



Inspectorate of Prosecution in Scotland

Annual Report 2016-17

December 2017



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TO THE RIGHT HONOURABLE JAMES WOLFFE QC
THE LORD ADVOCATE

The Twelfth Annual Report to the Scottish Parliament

December 2017

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HM CHIEF INSPECTOR
INSPECTORATE OF PROSECUTION IN SCOTLAND

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FOREWORD

In October 2016, the Scottish Parliament's Justice Committee announced an inquiry into the role and purpose of the Crown Office and Procurator Fiscal Service (COPFS) and as part of their remit the Committee sought evidence on the role and function of the Inspectorate of Prosecution in Scotland. The Inspectorate welcomed the opportunity to be part of the review.

Following almost five months of evidence-taking, the Justice Committee published its report on 25 April 2017.

We are pleased that the Committee acknowledged the important role played by the Inspectorate of Prosecution in Scotland (IPS) in ensuring the effectiveness and efficiency of the prosecution system. It was also gratifying to read that COPFS values our inspection work, commenting that it has provided the service with a valuable, constructive and, where necessary, challenging source of independent review.

A significant benefit of external scrutiny and inspection is to "see ourselves as others see us!"¹

The Committee raised two issues: the Inspectorate's low profile and the lack of awareness of its work, and the risk that the Inspectorate's independence might be perceived to be compromised by routinely employing seconded or former COPFS staff.

We are grateful to the Committee for enhancing the profile of the Inspectorate through their inquiry. We have taken on board the findings of the Committee and have implemented a number of measures, including expanding the distribution of our reports and fostering wider engagement with criminal justice partners and other relevant stakeholders, designed to increase the profile and visibility of IPS.

During our inspection this year on the investigation and prosecution of sexual crimes, we consulted and interviewed key personnel from a wide range of stakeholders, charities and organisations, including Archway Glasgow, Barnardo's, Children 1st, Rape Crisis Scotland (RCS), Scottish Children's Reporter Administration (SCRA), Scottish Women's Aid (SWA) and Victim Support Scotland (VSS). We met also with 16 victims of sexual crimes who had personal experience of the prosecution service and the criminal justice system.



HM Chief Inspector giving evidence to the Justice Committee

¹ Burns poem – "To A Louse, On Seeing One on a Lady's Bonnet at Church".



The recent publication of the report received wide media coverage and has hopefully made a positive contribution to the debate on how victims and witnesses of such crimes can be better served by the criminal justice system.

Regarding the perception that the independence of the Inspectorate may be adversely impacted by employing seconded staff from COPFS, as I advised when giving evidence to the Committee, the IPS values and guards its independence and this is respected by others. All findings and recommendations are ultimately my responsibility.

I agree with the Committee that the inspection of some areas of the operation of the prosecution service may benefit from the input of inspectors with different backgrounds and skill sets. The ability to second inspectors provides opportunities to supplement the team from outwith COPFS, depending on the subject matter of the review.

Many of the Inspectorate's reports, however, involve complex areas of prosecution where detailed knowledge and experience of prosecution and the criminal law is essential. The ability to ask the right questions is necessary to secure an independent, credible and challenging inspectorate.

The Committee's report concluded that the public can have confidence in an effective, rigorous, fair and independent COPFS whilst acknowledging it is a service that remains under considerable pressure.

This chimes with the findings of our recent report.

We found many committed and dedicated professionals seeking to achieve the best outcome for each case, challenged by unprecedented numbers of serious sexual crimes in a climate of budgetary restraint and an increasingly complex criminal justice system.

Overall, we found that cases of sexual crimes were being prepared and investigated to a high standard with all relevant lines of inquiries being explored.

However, taking account of what we were told by victims and witnesses who had recent experience of the prosecution and wider criminal justice service, we identified a gap between the service provided to victims and witnesses and what they want, need and expect. We have made recommendations designed to assist victims in their journey through the criminal justice system and to provide them with information and support in a more nuanced way tailored to their individual needs. Increased engagement with victims and witnesses will inevitably involve more time and resources for COPFS.

