



The prosecution of domestic abuse cases at sheriff summary level



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Introduction

The aim of this inspection was to assess how well the Crown Office and Procurator Fiscal Service (COPFS) manages and prosecutes cases involving domestic abuse at sheriff summary level.

Experiences of the justice process

To support our inspection, we engaged with 23 people who had experienced domestic abuse. We would like to thank those who shared their experiences with us. They revisited difficult and often traumatic periods in their lives in the hope that their experiences could lead to better outcomes for others. We also benefited from interviews and focus groups with more than 50 advocacy workers who shared their experience of supporting hundreds of other victims and child witnesses through the justice process.

A small number of the victims we met had a generally positive experience of the justice process. Some victims were able to point to specific parts of their experience that were positive, or to specific professionals who they considered had helped them through a difficult time. Victims were consistently appreciative of the assistance provided by voluntary sector advocacy and support organisations.

We were concerned, however, that most victims had a poor experience of the justice process. Several said they had lost faith in the justice system and felt let down by justice agencies. One victim described the justice process as ‘hugely traumatic for not a lot of outcome’. Another said, ‘No wonder women don’t report domestic abuse, if this is how the justice system responds’.

Victims often felt unsupported, and described the justice process as confusing, frustrating, exhausting and stressful. They felt as though they were a burden to justice agencies. They wanted statutory agencies to be more trauma-informed. A recurring theme from our discussions was victims’ sense that the accused had not been held to account for their behaviour. Victims felt the accused was persistently released on the same bail conditions they had already breached, the accused failed to appear at court with no apparent consequences, and sentencing outcomes did not reflect the gravity of the offending. One victim said their ex-partner had been ‘emboldened’ by the way their case had been handled by the justice system.

Another recurring theme was the length of the justice process. While a few victims felt their cases had progressed efficiently, most described repeated delays and adjournments. Victims felt unable to move on with their lives.

We sought to understand the reasons for victims’ poor experience of the justice process and the role played by COPFS.

The prosecution of domestic abuse cases at sheriff summary level

Tackling violence against women and girls is a strategic priority for COPFS. Those working at COPFS are well aware of the need to respond robustly to reports of domestic abuse. We met a range of staff who are committed to delivering an effective service to some of the most vulnerable victims in the justice system. We found some cases that are well-prepared and in which victims are kept informed of developments, supported to give evidence through appropriate special measures, and protected through special bail conditions and non-harassment orders. We also found that domestic abuse cases were being prioritised for early trial diets.

However, we also examined too many cases which could have been prepared more effectively and efficiently, and in which victims' individual needs were not addressed. Despite aspiring to deliver a person-centred and trauma-informed service, we considered that much work requires to be done before this aspiration can be delivered routinely. We make 27 recommendations for improvement.

In too many cases we reviewed, there was a failure to address issues at the earliest opportunity during case preparation. The model for preparing domestic abuse cases at summary level, whereby cases pass from prosecutor to prosecutor at different stages, contributes to a lack of case ownership. This lack of ownership, coupled with a lack of preparation time and the relative inexperience of some summary prosecutors, means cases are not prepared as effectively as they should be. In some cases this led to delays, and in others it resulted in cases being discontinued at a late stage. It also risked victims' withdrawal from the process.

There is also a failure to engage effectively with victims who are not engaged in, or are at risk of disengaging from, the justice process. Insufficient steps are being taken to establish the reasons for victims' lack of engagement, and to provide reassurance and appropriate support. The approach appears to be one of hoping for the best, without taking proactive steps to achieve positive outcomes. Recent initiatives in some areas to enhance engagement with victims during case preparation are welcome, but require to be delivered more effectively and rolled out nationally.

Communication with and support for victims is also inadequate. We reviewed communication between COPFS and 61 victims. We found the overall quality of communication to be unsatisfactory for 80% of those victims. Efforts to enhance engagement between prosecutors and victims simply cannot make up for basic errors or delays in the service delivered by COPFS's Victim Information and Advice service (VIA).

VIA is staffed by many people who are committed to delivering a better service for victims, but who feel constrained and frustrated by the limitations of their role and their workload. They are being hampered by, amongst other things, backlogs of work; a lack of resources, training and support; and poor systems. In summary domestic abuse cases, VIA is at risk of becoming a letter-writing service, rather than one in which staff proactively support and engage with victims in a way that is tailored to individual needs. Fundamentally, there is a need to review whether, in summary cases, the VIA service is fit for purpose and whether, in its current form, it will be able to deliver the person-centred and trauma-informed service to victims to which COPFS aspires.

The picture that emerges from our inspection is of a service committed in principle to tackling domestic abuse and supporting victims, but which is struggling to put this commitment into practice in every case and to keep pace with increasing expectations. Indeed, many of our recommendations relate to matters that are already required by policy or processes, but which are not yet being delivered routinely.

Some of the issues highlighted in our report are not entirely within the control of COPFS. It requires to work closely with other justice agencies, notably the police and the Scottish Courts and Tribunals Service (SCTS), to consider and address the issues raised. For example, there is a need to work with the police to improve the quality of Standard Prosecution Reports (SPRs) submitted by reporting officers. Our findings illustrate that high quality reporting by the police has a lasting impact on how efficiently cases subsequently progress. There is also a need to work with the SCTS to ensure that measures agreed to help victims give their best evidence are actually in place on the day of the trial.

This report also highlights the need for COPFS to embed quality assurance in its work, and to exercise more effective governance of the management of domestic abuse cases by improved monitoring of performance data, complaints, Victims' Right to Review applications and service user feedback.

Different approaches to managing summary cases

When planning this inspection, the Lord Advocate asked me to compare the prosecution of summary level domestic abuse offending under the standard summary prosecution procedure, in the Glasgow Domestic Abuse Court, and in the summary case management pilot. We chose to focus on the way in which the pilot is operating in Dundee, one of the three pilot sites.¹

In both Glasgow and Dundee, there were examples of better practice, compared to the service being delivered in the rest of Scotland under the standard summary prosecution procedure.

In Glasgow:

- The quality of SPRs submitted by the police to COPFS was consistently better than elsewhere. We could not establish why this was so, but these reports better supported prosecutorial decision making.
- The quality of the marking decisions was substantially better. There appeared to be a correlation between the quality of the SPR and the quality of the marking decision, highlighting the importance of the police getting it right from the start of the case.
- A dedicated team of deutes prosecuted cases in the Glasgow Domestic Abuse Court. This provided an opportunity for these deutes to develop expertise in managing and prosecuting domestic cases. Such an approach may only be replicable in areas which have a high volume of domestic abuse cases.
- The cases we reviewed suggested that deutes in Glasgow may have had a more robust approach to accepting pleas compared to elsewhere. However, our case samples were not statistically significant, so we cannot be sure if this finding was due to chance. This may benefit from further exploration.
- Court loadings for the Glasgow Domestic Abuse Court were lower than those for other courts in Glasgow. This allowed deutes more preparation time. We also heard that sheriffs in this court were more consistently amenable to allowing time for deutes to meet with victims at court.
- The time between the first calling of the case and the first trial diet in Glasgow is one of the lowest in Scotland, despite it having the highest volume of cases.
- In the cases we reviewed, the time between the first and second trial diets was lower than elsewhere, suggesting that domestic abuse cases continue to be prioritised in Glasgow even after the first trial diet is adjourned. The average journey time between the case being reported to COPFS and it being concluded was also lower in Glasgow compared to the cases we reviewed elsewhere.

