

Thematic Report on Knife Crime

July 2011

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CHAPTER 1

INTRODUCTION AND INSPECTION METHODOLOGY

1. The Inspectorate of Prosecution in Scotland (IPS) is the independent inspectorate for the Crown Office and Procurator Fiscal Service (COPFS) which is the sole prosecuting authority in Scotland. The Inspectorate was put on a statutory basis by the Criminal Proceedings etc (Reform) (Scotland) Act 2007 (sections 78 and 79) and given statutory powers and responsibilities.
2. The IPS is committed to observing agreed policy on the principles of inspection including taking a customer focus, pursuing the purpose of improvement, being evidence based and publishing all reports.
3. All reports can be viewed on the Inspectorate's website at: www.scotland.gov.uk/topics/justice/ipis.
4. Knife crime in Scotland is not a new problem. Some writers trace the incidence of such violent crime back to the industrial revolution.
5. In the 1950s razor gangs made the headlines giving Glasgow the dubious title 'no mean city'. In the High Court of Justiciary Lord Carmont handed out exemplary sentences in the 1960s and these were seen by some as a deterrent.
6. In the 21st century knife crime continues to dominate the headlines, especially so in recent months with calls for tougher action including mandatory prison sentences for those who carry knives. Hardly a week goes by without the report of some stabbing, robbery or other violent crime with the use of a bladed weapon.
7. In 2006 in recognition of the seriousness of knife crime and its significance in Scottish society the then Lord Advocate, Colin Boyd QC asked Crown Office Policy Group to conduct a review of prosecution policy. Following consultation with criminal justice partners (and particularly with the acknowledged assistance of the head of the Violence Reduction Unit, John Carnochan) the revised guidance was issued to the Procurator Fiscal Service in 2006 and publicly announced at a Violence Reduction Unit seminar in Edinburgh on 22 May of that year.
8. There were three broad aspects to the new guidance:
 - Police were to arrest and report in custody knife crime offenders so that they could be swiftly dealt with. If a plea of not guilty was tendered prosecutors would seek early court diets to ensure that the case was resolved as quickly as possible.
 - Bail would be opposed by prosecutors where an accused person had a previous conviction involving the possession or use of a knife or for an

offence of violence and received a custodial sentence for that violent offence.

- Prosecutors would place on petition with a view to prosecuting on indictment (that is, before a jury) an accused who had previously been sentenced to imprisonment for possession or use of a knife. In addition, there was to be a presumption in favour of prosecution on indictment of anyone charged with possession or use of a knife where they had previously been convicted of a similar offence (ie, even if they had not previously been given a prison sentence).
9. More detailed guidance was issued to staff in COPFS on that date and is contained in a document known as General Minute 2/2006 (hereinafter referred to as GM 2/06).
 10. At the same time there were also measures in the Police, Public Order and Criminal Justice (Scotland) Bill doubling the available penalties for possession of knives.
 11. Some five years on from the public statement by the Lord Advocate it was thought appropriate to inspect the arrangements for prosecuting knife crime in Scotland.
 12. The Inspectorate of Prosecution in Scotland takes an evidence based approach to work and the methodology used in this inspection was strongly evidence based. Having looked at the policy and guidance in place we then examined cases with a view to identifying and highlighting good practice as well as for compliance and possible policy/practice gaps and, where appropriate, making recommendations for improvement.
 13. We were acutely aware of the topical nature of our inspection as it took place against a backdrop of political debate about mandatory sentencing for first time knife crime offenders. We express no view about this.
 14. In order to set our knife crime inspection into current context we met with a range of people and organisations involved in a variety of both preventative and enforcement work in Scotland and we outline these in Chapter 3.
 15. No one with whom we consulted thought that the 2006 policy outlined by the Lord Advocate should be altered in its terms. Although much preventative work is ongoing there was unanimous support for a continued firm response to those offenders committing crimes with knives whether by carrying them in public or using them.
 16. The main part of our work was in relation to case review and we examined some 440 cases via the COPFS IT system. All cases reviewed were reported by police forces to their local Procurator Fiscal in the year from 1 April 2009 to 31 March 2010. We followed up just under 10% of these cases by way of paper file review.

17. At present all reports from law enforcement agencies to COPFS are submitted electronically in FOS (Future Office System). Initial marking decisions are made and recorded electronically. For cases being prosecuted in court a paper file is created for the first court appearance and thereafter some aspects of case progress can only be gleaned from an examination of paper records. Although COPFS is working towards a full electronic case recording system this is not in operation as yet.
18. Our case review sample was drawn from around 10,000 reports linked to knife crime in that period. Our sample was therefore approximately 4% of the recorded crimes reported in that year (although with multiple charges and multiple accused on the same police report it is not possible to be completely accurate about the percentage size of our case sample). Thus our case review cannot be said to be statistically relevant but we consider it to be large enough to provide an indication of decision making around the country and of any emerging issues.
19. Full details of our case review including the parameters of the cases selected for review are found in Chapter 6.
20. The focus of our case review was on the matters highlighted by the Lord Advocate in 2006. Therefore, (although not inspecting the police), we checked the method of reporting and quality of information provided by the police. We also scrutinised the marking decisions in terms of decisions about the way offenders were prosecuted, the framing of charges generally and bail instructions for those appearing in court.
21. Although much of the policy and guidance is directed to the decision making process at the start of a prosecution we took an 'outcome focussed' approach and checked the progress of the case as much as we could by reference to the IT system and considered also the eventual disposal of the cases we reviewed.
22. Aside from the case review we asked to speak to representatives from each of the 11 COPFS Areas about everyday experience of applying the knife policy. We spoke to a range of operational lawyers ranging from senior managers or District Fiscals – in charge of individual Fiscal's offices - to senior deputies, all of whom provided a 'hands on' perspective of working with the guidance in knife crime cases. We noted some practical issues about some of the more detailed aspects of guidance that were flagged up to us.
23. At the conclusion of our review we contacted each Area Fiscal for comments on any cases that appeared not to follow the strict guidance on knife crime as outlined in 2006. At this time we also contacted the head of policy in COPFS to notify her of some discrepancies we discovered between some detailed case marking guidance and the overarching guidance contained in GM 2/06.

24. As required by Statute¹, the Inspectorate is obliged to have a 'user' focus. With this in mind we sought the views of a number of Sheriffs from all around the country about the way knife crime cases were prosecuted in terms of forum choice and bail opposition. We also asked Sheriffs if they were satisfied with the information provided to them about the crime for sentencing purposes. We are very grateful to those Sheriffs who agreed to assist us in this respect.
25. Indeed we acknowledge with gratitude the assistance of a number of individuals and organisations who assisted us in our research and preparation of this report including Detective Chief Superintendent John Carnochan, QPM, Head of the Violence Reduction Unit in Scotland; Assistant Chief Constable Campbell Corrigan, Head of Anti-Violence Directorate, Strathclyde Police; Willie McDonald and staff at the Interventions Unit, Polmont Young Offenders Institution and members of staff of the Justice and Communities Directorate of Scottish Government.
26. We record our appreciation also for the assistance provided by the members of staff of the COPFS who provided (and explained) data and who gave of their time in interviews and meetings with us.
27. Apart from compliance, the inspection considered whether the policy/guidance should be reviewed in light of findings.
28. We outline our findings in the case review in Chapter 6.
29. Our conclusions and recommendations are found in the Executive Summary which forms Chapter 2 of this report.

¹ Public Service Reform (Scotland) Act 2010, Section 112

CHAPTER 2

EXECUTIVE SUMMARY AND RECOMMENDATIONS

30. When in 2006 the Lord Advocate Colin Boyd QC addressed a Violence Reduction Unit seminar in Edinburgh and announced new more robust prosecution policies on the prosecution of knife crime, he pledged “continued, on-going energies of the Crown Office and Procurator Fiscal Service” in tackling knife crime. It was said that the goal of the new prosecution policy on knife crime was “to send a strong deterring message to those who commit knife crime”.
31. The Lord Advocate made it clear that the policy related to both the *possession* and *use* of a knife in a criminal act.
32. “And let me say that in my mind there is little distinction between possession and use of a knife in a criminal act. The danger when carrying a knife is plain for all to see and there are sound public safety reasons for the statutory offences which exist to prevent the possession of knives in public places.”
33. The Lord Advocate said:

“So my message today is simple.

And it goes out to anyone who would carry a knife on our streets.

If you are caught by the police carrying a knife, you will be arrested and kept in custody even if you are a first offender.

When you appear from custody if you have a previous conviction for a similar offence then your bail will be opposed and you risk losing your liberty pending your trial.

If you have a previous conviction for a similar offence you run the risk of being prosecuted before a jury and face a maximum sentence of 4 years imprisonment, after the Bill, which is presently before Parliament, becomes law.

If you not only carry a knife but use it the consequences will be even more serious.”

Conclusion

34. The overarching conclusion based on our inspection of 440 cases is that there is a very high compliance with the policy outlined by the Lord Advocate.

35. We did take issue with the decision not to take proceedings in seven cases (or 1.5%) and we did not agree with the choice of forum in 18 cases (or 4%). These latter cases were, however, prosecuted.
36. We make six recommendations designed as an aid to improvement.

Good Practice

37. Prosecutors seem well aware of the robust nature of the provisions and for the most part are following the detailed guidance set out in the General Minute to all staff.
38. The results of our case review inspection show that in the vast majority of cases there is compliance with the knife crime guidance outlined by the Lord Advocate in 2006 in respect of bail and choice of forum.
39. On the whole cases involving knife crime are now reported by the police immediately after the arrest of the accused after they have been kept in custody pending his or her court appearance.
40. Our case review confirmed that an appropriately robust position in relation to bail opposition is being taken around the country in relation to those who are alleged to have committed knife crime, particularly where the offender has one or more previous convictions for knife crime or other crimes of violence.
41. This is borne out by Scottish Government statistics² which show a decrease generally in the number of bail orders in 2009/10. In 2005/06 56,233 bail orders were granted in courts in Scotland. Of that figure, 2,818 related to the crime of handling an offensive weapon. After a peak in 2006/07, the total number of bail orders has reduced to a figure of 47,921 last year of which 2,313 were for offensive weapon cases.
42. As a result of the guidance on choice of forum for knife crime those who have previous convictions for knife crime or violence are more likely to be prosecuted on indictment rather than summary complaint. This gives the sentencing Sheriff the option of a custodial sentence of up to five years.
43. In 2005/06 882 people received a custodial sentence for 'handling an offensive weapon' and spent an average of 117 days in custody. Over half (54%) of these received sentences of 3 months or less, 41% were sentenced to between 3 and 6 months behind bars and the remaining 5% got between 6 months and 2 years.
44. In 2009/10 the same statistics show that whilst those sentenced for the same crime rose slightly to 916, the length of sentence had increased dramatically. Only 16% received a sentence of less than 3 months, 38% received between 3 and 6 month sentences and 42% were in the 6 month

² Criminal Proceedings in Scotland 2009-10

to 2 year category. [In the future this trend may be affected by new provisions in the Criminal Justice and Licensing Act of 2010³ that create a presumption against the court passing sentences of imprisonment (for any offence) of 3 months or less unless it considers that no other method of dealing with the person is appropriate.]

45. There was evidence of good liaison work between Fiscals and police in relation to gang problems in the Glasgow area. The use of CCTV footage at an early stage and proactive work to encourage early pleas of guilty was commendable.
46. Some monitoring of knife crime cases was taking place in solemn cases but the practice seemed to be in decline. FOS (IT system based) auditing was evident and in some cases we noted a change (at audit) to the original marking decision by legal managers to ensure compliance with knife crime guidance.
47. In addition, one Area's (Lanarkshire) Quality Review Group's knife crime monitoring exercise was shown to be effective and led to focussed training of both police and Fiscals.

Areas for strengthening:

48. We chose to examine cases against the terms of the General Minute and at the same time checked cross referencing of the more detailed offence specific case marking guidance that has been developed in recent years. It was during this exercise that we discovered some discrepancies between the offence specific guidance and the General Minute.
49. In practice we found that some cases that we expected to proceed by way of solemn procedure – that is before a jury – did not and instead were dealt with at Sheriff Summary level where the Sheriff has maximum sentencing powers of 12 months imprisonment.
50. When we brought these discrepancies to the attention of the head of policy in COPFS the case marking guidelines were changed immediately to reflect the 2006 policy. It is important that the changes are publicised in the Service in order that all staff are aware of the issue.

We therefore recommend that -

- 1. All Case Marking Guidance is checked against the guidance contained in GM 2/06 and cross referenced accurately.**
- 2. Procurators Fiscal are reminded of the terms of GM 2/06 and that they are advised of the recent changes to Case Marking Guidance for Breach of the Peace and Section 49(1) of the Criminal Law**

³ Section 17

(Consolidation) (Scotland) Act 1995 to bring the marking guidance in line with GM 2/06.