In times of budgetary constraint and rising public expectations, identifying opportunities for efficiencies and promoting public confidence in the quality of public services is increasingly important.



We identified potential savings for COPFS and the criminal justice system through the abolition of notices and applications for support measures to assist those giving evidence at court. One of our previous recommendations – to serve indictments electronically – has the potential not only to incur savings for COPFS, and for the police in terms of man hours employed to physically serve indictments approaching the time limit but to mitigate the risk of late service of indictments.

The reforms under contemplation in the ongoing Evidence and Procedure Review, which aim to modernise criminal trial procedures by harnessing modern digital technology and greater judicial case management and to significantly reduce the number of witnesses giving evidence in the courtroom, has real potential to make the system more efficient and to introduce a truly transformative change for many victims and witnesses, all of which the Inspectorate endorses.

Michelle Macleod.

Michelle Macleod
HM Chief Inspector
December 2017



CHAPTER 1 – ABOUT US

1. 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

2. 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

3. The core values of the Inspectorate are:

I ndependence	to provide impartial and objective scrutiny of the service provided by COPFS
P rofessionalism	to undertake inspections with integrity, rigour, competency and consistency
S ervice	to provide a service that enhances public confidence in the investigation and prosecution of crime in Scotland

Equalities

4. 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. We carry out Equality Impact Assessments, focusing on the potential impact of our work on those with protected characteristics.

Our Approach

5. 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.



6. 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).
7. There are a number of different types of inspection work that can be undertaken by the Inspectorate. These include:

Thematic Reviews

8. 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

9. 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

10. We will continue to review the effectiveness and efficiency of the new functional model of working, recently introduced across COPFS. This was a feature of our recent inspection into the investigation and prosecution of sexual crimes.

Collaborative Inspections

11. 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.

Engagement between IPS and other Prosecutorial Systems

Visit of Chinese Prosecutors

12. This year, IPS was pleased to welcome two delegations of prosecutors from the People's Republic of China, one from Shanxi Province and one from Heibe Province. This provided an opportunity to promote the vision and values of the Inspectorate, explain the role and function of the Inspectorate and how we undertake inspections. It also enhanced our knowledge of the system of prosecution in the People's Republic of China. There was an interesting correlation with both Scotland and China adopting a more specialised approach to more serious and complex areas of law.



International Association of Prosecutors (IAP)

13. Established in 1995, the International Association of Prosecutors is the first and only worldwide organisation of prosecutors, representing over 300,000 prosecutors from over 176 different countries and territories. The main impetus for its formation was the rapid growth in serious transnational crime and the need to meet the challenges this presents through greater international cooperation, to enhance the speed and efficiency in mutual legal assistance and other international cooperative measures.
14. The IAP's annual conference and general meeting provides an opportunity for prosecutors to share and gather knowledge, experience and best practices and to assist in combating the most serious crimes such as terrorism, human trafficking and other internet related organised crimes.
15. This year, the 22nd Annual Conference and General Meeting of the IAP was held in Beijing, China. The Assistant Inspector attended as a representative of IPS. The theme "Prosecution in the Public Interest – Facing the Challenges and Opportunities in Changing Societies" was relevant and prompted much discussion on subjects as varied as "the role of corporations in human trafficking", "whether prosecutors could be replaced by artificial intelligence?" and "radicalisation and subcultures in the big cities". The conference provided a platform for discussion and exchange of ideas on the challenges prosecutors face in an ever increasing digitalised world and the potential to use technological solutions to improve collaboration and efficiency.





CHAPTER 2 – OUR INSPECTIONS

16. This report covers the period from November 2016 to November 2017. During this period we published our follow-up report on the management of time limits and a thematic report on the investigation and prosecution of sexual crimes.