The examples of better practice in Glasgow are not just attributable to COPFS, but also to other justice agencies and the collective effort they make in domestic abuse cases. This may be due to the existence of the Glasgow Domestic Abuse Court. This is despite the court not operating as it once did – for example, while there are still dedicated prosecutors, there are no longer dedicated sheriffs. Governance arrangements highlighted in an evaluation of the court have also fallen away.² Nonetheless, the court still appears to be having a positive effect. There have been initiatives to cluster domestic abuse cases in other courts in Scotland, but we heard that these had largely stopped during the pandemic.

¹ The pilot has since been rolled out to a fourth site, in Glasgow in January 2024.

² Reid Howie Associates, [Evaluation of the pilot domestic abuse court](#) (2007).

The impact of the summary case management pilot is set out in detail in an interim evaluation published in November 2023.³ In our inspection, we noted that in Dundee:

- Deputes said the quality of SPRs submitted by the police continued to improve since the introduction of the summary case management pilot.
- The submission of key evidence alongside the SPR enhanced prosecutorial decision making. We also heard that it contributed to speedier marking decisions, a reduction in the need to instruct further enquiries, and informed more comprehensive marking instructions, which contributes to more effective case management from the outset.
- The submission of key evidence alongside the SPR also facilitated early disclosure to the defence, which can lead to pleas being tendered at an earlier stage in proceedings.
- Marking deputes were noting whether the victim's evidence is required to prove the charge.
- The Digital Evidence Sharing Capability has been piloted in Dundee to positive feedback. Prosecutors said the quality of images shared via this platform was much improved, and evidence could be shared more easily and more quickly.
- Case management hearings were generally replacing pre-intermediate diet meetings and intermediate diets. Prosecutors felt these contributed to issues being resolved.
- Cases were being continued without plea by the court with the aim of them being resolved without trial diets being set unnecessarily. There is a need to ensure this does not prolong case journey times however.
- There was good partnership working in support of the pilot's implementation.

In both Glasgow and Dundee, there were initiatives to enhance engagement between prosecutors and victims during case preparation. The arrangements varied in each area, but the general principle is welcome. When delivered routinely, enhanced engagement should significantly improve case preparation. We consider that it is beneficial to the victim. It may also help secure pleas at an earlier stage and reduce late discontinuations, thereby contributing to a more effective and efficient justice system overall.

Despite these examples of better practice in both Glasgow and Dundee, many of the issues highlighted above, such as not addressing issues at an earlier stage during case preparation and inadequate communication with victims, existed as much in those areas as elsewhere. Our findings suggest there is no one approach which is consistently better than others. Rather, each approach has features which contribute to the more effective management of summary domestic abuse cases. In this report, we have highlighted those features which COPFS should consider implementing across its service.

Next steps

In response to this report, COPFS will produce an action plan setting out how it will respond to our recommendations. Each action will require to form part of a coherent package of reform. We consider that action taken in one area may help relieve pressure and support improvement in another. We will review the progress made by COPFS in delivering its plan.

As well as the victims and advocacy workers who gave so generously of their time to support our inspection, we would like to thank all those from COPFS and other organisations who shared their experiences with us. Their views and suggestions helped shape our findings and recommendations.

Laura Paton
HM Chief Inspector of Prosecution
March 2024

³ SCTS, [The summary case management \(SCM\) pilot: Interim evaluation](#) (2023).

Key findings

Supporting staff

Prosecution policy and guidance on managing domestic abuse cases is generally clear, comprehensive, accessible and robust. Staff were aware of the policy and that addressing domestic abuse is a strategic priority for COPFS.

There is a good range of training available to staff on managing domestic abuse cases. Those staff who had completed the training found it valuable. However, few staff we interviewed had been able to take advantage of the range of training on offer, including some who manage and prosecute domestic abuse cases daily. They cited a lack of resources to cover their role as a barrier to doing more training.

COPFS has committed to delivering a trauma-informed service. More requires to be done to ensure its workforce and processes are trauma-informed.

The IT systems used by COPFS hamper staff productivity and do not help staff manage cases as efficiently and effectively as possible. This affects the service provided to victims and staff morale.

Reporting and marking cases

In the 60 cases we reviewed, 37% of SPRs fully supported prosecutorial decision making. There were examples of excellent, detailed reports. However, there were also reports which did not address key issues.

The standard of SPRs was consistently better in Glasgow. These reports better supported prosecutorial decision making. We also heard that the standard of SPRs in Dundee is improving as a result of the summary case management pilot.

Almost all SPRs in Glasgow and Dundee set out the views of the victim on at least one of three issues – court proceedings, bail conditions and non-harassment orders. However, across all the cases we reviewed, it was not uncommon for the victim's views on at least one of the three issues to be missing.

Marking deposes said the police continued to report both parties where counter allegations had been made, despite guidance that states the principal perpetrator should be identified and reported.

Submitting key evidence at the same time as the SPR, as happens in the summary case management pilot, not only facilitates early disclosure to the defence, but also provides a stronger foundation on which the marking depute can make decisions about the case and how it should proceed.

Marking decisions were appropriate in almost all of the cases we reviewed.

There appeared to be a correlation between the standard of the SPR and the quality of the marking decision. This highlights the importance of the police getting it right from the start of the case, and the need for marking deposes to address any deficiencies at the earliest opportunity.

COPFS should be more proactive at an earlier stage in its efforts to engage and support victims who are at risk of not supporting a prosecution.

In summary case management pilot cases, marking deposes are required to address additional issues in their marking instructions. This has a positive impact on case management. In these cases, marking deposes are also required to state whether the prosecution can proceed without the victim's evidence. This requirement should be rolled out nationally.

Preparing and prosecuting cases

Deposes are able to flag cases requiring additional attention, which is helpful. However, guidance on what is an Advance Notice Trial (ANT) or an Advance Preparation Trial (APT) is inconsistent and practice varies. A failure to appropriately identify ANTs and APTs at the marking stage means they require to be reassessed by another depote.

Deposes said they lacked time to prepare cases adequately at various stages in the justice process. Trial preparation was often done the evening before the trial after spending the day in court. The high volume of cases scheduled in court each day made preparation more difficult.

COPFS's model for preparing and managing domestic abuse cases at summary level was not working well in too many of the cases we reviewed. A lack of ownership at different stages and a failure to address issues promptly during preparation led to delayed and/or poor outcomes. There is a need to ensure there is effective oversight and grip of cases throughout the prosecution process.