51. We looked at issues concerning the quality of police reporting of knife crime to Fiscals. Our remit is not to inspect police forces. However, we noted the comments of the Lord Advocate in asking for the assistance of the police in ensuring the knife crime cases were reported quickly and with adequate information.
52. We should say that we were told by all Area representatives that they were satisfied with both the timing and quality of police reporting in their jurisdiction. However, we noted that very few reports contained any community impact assessment information (albeit in some cases such comment would be inappropriate – for example where the incident took place in a domestic setting).
53. We also heard from Sheriffs that ideally they wanted to see the weapon itself or at least a photograph of it for sentencing purposes. There was some evidence of visual information being provided by the police whether by way of a photograph or a photocopy of the knife. Some local police officers were able to bring along the knife itself to the Procurator Fiscal in time for custody marking. In some rare instances CCTV footage was brought at this time also. We thought it was important for the Fiscal marking the case to be able to see the weapon (or at least a photograph of it) to take a view about the case at marking as well as being able to present the fullest information to the Sheriff for sentencing, at summary level prosecutions.
54. We also highlighted the issue about data quality in the reports, which if not challenged or changed, can affect the quality of information in the Criminal History Records. Police reports have a data field for the reporting officer to complete where a weapon is used in the offence. This data field is called a 'modifier'. The significance for our inspection was that if any police reports with 'no modifier' where a knife was in fact involved proceeded to conviction the criminal record would not show a reference to a knife. Since the criteria for placing a person on petition for knife crime is directly related to previous 'relevant' offending then this is an issue which must be resolved. The completion of the 'modifier' section of the report was essential for future reference but one not likely to be noticed by Fiscals marking cases. This is a quality of reporting matter that should be raised with the police.

With these matters in mind we therefore recommend that -

- 3. Procurators Fiscal should liaise with police forces in connection with the quality of knife crime reporting to ensure that reports meet the needs of the Procurator Fiscal, the courts and provide sufficient information on data for the Criminal History System.**

55. We had some misgivings about one or two cases where we felt that the decision to take no proceedings was made instantly rather than with the benefit of further enquiry. Given the serious nature of knife crime we would urge more careful reflection before ruling out prosecution in the public interest.
56. GM 2/06 provided for warnings or diversion in only exceptional circumstances. Specific case marking guidance provided for approval of warnings by District Procurators Fiscal. There was scant evidence of prior approval by District Procurators Fiscal.
57. In certain situations the General Minute provided a presumption in favour of prosecution at solemn level and any deviation from that practice required Depute Fiscals marking cases to obtain prior approval of their senior managers. Our case review findings showed little evidence that the measures for prior approval were being adopted. We also found some cases, but overall not many, where the presumption for solemn proceedings applied due to the previous criminal record of the accused yet proceedings were at summary level.

We therefore recommend that -

- 4. As a matter of good practice Procurators Fiscal should provide a case note concerning a decision where the decision appears to go against guidance or rebuts a presumption.**
- 5. Where approval of a senior member of staff is required for a particular course of action that there is a clear procedure in place for ensuring such approval is obtained and is properly recorded.**
58. Given that knife crime is a matter of public concern and the subject of specific direction from the Lord Advocate we looked for auditing and monitoring within the Service to ensure compliance. One Area had undertaken specific quality monitoring of knife crime reporting and marking and used the results to inform joint training of police and Fiscals which was good practice.
59. At national level there was some limited monitoring of 'solemn' knife crime evident but that seems to have fallen into disuse. There was a national knife crime monitoring exercise of statutory summary knife crime that coincided with the start of our scoping for this inspection. Other local general (not knife crime specific) auditing practices for case marking were evident. We thought there was a need for more robust monitoring, especially of cases that were prosecuted at summary level or not prosecuted at all.

We therefore recommend that -

- 6. There is regular monitoring of compliance with the provisions of the knife crime guidance, particularly those cases that are dealt with at summary level or not prosecuted.**

CHAPTER 3

PROSECUTION OF KNIFE CRIME IN SCOTLAND IN CONTEXT

60. In this chapter we examine the extent of the knife crime problem in Scotland and the various strands of work going on in Government departments and other agencies to try to tackle it.

What is the extent of the knife crime problem in Scotland?

Homicides

61. In 2002 the WHO (World Health Organisation) report 'World Report on Violence and Health' listed Scotland alongside Argentina, Costa Rica and Lithuania as having a homicide rate of 5.3 per 100,000 per population in males between 10 and 29. The comparative figure in England and Wales group was 1.0 per 100,000.
62. Five years ago in 36% of murders in Scotland (34 cases) the method of killing was by use of a sharp implement.
63. Although there has been a recorded drop in homicide figures in the last year⁴ (as at 13 December 2010 Scottish police forces recorded 78 cases of homicide for the year 2009/10, representing a 10 year low) knives continue to play a depressingly significant part in the homicide figures. Last year (2010) 35 people were killed by sharp instruments, representing 44% of the homicides in Scotland.
64. Indeed in *each* of the last 10 years (and 2009/10 was no exception) using a sharp implement was the most common method of killing. Whilst this figure is down from a peak at 58% in 2008/09 it still represents *over three times* as many as were killed in other ways: hitting and kicking (15% of male victims); use of a blunt instrument (13% of male victims) or strangulation/asphyxiation (26% of female victims).
65. There are geographical variations. The West of Scotland remains the national geographical homicide hotspot. In 2005/06 62 homicides took place in Strathclyde police force area representing 65% of the total. In 2009/10 the figure was 43 (55% of the total). Knife crime also follows the same geographical slant with a large proportion of knife crime committed in the West of Scotland as is seen in our case review chapter.
66. Although perhaps the public perception of violent knife crime is of a public street encounter in fact last year 60% of homicides took place in a house and 28% were out on a street. The figures do not reveal how many of those homicides that took place in a house involved a pointed implement but we noted a significant number of knife crime cases in our case review took place in a domestic setting.

⁴ Scottish Government Statistical Bulletin – Homicide in Scotland 2009/10

Assaults

67. In 2005/06 there were 94 homicides, 710 attempted murders, 6,320 serious assaults, 3,553 robberies and over 72,000 minor assaults. Of the 94 homicides 5 years ago 46% took place in a house and 41% happened in a street or an outdoor open area. These figures are taken from the Scottish Government published crime statistics contained in 'Criminal Proceedings in Scottish Courts in Scotland 2005/06' with its corresponding publication for this last year 2009/10 (now re-named 'Criminal Proceedings in Scotland').
68. While the homicide figures are examined by statisticians with regard to weapon used, statistics covering other crimes of violence such as assault (both 'serious assault including attempted murder' and 'common assault'), robbery, rape do not reveal the extent of weapon or in particular, knife usage.

Gangs

69. There has been little research into knife crime as such until very recently when the Scottish Government commissioned research into knife crime in the context of gang culture in Scotland.
70. Knife crime is not a distinctly Scottish problem. In England and Wales the government invited TV personality Brooke Kinsella to report on the work taking place around the country to help young people out of the cycle of violence and prevent them getting involved in knife crime. Her report⁵ outlines some of the reasons the young people themselves gave for getting involved with knife crime and what seemed to work in terms of prevention. As a result the government announced a range of measures designed to change attitudes and behaviour alongside tough measures for those persisting in violence.
71. In Scotland there is recently published research⁶ into knife carrying among gang members. Gang members in Glasgow, West Dunbartonshire, Edinburgh and, to a lesser extent, Dundee and Aberdeen were interviewed as well as serving prisoners in Barlinnie and Perth (adult) prisons and Polmont Young Offenders Institute.
72. Although the report was clear that knife carrying is not the exclusive domain of the young or of gang members in the context of the research it found that knife carrying and use was most strongly associated with gangs in the west of Scotland. Many of the participants in the study had been the victim of knife crime themselves and cited as a reason for carrying a knife their own protection, particularly when venturing outside of their territorial area. Other reasons cited were to enhance reputation as a 'hard man' or quite simply with the intention of using it to stab someone.

⁵ Tackling Knife Crime Together - review of local anti-knife crime projects, February 2011

⁶ Troublesome Youth Groups, gangs and knife carrying in Scotland

73. Despite some knowledge of both physical risks to their own safety and risk to liberty if convicted these risks did not always have the assumed deterrent effect.
74. While there has been some recently published research regarding the effects of community based sentencing with curfew restrictions⁷ there is a lack of published research on the effects of custodial sentencing on those who commit knife crime.

Knife/offensive weapon carrying

75. For our purposes, looking at knife crime, the other relevant statistics concern what is described as 'handling an offensive weapon'.
76. These statistics are drawn from the cases where the accused has been charged under Section 47(1) of the Criminal Law (Consolidation) (Scotland) Act 1995. Not all 'offensive weapons' are knives or similar implements but very many do fall within that description. However these statistics do not then cover the separate offence of having an article with them that has a blade or is sharply pointed (s49 (1) of the 1995 Act) – and many knife 'carriers' are caught under the latter provision where there is no evidence to prove intention to use but nonetheless they had with them, perhaps in a pocket, a knife or blade or similar implement.
77. However limiting these statistics are they nevertheless provide some indication of trends in offending and conviction rates and in sentencing.

Offending/conviction for weapon carrying

78. In 2005/06 3,392 people had a charge of 'handling an offensive weapon' proved against them (reportedly an increase of 42% on figures from 2001/02). In 2009/10 there was a 33% drop in that figure to 2,855.

What is being done to address the knife crime problem in Scotland?

79. Scottish Government policy concerning knife crime has two distinct strands:
 - Preventing violent behaviour by tackling the causes of knife crime
 - Enforcement - tough action to keep the public safe and punish those who break the law
80. The role of COPFS clearly falls into the second of those strands, although we did come across some examples of Procurators Fiscal engaging with local community projects to support the first (preventative) strand of work.

⁷ 'Gangs, Blades, Cops and Curfews: the Reality for Marginalised Youth in the West of Scotland' - Professor Ross Deuchar, 2011

Preventative work

81. The Scottish Government takes a public health approach to violence prevention. A WHO report in 2010 - 'Violence prevention: the evidence' - indicates that a number of strategies from early years and adolescent interventions through to more directed measures such as alcohol pricing, legislation to curb weapon carrying through to victim care can all contribute to some degree to preventing violence and there appear to be a number of programmes which fall into this category.

Early intervention

82. The Youth Justice Department of Scottish Government is encouraging all agencies involved with children to intervene at the earliest opportunity to address offending behaviour and so prevent escalation to the more serious levels it might otherwise reach. One example we found of the work being done was YouthLink Scotland. This is a national agency that co-ordinates activity among a variety of agencies to provide frontline services and youth activities including training materials such as "Sharp Solutions" – a template for activities and discussions with young people addressing knife crime.

Violence Reduction Unit

83. Based in Glasgow and led by Detective Chief Superintendent John Carnochan, this was first established in 2005 as a unit of Strathclyde Police. In 2006 the Unit assumed a national role in Scotland and is now supported by the Scottish Government. Its motto is 'violence is preventable, not inevitable' and the Unit leads on a number of preventative initiatives.
84. The Unit is responsible for analysis of crime trends in violent crime around Scotland as well as specific initiatives aimed at tackling some of the identified problem areas. Profiling of victims and offenders involved in knife crime, identification of hotspots and timing of offences has allowed police to be proactive and target potential offenders with effective patrolling and search strategies that have made some impact on violent crime committed in public spaces.
85. Alongside these measures, more long term measures have been devised and put in place. One such measure from the VRU is CIRV:

CIRV – Community Initiative to Reduce Violence

86. Described as a 'multi-agency community based project with the aim of securing a rapid and sustained reduction in violent behaviour amongst gang members across Glasgow', it is loosely based on a programme run in the USA to tackle gun crime in Cincinnati.

87. An intelligence-informed mapping exercise was carried out of gangs and their known membership in the east and north of Glasgow. In 2008/09 there were thought to be 76 gangs in these two areas of the city alone with in excess of 1,000 members overall. Gang members have been invited to attend sessions which are held regularly at the Sheriff Court in Glasgow. The sessions are chaired by a Sheriff and there are three basic elements to the programme:
- Enforcement. The message that the violence must stop is given to those attending. Senior police officers (and prosecutors) are among those delivering the message that if the violence continues the enforcement will be targeted on those who have heard but persist. The Procurator Fiscal in Glasgow is involved in this aspect of the initiative.
 - Services and programmes. In exchange for a commitment to stop offending a range of options can be offered to the participants including addiction support, sporting opportunities, employment advice and placements and counselling to name a few.
 - Moral voice of the community. Members of the local communities in these parts of the city come to tell their side of the story – about how knife crime has affected their homes, their streets. Medical professionals also attend to provide an insight into the consequences of using knives.
88. Although yet to be fully independently evaluated CIRV's initial reports indicate an encouraging level of reduction in violent offending among those who engaged.

Violence surveillance using NHS data

89. Another innovative idea being taken forward is the sharing of 'anonymised' information collected at Accident and Emergency (A & E) departments in hospitals concerning the incidence of violence and use of weapons at particular geographical 'hotspots' so that police can track violence trends and take preventative measures. Many victims of violence do not report the crime to the police but do attend at A & E with their injuries. The National Violence Surveillance Network established by the Cardiff University Violence Research Group in England and Wales found that such measures led to decreased numbers of wounded victims attending A & E as a result of violence and a decrease in serious assaults reported to the police. A pilot study is underway in Lanarkshire hospitals along the same lines.

