transcend territorial boundaries.
- Solemn cases have become more complex with new sophisticated investigation techniques being employed to combat crime. With advances in science and technology, such as more sensitive DNA techniques there is increasing reliance on the use of forensic, telephony, IT analysis and CCTV footage evidence. Obtaining such evidence can be a lengthy process. In addition, when dealing with more serious cases, there is likely to be more input from expert witnesses such as psychologists, psychiatrists, medical practitioners and pathologists.

75 Source – COPFS management information as at 31 Oct each year.

76 Source – COPFS management information.

77 Data is recorded by subject ie accused persons.

78 February 2015.

- Multiple-accused prosecutions, often with different time limits for different accused, are more common, as are accused persons with a number of cases proceeding simultaneously all with different time limit. The case study below is indicative of the complexity of managing time limits in multiple accused cases.

CASE STUDY

In order to understand the complex nature of some cases we reviewed a High Court case which involved five police reports that had been conjoined with multiple accused and multiple charges.

The background to the case was a fall out between two groups involved in the supply of controlled drugs. There were escalating tensions between the two groups culminating with a pursuit by one of the groups of the other group through various locations in Edinburgh which concluded with the shooting and murder of one of the group.

There was an extensive and protracted police enquiry which resulted in seven persons being charged and subsequently prosecuted at the High Court of Justiciary in May 2014 for a number of offences including contraventions of the Misuse of Drugs Act 1971, assault, contraventions of the Firearms Act 1968 and murder.

The accused were arrested and appeared at court on different dates and all were remanded in custody. The procedural history of each accused is detailed below. The first three accused were fully committed on the same day and therefore had the same 80th, 110th and 140th time limit dates. Accused 4, 5 and 6 appeared on petition at later and different dates from each other which resulted in four different sets of time limits.

Due to the complexity of the case and to enable the prosecution to prosecute all accused at the same time, COPFS sought an extension which was granted on 19/08/13.⁷⁹ Accused 7 was apprehended at a later date and appeared on petition in December 2013. He was served with an indictment citing him to the same preliminary hearing and trial dates as the other accused.

79 As shown in table as 'Amended 80th & 110th days'.

ACCUSED	1	2	3	4	5	6	7
CFE	06/06/13	07/06/13	07/06/13	05/07/13	02/07/13	01/08/13	ARREST WARRANT GRANTED 06/06/13 CFE 06/12/13
FC	14/06/13	14/06/13	14/06/13	12/07/13	10/07/13	09/08/13	13/12/13
80TH DAY	02/09/13	02/09/13	02/09/13	30/09/13	28/09/13	28/10/13	03/03/14
110TH DAY	02/10/13	02/10/13	02/10/13	30/10/13	28/10/13	27/11/13	02/02/14
140TH DAY	01/11/13	01/11/13	01/11/13	29/11/13	27/11/13	27/12/13	02/05/14
S 65 EXTENSION GRANTED	S 65 EXTENSION GRANTED 19/08/13						—
AMENDED 80TH DAY	10/12/13						—
AMENDED 110TH DAY	09/01/14						—
AMENDED 140TH DAY	08/02/14						—
SERVICE OF INDICTMENT	10/12/13 THEN 27/01/14						27/01/14
PH	09/01/14 WHEN TIME LIMIT EXTENDED TO 27/02/14 THEN CONTINUED TO PH 27/02/14 WHEN TIME LIMIT EXTENDED TO 22/04/14						27/02/14
TRIAL	22/04/14						
VERDICT	15/05/14 GUILTY OF MURDER	15/05/14 NOT GUILTY	15/05/14 GUILTY OF MURDER	15/05/14 GUILTY OF MURDER	15/05/14 NOT GUILTY	15/05/14 NOT GUILTY	15/05/14 NOT GUILTY