Management of Time Limits Follow-up Report

17. The Management of Time Limits follow-up report was published in February 2017. (<http://www.gov.scot/Publications/2017/02/3249>)
18. Time limits set out in legislation 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. Failure to adhere to statutory time limits has serious consequences:
 - If the accused has been remanded in custody and the relevant time limit is not complied with, 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 and/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 from those charges.
19. As well as the consequences described for victims, witnesses and the community, any failure to comply with statutory time limits is likely to undermine public confidence in COPFS and, potentially, in the criminal justice system as a whole.
20. In our thematic report on the management of time limits, we concluded that COPFS has a strong record of compliance with statutory time limits, but the combination of an increasing volume of serious cases, the changing profile of serious offending and the greater complexity of such cases, within the context of reducing budgets, posed significant challenges for COPFS in the management of its solemn business and increased the risk that cases may be lost if time limits are not managed effectively.
21. We made 13 recommendations designed to provide assurance that the systems employed by COPFS to ensure compliance with time limits are effective, comprehensive and robust.



22. Our follow-up report found that COPFS had implemented 10 of the 13 recommendations, resulting in:
 - More robust procedures for recording, amending and monitoring time limits;
 - Increased awareness of time limits that apply in different circumstances and forums; and
 - Clarity for managers as to who is responsible for monitoring the progress of solemn cases.
23. There were three recommendations that remained outstanding at the time of publication of the follow-up report. We are pleased to report that the recommendation for COPFS to 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 has now been achieved, with the delivery of bespoke training on the management of time limits and the relevant law to all staff with responsibility for the management and monitoring of time limits.²
24. Work is ongoing to complete the technical specification of an automated process for collecting and updating all time limit information to be held in the COPFS Management Information Book (MI Book) as the sole repository. This will streamline the existing process and be a significant advance on current arrangements.
25. In the follow-up report, we found that there had been a reduction of cases being indicted within three days of the time limit. There were, however, a significant number of indictments that were still being served within seven days or less of the time limit. Electronic service of indictments would go a long way to mitigate this risk and has the potential to incur savings for COPFS, and for the police in terms of man hours employed to physically serve indictments approaching the time limit.

Thematic Report on the Investigation and Prosecution of Sexual Crimes

26. A thematic report on COPFS investigation and prosecution of sexual crimes was published in November 2017. (<http://www.gov.scot/Publications/2017/11/3053>)
27. The focus of this inspection was the investigation and prosecution of sexual crimes prosecuted in the High Court of Scotland. In contrast to most other types of reported crimes in Scotland, which have steadily fallen since 2007-08, sexual crimes have steadily increased. The prosecution of sexual crimes now constitutes 75% of COPFS High Court work.
28. While there has been an increase in the reporting of such crimes, the high rate of attrition (the process whereby cases drop out of the criminal justice system at any point) and the low conviction rate associated with sexual crime cases, particularly for offences of rape and attempted rape, remain a source of concern as do accounts of “secondary victimisation” experienced as a result of the trauma of the investigation, prosecution and court room processes.

² It also includes guidance and training on the new provisions being introduced by the Criminal Justice (Scotland) Act 2016 that apply to Sheriff and Jury proceedings.