Medics Against Violence

90. This is a charitable organisation set up by three Scottish surgeons with the aim of raising awareness of the risks and consequences of violence. The 'Medics' – all volunteers – go into schools on invitation and deliver a structured session to children aged 12/13 providing information about the medical impact of knife crime on the victims they treat in hospital. MAV (as

it is known) has close links with the Violence Reduction Unit and is affiliated with the WHO Violence Prevention Alliance.

No Knives Better Lives

91. Launched in March 2009 – this is a national youth engagement initiative aimed at educating young people about the dangers of carrying a knife. It was first piloted in Inverclyde before being rolled out nationally. An educational programme was devised including workshops with contributions from victims, ex-offenders, medical professionals and sportsmen as well as a dramatisation depicting the consequences of carrying a knife. This was backed up with an advertising campaign in cinemas, bus stops and other locations.
92. Although we considered that Procurators Fiscal would be involved in the ‘enforcement’ element of the Government’s policy we did find some evidence of community engagement along with criminal justice partners such as police or local authorities to reinforce the message that carrying a knife is dangerous for both the carrier and potential victim.
93. One District Fiscal advised us that he had attended schools in his area as part of the Big World Initiative run by the local authority and was involved in judging a poster competition on a criminal justice theme. Many of the posters were about the dangers of carrying a knife and were considered to be very effective. They were subsequently framed and now hang on the wall in the local Fiscal’s office.

Weapons searches

94. Ferroguard metal detectors have been used by police forces as an effective way of identifying knife carrying in public places. Individual police forces have adopted their own ‘stop and search’ policies.

Licensing of knife dealers

95. From 1 June 2010 all those who sold non domestic knives were required to obtain a licence from their local authority. Terms of the licence would cover such matters as record keeping, storage and display of the knives. Enforcement is for Trading Standards departments of local authorities. It is not yet clear how this will impact on knife dealers and doubtful that it will affect internet sales.

Knife crime awareness in prison

96. Although prison is the end result for many under the ‘enforcement’ element of the strategy even here there is preventative work aimed at addressing knife crime. During our inspection we observed a knife crime awareness session that is offered to all young offenders at HMYOI Polmont who are shortly due for release.

97. This session, run by the Polmont 'Interventions' team combined a series of presentations, film clips and discussion exercises. The messages during this session highlighted the robust sentencing policy for knife crime, the risks of using a knife when it was carried only for protection and the consequences of knife crime for all concerned. One video clip was from an interview with an inmate who had been previously served a short term in prison, had been a model prisoner and had done well on his release but had then gone on to commit a number of serious assaults with knives leading to a lengthy sentence. At the end of the session, offenders were encouraged to consider how they might in the future avoid situations that would lead them back into crime either carrying or using knives.
98. Seven of the nine who attended the session admitted that they had carried a knife in the past. Interestingly, when asked what would reduce knife crime offending the participants offered the view that, alongside better opportunities to use their time constructively either in activities or employment, longer custodial sentences for knife crime would be a deterrent.
99. Many of the preventative measures we have described above relate to violent crime in a public setting. Law enforcement officers told us that although many measures concerning knife crime in public settings were being tackled effectively by these preventative measures it has been far more difficult to tackle violence (of any type, knife crime included) that takes place behind closed doors. As the statistics show, 60% of violent crime in Scotland occurs behind closed doors and it has been more difficult to be proactive in this setting, although Strathclyde Police have reported some success, for example, in targeting known domestic violence perpetrators prior to football matches.

Enforcement

100. As the sole prosecution authority in Scotland the COPFS has a unique role to play in enforcement of the law concerning knife crime. The then Lord Advocate, Colin Boyd QC announced the new knife crime policy in 2006. Since then, the robust policy has been championed by his successor, Elish Angiolini QC and the Solicitor General Frank Mulholland QC.
101. In 2009 the Lord Advocate presented a Crown Appeal against an 'unduly lenient' sentence in respect of the case of HMA v Boyle, Maddock and Kelly⁸. This was a case of murder in which a knife had been used to stab the deceased on the leg in the course of a murderous attack in which he was repeatedly struck on the head with a bottle, stamped on his head, dragged downstairs and struck with a pole before being set alight on a makeshift 'pyre'.
102. The Appeal Court Judges had this to say:

⁸ 2009 HCJAC 89

“The Lord Advocate emphasised that murders committed with knives, swords and similar weapons were currently a matter of grave concern in Scotland. Although there were no figures available specifically for murder cases she advised us that police figures for homicide as a whole indicated that for 2007/08 there were 22 per million in Scotland as against 14.6 for England and Wales and 14 for Northern Ireland. Just under half of the Scottish figures represented deaths caused by a pointed weapon.

We agree that at the present time knife crime is a scourge in the Scottish community and that the court should be acting, and seen to be acting, in a way which discourages the carrying of sharp weapons, the use of which may lead to needless deaths. Sentences which may cause individuals to think more carefully before arming themselves and which reflect public concern at such killings are appropriate.”

103. The Solicitor General, Frank Mulholland QC stated in March 2009:

“Since the new guidelines were introduced on 26 June 2006:

More than 600 knife carriers have been prosecuted on indictment rather than summary complaint, allowing a greater sentencing power for the judge.

Convictions have been recorded in more than three quarters of concluded cases.

78% of these convictions have resulted in imprisonment.

Prosecutors have opposed bail in 83% of these cases, of which 69% have resulted in the accused being kept in custody pending trial.

The average sentence of imprisonment passed for knife crime prosecutions on indictment is more than 11 months.

These figures send a clear message to those who carry knives or use knives to harm others. That message is simple: you risk going straight to prison and staying there for a long time. Anyone thinking of carrying a knife should think again. We will not be relaxing our robust prosecution policy.”

104. Leaders in the COPFS, that is to say, the Deputy Crown Agent, the Crown Office Head of Policy and Area Procurators Fiscal were all involved in shaping the terms of the overarching guidance contained in General Minute 2/06 which was approved by the Law Officers.

105. There continues to be direct involvement of those key figures in developing and steering the Crown’s policy and practice in relation to knife crime. At national level – quarterly meetings between Law Officers and Head of Operations in COPFS and the Violence Reduction Unit (VRU)

take place so that COPFS is kept informed about latest developments. The Head of VRU advised that he was aware of the Crown's policy on knife crime. There has been no call from any quarter for a change to the current prosecution policy.

106. **In the COPFS Strategic Plan 2009-12 a commitment is given to continuing to tackle serious crime.**

"We take a robust approach in relation to the prosecution of knife crime. Those carrying knives risk going straight to prison and staying there for a long time."

107. In making this strategic aim a reality, the Procurator Fiscal and every Depute Fiscal around the country has an important role. The law on knife crime can be complex and working within tight timescales can be particularly challenging.

CHAPTER 4

THE LAW CONCERNING KNIFE CRIME

108. We outline below the legal considerations that must be taken into account by Procurators Fiscal when assessing a police report and considering whether to take proceedings and, if so, what proceedings should be taken.

Carrying a knife

109. It is against the law to have with you in a public place (or school or prison) an offensive weapon. A knife could be an offensive weapon depending on what it is and the circumstances in which it is carried or possessed. It is also against the law, in certain situations, to have a bladed or sharply pointed article (such as a knife) with you in a public place, in a school or in a prison.

110. The law concerning these aspects of knife crime is written in Statute (Act of parliament). The current law is contained in the Criminal Law (Consolidation) (Scotland) Act 1995 (hereinafter referred to as 'the 1995 Act'). Sections 47 and 49 relate to the carrying in a public place of offensive weapons and knives respectively.

111. Legislation to deal with possession of offensive weapons (including knives) was first introduced in the UK in the Prevention of Crime Act 1953. This Act made it an offence to have with you in a public place an offensive weapon without lawful authority or reasonable excuse.

112. Although the 'Offensive Weapon' legislation came into force in 1953 it was four decades later before law was enacted concerning knives (described as an "article which has a blade or is sharply pointed").

113. Thus in 1993⁹ it became an offence under statute to have an article with a blade or sharp point in a public place. There was an exception for folding pocket knives where the blade was less than three inches. It was a defence to have the item in a public place if a 'good reason or lawful authority' could be established. Similarly if it could be proved that the item was for use at work, part of a national costume (such as a skean dhu) or being carried for religious reasons.

114. These two statutes (the 1953 Act and the 1993 Act) were in force until 1996 when the law regarding possession of such implements was consolidated in the Criminal Law (Consolidation) (Scotland) Act 1995. The provisions concerning knife crime were contained in Section 47 (a re-statement of the 1953 provisions) and Section 49 (a re-statement of the 1993 provisions).

⁹ Carrying of Knives (Scotland) Act 1993, Section 1

115. Further additions to Section 49 were added to cover possession of offensive weapons and bladed or sharply pointed implements in schools in 1996¹⁰ and in prisons in 2007¹¹.
116. In 2006 maximum sentences¹² were increased to 12 months for cases under Sections 47 and 49 where tried summarily (that is, before a Sheriff sitting alone) and to four years on indictment (Sheriff and Jury or High Court proceedings).
117. In 2010 further slight amendments were made to Sections 47 and 49.
118. Section 37 of the Criminal Justice and Licensing (Scotland) Act 2010 came into force on 13 December 2010, defining 'public place' as 'any place other than domestic premises, school premises or prisons'. The definition of 'domestic premises' excludes those areas 'used in common by the occupant of more than one (such) dwelling', thus ensuring that common closes do now come within the ambit of the legislation. This effectively closed the loophole created by the 'Templeton' case.
119. The second amendment changes the wording of the defence laid down in Section 49 of the 1995 Act so that an accused has to 'show' (not prove) that he or she had 'reasonable excuse (rather than the previously stated 'good reason') or lawful authority'. The accused now has to 'show' that he had a 'lawful authority or reasonable excuse' defence in Section 47 rather than the previous wording which said the 'the proof whereof shall lie with him'.
120. As with all legislation questions of interpretation have arisen on a number of different matters:

What does 'have with you' mean?

121. It can mean in your hand, but also in a pocket, handbag, rucksack. In some situations the court has decided that having it in the side pocket in your car also comes within the scope of the Act.

What is a public place?

122. Generally defined as a place to which the general public has access. This would include open spaces – most obviously the street, a park, a playground, a multi storey car park. A decision in a Glasgow court in 2008¹³ held that a common close of a tenement building was not a public place because it had a security entrance system, albeit that the locking mechanism on the door was broken. The rationale behind that decision was that although members of the public could gain entry to the close it would or should be only on the invitation of residents of that building. [This

¹⁰ Added by the Offensive Weapons Act 1996

¹¹ Added by the Custodial Sentences and Weapons (Scotland) Act 2007

¹² Police Public Order and Criminal Justice (Scotland) Act 2006

¹³ Templeton V HMA 2008 (unreported)

was the law in 2009/10 – the period of our case review, although it has now changed as explained earlier in this chapter.]

What circumstances might establish ‘lawful authority’ or ‘reasonable excuse’ or ‘good reason’?

123. In each case the facts and circumstances have to be weighed and assessed. A jobbing gardener had an axe in the driver’s door pocket of his car. He claimed it was for his work as a gardener but since it was not stored in a tool bag in the boot of the car with the other tools but within the driver’s door such a reason was not accepted by the court and he was convicted of a contravention of Section 49(1) of the Criminal Law (Consolidation) (Scotland) Act 1995.¹⁴

What is an offensive weapon?

124. In interpreting this piece of legislation the courts over time and in the course of many judgements made it clear that an offensive weapon could belong to one of three categories:

- That made for use for causing personal injury and could be described as a weapon ‘*per se*’ (and in the context of knife crime these would include such items as swords, daggers and flick knives)
- That adapted for use for causing personal injury (which might include sharpened tools, broken glass, razor blades stuck in potatoes)
- That intended for use. This could be any item which in the context of the incident could be shown by the prosecutor to have been used as a weapon. Thus in the latter category ordinary everyday items such as a pencil, a pair of scissors, even a slipper could be an offensive weapon depending on the circumstances in which used

125. Thus prosecutors considering the evidence in a police report must assess the information in deciding whether the circumstances amount to a contravention of any aspect of the legislation. In addition there are evidential rules about police having good reason to carry out a search for an offensive weapon or a knife and these must be weighed in the balance too.

126. Some prosecutors take the view that the more serious statutory offence is Section 47(1) – offensive weapon charge. This is because the weapon itself is inherently dangerous; or it is altered in some way to make it a weapon; or because it is carried in circumstances that show an intention to use it as a weapon. In the last category that might involve some threatening gesture or remark. The penalty is exactly the same for a contravention of Section 49(1) that requires proof of possession only and no proof of intention to use it as a weapon.

¹⁴ Mackenzie v Vannet 1999 JC 44

127. One Sheriff with whom we consulted wondered why Fiscals chose to libel a charge that required more onerous proof when a Section 49 charge would prove more easily. Another took the view that prosecutors should carefully choose the correct section of the Act to reflect the circumstances of the case (and that was not *always* being done). In our case review we thought that, in general, the correct statutory charge was selected.