Efforts are made by COPFS to agree evidence at the earliest opportunity. This reduces the evidence to be led at trial, saving court time and potentially reducing the number of witnesses that need to be cited.

A key feature of the summary case management pilot is the early disclosure of key evidence to the defence. COPFS's performance on this measure is strong in Dundee.

COPFS could do more to anticipate and address issues that lead to adjournments. This includes through better case preparation and early engagement with the victim to assess their attitude towards prosecution, answer questions and provide reassurance.

Where it is clear during case marking and preparation that early trial diets are not achievable, more realistic trial diets should be sought.

If cases are managed and prepared more effectively, more cases would proceed to trial. Decisions to discontinue at a late stage would either not be necessary or could be made earlier.

When cases are not called or deserted pro loco et tempore, there appeared to be no consistent and timely review process to decide what action should be taken next.

Progressing cases efficiently

There is a welcome collective goal among justice agencies that domestic abuse cases should be prioritised and that early trial diets should be sought.

There is a target, known as the domestic abuse waiting period, of scheduling the first trial diet in a summary domestic abuse case within 10 weeks of the first calling of the case. The target was extended to 12 weeks during the pandemic.

Between February 2023 and January 2024, the average waiting period across Scotland was 11 weeks. Glasgow Sheriff Court has the highest volume of cases but has achieved an average waiting period of nine weeks.

The domestic abuse waiting period is a useful indicator but it only provides a partial picture of case journey times. In some areas, it appeared as though a case was no longer prioritised if it was adjourned at the first trial diet. Adjourned trial diets can be set months rather than weeks later.

Monitoring the total journey time of cases would be a more person-centred and outcome-focused approach to measuring performance.

Where journey times are prolonged, the need for COPFS to communicate, update and support victims to ensure engagement, is all the greater.

Supporting victims

Special bail conditions are regularly sought by prosecutors to help protect victims. However, they are not always sufficiently tailored to the needs of victims.

When there is an application to review an accused's bail conditions, victims are not always consulted or informed of the outcome.

COPFS has committed to attempting to advise victims promptly of the outcome of the first calling of the case and any bail conditions. This is achieved in many but not all cases.

There is a need to improve victims' pick-up rate when COPFS makes contact by phone. COPFS requires to explore and address the reasons victims do not answer calls.

Prosecutors are well aware of the need to provide the court with victims' up to date position on non-harassment orders. There was less understanding of this among VIA staff. Reports setting out a victim's views on non-harassment orders were often submitted by support organisations but did not always reach prosecutors timeously.

Applications for special measures to help victims give evidence at court are made routinely. In some cases, there were examples of effective discussions between victims and VIA about the measures that would support them to give their best evidence.

Generally, the onus is on the victim to contact VIA about their preferred special measures. For many victims in summary cases, VIA acted as a gatekeeper to special measures rather than a facilitator. Many victims were not aware of the full range of special measures available.

Many victims would prefer to give evidence via a TV link from a remote location. Justice agencies should work together to ensure this option is available to all victims in domestic abuse cases, and that there is sufficient capacity to meet demand.

Victims are not routinely advised whether applications for special measures have been granted.

There are welcome initiatives to enhance engagement between the prosecutor and the victim during case preparation. Such initiatives should be rolled out nationally.

Many victims want to have contact with the depute who will prosecute their case in court. There are barriers to achieving this, including the high level of court loadings and the many other demands on a prosecutor's time at court.

There were 61 victims in the cases we reviewed. Only 33% were fully or mostly advised of the key dates in their case. Many victims would like to receive more information, including about pleas and adjournments, and to be kept updated more frequently and more timeously after key developments.

The overall quality of communication was assessed as unsatisfactory for 80% of victims in the cases we reviewed.

Much of VIA's communication with victims is through letters. The quality of the letters continues to attract adverse comment from victims. Opportunities to tailor communication to the individual needs of victims are often missed.

Many victims and advocacy workers reported that VIA was often inaccessible and unresponsive. However, in some areas, victims and advocacy workers were more positive about their experience of VIA.

Backlogs in VIA's work contribute to victims not being kept informed of the progress and outcome of their case. Many VIA staff felt frustrated and demoralised and were keen to do a better job. They wanted to have more direct contact with victims, but felt constrained by a lack of capacity and an increasing workload.

For some victims, advocacy workers have stepped in to fill gaps in communication and support from COPFS in addition to performing their own role. Advocacy workers help victims navigate the justice system, but not all victims have this support.

A VIA Modernisation Programme is looking at several of these issues. A more fundamental review of VIA's capacity and capability to deliver what is required of it in summary domestic abuse cases is required.

COPFS's National Enquiry Point is often the first point of contact for victims and witnesses. There was a record of contact between victims and witnesses and Enquiry Point in 40% of the cases we reviewed. Enquiry Point operators seek to deal with queries at the first point of contact. Demand appears to be shifting from VIA to Enquiry Point, but this needs to be managed and supported.

Contact with victims is not captured in a single, centralised place. This results in key information being missed, including during case preparation.

Supporting child witnesses

Many of the issues highlighted in respect of victims apply equally to children, whether they are the victim of domestic abuse or a witness.

Whether to cite a child as a witness is, appropriately, case and child-dependent. Some children will be keen to have their say, while others may be reluctant to give evidence, especially against a parent.

Victims felt they waited too long to find out from COPFS whether their child would be cited to give evidence.

Prosecutors felt the quality of joint investigative interviews was improving, but noted barriers to using them more regularly.

Victims and advocacy workers felt that delays in the justice system had an even greater impact on the wellbeing of child witnesses.

Supporting continuous improvement and working in partnership

There is limited evidence of quality assurance being used to routinely monitor the quality of case management and communication with victims.

While COPFS has committed to seeking user feedback to support continuous improvement, there is currently no mechanism by which COPFS routinely gathers information about the experience of victims in domestic abuse cases.

COPFS engages well with its national partners in their efforts to address domestic abuse. Feedback about local partnership working was more mixed. Where local partnership working is more established, this contributes to the more effective management of domestic abuse cases.

COPFS works well with other justice agencies to implement the summary case management pilot. Pilot cases, processes and data are being monitored to assess the pilot's impact and to identify further improvements.

Recommendations

Recommendation 1

With regard to training of staff, COPFS should:

- (a) review and streamline the content of its domestic abuse training taking into account the target audience
- (b) review the take-up of mandatory and other training, and identify and address the reasons for low take-up
- (c) ensure that all staff managing and prosecuting domestic abuse cases and engaging with domestic abuse victims have appropriate training (including prosecutors, VIA officers and National Enquiry Point operators)
- (d) review the domestic abuse e-learning module for VIA officers and make it mandatory.