- There has been a change in the profile of the type of cases being reported. In recent times, cases involving sexual crimes have come to represent the majority of High Court prosecutions. During the previous 18 months, cases involving sexual offences have constituted more than 50% of the overall COPFS High Court workload.⁸⁰ In the North and East Federations, there have been some months where such cases have constituted more than 70% of their workload. The changing profile reflects the increase of sexual crime recorded by Police Scotland.⁸¹ In 2013/14 there was an increase of 12% from the previous year in recorded sexual crime including an increase of 23% in recorded offences of rape. More than one-third (36%) of the rape offences fell into the category of historic reporting.⁸² Such cases often involve multiple victims, some who come forward during the course of the investigation and often after a significant period of the time limit has expired.
 - Taking the pre-petition cases into account, the investigation and preparation of cases of sexual crimes is disproportionate to any other category of crime being dealt with by the High Court hubs. This undoubtedly impacts on the resources within the solemn hubs.
117. By meeting the service of indictment targets, COPFS ensures that all cases are progressed within the time limits. Indicting within eight months for solemn sheriff cases and nine months for High Court cases provides a comfortable buffer to deal with any difficulties that may arise between indictment and trial. However, as the number of cases being indicted out of target increases, so does the risk.
 118. An unintended consequence of seeking to meet performance targets is that cases within target are often prioritised over cases where the target has been missed resulting in those cases often being indicted close to the expiry of the time limit.
 119. For example, in 2013/14⁸³ of the 181 accused persons who were served with an indictment for proceedings in the High Court after the nine-month period, 55%⁸⁴ were indicted within three days or less of the expiry of the time limit.
 120. Part of the rationale for performance targets is to minimise the number of cases being indicted at a late stage. The greater number of cases indicted close to the time limit adds pressure to all those involved with High Court business and affords little margin for error or the unexpected.
 121. From the perspective of managing time limits, it is preferable to minimise the number of cases indicted close to the time limit. To achieve that outcome and retain focus on cases which have not achieved the nine month target consideration should be given to introducing a new milestone to indict all High Court cases at least seven days prior to the expiry of the 10 month time limit for High Court bail cases. This should act as a backstop for cases that do not achieve the nine month target and build in a degree of resilience.
 122. The introduction of such a milestone is likely to require, at least in the short term, additional resource for the HCU and the High Court hubs.

Recommendation 13

COPFS should introduce a new milestone to indict all High Court bail cases seven days prior to the expiry of the 10 month time limit.