Using a knife

128. As became clear in the course of our case review, the ways in which knives are used to commit crimes are many and various. Many are Common Law crimes, that is to say judge-made law developed over the centuries. Crimes such as breach of the peace, assault, robbery and murder are all Common Law crimes.
129. The law has always taken a serious view of those who use weapons in the commission of crime. It is normal practice that the wording of the charge will reflect that a weapon such as a knife was used. A charge of assault with a knife might libel “stab him on the head and body with a knife”. If injury occurred as a result of the way that assault was carried out with the weapon such injury, for example “to severe injury” or “to the danger of life” would be an aggravation to the crime.
130. In sentencing, the Judge or Sheriff would be expected to take account of the added seriousness of the crime brought about by the use of the weapon involved and the resultant injury.
131. Even where the knife was simply used to threaten but not injure it would still feature in the charge. Thus some breaches of the peace included such phrases as “brandish a knife” or similar wording depending on the facts and circumstances of the case. Such factors would be taken into account by the court in sentencing.
132. It is open to prosecutors to include charges of both using AND carrying a knife. A person who stabs someone in the street is guilty not only of the assault but also of the statutory offence of carrying the knife in a public place. Tactically prosecutors may consider that they should libel (that is, include in the charges) both even if they arise out of the same set of circumstances. One reason might be in the event of an acquittal of the assault charge (say for example because some witnesses did not speak up in court or a self defence was accepted by the court) then the court would still have a charge of possession of the knife in a public place (assuming it was in public) to consider.

CHAPTER 5

COPFS POLICY AND GUIDANCE ON KNIFE CRIME

133. In this chapter we provide more detail about the policy and guidance issued to Procurators Fiscal in light of the Lord Advocate's public pronouncement in 2006.
134. The revised guidance was issued to all staff in COPFS by way of General Minute 2/2006 and made reference to crimes involving the possession or use of a knife ('relevant crime'), thus including both statutory and common law offences.

General Minute 2/06

135. The main thrust of the guidance was to treat offenders (particularly those who had analogous previous convictions) more robustly in terms of forum for prosecution and opposition to bail. The main principles were set out in the following three paragraphs.
136. Any individual charged with an offence involving the possession or use of a knife (a relevant offence) should be placed on petition where they have been previously sentenced to imprisonment for a relevant offence.
137. There is a presumption in favour of placing on petition any individual charged with a relevant offence where they have been previously convicted of a relevant offence. [In determining whether the presumption may be rebutted, regard may be had to the age of the previous conviction, any exceptional circumstances relating to the accused or any other exceptional feature in respect of either the current offence or the previous conviction. Any decision to rebut the presumption will require to be confirmed by a legal manager.]
138. Prosecutors should oppose bail and seek relevant special conditions if bail is granted where the accused has been previously convicted of either
- a relevant offence; or
 - an offence of violence which has resulted in a custodial sentence
139. Aside from these main principles, General Minute 2/06 gave more detailed guidance to prosecutors as to how they should approach cases involving carrying or using knives.

About forum:

140. If the criminal record disclosed a previous offence of violence then careful consideration was to be given for petition proceedings.

141. Prosecution for knife crime should take place in the Sheriff Court. Such cases were not suitable for warnings (or other alternatives to prosecution) except in exceptional circumstances.
142. Those cases commenced on petition were to be reported for Crown Counsel's instructions and not reduced at a later date to summary proceedings unless, in the view of the District or Area Procurator Fiscal, there were exceptional reasons for so doing.

About case preparation:

143. Procurators Fiscal were advised to ask the police to follow up for factual accuracy any excuse or reason for having the knife offered by the accused at the time.
144. Where summary proceedings were instituted early diets of trial were to be sought where possible.

About bail considerations:

145. Expanding on the advice regarding prosecutors' bail considerations, it was suggested that in some circumstances it might be appropriate to seek curfew conditions as a direct alternative to custody.

About young offenders:

146. Where offenders were under 16 at the time of the offence or under the supervision of the Children's Panel there remained, a presumption in favour of allowing the Reporter to the Children's Panel to deal with the case. However, after consultation with the Reporter, if it were thought that there were compelling reasons in the public interest, prosecution should occur. Indeed, if there was a history of knife crime offending or routine involvement in gang violence, prosecution would be more appropriate.

About the timing and quality of police reporting:

147. Knife crime cases would be reported as custody cases or exceptionally by way of undertaking¹⁵, rather than delay some weeks for routine report. In this way knife crime cases were to be fast tracked to court ahead of some more routine and less serious crimes. Lord Advocate's Guidelines (to Chief Constables) on Liberation were amended to reflect this new instruction. In addition Procurators Fiscal were to seek early trial dates in summary cases to ensure they came to a swift conclusion.
148. Police were asked to provide a 'community impact' statement giving background information concerning the impact of knife crime on the community and its prevalence in the particular location. This information was to be given to the court where a guilty plea was tendered.

¹⁵ Criminal Procedure (Scotland) Act 1995, Section 22 - police may liberate a person charged with an offence on an undertaking that they will appear at the Sheriff Court on a specified time and date

Case marking guidance

149. In the last few years Crown Office has developed very helpful guidance to prosecutors in the form of case marking guidance about specific offences. This is available on the COPFS intranet and easily accessible to legal staff. Since the overarching policy contained in General Minute 2/06 relates to the decision making process upon receipt of a report from the police it seemed appropriate for us to consider, in our case review, the extent to which there was compliance with the terms of GM 2/06 and the offence specific case marking guidance. Overall we found that the knife crime guidance was simple to access and the offence specific marking guidance for the most part mirrored the terms of the General Minute. There were one or two matters that arose from our inspection however.
150. There is case marking guidance for both Section 47 and Section 49 of the Criminal Law (Consolidation) (Scotland) Act 1995.
151. We found that the case marking guidance for Section 47 was full and helpful. The principles concerning choice of forum mirrored the wording of the 2006 General Minute.
152. At the time our inspection commenced the case marking guidance for Section 49 offences (including all the subsections relating to schools and prisons) contained some anomalies.
153. There was conflicting guidance as to when a case would merit proceedings by way of petition. In one section the guidance said:
154. *“Where the accused has already been sentenced to a period of imprisonment for an offence involving the possession or use of a knife, and is charged with a subsequent offence involving the possession or use of a knife, the accused **should** be placed on petition.” (our emphasis)*
155. However elsewhere in the same guidance note it said:
- “Where the accused has already received a sentence of imprisonment for an offence involving the possession or use of a knife, there is a **presumption in favour of** placing the accused on petition.” (our emphasis)*
156. There was nothing in this case marking guidance to advise that any relevant knife crime previous conviction (regardless of sentence) triggered the presumption of petition proceedings. This was a subtle but significant deviation from the original policy stated in General Minute 2/06.

157. The significance of these anomalies became apparent during our case review. We found that some cases should have raised a presumption in favour of petition proceedings as stated in the General Minute 2/06 yet were marked for summary proceedings without apparent reference to a legal manager considering and rebutting the presumption.
158. We are pleased to report that as soon as this discrepancy, which is likely to have been the result of a simple error, was brought to the attention of the Head of Policy at Crown Office it was immediately rectified so that the guidance accurately reflected the 2006 stated policy.
159. Other matters raised about the accuracy of the wording of the guidance with reference to the wording in the statute were also corrected instantly.
160. It was our view that busy practitioners may not always have the time to consult different forms of policy and guidance and would, for the most part, rely on the case marking guidance to correctly state the policy. This was confirmed by practitioners with whom we consulted at Area level. Case marking guidelines are an invaluable tool but need to be completely accurate so that those taking decisions about prosecuting cases within very tight time frames (and here we are very conscious of the need for speed and accuracy in marking custody cases) can rely on them.

Common Law crimes

161. Under this general heading we examined the case marking guidelines for -
 - Assault
 - Abduction
 - Robbery (includes assault and robbery)
 - Breach of the peace
 - Culpable and reckless conduct
 - Hamesucken (an old term for the aggravation of assault by first breaking in to the victim's house)
 - Attempt to pervert the course of justice
162. The marking guidance for breach of the peace referred to and therefore had similar errors as the marking guidance on Section 49 of the Criminal Law (Consolidation) (Scotland) Act 1995 which were also corrected by Crown Office when we raised them.
163. Case marking guidance for the crimes of robbery (and assault and robbery) accurately reflected the terms of General Minute 2/06.
164. However case marking guidance for crimes of assault appeared to take a more robust position than stated in the General Minute. Here guidance stated that any previous conviction for a 'relevant' offence, whether

resulting in a custodial sentence or otherwise, would merit petition proceedings.

165. Case marking guidance for crimes of abduction, culpable and reckless conduct, hamesucken and attempt to pervert the course of justice had **no** reference to the knife crime guidance or the GM 2/06. As we found during our inspection, such crimes could involve the use of a knife and we considered it might be helpful to have a cross reference to the general minute on knife crime. However, we thought that these types of crime were far more unusual and therefore perhaps not so critical.
166. We also looked at the guidance for the statutory crimes of assaulting emergency workers or police officers. Again there is no cross reference to the knife crime policy which would make the guidance more complete.

RECOMMENDATION 1 – That all Case Marking Guidance is checked against the guidance contained in GM 2/06 and cross referenced accurately.

RECOMMENDATION 2 - That Procurators Fiscal are reminded of the terms of GM 2/06 and that they are advised of the recent changes to Case Marking Guidance for Breach of the Peace and Section 49(1) of the Criminal Law (Consolidation) (Scotland) Act 1995 that brings the marking guidance in line with GM 2/06.

CHAPTER 6

CASE REVIEW

The case sample

167. We sought and obtained from COPFS a full list of cases reported by the police between April 2009 and end of March 2010 under two distinct headings to ensure that we captured both statutory and common law 'knife' crime:
168. We identified cases also by selected data descriptors or 'modifiers' as the police report describes them.

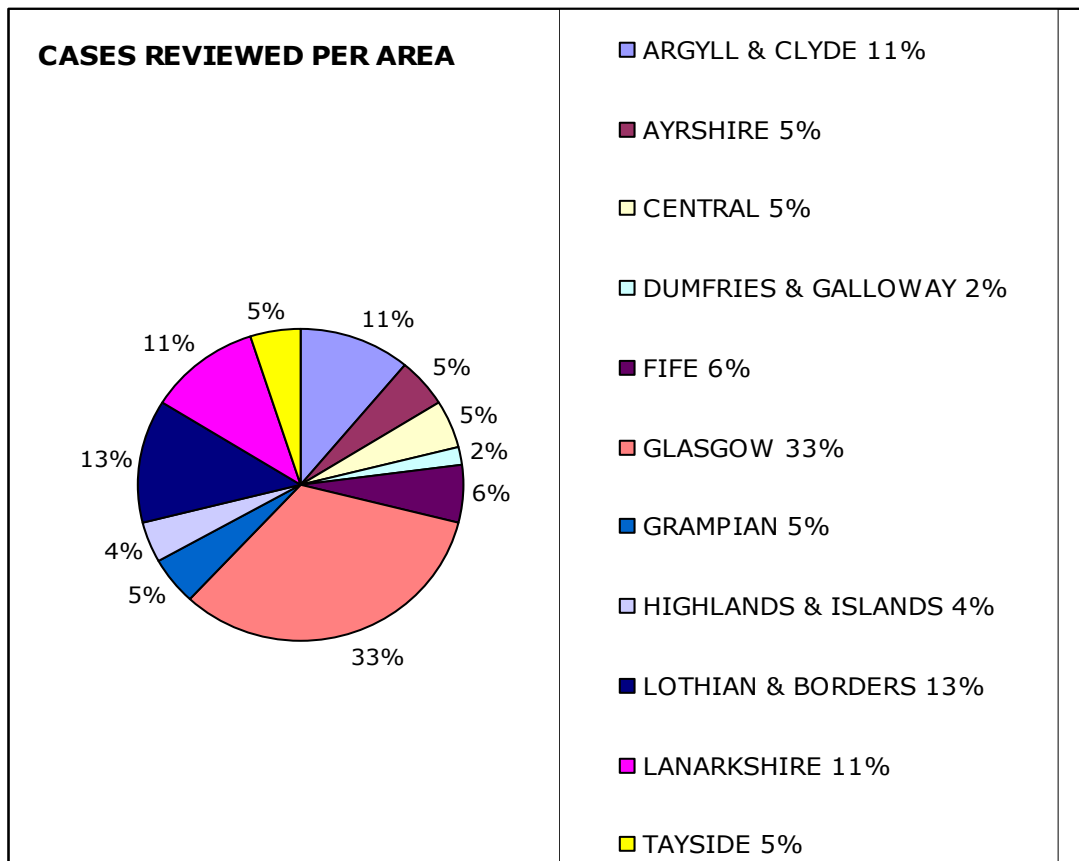
Statutory knife crime – possession offences

169. Cases reported under Sections 47 and 49 of the Criminal Law (Consolidation) (Scotland) Act 1995 were relevant. We obtained a list of cases of those charged by the police and reported to the Procurator Fiscal for offences of *having with them in a public place* an offensive weapon (s47) and a bladed or sharply pointed article (s49). Section 49 cases also included similar offences where the locus was a school or prison rather than a public place.
170. We referenced also a data field in the police report showing a 'modifier' ie a note describing the type of weapon used. There were a number of weapon 'modifiers' that we thought our knife crime inspection should encompass. These were: *knife, axe, sharp object, screwdriver, scissors, open blade razor, pick axe, machete, sword, saw, bottle and glass*. This list seemed to provide the variety of 'knives' that might be used or carried as 'stabbing' implements. In fact, once we started to examine cases, we found that bottles were invariably used as blunt instruments and we therefore excluded 'bottle' and 'glass' cases fairly quickly from our case review. Our review did not cover other offensive weapons that were blunt instruments such as poles, pieces of wood etc.
171. The total number of 'weapon carrying offences' cases reported during 2009/10 was 7,355. Of this figure, 3,302 had 'knife' or one of the other descriptors of similar instruments we were including. 1,984 records had no 'modifier', in other words no descriptor of the weapon in a data field in the report that would then show up in any later criminal record in the event of a conviction. Since this was a large proportion of the weapon cases we included the 'no modifier' cases in our sample set and discarded those that were not knife related. So our sample pool of those charged with 'possession' of knives or offensive weapons we classed as knives amounted to **5,286**.