Recommendation 2

In relation to the reporting of domestic abuse cases, COPFS should work with Police Scotland to:

- (a) ensure that prosecutors have sufficiently detailed information on the risk to victims which can be passed on to the court when required
- (b) ensure that Standard Prosecution Reports fully address the victim's views on court proceedings, bail conditions and non-harassment orders. Reasons for victims' views should be fully explored and should be described, by both COPFS and Police Scotland, in appropriate and accurate language
- (c) ensure that the approach to counter allegations set out in the joint protocol on challenging domestic abuse is followed in practice by both reporting officers and marking deposes. Managing counter allegations should form part of training
- (d) ensure that calls to 999 and 101 are assessed for their evidential value by both reporting officers and marking deposes
- (e) address the premature reporting of cases and delays in carrying out further enquiries. Consideration should be given to increasing the use of investigative liberation, while ensuring that the risk to victims is assessed and managed through the use of protective conditions.

Recommendation 3

COPFS should ensure that statutory aggravations are applied where appropriate. This could be done via additional training and guidance, as well as quality assurance and feedback to staff.

Recommendation 4

In domestic abuse cases, COPFS should require that marking instructions specify whether there is a sufficiency of evidence without the victim giving evidence.

Recommendation 5

COPFS should ensure there is a shared, service-wide understanding of Advance Notice Trials and Advance Preparation Trials. There should be a clear, efficient process for identifying cases that require advance notice or preparation and for ensuring that they receive the additional attention they require.

Recommendation 6

COPFS should ensure that domestic abuse cases at summary level are prepared effectively. This will require that:

- (a) new information is brought to the attention of deposes and acted on promptly
- (b) deposes are available to deal with urgent and unexpected queries as they arise
- (c) the tasking of reporting officers is followed up timeously
- (d) action is taken to address any risks to the efficient progression of the case

(e) deputies have sufficient time to address issues during their case preparation.

Recommendation 7

COPFS should ensure that an accurate record of discussions and decisions at pre-intermediate diet meetings is made in the electronic case file.

Recommendation 8

To avoid unnecessary adjournments, COPFS should ensure that, where it is clear during case marking or case preparation that the complexity of the case or the nature of the evidence required will mean early trial diets are not achievable, then more realistic trial diets should be sought.

Recommendation 9

COPFS should provide clear guidance to staff on when a domestic abuse victim should be informed of a decision to discontinue a case and of their right to request a review of that decision.

Recommendation 10

Where cases are discontinued at court, COPFS should ensure that they are reviewed timeously by a Principal Depute. The Principal Depute should review whether the discontinuation decision was appropriate, identify if there is any learning arising from the case, and determine how the case should proceed.

Recommendation 11

As well as monitoring the domestic abuse waiting period, COPFS should work with its partners to monitor the overall journey time for domestic abuse cases. This monitoring should lead to action to address any barriers to progressing cases efficiently.

Recommendation 12

With regard to bail in domestic abuse cases, COPFS should:

- (a) ensure that prosecutors provide sheriffs with information about whether victims want special bail conditions and, if so, what those conditions should be, tailored to each victim's needs
- (b) work with justice partners, particularly the police and the Scottish Courts and Tribunals Service, to ensure that victims are informed of the outcome of the accused's first appearance on the same day, and update all guidance and protocols accordingly
- (c) ensure that victims are informed of bail review applications, their views are sought and put before the court, and they are informed of the outcome timeously.

Recommendation 13

In domestic abuse cases, COPFS should ensure that:

- (a) throughout the case, the victim's views on the need for a non-harassment order and its contents should be sought, whether directly or through a support organisation
- (b) reports containing the views of the victim about non-harassment orders should be processed and brought to the attention of prosecutors timeously, and the victim's views put before the court.

Recommendation 14

COPFS should review its guidance to ensure there are clear, consistent instructions to staff about who is responsible for notifying victims of postponed undertaking dates. Guidance should be supported by appropriate processes, and staff should be made aware of the approach to be taken.

Recommendation 15

With regard to special measures, COPFS should:

- (a) ensure that when victims make contact to discuss special measures, they are offered the full range of measures available. This will allow victims to choose the standard special measure or measures that will help them give their best evidence, or request non-standard measures
- (b) work with its justice partners towards ensuring all victims in domestic abuse cases have the opportunity to give their evidence remotely, and that there is sufficient capacity to meet demand
- (c) review the process for arranging remote TV links from other nations in the UK and consider whether this should be done by a centralised resource
- (d) inform victims about the special measures that have been granted. This information should be provided as early as possible.

Recommendation 16

COPFS should ensure that victims in summary domestic abuse cases are proactively made aware of the possibility of viewing their statement in advance of the trial.

Recommendation 17

COPFS should ensure that in all summary domestic abuse cases, prosecutors seek to make contact with the victim as part of their early case preparation. Prosecutors should have sufficient capacity to carry out this task effectively.

Recommendation 18

In summary domestic abuse cases, COPFS should address victims' desire to speak with the trial prosecutor in court. To alleviate the pressure on prosecutors at court, this could include requiring prosecutors to make contact with victims during trial preparation to introduce themselves and address any outstanding issues. Prosecutors should have sufficient capacity to carry out this task effectively.

Recommendation 19

In relation to communicating with victims in summary domestic abuse cases, COPFS should:

- (a) take immediate steps to ensure that victims are receiving basic information about their case, including its outcome, timeously
- (b) work towards providing information to victims at additional key points in the progression of cases
- (c) develop guidance for all staff to ensure that there is consistent practice regarding what a victim is told about charges and accepted pleas
- (d) ensure that staff are able to identify and respond to the additional support needs of victims.

Recommendation 20

COPFS should review whether the current VIA service in summary cases is fit for purpose and whether, in its current form, it will be able to deliver a person-centred and trauma-informed service to victims. As part of its review, COPFS should consider the need for effective national leadership and oversight of the VIA service.

Recommendation 21

COPFS should provide victims in domestic abuse cases with a dedicated VIA officer.

Recommendation 22

COPFS should ensure that all victim and witness contact is recorded in one centralised place accessible to all staff. In the short term, COPFS should take immediate action to ensure that all staff are aware where victim and witness contact with Enquiry Point is recorded, and that staff use this information when preparing and managing cases.

Recommendation 23

To improve the efficiency of its service, COPFS should identify and reduce failure demand.

Recommendation 24

At an early stage in proceedings, COPFS should proactively advise child witnesses who provide statements to the police in domestic abuse cases (and/or their parents or guardians) whether or not they will be cited to give evidence.

Recommendation 25

COPFS should review its use of quality assurance to support continuous improvement in the management of summary cases and in communication with victims and witnesses.

Recommendation 26

COPFS should gather feedback from victims and witnesses about their experience in domestic abuse cases. This feedback should be used to support improvements in its service.

Recommendation 27

COPFS should ensure there is a national mechanism by which information about its management of domestic abuse cases (including the results of quality assurance activity, complaints, Victims' Right to Review applications, feedback from service users and support organisations, and performance data) is monitored, discussed and acted upon, with a view to supporting continuous improvement in its service.