80 Source – COPFS MIU.

81 Police Scotland Management Information 2013/14.

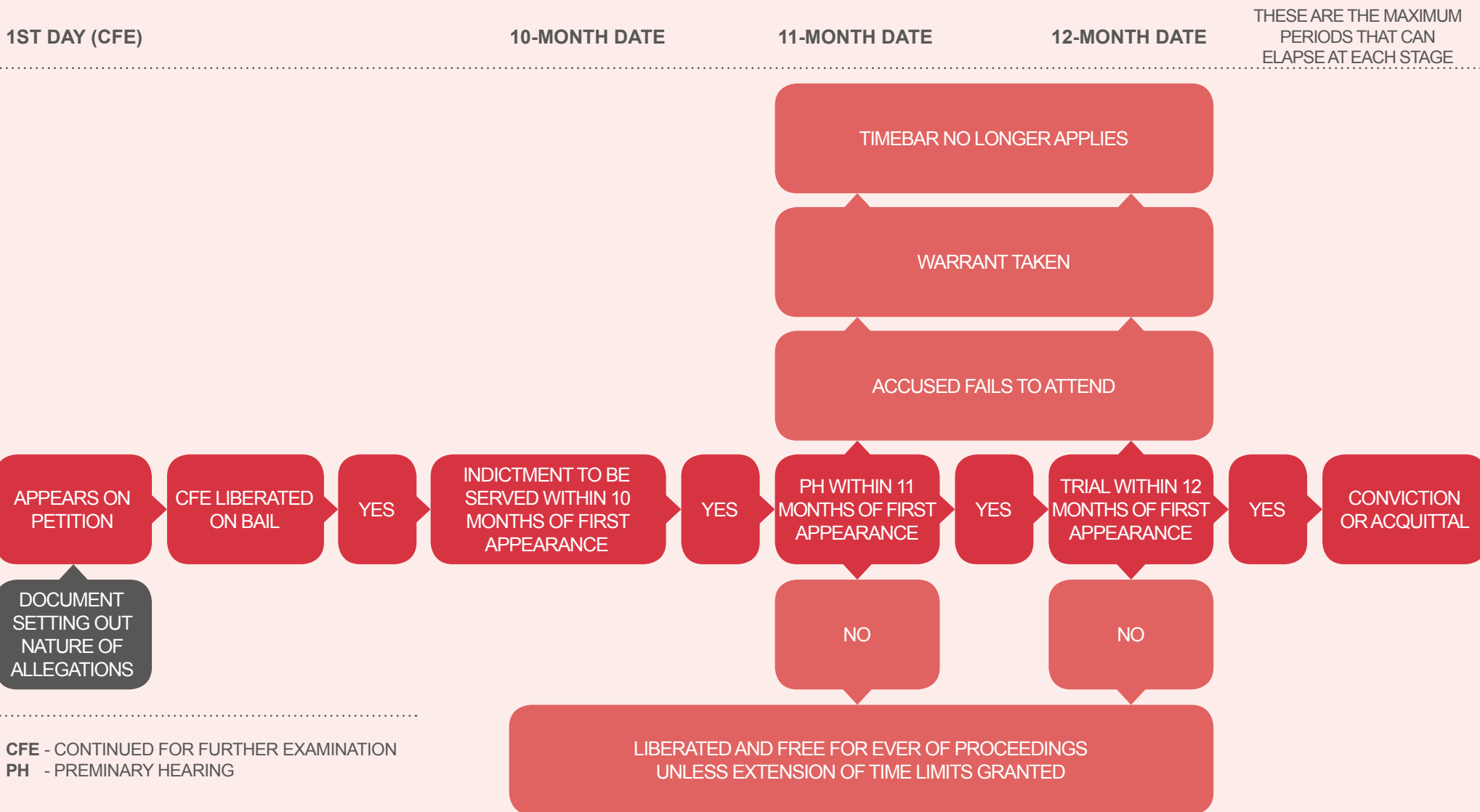
82 Crimes where reporting has not taken place for a year or more.

83 As at 29 October 2014.

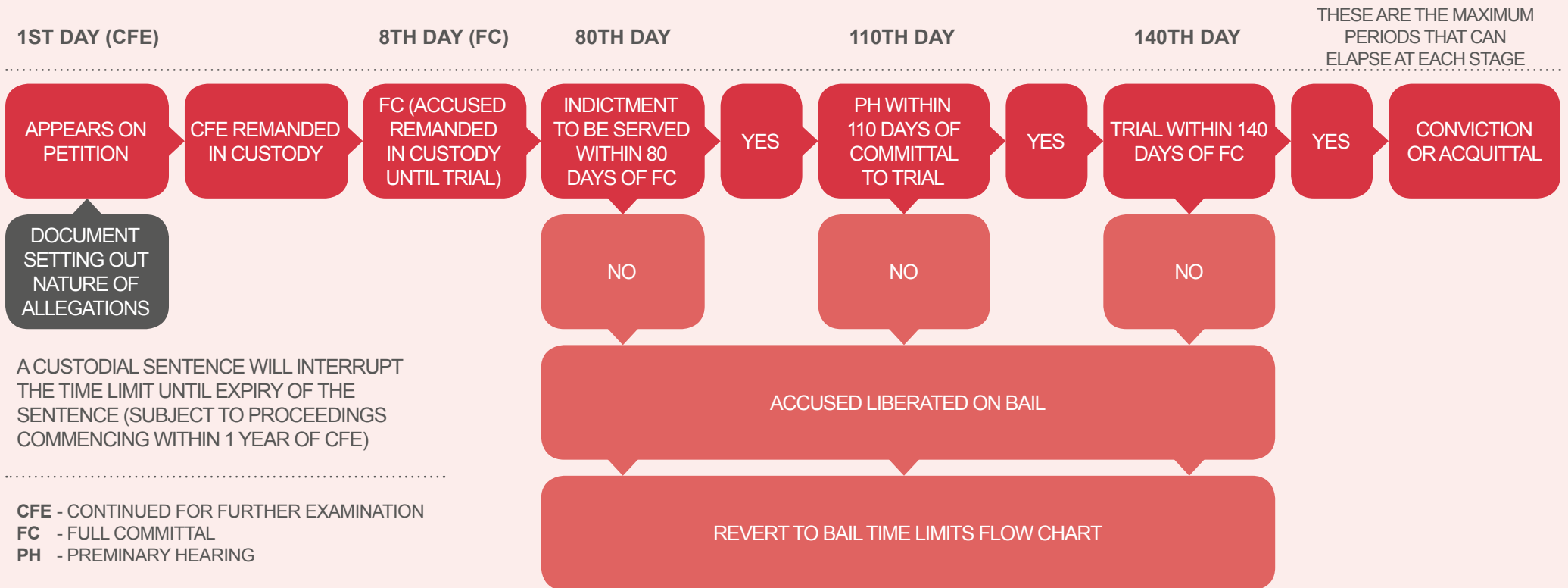
84 99 persons: Source – MI Book.