172. This data integrity issue is problematic for future reference, in the event of a conviction and we discuss this and make a recommendation in Chapter 2.

Common Law knife crime and other 'using' offences

173. When we asked for a list of the common law offences reported these were identified by retrieving those reported to the Procurator Fiscal during 2009/10 where the police had included a 'modifier' or note describing the weapon to the charge. (We have no way of knowing if, like the statutory offences in the paragraph above, the police included in their report a reference to modifier in every case in which a weapon was used.) The cases where modifiers matched our description of 'knife' included a vast range of offending including some charges that were clearly irrelevant for our purposes – such as housebreaking, car thefts etc which were removed. We found an array of offending at common law using knives from the minor end of the scale - breach of the peace - up to the most serious – murder. Aside from the most obvious common law offences of violence we found that knives were aggravating features in a number of crimes such as culpable and reckless conduct, extortion and abduction to name but a few.
174. We list in Appendix 1 the full range of common law crimes included in our case review sample. We also included in the case review sample those offences of violence against public service personnel such as the police and emergency services. Although these are offences under statute – for example the Police (Scotland) Act 1967, s41(1)(a) – assaulting a police officer, they are included here so that our case review covered the broad spectrum of criminality *using* knives that was not otherwise captured by the 'carrying' offences.
175. In this category of crimes there were **5,421** relevant reports for the year.
176. We should say here that some cases appeared on both data lists where offenders were charged by the police and reported for a variety of offences arising out of one incident. We eliminated any duplication from the cases actually sampled. We can therefore say that the total number of charges from which we obtained our sample for review was just over 10,000. Our review examined 440 cases, giving approximately 4% of a sample.
177. Our case sample was in proportion to the number of cases reported to each Area and final marking decision per Area. Not surprisingly the West of Scotland had higher percentages of knife crimes reported than elsewhere with Glasgow Area receiving the most reports. This is illustrated in the table below showing the geographical spread of cases under review.



178. We did not examine in the case review cases reported regarding sale of knives as there were so few of these and in any event the guidance focussed on the crimes involving users and carriers of knives rather than retailers. Although legislation is in place to curb the sale of knives there was only one case reported to any Procurator Fiscal during the year 2009/10 under the Knives Act 1997, section 1 relating to the sale of knives intended for combat; just two cases were reported in the year under section 141(1) of the Criminal Justice Act 1988 which provides for regulation of 'prohibited items'; and one case under section 141 A – selling knives/blades to under 18s.

Criteria for case review

179. Case review examined the practice against the stated policy and guidance in relation to the following key areas:

- Police reporting
- Initial case marking decisions with particular regard to choice of forum and libelling of offence [although other general marking considerations were reviewed]
- Bail considerations
- Reporting to Crown Office (where appropriate)
- Case outcome

- Monitoring arrangements

180. We looked at the 'last marking' for a case as an indication as to how the case had ultimately been dealt with by prosecutors. We can separate these into five broad headings:

Cases marked for 'no action'

Cases dealt with other than by court proceedings

- Warnings
- Diversions
- Direct measures
- Reporter to the Children's Panel

Cases at summary court level

- Justice of the Peace court
- Stipendiary magistrates court (these are only found in Glasgow)
- Sheriff Court
- Those commenced on petition (solemn procedure) but reduced to summary proceedings

Cases that were dealt with by way of solemn procedure

- Sheriff and Jury
- High Court

Cases where court proceedings were discontinued

- Summary proceedings
- Solemn proceedings

Inspection Findings

Some general observations

Police Reporting

- Timing/custody

181. The vast majority of knife crime cases reported to the Procurator Fiscal were reported as custody cases where the accused had been arrested and kept in the cells until the following court day. In some less serious matters or where there were factors relating to the circumstances of the accused – perhaps age or family circumstances the case was by undertaking or released for report in the normal way. If the accused was not traced the police often reported the case seeking a warrant for apprehension. A number of cases reviewed were reported by the

Glasgow Gangs' Task Force and there was close liaison between the police and Fiscal about how to proceed.

- Community impact statements

182. **In the cases we reviewed we found 96% had no community impact statement.** In some cases such comment would be inappropriate – for example where the incident took place in a domestic setting. However, where the incident took place in a public area like a park or street we found few examples of community impact statements. We found that some reports from the Glasgow Gangs' Task Force cases in particular did contain very detailed information about the prevalence of knife crime at the locus of the offence and this was very helpful for prosecutors.

- Description of knife

183. Sheriffs highlighted to us that they found some Fiscals unable to provide a full description of the knife. This was confirmed by some operational Fiscals. This information is essential both for Fiscals marking cases but also crucially for sentencing purposes.

184. Some offices had local arrangements with the police whereby the knife itself would be lodged with the Procurator Fiscal on the same morning as the custody report was submitted. This is the ideal situation, but for logistical reasons does not happen everywhere. Some forces submitted either a photograph or a photocopy of the weapon for information and that was thought to be very helpful too.

185. Viewing of CCTV would be best practice before marking any case but did not appear to be routinely happening as far as we could tell.

186. Where CCTV footage was available at the marking stage (and here we noted that the time-frame for custody cases meant that CCTV would rarely be available to view by the Fiscal before marking) Fiscals told us that it was very helpful in providing a visual narrative of the events which sometimes lose a little in translation to the written word on the page. One example cited was of a youth involved in a gang disturbance. The case was reported to the Procurator Fiscal and CCTV footage was made available and viewed by the Fiscal. The samurai sword in the hand of one offender was almost as big as the boy himself and provided a striking image.

187. Apart from the size of the weapon, CCTV footage also shows the level of aggression shown. We noted that Procurators Fiscal engaging at an early stage with defence lawyers and showing them CCTV footage produced early pleas of guilty.

188. One Sheriff advised that the Fiscal's practice is to produce the knife at the sentencing diet and put it onto the court projector so that it can be

seen on all the TV screens around the court. In this way the public as well as the Sheriff are provided with a view of the weapon concerned.

189. Knives came in an array of shapes and sizes from (at the bottom of the scale) small attachments to key-rings right up to (at the top of the scale) samurai swords and the like. Size of weapon was not always an indicator of seriousness. Some smaller weapons such as craft knives can have dreadful effects if used in a slashing. During a knife crime awareness session at Polmont YOI one of the most disturbing photographs shown was of a young girl who had her face slashed from forehead to chin with a craft knife. She will remain severely disfigured for the rest of her life.

- The 'modifier'

190. When a case is reported by a law enforcement agency to the Procurator Fiscal it is transmitted in a set format (the SPR2 – Standard Police Report version 2) via an IT system. When the Procurator Fiscal considers the case and comes to a decision about how to proceed, the 'marking' of the case is carried out onscreen. The decision is recorded in the IT system which then communicates with the IT system of the reporting agency. In addition, where court proceedings are taken, the IT system is linked to the IT system of the Scottish Court Service so that a computer record is created of the case. It is this information, in the event of a conviction, which is placed on the Scottish database – Criminal History System (CHS).
191. In all cases it is imperative that accurate details about the charge, conviction and sentence are recorded on CHS – Scotland's computerised Criminal History System. However, for knife crime there is an added requirement that where a knife or other weapon is used or in the case of s47 and 49 of the 1995 Act, carried, that the 'modifier' is present.
192. The significance for our inspection was that if any of those cases proceeded to conviction the criminal record would not show a reference to a knife. Since the criteria for placing a person on petition for knife crime is directly related to their previous 'relevant' offending then this is an issue which must be resolved.
193. We noted that in August 2010 our fellow inspectors in HM Inspectorate of Constabulary (Scotland) raised serious concerns about the integrity of criminal records on the police national computer. Although the issue of crime 'modifier' records was not specifically mentioned, the report concluded that -

'The integrity of data held on the CHS system relies on the actions of the three main criminal justice agencies, namely the police service, the Crown Office and Procurator Fiscal Service and the Scottish Court Service. Effective data management by these partner agencies is

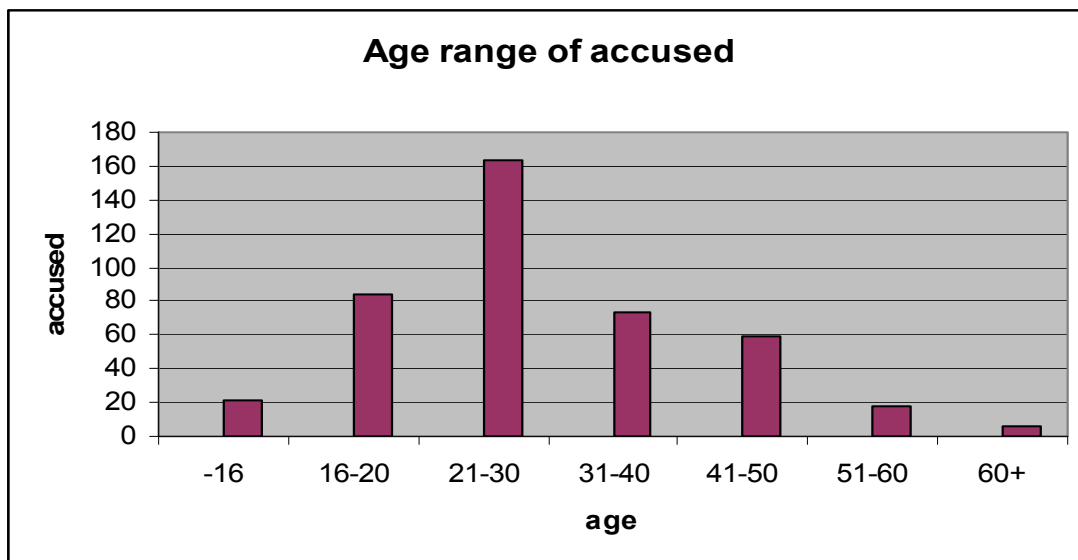
therefore crucial. In practice, liaison between the three in relation to CHS (and subsequently PNC) data could be improved.'

194. We agreed with those conclusions and with the suggestion that ideally where errors occur they should be corrected at source. This is a matter that COPFS should be raising directly with police forces. However, as well as reinforcing the need for this data to be included in the police report, COPFS staff should be alive to the fact that it is possible to correct the omission manually.
195. Processing instructions for the computer system used by COPFS includes a simple step by step process for adding information missed out by the police. Indeed on some occasions prosecutors will wish to add a fresh charge not libelled by the police. Coincidentally the FOS process manual uses the example of adding a charge of carrying a knife under s49 of the 1995 Act to illustrate the process. The option of adding in the 'modifier' is available although does not appear to be a mandatory step.

RECOMMENDATION 3 - That Procurators Fiscal should liaise with police forces in connection with the quality of knife crime reporting to ensure that reports meet the needs of the Procurator Fiscal, the courts and provide sufficient information on data for the Criminal History System.

Age of accused

196. Although the majority of offenders were in the 21–30 age range it was interesting to note the wide variety of ages of offenders.



Case Notes

197. ***In general case marking decisions were well judged and we found many instances of good practice of notes created in the system.***

These notes were crucial to us in understanding how a decision had been made. Some notes explained information that had been gleaned from further enquiries made by telephone prior to the decision being made. Others recorded discussion with colleagues about the case. We had concerns in this inspection about those cases which appeared to contravene policy or go against a presumption for particular court action and which contained no explanatory case note.