Context

Definition of domestic abuse

1. In a joint protocol that sets out how they will investigate, report and prosecute allegations of domestic abuse, COPFS and Police Scotland define domestic abuse as:
'Any form of physical, verbal, sexual, psychological or financial abuse which might amount to criminal conduct and which takes place within the context of a relationship. The relationship will be between partners (married, cohabiting, civil partnership or otherwise) or ex-partners. The abuse can be committed in the home or elsewhere including online.'⁴
2. The joint protocol notes that, as a form of gender-based violence, domestic abuse is predominantly perpetrated by men against women. However, the definition is intended to acknowledge and include 'abuse of male victims by female perpetrators and includes abuse of lesbian, gay, bisexual, transgender and intersex people within relationships.'
3. The joint protocol also notes that its definition of domestic abuse, 'encompasses the entire spectrum of behaviour by perpetrators where this amounts to criminal conduct. This includes cases which involve isolated incidents as well as cases involving a course of conduct and includes both violent and non-violent abusive behaviour. Some cases will involve elements and tactics of coercive control, which can involve a range of behaviours designed to control and harm a victim, while others will involve isolated incidents of conflict provoked by situational factors.'

Terminology

Various terms may be used to describe a person who has experienced domestic abuse. They are usually described as a 'complainer' during the criminal justice process, but may also be referred to as a 'victim' or 'survivor'. Some of those we interviewed who had experienced domestic abuse had a clear preference for a particular term, however the preferred term varied from person to person. In this report, we have used the term 'victim' for ease and consistency.

Policy context

4. In 2014, the Scottish Government published 'Equally Safe', a strategy for preventing and eradicating violence – including domestic abuse – against women and girls. Updated most recently in 2023, the strategy prioritises preventing violence and supporting early intervention, holding perpetrators to account, and delivering services that meet victims' individual needs.⁵
5. In 2022, the Scottish Government published its 'Vision for Justice in Scotland'. This includes several priorities relevant to addressing domestic abuse, including that justice services be person-centred and trauma-informed, that women and children be better served by the justice system, and that delays in the justice process reduce.⁶
6. These national priorities are reflected in COPFS's Strategic Plan 2023-27, in which COPFS notes that it anticipates cases involving violence against women and

⁴ [Joint protocol between Police Scotland and COPFS – In partnership challenging domestic abuse](#) (2023).

⁵ Scottish Government, [Equally safe: Scotland's strategy for preventing and eradicating violence against women and girls](#) (2023).

⁶ Scottish Government, [The Vision for Justice in Scotland](#) (2022).

children, sexual crime and domestic abuse will form the bulk of its casework for years to come.⁷ In its strategic plan, COPFS states that it will transform the way domestic abuse is prosecuted and sets out three transformation priorities for the years ahead:

- improving the experiences of women and children within the justice system
- improving communication and the support offered to the most vulnerable service users
- achieving quicker conclusions to criminal investigations.

Prosecution policy

7. Tackling domestic abuse is a priority for COPFS. In its joint protocol with Police Scotland on challenging domestic abuse, the two organisations outline the procedures to be followed in the investigation, reporting and prosecution of domestic abuse allegations. The protocol also sets out the standards of service which victims of domestic abuse can expect from the police and COPFS. Prosecution policy is set out in more detail in a dedicated chapter of the COPFS manual on victims and witnesses, and in case marking instructions specific to the offences alleged.
8. It is prosecution policy that there is a presumption in favour of prosecution in all cases of domestic abuse where a sufficiency of evidence exists. This includes cases where no evidence is to be led from the victim and cases where the victim may require additional support to enable them to engage with the criminal justice process.⁸
9. In cases involving violence or the threat of violence, there is a further presumption that proceedings will be taken in the Sheriff Court or High Court. In cases which do not involve violence or the threat of violence, proceedings may be taken in the Justice of the Peace Court.⁹ In exceptional circumstances and subject to additional COPFS guidance and policies, the presumption in favour of prosecution may be rebutted and alternative action taken, such as diversion from prosecution, a warning letter or a personal warning.

Recent legislative developments

10. Depending on the nature of the abuse and the circumstances in which it takes place, domestic abuse may be prosecuted as many different crimes at common law or as statutory offences. The most common type of domestic abuse incidents reported to COPFS in 2022-23 were those relating to threatening and abusive behaviour (contrary to section 38(1) of the Criminal Justice and Licensing (Scotland) Act 2010) and common assault.¹⁰
11. The Abusive Behaviour and Sexual Harm (Scotland) Act 2016 created a statutory aggravation of domestic abuse. This aggravation can be applied to any offence involving the abuse of a partner or ex-partner. Since its introduction in April 2017, prosecutors are able to establish the aggravation by proving that the accused either intended to cause or was reckless about causing physical or psychological harm to their partner or ex-partner.
12. The Domestic Abuse (Scotland) Act 2018 was introduced to improve how the justice system responds to domestic abuse by ensuring that the criminal law reflects a 'modern understanding' of domestic abuse and reflects how victims actually

⁷ COPFS, [Strategic Plan 2023-27](#).

⁸ COPFS, [Statement of prosecution policy in cases involving domestic abuse](#) (2022).

⁹ The prosecution of domestic abuse cases in the Justice of the Peace Court tends to be rare.

¹⁰ COPFS, [Domestic abuse and stalking charges in Scotland 2022-23](#) (2023).

experience such abuse.¹¹ Section 1 of the 2018 Act created a new offence of engaging in a course of behaviour that is abusive of the accused's partner or ex-partner. The abusive behaviour can include violent, threatening or intimidating behaviour, as well as psychological, emotional or financial abuse which were more difficult to prosecute under previously existing law. The 2018 Act also created a statutory aggravation intended to reflect the harm caused to children by domestic abuse. The aggravation can be applied to an offence under section 1 where the accused committed the offence in a way which involved a child.

13. The 2018 Act also introduced various reforms to criminal procedure, evidence and sentencing. These reforms apply to offences under the 2018 Act itself as well as other offences subject to the domestic abuse aggravation. They include, for example, a requirement that, on conviction, a court consider and make a non-harassment order for the victim and any children unless satisfied that this is not appropriate or necessary for their protection.
14. While section 1 of the 2018 Act is now a useful tool for prosecutors when responding to domestic abuse, it will not be appropriate for all such offending. Previously existing common law and statutory offences continue to be used depending on the facts and circumstances of each case.

Data on domestic abuse

15. In 2022-23, the police reported 30,139 charges with a domestic abuse identifier to COPFS, a decrease of 8% compared to the previous year.¹² On receipt of a police report, COPFS may decide to initiate court proceedings, issue a direct measure (such as a warning or diversion from prosecution) or take no action. The vast majority of charges reported with a domestic abuse identifier were prosecuted (94% in 2022-23, up from 93% the previous year). The proportion of charges that resulted in no action was 4%, up from 3% the previous year. The most common reason for taking no action was that there was insufficient admissible evidence.
16. Of the charges that were prosecuted, 79% were prosecuted at sheriff summary level.
17. The most common types of offences reported in 2022-23 with a domestic abuse identifier were threatening and abusive behaviour (27%), common assault (24%) and crimes against public justice, which includes bail offences (23%). Only 6% of the domestic charges reported related to section 1 of the 2018 Act.
18. The majority of those accused of domestic abuse were male (86%).
19. Domestic abuse continues to represent a substantial proportion of cases managed and prosecuted by COPFS. In 2022-23, 11% of all charges reported by the police to COPFS related to domestic abuse.¹³
20. Despite the high volume of domestic abuse charges reported to COPFS, most incidents of domestic abuse go unreported to the police¹⁴ and, even when reported, may not result in the recording of a crime or a report to COPFS.¹⁵

¹¹ [Domestic Abuse \(Scotland\) Bil: Policy Memorandum \(2017\)](#) at paragraphs 3, 5 and 18.