ANNEX A

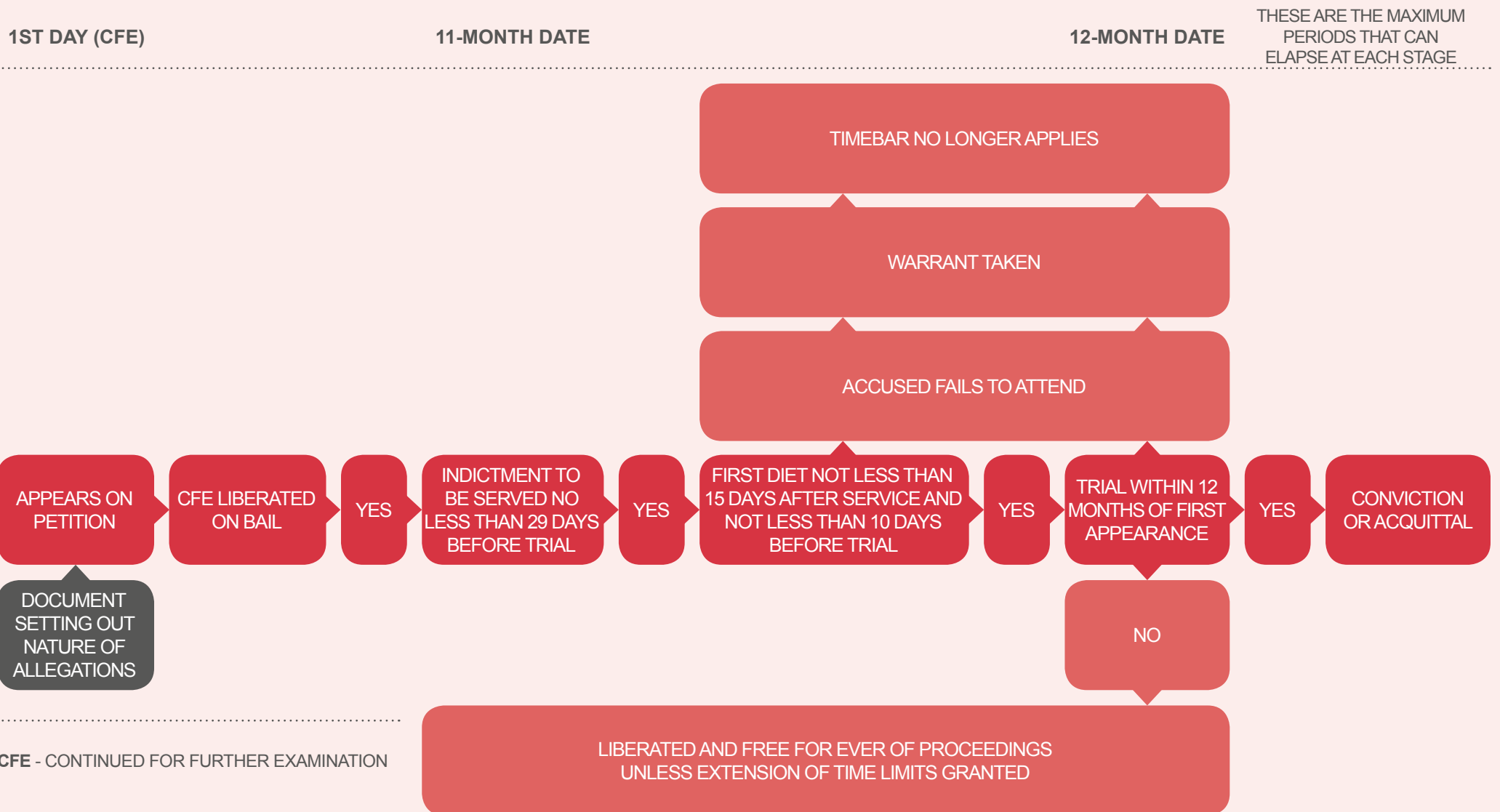
HIGH COURT TIME LIMITS – BAIL



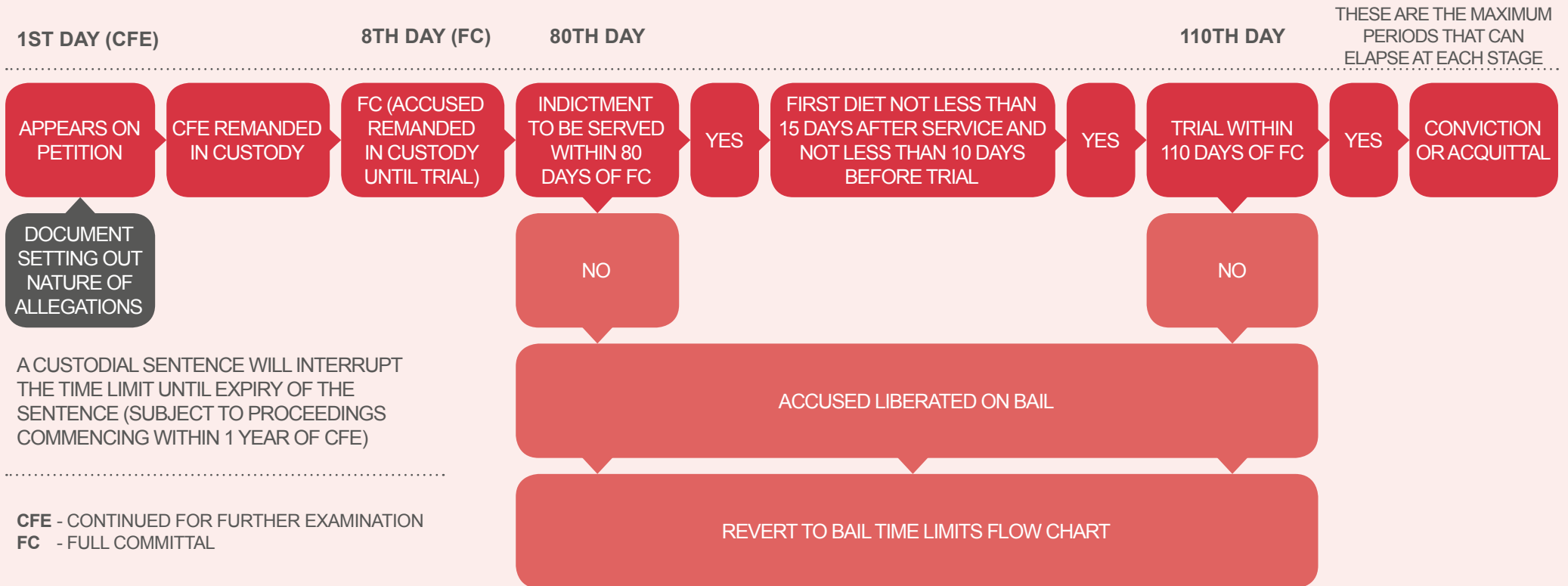
HIGH COURT TIME LIMITS – CUSTODY



SHERIFF AND JURY TIME LIMITS – BAIL



SHERIFF AND JURY TIME LIMITS – CUSTODY



ANNEX B

Glossary of Terms

Act of Adjournal

Act setting out the rules and regulations governing criminal procedure.