198. We are well aware of the tight timescales for marking cases especially those where a knife is involved which are inevitably reported as custody cases. This means that a decision must be taken on the morning (or indeed sometimes later in the day) of the report being received. Marking involves a consideration of the law in relation to any search, the circumstances of the case and any relevant legislation and case law, an assessment of the evidence, consideration of any guidance, checking and if necessary changing police charges, considering whether bail should be opposed, if so, on what grounds. In addition in recent years the marking process has been extended to also include trial preparation instruction in the event of a plea of not guilty. All this must be done in time for the accused to receive a copy of the complaint or petition against him, instruct a lawyer in the cells of the court and then appear in the custody court that same day.
199. We accept that in carrying out our case review we have the opportunity to examine the cases in a far less pressurised time-frame. We also recognise and uphold the need for the Procurator Fiscal to retain an element of discretion where appropriate given the individual circumstances of each case. Case notes showing the rationale of a decision against a presumed course of action should be created for audit trail purposes.

RECOMMENDATION 4 – That as a matter of good practice Procurators Fiscal should provide a case note concerning a decision where the decision appears to go against guidance or rebuts a presumption.

FOS audits

200. There is a facility within the IT system (called Future Office Systems – or FOS for short) for ‘real time’ case marking audits. Legal managers can set audit parameters for each member of staff in their team. The settings allow for a percentage audit of the whole caseload or against certain case marking decision categories. So, for example, a percentage of all warnings or JP court markings could be set for audit. Managers can choose the extent of auditing for each member of staff depending on their experience and competence. The system settings ensure that the case is transferred to the manager for approval before it can complete the case marking process.
201. This audit setting does not easily allow for auditing of a particular crime type, such as knife crime. We were advised that it *is possible* to flag up

crime types. The cases in which they appear are then shown with a [P] for priority in the case marking 'trays' and auditing could be arranged based on such flagged cases.

202. As far as we are aware no FOS auditing based on *crime type* has taken place for knife crime in any office in the country. However, we noted that FOS auditing did take place (via other set parameters per member of staff) in 45 of the cases reviewed. This represents approximately 10% of the overall case review sample.

What were our specific findings?

Cases marked for 'no action'

203. Prosecutors consider the facts of the case reported to them and in some circumstances they decide that no action is appropriate. There are a number of prescribed reasons for taking this decision and a reason is recorded by the marking depute at the time the decision is made. Sometimes the decision is made immediately and at other times prosecutors will seek further information before coming to that final decision.
204. Our case review examined *all* the cases which appeared to involve a knife in the charge that were marked for '*no action*' under the category '*further action disproportionate*'. This category of no action is intended to reflect that the incident or matter reported is so '*de minimis*' that prosecution is not merited. We chose to look at all the cases for the year under this heading as we did not expect Fiscals to treat any knife crime cases as *de minimis*.
205. In all 47 cases were examined in this category. The majority of cases that were marked in this way related to people who were trying to self harm and were arrested by the police as much for their own safety as for any other reason. The Crown's view is that such cases do not justify any criminal proceedings in the public interest. Many Fiscals quite properly consulted with local social work or mental health professionals and we heard of varying levels of service provision and support available for Fiscals to call upon in this connection.
206. Four of these cases had been subject to an in-house (FOS) audit at the time of marking. Many more had been marked by legal managers themselves. We sought comment on five cases from the Areas concerned. One case had in fact been taken up as a prosecution. We agreed with the decision to take no action in two but disagreed with the category of reason given. Both should have been in the 'not a crime' category for no proceedings.
207. We accept that Fiscals must retain absolute discretion in their decision making and those local Fiscals, particularly in smaller offices, will have a grasp of local issues and indeed may have come across the accused

and witnesses previously. Their assessment of the evidence with such local knowledge and experience is invaluable and whilst we may have come to a different conclusion about a case we uphold the discretion of the Procurator Fiscal to take proceedings or not as he/she sees fit.

208. In two of the 47 cases we disagreed with the decision to take no action. In the first case the accused was 16 and was found in possession of a locking Stanley blade. He claimed he had it for use at work but there was no evidence to support that and indeed the police report indicated he had gang affiliations. The Area Fiscal agreed with our view that there was no obvious reason for the 'no action' decision.
209. In the second case we thought that at the very least further enquiries should have been made before the final 'no action' decision was made.
210. We examined a further 33 cases (representing 3%) chosen at random of other cases marked 'no proceedings' under a variety of different reasons. Prescribed reasons for 'no proceedings' might be for lack of admissible evidence, mitigating factors, attitude of victim, not a crime, insufficient admissible evidence or other reasons.
211. We found that overall decisions were sound and showed good judgement, often showing a careful consideration of the legal issues concerned. There were only three exceptions to this and we outline the issues raised below.
 - One case involved a craft knife with a blade of less than an inch. The decision to take no action was due to an error that the exception provided in Section 49 of the 1995 Act concerning folding pocket knives also applied to this weapon.
 - Another was not prosecuted because the victim of an assault with a meat cleaver failed to provide a statement about it. Some of the incident was captured on CCTV and there was enough evidence to prosecute at least the statutory charge of having an offensive weapon in a public place.
 - In the third case we noted that again there were difficulties highlighted about a victim who wanted to retract his original statement. We took the view, however, that the serious nature of the assault merited some further investigation before coming to a decision. We could find no evidence that this had occurred.
212. The Crown's role in investigating serious crime is an important one. We consider that a case such as this merited closer scrutiny and consideration of the evidence. We touch on this issue again in paragraph 238 of this report.

Cases dealt with other than by court proceedings

213. Here there are various options -
- Warnings
 - Diversions
 - Direct measures
 - Reporter
214. Procurators Fiscal have the option to issue a warning letter to an accused or alternatively issue a personal warning. In the latter case an invitation is issued to a private meeting during which the personal warning is administered by a legal manager or more senior member of staff.
215. Diversions from prosecution vary from office to office around the country. Social work diversion may be an option for prosecutors to consider depending on the availability of provision from social work departments and other bodies offering some practical alternative to prosecution.
216. Direct measures are so called as they offer a direct alternative to a prosecution. Prosecutors have an array of options including issuing a fiscal fine, a compensation offer, a combined offer (of fine and compensation) and in some offices (under a pilot which has just been evaluated and extended) a work order is an option.
217. The guidance to legal staff contained in the GM 2/06 makes clear that persons carrying knives in public or involved in common law knife crime *“should be prosecuted in the Sheriff Court”* and *“are not appropriate for warnings (or other alternatives to prosecution) except in exceptional circumstances”*. (our underline)
218. This clear guidance is repeated in the offence specific case marking guidelines (CMG) for the statutory crimes of carrying knives or similar in public. Indeed in respect of warnings, CMG requires the decision to be taken by a Procurator Fiscal at District Fiscal or Divisional Fiscal level. Personal warnings should be issued by the District or Divisional Fiscal.
219. Our case review found the following:

Warnings

220. The policy stated in GM 2/06 was that knife crime offences were to be prosecuted at Sheriff Court level and warnings or other alternatives for prosecution were not appropriate except in exceptional circumstances.
221. We carried out a 100% check on cases where a warning was recorded as the final marking in the case. 49 charges were initially thought

relevant although many (14) were not fully checked as it quickly became apparent that the weapon was not in the class of weapons we were reviewing.

222. **Of the remaining 35 cases we found only four cases where it was recorded on the IT system that the District Fiscal agreed the decision to warn the accused** in accordance with the case marking guidance for statutory offences.
223. Warnings were given either by way of letter or by way of a personal warning. In one Area a number of personal warnings were given by a Principal Depute. On investigation these all related to young offenders involved in displaying images on social network sites, posing with various weapons and knives in obviously public places.
224. Many of the cases here had very exceptional circumstances justifying warnings and discretion was very properly exercised in the public interest although there was no case note indicating Divisional Fiscal involvement. For example one case we reviewed involved university students who were members of a martial arts club who were practising with swords in a local park for a forthcoming club event.
225. On the other hand there was one case where we did not agree that a warning was appropriate and some other method of disposal should have been adopted given the circumstances of the offence and previous record with the police.
226. There are some practical issues about the restrictive nature of the guidance that were thrown up by this inspection. In some situations a District Fiscal is not always available to make the decision and where an accused has been held in custody by the police (per the Lord Advocate's Guidelines on Liberation to Chief Constables) this can pose a practical problem for those carrying out case marking. Nonetheless, in the absence of any case note concerning the decision, we cannot be satisfied that this element of the guidance is being followed. We assume that the reasoning behind such a rule for District Fiscals to issue warnings is to ensure that only those very *exceptional* cases receive a warning.

RECOMMENDATION 5 – Where approval of a senior member of staff is required for a particular course of action, that there is a clear procedure in place for ensuring that approval is obtained and is properly recorded.

Diversion

227. In each Area there are local arrangements with social work departments for diversion from prosecution. This can mean either non prosecution or a deferred decision on prosecution pending the outcome of social work intervention. Only seven cases that appeared on the face of it to relate to knife crime were marked for diversion over the

year 2009/10 and we examined all of them. **We confirmed that in each case there were exceptional circumstances that would, in our view, justify the decision.**

Direct measures

228. 12 cases in the year 2009/10 resulted in direct measures and again a 100% case review was carried out. In all cases, on scrutiny, the knife element quite properly had been removed from the offence due to lack of evidence so that the direct measure – eg a fiscal fine was for an offence such as breach of the peace with no knife aggravation.

Reporter

229. Under the category of diversion from prosecution we also considered those cases diverted to the Reporter to the Children's Panel. Children are defined as those under 16 or aged 16 or 17 but still under the Supervision of the Children's Panel.
230. For offenders under 16, general policy provides a presumption against prosecution except where there are 'compelling reasons in the public interest'. Instead of prosecution the case would be dealt with by the Reporter to the Children's Panel.
231. In our field work we spoke to operational staff at a senior level in every Area. Some Areas had designated individuals who would discuss all cases for potential referral to the Reporter. Others told us that (especially for cases where the accused was in custody) a discussion would take place by telephone in the morning when the report was received.
232. Those offenders who commit crimes normally prosecuted in the High Court would expect to be prosecuted – for example crimes of murder or rape. Where a Procurator Fiscal considered that prosecution was merited he ought to consult with the local Reporter to the Children's Panel and in certain circumstances also seek the authority of the Lord Advocate. Where the case is so serious that it would merit solemn court proceedings and the child offender is in custody any decision to put that child before the court on petition requires to be ratified within three days by Crown Counsel acting on behalf of the Lord Advocate. Our examination of solemn cases showed a few cases where this quite properly occurred.
233. 15 cases were reviewed, representing approximately 8% of the cases referred to the Reporter during that year. Our case review found that there was no record of the terms of any discussion with the Reporter on the electronic records that we examined. Whilst in the main, where the presumption would have been for the Reporter to deal with the case, there would be no real need for an explanatory note there was one case with factors that might suggest a seriousness that might merit

prosecution. Here good practice would have been for a note outlining any discussions with the Reporter and reasoning for the decision not to prosecute. We accept the Area Procurator Fiscal's assurances that discussions did take place.

Cases at summary court level

234. Here we examined cases prosecuted at summary level - that is to say cases heard before a single Sheriff (no jury), Stipendiary Magistrate (a legally qualified judge sits with the same sentencing powers as a Sheriff sitting summarily – in practice only in Glasgow) or lay JP (in the Justice of the Peace court). We included in the case sample a small random selection of cases where an initial decision to place the accused on petition (signalling solemn proceedings were contemplated) had later been changed, downgrading the case to be heard by way of summary procedure.
235. All cases were examined against the policies outlined in 2006, in particular:
- Police reporting and use of early diets
 - Opposition to bail and appropriate use of bail conditions
 - Case marking decisions – especially choice of forum
 - We also looked at the more detailed aspects of guidance outlined in Chapter 5.

Justice of the Peace court

236. The guidance for knife crime indicates that prosecution should take place at Sheriff Summary level. Therefore we did not expect to see any cases prosecuted at the JP court. We examined all 30 JP court cases listed but were able to rule out most of them as either non relevant weapons such as bottles or because the knife element was excluded due to lack of evidence or because a co-accused in the same case was prosecuted for a knife crime offence in the Sheriff Court and the District Court case related to other, less serious charges. One case had been subject to a FOS audit.
237. **We did, however, take issue with the decision taken in two cases looked at in this part of our case review, although for differing reasons:**
238. In one, a decision was made to proceed in only one (a drugs offence) out of three charges reported by the police. The process involved does not require the marking depute to provide a reason for the decision not to proceed on every charge, unlike the situation in paragraphs 203 and 204 above where a reason must be provided for a 'no action' decision

of an entire police report. Nonetheless, particularly where the more serious (knife) charges are not being taken up, we would have thought it desirable to create a case note with a brief explanation. In this case we took the view that the incident itself coupled with the previous criminal record of the accused were both serious enough to merit petition proceedings and some further investigation before coming to a final decision about the sufficiency and quality of the evidence and what might prove in court.

239. Cases such as this throw up some of the problems encountered every day by Fiscals assessing the merits of a case and taking decisions in the public interest. In custody cases, these decisions are made in very short time scales during the morning of the custody court.
240. In the second case a female charged with a breach of the peace by brandishing a cutlery knife at staff at an alcohol support services unit was prosecuted at the JP court. Policy dictated that this should have been taken up at the Sheriff Court.