¹² COPFS, [Domestic abuse and stalking charges in Scotland 2022-23](#) (2023).

¹³ Data supplied to HM Inspectorate of Prosecution in Scotland (IPS) by COPFS.

¹⁴ Only 11% of respondents to the Scottish Crime and Justice Survey who experienced partner abuse in the previous 12 months reported the incident to the police. See [Scottish Crime and Justice Survey 2019/20: Main findings](#) (2021).

¹⁵ In 2021-22, only 39% of domestic abuse incidents recorded by the police resulted in the recording of a crime or offence. See Scottish Government, [Domestic abuse recorded by the police in Scotland, 2021-22](#) (2022).

Scope and methodology

Scope

21. The aim of this inspection was to assess how well COPFS manages and prosecutes cases involving domestic abuse at sheriff summary level.
22. While some cases involving domestic abuse may be prosecuted in the High Court or before a sheriff and jury, we chose to focus our scrutiny on cases at sheriff summary level (that is, where the sheriff hears the case without a jury). This is where the majority of cases involving domestic abuse are prosecuted. Data published by the Scottish Courts and Tribunals Service (SCTS) indicates that 95% of domestic abuse cases were heard at sheriff summary level. Indeed, domestic abuse cases make up a substantial proportion of the work of sheriff summary courts. In Quarter 2 of 2023-24:
 - 21% of the total summary complaints registered in the sheriff court were domestic abuse cases
 - domestic abuse cases accounted for 29% of sheriff summary trials called and 32% of sheriff summary trials in which evidence was led.¹⁶
23. By narrowing our scope to cases prosecuted at sheriff summary level, we intended to focus our attention on the service provided by COPFS to the majority of domestic abuse victims.
24. We have examined COPFS's standard approach to preparing and prosecuting domestic abuse cases at sheriff summary level, as well as assessing and comparing bespoke arrangements for managing domestic abuse cases:
 - calling at the Glasgow Domestic Abuse Court, where dedicated resources are committed to improving the justice process
 - falling within the remit of the summary case management pilot, taking into account its focus on facilitating advanced disclosure, early resolution, enhanced victim engagement and an accelerated trial process. Although the pilot was operating in Dundee, Hamilton and Paisley, we chose to focus our scrutiny on only one pilot site. This helped manage our own limited resources, and we selected Dundee for scrutiny based on early feedback that implementation of the pilot was progressing more quickly in that area than in others.
25. We sought to identify the features and characteristics of each of the three approaches (standard, Glasgow, Dundee) that contribute to well-prepared, efficiently progressed cases that better meet the needs of victims.

Glasgow Domestic Abuse Court

First established as a pilot in 2004, the Glasgow Domestic Abuse Court was set up in recognition of the need to address problems in dealing with domestic abuse through traditional courts. Initially, one specialist court heard all domestic abuse summary cases and dealt with first appearance custody cases, intermediate diets and trials, as well as sentencing. Various agencies allocated staff to work specifically in the court, including a prosecutor, sheriffs, a clerk and others. A court-based advocacy service (ASSIST) was also established at the same time. There are now two dedicated courts in Glasgow, and the way they have operated has evolved over the years. COPFS has continued to allocate prosecutors to the court. Those prosecutors now form the Glasgow Domestic Abuse Unit within COPFS.

¹⁶ SCTS, [Quarterly Criminal Courts Statistics – Bulletin 22 – Quarter 2 2023/24](#) (2023).

The summary case management pilot

The pilot introduces a new approach to managing cases at summary level with the aim of reducing the number of cases that are set down for trial unnecessarily and reducing the volume of late pleas of guilty and late decisions on discontinuation, thereby reducing the adverse impact on victims and other witnesses. A key feature of the new approach is the early disclosure of key evidential material and early judicial case management.¹⁷ The pilot commenced in Dundee, Hamilton and Paisley on 5 September 2022, and is expected to run for 18 months. An interim evaluation of the pilot was published in November 2023.¹⁸

26. We examined how well COPFS is fulfilling its obligations and commitments to victims in domestic abuse cases. This included how well COPFS keeps victims informed throughout the life of a case, how victims are engaged and involved in the justice process, and the extent to which COPFS takes steps to ensure victims are supported and protected. We also gave special consideration to child witnesses in domestic abuse cases. This was in light of the growing recognition of the impact of domestic abuse on children and the recent introduction of the statutory aggravation intended to reflect the harm caused to children by domestic abuse.
27. The key inspection questions we sought to answer were:
 - (1) How well does COPFS support its staff to prepare, manage and prosecute domestic abuse cases at sheriff summary level?
 - (2) How well does COPFS prepare, manage and prosecute domestic abuse cases at sheriff summary level?
 - (3) How efficiently are cases progressed by COPFS?
 - (4) How well does COPFS support and protect, and communicate and engage with, victims and child witnesses? To what extent is COPFS delivering a person-centred and trauma-informed service?
 - (5) To what extent does COPFS use quality assurance and other feedback mechanisms (such as feedback from victims or support organisations) to improve its approach to domestic abuse cases?
 - (6) How well does COPFS work with partner agencies at both a strategic and operational level to progress cases efficiently and to improve the experience of victims and child witnesses?
 - (7) How well are domestic abuse cases managed by COPFS in line with bespoke local arrangements, including cases falling within the Glasgow Domestic Abuse Court and the summary case management pilot? What are the key features and characteristics of these local arrangements that contribute to well-prepared, efficiently progressed cases that better meet the needs of victims?

Methodology

28. To support our inspection, we gathered evidence from a range of sources including:

¹⁷ Further information about the pilot is available in SCTS, [The summary case management pilot: The transition from EPR and way forward](#) (2022).

¹⁸ SCTS, [The summary case management \(SCM\) pilot: Interim evaluation](#) (2023).