Accused

Person charged with committing a crime.

Adjournment

A break during court proceedings or suspension to another hearing.

Advocates Depute

Advocates Depute are prosecutors appointed by the Lord Advocate. Advocates Depute prosecute all cases in the High Court and present appeals in the Appeal Court.

Bail

The release from custody of an accused person until the trial or next court hearing.

Band G Legal Manager

Senior legal manager.

Case Investigator/Preparer

Members of staff who interview witnesses and prepare cases for court in solemn proceedings.

Charge

The crime the accused is alleged to have committed.

Committal for Further Examination (CFE)

First appearance of an accused at court.

Complaint

Formal document initiating proceedings in the Sheriff summary court.

COPFS Federation Structure

COPFS is organised into four Federations, each led by a Procurator Fiscal. All operational work is managed within the East, West and North Federations. The fourth Federation is the National Federation which includes a number of specialist units including the Scottish Fatalities Investigation Unit and corporate functions.

Criminal Court Rules Council

A body established under the 1995 Act to review the procedure and practices of the courts exercising criminal jurisdiction in Scotland and to assist the High Court in the discharge of its court procedural rule-making function.

Crown Counsel

The Law Officers (Lord Advocate and Solicitor General) and Advocates Deputes.

Crown Office and Procurator Fiscal Service (COPFS)

The independent public prosecution service in Scotland. It is responsible for the investigation and prosecution of crime in Scotland. It is also responsible for the investigation of sudden, unexplained or suspicious deaths and the investigation of allegations of criminal conduct against police officers.

First Diet

A procedural hearing in solemn sheriff prosecutions. Its main purpose is to determine whether both prosecutor and defence are prepared for the trial.

Forum

The level at which the case is to be prosecuted with more serious offences being heard by a jury and less serious offences heard by a single judge.

Full Committal (FC)

Procedural hearing which takes place in private.

Indictment

Court document that sets out the charges the accused faces in solemn proceedings.

Knowledge Bank

COPFS information database containing legal and non-legal guidance.

Law Officers

The Lord Advocate and the Solicitor General for Scotland.

Lord Advocate

The Ministerial Head of COPFS. He is the senior of the two Law Officers, the other being the Solicitor General.

Management Information Unit (MIU)

A Unit that provides statistical analysis and data.

On licence

Prisoners released from prison at an earlier date than their full period of their sentence subject to certain conditions.

Petition

Formal document served on accused in solemn proceedings. It gives notice of charges being considered by the Procurator Fiscal.

Preliminary Hearing (PH)

Procedural hearing in all High Court cases. The purpose is to adjudicate on the state of preparation of the defence and the prosecution and to resolve all outstanding issues prior to the trial commencing.

Productions

Items/exhibits produced in court as part of the evidence.

Procurators Fiscal (PFs)

Legally qualified prosecutors who receive reports about crimes from the police and other agencies and make decisions on what action to take in the public interest and where appropriate prosecute cases. They also look into deaths that require further explanation and where appropriate conduct Fatal Accident Inquiries and investigate criminal complaints against the police.

PROMIS

(Acronym for **Prosecutor's Management Information System**). COPFS computer-based case-tracking and management system.

Quality Assurance (QA)

Improving performance and preventing problems through planned and systematic activities including documentation, training and review.

Senior Civil Servant (SCS)

A senior official in the Civil Service equivalent to Deputy Director level and above.

Sheriff and Jury

Serious criminal cases heard in the Sheriff Court by a jury.

Sitting

A designated period of time during which a number of cases are listed for trial.

Solemn proceedings

Prosecution of serious criminal cases before a judge and jury in the High Court or Sheriff Court.

Solicitor General

The Lord Advocate's deputy. She is also a Minister of the Scottish Government.

Summary proceedings

Prosecutions held in the Sheriff or Justice of the Peace Court before a judge without a jury.

Warrant

A document from the court allowing the police to arrest a person alleged to have committed a criminal offence or having been convicted to be sentenced.

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