29. The aim of the inspection was to assess the effectiveness of COPFS investigation and prosecution of High Court sexual crimes having particular regard to:
 - The effectiveness of procedures, processes and systems in ensuring cases are progressed expeditiously;
 - The quality and thoroughness of the investigation; and
 - The individual needs of the victims.
30. We found that cases were investigated thoroughly and prepared to a high standard. There were many dedicated professionals in the Crown Office and Procurator Fiscal Service (COPFS) seeking to achieve the best outcome for each case, facing challenges including unprecedented numbers of serious sexual crimes.
31. However, the high number of victims who disengage during the criminal justice process, after taking the significant step to report such crimes, infers that more could be done by the criminal justice system, in which COPFS is arguably the key organisation, to secure their participation throughout the process.
32. Our inspection identified the need for a more proactive approach, tailored to individual vulnerabilities and needs of victims and witnesses and advocates the introduction of a bespoke court management strategy, designed to ensure the suite of practical measures aimed at providing support is made available in a coordinated package.
33. We also make recommendations aimed at streamlining the existing investigation process.
34. The review also highlights wider criminal justice issues, including a gap in the availability of any advocacy or court based support for child victims or witnesses and the benefit of removing the requirement to lodge notices for support measures at court, to provide those giving evidence with more certainty that they can give evidence in the manner of their choosing.
35. The report makes 12 recommendations designed to ensure serious sexual crimes are investigated and prosecuted thoroughly, expeditiously and to the highest quality, in accordance with the individual needs of the victim(s).
36. The key findings and recommendations are set out below.



KEY FINDINGS

- ❖ The high number of victims who disengage during the criminal justice process, after taking the significant step to report the crime, infers that more could be done by the criminal justice system, in which COPFS is arguably the key organisation, to provide the necessary information and support to victims, many of whom have complex needs or vulnerabilities, to enable them to have the confidence to continue throughout the process.
- ❖ The high level of agreement between the specialist prosecutors and NSCU at the initial decision stage is reassuring and provides a high degree of confidence in the initial decisions made by specialist prosecutors.
- ❖ Premature reporting by Police Scotland is a contributory factor for instructing pre-petition investigation.
- ❖ Pre-petition investigation took more than ten months to conclude in 45% of the cases examined.
- ❖ Cases where there has been pre-petition investigation are not being expedited after the accused has appeared on petition. By and large, COPFS is indicting pre-petition cases in accordance with the statutory timescales that apply to High Court cases.
- ❖ The standard of communication where pre-petition investigation was undertaken, fell below what should be expected for 47% of victims.
- ❖ VIA updated victims of any significant developments in 93% of cases. There were, however, significant gaps between contacts from VIA.
- ❖ The frequency of contact provided by the COPFS Victim Strategy is not meeting the needs of victims.
- ❖ Victims commonly do not understand that VIA is part of COPFS.
- ❖ The use of legal terms when dealing with victims and witnesses creates barriers and enhances a sense of separation and detachment from the process.
- ❖ The COPFS Victim Strategy requires a more nuanced approach, tailored to victims' needs. For victims with identified vulnerabilities, such as mental health problems or learning difficulties, a bespoke strategy taking account of their particular needs, including whether more regular contact would assist, should be discussed and agreed at the outset.
- ❖ There is an unrealistic expectation by COPFS of victim and witnesses' understanding of the prosecution process and how the criminal justice system operates.
- ❖ The abolition of notices and applications for special measures would provide certainty for victims that they could give evidence in accordance with the standard measure of their choice.



- ❖ Asking the victim to engage pro-actively on special measures at the beginning of the investigation is premature. Many victims and witnesses do not have sufficient knowledge of court procedures and concepts such as TV link to make informed decisions. Decisions on special measures should be tailored to the individual needs of the victim following a face to face meeting.
- ❖ The criminal justice system places an onus on victims to seek updates, decide about special measures, find appropriate support, deal with the shifts and uncertainties in scheduling of trials and narrate what happened in an environment over which they have no control. For many dealing with the trauma of the offence, the process is too much and it explains why many simply disengage.
- ❖ Prosecution requests for sensitive, personal records are being tailored to the specific purpose for which records are being sought.
- ❖ Whilst cases involving child offenders/victims are being given some priority they are not being progressed to custody timescales.
- ❖ We found a significant gap in the availability of any advocacy or court based support for children. No agency or organisation provides such support on a national or systematic basis.



RECOMMENDATIONS

Recommendation 1:

COPFS should develop a policy of exception reporting to NSCU at the initial decision-making stage of the investigative process.