- reviewing COPFS strategies, policies, guidance, procedures and other documentation relating to the management and prosecution of cases involving domestic abuse
 - analysing data on domestic abuse cases
 - observing the training available to COPFS staff
 - observing court proceedings
 - reviewing a sample of 60 cases involving domestic abuse charges
 - interviewing over 60 COPFS staff involved in managing and prosecuting domestic abuse cases. This included senior leaders, prosecutors, those working in the VIA service and those in administrative roles
 - interviewing stakeholders such as organisations offering support to those who experience domestic abuse, the police, sheriffs, clerks and defence agents.
29. We also sought to hear directly from people who had experience of domestic abuse and the justice process, as well as their advocacy workers. We engaged with 23 people who had experienced domestic abuse. This included 19 women and four men. We interviewed the majority in person or by phone, although some preferred to send us written information about their experiences.
30. All of the victims who shared their views and experiences with us had received support from a voluntary sector organisation. We are mindful that the experiences of those who received no additional support from specialist organisations are not reflected in this report. It is possible that some of those victims may have had a more positive experience of the justice process. It is also possible that some of those victims' experiences may have been less positive, without additional support to navigate the process.
31. We have also drawn on recent research about domestic abuse victims' experience of the justice system.¹⁹ Initially, the research helped inform the scope of our inspection and, latterly, it reinforced many of our own findings. In the research we reviewed, it was sometimes hard to pinpoint the exact role COPFS had played in victims' overall experience and views on the justice system. Victims were sometimes unclear which justice agency was responsible for which part of the process. The justice system can seem complex and opaque to those not familiar with it.
32. While it is the responsibility of all justice agencies to address victims' concerns about the system, our own statutory mandate is limited to the service provided by COPFS. Interviewing victims directly therefore gave us an opportunity to ask questions focused on the role of COPFS. However, we encountered the same challenges as were evident in the research – victims were not always able to pinpoint who had provided a good service, or who they felt had let them down. Our knowledge of COPFS policies, procedures and staff meant that we were sometimes – but not always – able to resolve this.
33. We have benefited from interviews and focus groups with more than 50 advocacy workers, around a quarter of whom worked specifically with children. This included advocacy workers from ASSIST, Dundee ASSIST, EDDACS and Children 1st, as well as from various services operated by Sacro, including its Caledonian Women and

¹⁹ Such as N Lombard & K Proctor, [Women's lived experiences of coercive control, stalking and related crimes, as they progress through the justice system](#) (March 2023); Houghton et al, [Domestic abuse court experiences research: the perspectives of victims and witnesses in Scotland](#) (2023); Scottish Government, [The domestic Abuse \(Scotland\) Act 2018: emerging findings of male victims' experiences of the criminal justice system](#) (2023); and N Lombard, K Proctor & N Whiting, [Domestic Abuse \(Scotland\) Act 2018 and the criminal justice system – Women's experiences two years in: the emerging findings](#) (2022); E Forbes, [Victims' experiences of the criminal justice response to domestic abuse: Beyond GlassWalls](#) (2021).

Children's Service, Aura, FearFree and Aditi.²⁰ These advocacy workers provide a range of support to victims of domestic abuse, including support through the justice process. Their feedback on the service provided to victims, including their views on working with COPFS, has been invaluable.

Case review

34. The purpose of our case review was to gain a better understanding of how cases involving domestic abuse are prepared, managed and prosecuted by COPFS, and to assess how and to what extent domestic abuse policy is being implemented in practice. Our findings helped us identify areas for discussion during our interviews. Our findings are also highlighted throughout this report.
35. We reviewed a random sample of 60 cases involving domestic abuse that were marked for proceedings at sheriff summary level. This included:
 - 20 cases falling within the remit of the Glasgow Domestic Abuse Court
 - 20 cases falling within the remit of the summary case management pilot at Dundee Sheriff Court
 - 20 cases from across Scotland, but excluding those from Glasgow, Dundee and the other summary case management pilot sites at Hamilton and Paisley. This sample will be referred to throughout this report as the 'Rest of Scotland' sample.
36. The Glasgow and Rest of Scotland cases were randomly selected from all cases reported to COPFS between 1 July 2022 and 30 September 2022 which had a domestic abuse identifier and which had a first substantive marking that a prosecution should take place at sheriff summary level. We chose this sample period in the expectation that most cases would have concluded by the time we commenced reviewing them in May 2023. We reviewed the progress of these cases until July 2023. At that stage, three Glasgow cases and two cases from the Rest of Scotland had not yet concluded.²¹
37. The summary case management pilot began in September 2022, and early challenges were only resolved in January 2023.²² For that reason, the Dundee cases we reviewed were randomly selected from a later sample period of 1 January 2023 to 31 March 2023. We hoped this would help us get a better picture of how the cases were being managed once the pilot was operating as intended, although we appreciate that the pilot was still in relative infancy at that stage. We reviewed the Dundee cases between August and September 2023. At the end of our review, seven Dundee cases had not yet concluded.

²⁰ ASSIST is a West of Scotland-based service that supports those who have experienced domestic abuse with a case going through the criminal justice system, while Dundee ASSIST, a separate organisation, offers a similar service in Dundee. EDDACS is a court advocacy and support service operated by Edinburgh Women's Aid. Children 1st is a national organisation that helps children and their families recover from the impact of childhood trauma and abuse. Sacro's Caledonian Women and Children's Service provides support to women and children in Stirling, Clackmannanshire and Falkirk whose partner/father has been convicted of domestic abuse. Aura is a domestic abuse support service in North Lanarkshire. FearFree is a national service supporting men and those in the LGBT+ community who have experienced domestic abuse. Aditi is a service for Black and Asian ethnic minority women in Edinburgh who have experienced domestic abuse or honour-based violence.

²¹ We considered the case to be concluded when a plea was entered, when a verdict was returned or when a decision was taken to discontinue proceedings. We did not include any additional time taken for sentencing, as that is outwith the control of COPFS. Sentence was deferred in many cases meaning that, from the perspective of the victim and the accused, the case may not have been considered concluded until much more time had passed.

²² For further information on these early challenges, see SCTS, [The summary case management \(SCM\) pilot: Interim evaluation](#) (2023).

38. In each of the 60 cases, we noted the main charge in the Standard Prosecution Report submitted by the police to COPFS.²³ We deemed the main charge to be the one that would result in the most severe penalty. The most frequently occurring main charge was common assault (18 cases).

Table 1 – Main charge in cases reviewed

Main charge	Number of cases
Assault	18
Threatening and abusive behaviour	13
Breach of bail or undertaking conditions, or non-harassment order	14
Section 127 of the Communications Act 2003	6
Section 1 of the Domestic Abuse (Scotland) Act 2018	4
Other ²⁴	3
Stalking	2

39. The number of charges in each case ranged from one to six:
- in 34 cases, the accused was charged with one offence
 - in 12 cases, there were two charges
 - in six cases, there were three charges
 - in six cases, there were four charges
 - in two cases, there were six charges.
40. Each of the 60 cases featured one accused person. The accused was male in 51 (85%) cases and female in nine (15%) cases. In 25 (42%) cases, the accused had previous convictions relating to domestic abuse.
41. Half of the accused were reported to COPFS while they were in police custody. A further 26 (43%) accused were reported to COPFS having been released by the police on an undertaking to appear at court on a specified date. In four (7%) cases, the accused was reported to COPFS but was neither in custody nor had an undertaking to appear at court.
42. One of the 60 cases featured two victims, meaning there were 61 victims in total. Fifty (82%) victims were female, and 11 (18%) were male. In the case with two victims, one victim was the partner of the accused and the second was their child.
43. At the point we finished reviewing the cases:
- in 34 (57%), the accused had pled guilty
 - in seven (12%), a decision had been taken to take no further proceedings, to not call or to discontinue the case
 - in three (5%), the accused had been acquitted at trial
 - in three (5%), the case had been deserted simpliciter
 - in one (2%), the accused pled not guilty and this was accepted
 - 12 (20%) cases were still ongoing.²⁵
44. More detailed findings about the results of our case review are included throughout this report. This includes information about the progress and outcome of the cases, how they were managed, and what steps were taken to communicate with, support and protect victims and child witnesses.