Stipendiary Magistrates Court

241. Although the sentencing power of a Stipendiary Magistrate is the same as that of a Sheriff sitting without a jury, we were told that it was the Glasgow practice to prosecute knife crime cases in the Sheriff rather than the Stipendiary Magistrates court.
242. Only one case in our case review was dealt with at the Stipendiary Magistrates court. This appeared to go against the local marking policy but seemed to be an exceptional occurrence.

Sheriff summary proceedings

Custody

243. We examined 133 Sheriff summary cases, representing just under 3% of the summary court cases for the year. Seven of these cases were subject to FOS audit at marking. 115 cases were reported and presented to court as custody cases. When a person appears on summary complaint from custody they are called upon to state their plea to the charge. If a guilty plea is tendered they can be dealt with there and then or deferred for background reports. If a plea of not guilty is tendered then dates are fixed for Intermediate and Trial diets. The question of bail then arises and the Sheriff will hear both sides before making a decision as to whether the accused will be allowed his liberty pending the trial or whether he/she should be remanded in custody for trial. If the accused is remanded in custody, trial must take place within 40 days of first appearance.
244. Seven cases were not marked with any bail instructions on the IT system. This was more of a processing error and in all of these cases

we saw ourselves or it was confirmed to us that the written case papers had bail instructions marked.

245. We queried a further seven cases where the instruction was not to oppose bail. The policy set out in 2006 seems quite strict in that a previous relevant offence or a previous conviction for violence which has resulted in a custodial sentence should trigger opposition to bail.
246. In four of those cases queried the relevant previous conviction was of some age which would be a relevant factor for the Sheriff and we agree that bail most probably would be granted in the circumstances.
247. Our interpretation of the policy was that a fairly strict rule was set in relation to bail opposition. Unlike the policy in relation to forum, where some discretion is allowed and a presumption applies that can be rebutted, there appears to be little discretion allowed in relation to bail in the written policy documents.
248. In practice, our case review showed that some discretion was being exercised where the previous criminal record was of some vintage. The difficulty with a strict policy is that a 'one size fits all' approach does not always work and some element of discretion in unusual circumstances can be helpful.
249. We noted that bail was not opposed and should have been opposed in the other three summary custody cases per the guidance. Area Fiscals agreed in one case but thought that deputes showed proper discretion in not opposing bail in the other two.

Undertakings

250. The Lord Advocate's Guidelines to Chief Constables indicate that it is '*unlikely to be appropriate*' to release an accused person for report or on a written undertaking where they have been found in possession of or have used a knife in the commission of an offence. This is subject to the discretion of the officer in charge of the station. Procurators Fiscal with whom we consulted in every Area advised us that they thought that the police in their respective Areas were following the guidelines. They had not had occasion to raise any compliance issues with police Divisional Commanders in their Area.
251. Eight cases in our summary case review related to accused who were initially taken to the station and may have been considered for custody but were released by the police to appear at court a week or so later on an undertaking (a form of 'police bail'). The Lord Advocate's Guidelines to Chief Constables were changed in 2006 so that knife crime offenders should only in exceptional circumstances be released on an undertaking. In some cases there was an explanation of the reason for release on undertaking and in others there were clearly exceptional circumstances. Other cases were less obvious.

252. We queried two cases which were dealt with as undertaking cases.
253. In one case the accused was 52 years of age with a short criminal record for road traffic offences. He was found sleeping in a bus shelter and was arrested for being drunk and incapable and taken to the local police station. There, his rucksack was searched and a knife found. It was described as an ornamental letter opener although the accused claimed he had it in his rucksack because he had used it for fishing a few days earlier. The District Fiscal had no issue with the police liberating the accused on an undertaking rather than keeping him in custody over the weekend.
254. The second case was more serious and the Fiscal marking the case did have concerns that both accused had been liberated from custody to appear on undertakings later, but raised this concern with the police directly. It is not known if the District Fiscal was made aware of this case.

Released for report

255. Nine summary cases reviewed related to those cited to court (that is – not kept in custody and not appearing on an undertaking). In fact in two of those nine cases the accused had been liberated by the police on an undertaking. In one case, the marking depute required further information about another pending matter and liberated to later cite the accused to court. In the other case the police report was submitted after the undertaking date and so the accused was cited to court.
256. We queried two cases in this (*cited to court*) category. In the first case the accused had a previous Section 49(1) conviction that should have prompted opposition to bail. In the other case the accused had a previous criminal record for violence and was still on licence having recently been released from prison. There were grounds for initiating matters by warrant and opposing bail in line with the knife crime policy.
257. One case was started by a warrant request as the accused could not be traced. Bail instructions were appropriately marked.

General issues for summary court cases

Early diets

258. **We found no instructions to seek early diets of trial in any of the cases reviewed.** Although the General Minute states that Procurators Fiscal should seek early diets of trial wherever possible in summary cases, we did not see this guidance reflected in the specific case marking guidance for statutory or common law knife crime offences. We conclude that this aspect of the Lord Advocate's guidance is

neither commonly known nor followed because it is not replicated in case marking guidance.

259. There are now many categories of cases where it is recommended by Crown Office guidance that early diets be sought, such as domestic abuse, child or vulnerable witness cases. In practical terms if too many summary cases that call are treated as having priority in terms of requiring an early trial diet then the request can be fairly meaningless as the Sheriff Clerk will find it almost impossible to accommodate such requests.
260. We did note some cases where trial diets were fixed at a fairly early date after first appearance. These were not custody diets (within 40 days) but were within a short time frame. It was impossible for us to know for sure but we thought some might have been domestic abuse cases. Others may simply have been because the clerk of court had some diets of trial within a short time frame.
261. In practice therefore we can say that early diets were not routinely sought unless the accused was remanded in custody pending trial – in which case a (maximum) 40 day time limit applied.

Choice of forum

262. In this aspect of the case review that we found some evidence of non compliance with the terms of GM 2/06. We examined all the summary cases selected for review for choice of forum decision. We queried 26 summary cases concerning choice of forum and asked Area Fiscals for comments.
263. The detailed guidance contained in General Minute 2/06 gives directions on how to proceed in three situations where the accused is charged with a 'relevant offence' (using or carrying a knife):
- **Previous criminal record for 'relevant' offence and imprisoned for that**
 - *Direction to put on petition*
 - **Previous criminal record for 'relevant' offence and not imprisoned**
 - *Presumption in favour of petition, which presumption could only be rebutted by a legal manager*
 - **Previous criminal record for violence**
 - *Requires 'careful consideration' of petition*
264. Sometimes a range of convictions including knife crime and other general violence was evident.
265. In some cases we were not challenging the decision which, in the circumstances, appeared well founded. As we indicated in paragraph

197, a common issue was the lack of a case note confirming that a legal manager had ratified the decision to prosecute summarily. **Only two cases contained a note that the presumption in favour of petition was considered and rebutted by a legal manager.**

266. Where guidance provides that a presumption in favour of a particular course of action exists then it would be advisable for staff to ensure that they note their reasons for rebutting that presumption.
267. In three cases it appeared to us that there was a contravention of the clear direction for petition proceedings if the previous record showed a conviction AND prison sentence for a previous 'relevant' offence.
268. In the first case the accused (G) was reported in custody for a drugs offence and possession of a locking razor (described as an old fashioned barber's cut throat razor). He had a lengthy criminal record albeit the very serious offences were of some age. The record included two knife crime (s49) offences in 1999 and 2001, one of which attracted a four month sentence of imprisonment. He had more recent convictions for violence and drugs offences. Considering the record we felt that this fell into the first category where petition proceedings were required (and not simply a presumption). The case was marked by a senior member of staff who recorded his reasoning for marking for summary proceedings that, on balance, he did not think that the case would attract a 'solemn' sentence. At trial G pled guilty to the knife charge and was sentenced to six months imprisonment.
269. This was one of only two cases where a case note showing the reasoning behind the decision was found. We presumed that the Procurator Fiscal in this case was referring to the case marking guidance for s49(1), which, at the time, suggested that there was a presumption (rather than a clear direction) for petition proceedings. Since we raised the anomaly of the case marking guidance with Crown Office it has been changed to accurately reflect the knife crime prosecution policy outlined in 2006.
270. In the second case the accused had a lengthy and varied criminal record and he was still on licence for his last prison sentence when the incident took place. The offence involved assaulting his neighbour by thrusting a knife through the letter box of the front door. The guidance said this should be petition due to the last conviction for knife crime for which he was sentenced to eight months imprisonment.
271. The Area Fiscal thought this decision was defensible but was disappointed that the depute had not first cleared it with his legal manager. It was pointed out to us that the accused was only sentenced to three months imprisonment which is significantly less than the powers open to a Sheriff at summary level (12 months maximum).

272. In the third case the record would have dictated petition although we do not take issue with decision to proceed on summary complaint on the facts of the case.
273. In the second category – that is to say cases where a **presumption** in favour of petition proceedings applies - we found a number of cases prosecuted at Sheriff summary level where there had been a previous ‘relevant’ knife conviction (which had not attracted a prison sentence).
274. In five of those cases we observed that the previous conviction was of some age and therefore the decision to prosecute at summary level seemed entirely reasonable. Given the nature of the guidance we would have expected as a matter of good professional practice that deposes would record reasons for going against such a presumption and that they had discussed it with their legal manager. We accept that in a busy office, marking custody cases against the clock, this recording might take a little extra time. Nonetheless it is a worthwhile exercise to provide a clear audit trail.
275. **In five cases, where the criminal record of the accused raised a presumption of petition proceedings but summary proceedings had been taken up, we were of the view that petition proceedings ought to have been initiated.**
276. When we raised these cases with Areas there was an acceptance that the marking decision was wrong and could not be justified in two cases. In the other three cases Area Fiscals accepted that there was no note recording the rebuttal of the presumption but that, in all the circumstances, the decision could be ratified retrospectively.
277. In the third category, that is where the accused had a criminal record for violence, albeit nothing specifically knife related, the guidance was that ‘careful consideration’ was required for petition.
278. Nine cases were queried under this category. Of these, Area Fiscals agreed in four cases that they should have been considered for petition.
279. The other five decisions were justified retrospectively by Area Fiscals, either because of the circumstances themselves, the quality of the evidence or the eventual outcome.
280. Indeed it was a common theme from Area Procurators Fiscal who responded that the eventual outcome on conviction was a sentence that was below the maximum sentence open to a Sheriff sitting summarily and therefore could be taken as an indication that the decision to proceed by way of summary proceedings was a correct one.

281. We understand the approach to case marking in general is a more 'outcome focussed' approach and that Procurators Fiscal will consider the likely sentencing options available in making their decisions. We cannot say with any certainty that longer prison sentences would have been imposed had prosecution been at solemn level for those cases with which we took issue.
282. However, the whole thrust of the (published) policy on the prosecution of knife crime is towards giving Sheriffs the *option* to consider imposing a solemn sentence to mark the public disapproval of knife crime. We wondered if the decisions to prosecute summarily were influenced by the case marking guidance for offences of breach of the peace and Section 49(1) which, at that time, did not accurately reflect the terms of GM 2/06.
283. We obtained views from Sheriffs around the country. Sheriffs told us that, on the whole, they thought that Procurators Fiscal were getting the decisions so far as forum about right. However, there was a view that the Crown's role in choosing the forum does have an influence on the ultimate sentence imposed. One Sheriff said:
- "The Crown has an important role in the court"*
- and that a prosecution on indictment would signal that the expectation was for a sentence in excess of 12 months.
284. The essence of the knife crime guidance issued in 2006 was that Sheriffs would have the chance to consider imposing longer custodial sentences for those who had come before the court for a second time for knife crime offences. Indeed the Solicitor General referred to this in his comments in 2009 when he noted that more knife crime offenders were going to jail and for longer on account of the robust prosecution policy introduced in 2006.
285. The increased sentencing powers of 12 months on summary and four years on indictment were intended to reflect the serious view taken by parliament of the scourge of the knife culture of our times.

Cases reduced to summary proceedings

286. 27 cases in our case review were commenced on petition but then reduced to summary proceedings, representing 3% of those reduced over the year. 16 of these were reduced to summary without being reported for Crown Counsel's instructions. In most of these cases we noted that the case had been referred to the District Fiscal for approval or the District Fiscal was the person taking the decision, which is in line with the knife crime guidance in GM 2/06. Indeed we learned that most District Fiscals are involved in decisions of this nature as part of their core operational duties whether the case relates to knife crime or not.

287. The initial framing of charges on petition and marking of bail instructions for these cases were all appropriate.
288. The timing of the decision to reduce to summary proceedings varied. Often the decision was made within days of first appearance on petition and followed a review of full statements from witnesses in the case. Other times it appeared that the decision was taken at the precognition stage when the case was being prepared for prosecution in a jury court but the evidence, for some reason or other, did not reach the required standard or it was a less serious incident than first thought.