Recommendation 2:

COPFS should revise the target dates for the submission of the Investigative Agreement to Crown Counsel to enable a more detailed instruction on the direction of the investigation and of the case by Crown Counsel. The target dates should be monitored and rigorously enforced.

Recommendation 3:

COPFS should consider undertaking the indicting process prior to the case being reported to NSCU for a final instruction.

Recommendation 4:

COPFS should introduce a more sophisticated system of allocating cases for indicting to reflect the priority that is to be afforded to certain categories of cases.

Recommendation 5:

COPFS should restrict pre-petition investigation to only those inquiries that are essential to reach a decision on whether there is sufficient credible and reliable evidence.

Recommendation 6:

COPFS should take account of any period of pre-petition investigation when allocating reporting dates for cases to be reported to NSCU for a final decision.

Recommendation 7:

COPFS should ensure that VIA pro-actively offer to contact the victim every eight weeks, as a minimum, unless more frequent contact is required or requested or a victim expressly opts out.

Recommendation 8:

COPFS should ensure that there is a dedicated VIA Officer allocated to each case and provide victims with information on who to contact in their absence.

Recommendation 9:

COPFS should consider re-branding VIA to include a reference to “prosecution” in their title.

Recommendation 10:

COPFS should review all correspondence sent out by VIA.

Recommendation 11:

COPFS should discuss and agree special measures at the interview with the case preparer in the context of preparing the victim or witness for court.

Recommendation 12:

COPFS should ensure that a court management strategy is agreed with every victim and relevant agencies following service of the indictment as part of the Victim Strategy.



Current and Future Work Programme

- IPS has recently commenced a follow-up inspection on Complaints Handling. This will include an inspection of the Victims' Right to Review (VRR). The Right to Review, introduced in July 2015, provides victims with a statutory right to review a decision not to prosecute or a decision to stop or discontinue a case. It is important to assess the procedures and policies implemented by COPFS are effective and fulfil the right provided.
 - A follow-up report on the thematic review on Fatal Accident Inquiries.
 - A thematic review on the prosecution of young people in the Sheriff Court, including the availability and use of diversion from prosecution for young persons. There are several reasons for our decision to examine the prosecution of "young persons."
 - 2018 is the Scottish 'Year of Young People' – Bliadhna na h-oigridh.
 - The increasing number of children subjected to, or engaging in, sexual behaviour that constitutes criminal conduct is of significant concern. Cases reported to COPFS, involving a sexual offence committed against a child by a child, rose by 34% between 2011-12 and 2015-16.³ Cyber-related crime through the use of electronic devices and the internet, including "sexting" – sharing intimate images without consent or possessing images of a person aged 18 or under – is responsible for much of the increase.
 - To contribute to the ongoing debate on whether there is scope to reduce the number of young people prosecuted and to maximise the use of alternatives to prosecution taking an outcome focussed approach.
 - Our report on the investigation and prosecution of sexual crimes highlighted a lack of court-based or advocacy support for children in the criminal justice system.
37. The review will examine the prosecution of young persons in the Sheriff Court, the role of diversion and other alternatives to prosecution, outcomes for young people, the interaction with the Children's Reporter and the Whole Systems approach.
38. The IPS 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.

³ COPFS: Management Information Unit (MIU).



ANNEX A

Finance

The Inspectorate's budget for 2016-17 was £320,000.

The expenditure was as follows:

Staff costs*	300,445
Subsistence and motor mileage	0
Printing and binding	1,270
Travel and accommodation	5,071
Hospitality	0
Conference fees	1,163
Other running costs	<u>9,358</u>
Total	<u>£317,307</u>

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

Staff

The staff of the Inspectorate during the period of the report consisted of the Chief Inspector, an Assistant Inspector, a Legal Inspector, a Business Inspector and a Personal Assistant.

Freedom of Information (FOI)

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

During the period to end of November 2017 three Freedom of Information requests were received and 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 is 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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