Monitoring of summary knife crime cases

289. There were no centrally maintained monitoring processes for summary casework although GM 2/06 referred to monitoring and evaluating the policy. We noted that a framework for monitoring and evaluating solemn knife crime cases was established by Crown Office in 2006 but no system was put in place nationally to monitor summary case work relating to knife crime prosecutions.
290. During our field work visiting different Areas we came across one Area (Lanarkshire) where a 'quality review group' had been established. Here we were shown evidence of monitoring exercises in relation to a number of different themes, one of which was knife crime. The monitoring involved a check of some completed cases by a legal manager who identified aspects both of police reporting and Fiscal marking with a view to suggesting improvements. The findings mirror our own in this inspection and the results have been the basis for identification of refresher training for both police and Fiscals. We highlight this work as good practice and commend it to other Areas. No other Area seems to have carried out any monitoring of knife crime as a distinct topic.
291. In summary cases there is some case audit work carried out across the entire range of general summary caseload. Categories for audit under the self assessment case audit include 'no action', 'no further action' and 'quality of case marking decision' regarding forum, bail position considerations and recording. Knife crime is not particularly checked as a topic.
292. Aside from the FOS audits that we mention in paragraphs 200 to 202 there was no case audit work carried out at the time the cases we examined were reported – that is from April 2009 to March 2010. Self assessment case auditing in COPFS did not commence until May 2010. Nonetheless we asked all Area representatives if any issues had arisen in the course of self assessment case audit since May 2010. No issues or concerns were reported.

Crown Office audit of knife crime 2010

293. Crown Office 'Operations' section carried out a national audit of 25% of cases marked for summary proceedings where the offence reported was a contravention of either Section 47 or 49 of the Criminal Law (Consolidation) (Scotland) Act 1995 from April 2009 to March 2010. This audit, carried out in 2010, was the first of its kind since the knife crime guidance was issued and was restricted to an IT based review of cases.
294. There were differences in our respective approaches. Crown Office looked at cases reported under Section 47 or 49 only – that is knife *carriers*, not *users*, rather than the broader spectrum of knife crime covered in this inspection. Their weapon categories did not cover some of the weapons we chose to include such as an axe or scissors.
295. It appeared to us that the in-house audit considered non compliance only where the previous criminal record showed a conviction AND prison sentence for knife crime and we wondered whether the case marking guidance for Section 49 was used as a reference. The Crown Office audit did not consider cases where the criminal record merited a presumption in favour of petition proceedings.
296. The Crown Office audit found non compliance in four cases where the accused was charged with possession of a knife (either under Section 47 or 49), had previous convictions for knife crime and received a custodial sentence and was nonetheless prosecuted on summary complaint. (None of these cases featured in our sample of cases for review)

RECOMMENDATION 6 - That there is regular monitoring of cases for compliance with the provisions of the knife crime guidance, particularly those cases that are dealt with at summary level or not prosecuted.

Solemn procedure

- **Sheriff and Jury proceedings**
 - **High Court proceedings**
297. Serious cases are prosecuted before a Sheriff and Jury or in the High Court with a Judge and Jury. The maximum sentencing power of a Sheriff sitting with a jury is five years. Where a sentence in excess of five years is anticipated, the Crown will elect to take the case in the High Court.
298. Any case before a jury is prosecuted on indictment (charge sheet) which runs at the instance of the Lord Advocate – or Her Majesty's Advocate. Before a Procurator Fiscal serves an indictment on an accused person he must have the authority of the Lord Advocate. This

authority, in practice, is granted by Crown Counsel (Advocates Depute) who carry out the duties of prosecutors in the High Court but who also have the duty of approving cases for indictment in both the Sheriff and High Courts.

299. 61 solemn cases were reviewed, representing a 2% sample. We had intended to review a slightly larger sample but our findings were fairly uniform and we were satisfied that this provided us with a clear picture. All were reviewed by way of the IT system and we requested sight of four sets of papers to follow up. One set of papers could not be retrieved due to storage arrangements. We viewed the other three sets, mainly to check what had led to an unexpected outcome. 14 cases were subject to FOS audit.
300. We were able to see the marking and bail instructions in all cases. These were the focus of our inspection. We had varying success in tracking the progress of the cases after the initial stages in terms of case preparation as not all documents were prepared and saved in the IT system under the case reference. We were able to obtain factual information about case dates and outcomes and were thus able to piece together some basic information about the progress of the cases.
301. Of the solemn cases 54 had been reported as custody reports, there were three undertaking reports and a further four seeking warrants.

Bail instructions

302. **Overall, case marking in terms of appropriate charges and forum was good. In particular we found many examples of good practice in bail instruction notes.**
303. In 2007¹⁶, bail was made the subject of a statutory framework. This Act altered provisions of the Criminal Procedure (Scotland) Act 1995. In terms of section 23C of the 1995 Act the Sheriff was now required to take into account certain factors relating to 'substantial risk' before allowing or refusing bail. In terms of section 23D, bail was not to be allowed if the accused had a previous conviction on indictment for a violent or sexual offence unless in exceptional circumstances.
304. The majority of cases here had very full and detailed reasoning for bail opposition. We found excellent notes about the factors in terms of sections 23C and 23D that would require to be argued before a Sheriff. Where appropriate, instructions were also inserted to appeal against a Sheriff's decision to grant bail if that occurred or to seek special conditions including curfew conditions in the event of bail being granted.

¹⁶ Criminal Proceedings etc (Reform) (Scotland) Act 2007

305. We observed that the IT marking system was designed prior to the 2007 Act. Although many deposes marking bail instructions identified the important factors for submissions in terms of the relevant section 23 of the Act, other deposes did not. It occurred to us that a minor alteration to the checklist on the IT system at this stage, to prompt consideration of the application of section 23C and D, might help focus on the issues and make that aspect of bail instruction marking quicker and simpler to complete.
306. We wonder if this is a matter that those involved in the upgrade of the IT system would wish to consider but we make no recommendation in this regard.
307. In the event, in 42 out of the 61 cases reviewed, the accused were remanded in custody pending their trial. Nine of those remanded appealed to the High Court against refusal of bail but only one was successful.
308. One or two cases involved a statutory charge only on petition – either Section 47 (offensive weapon) or Section 49 (article with a blade or sharply pointed) - and this was the only charge on the indictment. There were a variety of common law charges in the cases we examined: murder, attempted murder, robbery, assaults (some to severe injury or danger of life or to permanent impairment). Others were less serious: simple assault, breach of the peace, culpable and reckless conduct.

Framing of charges

309. We noted in the course of our case review that it seemed to be fairly standard practice in solemn cases that statutory charges were included in the indictment where appropriate. So, for example, where the main charges were of assault or breach of the peace, and the incident took place in a public place, an additional charge was added under Section 47 or 49 of the 1995 Act. As we have mentioned, this additional charge is useful for putting a case to a jury so that all options are open for possible conviction when considering all the evidence. This good practice was not always followed in summary cases reviewed.

Case outcome

310. On petition the accused is not called upon to state a plea at that stage. It is only after the case is prepared and, on the instructions of Crown Counsel, an indictment is served that a plea is required.
311. There was little evidence (from the IT system at any rate) of precognition of witnesses. Many cases at Sheriff and Jury level appeared to have been prepared on the basis of police statements without any obvious further investigation.

312. From what we could tell, 16 cases were resolved at the first calling of the indictment. Section 76 of the Criminal Procedure (Scotland) Act 1995 allows for an indictment to be served so that a pre-arranged plea of guilty can be tendered. We noted some good practice of Fiscals writing to defence solicitors to engage early after petition appearance about the prospects for an early plea of guilty. More often in practice the approach would be made by the defence, instructed by their client who had been remanded in custody, so that the matter could be resolved as soon as possible.
313. It appeared that many more cases were resolved by way of a plea or adjusted plea at one of the hearings before the trial. In this way witnesses would not have been inconvenienced nor court time wasted. In one case we noted that an adjusted plea of guilty seems to have been tendered at the trial. Matters proceeded to trial in only nine cases with a balanced mixture of convictions and acquittals, as would be expected. In practice a case is unlikely to proceed to trial unless there is a legal issue at stake or there are doubts about the credibility or reliability of witnesses.
314. Sentences, on the whole, were in excess of 12 months and in some High Court cases exceeded five years imprisonment. The longest period of imprisonment in our case sample was eight years for attempted murder. Where the conviction was for a statutory charge only – carrying (but not using) a knife we noted some sentences of under 12 months and some for more than 12 months. Probation and community service also featured in some cases.

Monitoring

315. In June of 2006 General Minute 6/06 was issued to staff. This followed on from GM 2/06 in providing, at least for solemn cases, a framework for reporting statutory knife crime offences to Crown Office and a monitoring scheme. A new template was designed for the reporting of (statutory) knife crime cases to Crown Office. This template appears to have been designed with the statutory case in mind and not particularly for knife 'user' crime.
316. Fiscals were directed to attach to the report to Crown Office a monitoring form (A) containing information about the charge and bail position. A further form (B) was to be returned to Crown Office at the conclusion of the case. It appeared that the function of the monitoring was to compile statistics concerning bail results and sentencing rather than compliance with guidance.
317. In any event, this monitoring system is not widely used in the present day. It appears to have fallen into disuse over time and many operational staff with whom we consulted had never heard of it or thought it had been discontinued.

318. Crown Office figures for completed forms A and B submitted since 2006 confirmed this anecdotal evidence. Of the cases we reviewed, only two forms A were submitted.
319. Area representatives who commented told us that the monitoring forms were of limited value for local office purposes. If useful for Crown Office purposes it was suggested that the information could perhaps be collated via IT systems rather than paper forms.

Discontinued proceedings

320. In all 26 cases were reviewed where proceedings had been commenced but subsequently discontinued. This represented 4% of the total for the year. Of these 18 were summary cases and eight were solemn cases.

Summary

321. In the summary case review there were a variety of reasons – all quite proper for discontinuing proceedings. We have listed some of the reasons to provide an illustration of the situations where a decision is made that it is no longer appropriate or in the public interest to pursue the case (whether knife crime or otherwise):

- The non availability of one or more witnesses either because they are untraced or have moved abroad
- Accused now a prisoner and detained under mental health legislation on another matter
- Review of witness statements – case does not meet evidential standard of proof
- A challenge was taken to the evidence under European Human Rights law

322. In other cases the discontinuation was due to a knife crime issue:

- A challenge on the grounds for the police search for the weapon – conceded that the argument would be lost in court
- Reassessment of whether the locus was a ‘public place’
- A good reason for having the knife was accepted when proof of the accused’s employment and use of the knife in work capacity established

323. We took issue with only two cases. In the first case a Fiscal accepted a not guilty plea at the trial on an erroneous belief that there was a requirement to prove ‘intention’ in a Section 49 charge. Proof of a Section 49 charge does not require any intention on the part of the carrier of the knife that he would use it. In certain situations (some Section 47 – offensive weapon charges) proof of intention is required. This was an error in law and the Area Procurator Fiscal accepted that this was a mistake on the part of an experienced depute.

324. The second case again appeared to be an error. At the first trial diet the case was deserted in the absence of civilian witnesses. This was a strange decision, not least because the marking depute had never marked for citing the civilian witnesses and appeared to be approaching the case from the viewpoint that police witnesses who arrived in the course of the incident would speak to the main parts of the charge. We thought that the case could have been better prepared both by the marking and by the trial depute.

Solemn

325. We took issue with one solemn case that was discontinued. Here the issue was that the accused had committed crimes in different jurisdictions covered by different Fiscal Areas. Crown Counsel had instructed that Sheriff and Jury proceedings should take place in relation to one case against the accused. Separately he was prosecuted in a different Area and received a very lengthy prison sentence as a result of which the decision was taken to discontinue the case we reviewed.

326. We consider it would have been better for the two cases to have been joined up and prosecuted at the same time. The victim in the first case was (understandably) unhappy about the case being dropped. As a result of the case being abandoned that victim now has no right to be told when the accused is to be released from custody (under the Victim Notification Scheme).

327. Other than this one case, on review we again found a number of quite proper reasons for discontinuing solemn cases:

- Part of a 'global' plea
- Now insufficient evidence
- Death of complainer
- Change in a statement of a crucial witness
- Attitude of victim

Overall Conclusion on Case Review

328. Although we take issue with a few decisions as described above the overall compliance with policy in the 440 cases reviewed was very high.

APPENDIX 1

LIST OF OFFENCES IN CASE REVIEW WHERE KNIFE (OR SIMILAR WEAPON) SHOWN AS MODIFIER

COMMON LAW

ABDUCTION

ASSAULT (INCLUDING ALL AGGRAVATIONS FOR INJURY, PERMANENT DISFIGUREMENT, DANGER OF LIFE)

ASSAULT AND ROBBERY

ATTEMPT TO PERVERT THE COURSE OF JUSTICE/DEFEAT THE ENDS OF JUSTICE

BREACH OF THE PEACE

CULPABLE AND RECKLESS CONDUCT

CULPABLE HOMICIDE

HAMESUCKEN

MOBBING AND RIOTING

MURDER

RAPE

ROBBERY

THREATS

- INCLUDING ALL 'ATTEMPTS' TO COMMIT OFFENCES IN ABOVE LIST

STATUTORY OFFENCES

EMERGENCY WORKERS (SCOTLAND) ACT 2005 S 5 (1) – ASSAULTING AN EMERGENCY WORKER

POLICE (SCOTLAND) ACT 1967 S 41(1) (A) – ASSAULTING A POLICE OFFICER



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