²³ On receipt of the Standard Prosecution Report, COPFS may decide to add, delete or amend charges. See from paragraph 140.

²⁴ In these cases, the main charges were malicious mischief, abduction and theft.

²⁵ Throughout this report, percentages may not sum to 100 due to rounding.

Supporting staff

45. During our inspection, we considered how well COPFS supports its staff to prepare, manage and prosecute domestic abuse cases at sheriff summary level. This included consideration of the policy, guidance, training and other tools available to support staff in their decision making and management of cases.

Policy and guidance

46. Prosecution policy and guidance to staff on how to manage and prosecute cases is primarily set out in:
- the joint protocol between COPFS and Police Scotland on challenging domestic abuse²⁶
 - the COPFS manual on victims and witnesses
 - COPFS's case marking instructions.
47. This is supplemented by further guidance on specific issues such as bail, or through operational instructions which alert staff to essential and updated guidance or any new policies. Reminders are also sent to staff regarding issues that are complex or which may be causing difficulties. We saw helpful reminders about, for example:
- the use of the child aggravation
 - the use of the domestic abuse aggravation
 - drafting charges and seeking bail conditions involving a sensitive address
 - non-harassment orders.
48. All policy and guidance is available to staff via the COPFS intranet. For ease, one page draws together all policy and guidance on domestic abuse, as well as legislation, case law, links to training and other relevant materials.
49. Staff we interviewed were aware that domestic abuse is a priority for COPFS. There was also good general awareness of prosecution policy on domestic abuse. They felt domestic abuse policy was robust, generally comprehensive and easily accessible. If they were unsure how to manage a particular case, they could seek help from their manager. Across COPFS, support and guidance was also available from the National Lead for Domestic Abuse.
50. Where staff felt they would benefit from additional guidance or support was in relation to:
- the interaction of policies on managing summary cases with managing domestic abuse cases. Experienced deutes were aware of when domestic abuse policy required them to depart from standard approaches in summary cases, but less experienced deutes were less confident in this area
 - resolving potential tensions in their role acting in the public interest with trauma-informed approaches that encourage a focus on the individual needs and preferences of victims.
51. Both issues could be resolved through additional guidance, support from managers and training.
52. Domestic abuse cases are marked by prosecutors working in the National Initial Case Processing (NICP) unit and in local court teams. NICP has useful internal marking guidance but this is not always shared with prosecutors working in other

²⁶ [Joint protocol between Police Scotland and COPFS – In partnership challenging domestic abuse](#) (2023).

teams or made available on the intranet. Local court prosecutors mark cases less frequently than colleagues working in NICEP and would benefit from access to this guidance. This will help promote consistency in marking decisions across teams.

53. All victims of domestic abuse should be referred to COPFS's Victim Information and Advice (VIA) service. VIA provides information to victims about their case and signposts them to other sources of support where needed. Policy and guidance relating to VIA's role is also accessible on the intranet. Some VIA officers advised that they also use local desk instructions to guide their work, but most VIA officers felt there was little specific domestic abuse guidance for them and they mostly learned on the job or by listening to colleagues.
54. In preparation for the implementation of the summary case management pilot, additional guidance was provided to prosecutors and administrators working in the pilot areas. The guidance set out how pilot cases would be processed and managed differently than standard summary cases, and what was expected of staff. Staff found this guidance clear, detailed and helpful. Administrators appreciated being consulted on the guidance prior to implementation. The guidance was updated as the pilot evolved. In late 2023, all guidance and information associated with the pilot was brought together in one place on the intranet. This will be helpful for staff working in areas where the pilot will be implemented next.

Training

55. In its Strategic Plan 2023-27, COPFS states that one of its strategic aims is to 'support our people to deliver excellence'. It will build a skilled and trauma-informed workforce, and will invest in staff development.²⁷ It has also stated that it will ensure that learning and development opportunities are available throughout its people's careers to strengthen its capacity to deliver an improved service.²⁸
56. At 31 May 2023, COPFS employed 2,445 staff. Twenty nine per cent were legally qualified. The majority of staff worked in a range of other roles including business managers, case preparers, administrators and VIA officers. Almost half the staff were employed in the local court function, which primarily deals with summary and solemn cases in the sheriff court. More than half of the workforce had joined COPFS since 1 April 2016.
57. There is extensive policy around responding to domestic abuse, and guidance on how domestic abuse cases are often managed differently to other cases. There are also legal developments that require to be shared with staff. There is also an appreciation that victims in domestic abuse cases may require additional support through the prosecution process. Supporting new staff through training, and supporting existing staff through refresher training as well as training on new legal, policy and process developments is therefore key to delivering an effective service. Formal training takes on more significance when opportunities for informal, 'on the job' learning are more limited when many staff work from home.
58. A range of formal training on domestic abuse is available. This includes:
 - a three-day domestic abuse accredited prosecutor course
 - a one-day domestic abuse awareness course
 - a one-hour domestic abuse course
 - a half-day stalking workshop

²⁷ COPFS, [Strategic Plan 2023-27](#) (2023).

²⁸ COPFS, [Learning and development strategy 2020-2023](#) (2021).

- e-learning modules on domestic abuse for VIA staff, the Domestic Abuse (Scotland) Act 2018 and stalking offences
 - a one-day course to support staff engaging with victims and witnesses.
59. Training specific to the 2018 Act was also provided when it came into force. Ad hoc training opportunities are made available to staff, such as a seminar on understanding economic abuse. These are often recorded, allowing staff – such as those who were busy in court – to watch them at a more convenient time. We also heard that some teams, such as NICP and the Glasgow Domestic Abuse Unit, supplement the formal courses with training sessions for their staff on issues of particular interest.
60. The formal training courses are advertised in an online prospectus published by the Scottish Prosecution College. The prospectus describes each course and sets out its target audience, including whether it is mandatory.
61. The domestic abuse courses vary in depth, but they generally cover a range of issues including the typology and dynamics of domestic abuse to help in the identification and understanding of cases, legal and evidential principles, and the role of the police and support organisations in domestic abuse cases.
62. We took part in the domestic abuse courses and considered that, overall, the training available was comprehensive, relevant and up to date. There were good examples of some content being delivered by partner agencies, such as the police and support organisations. However, there was a lack of clarity about how the one-hour, one-day and three-day courses linked with one another and whether they should be completed sequentially by the target audience, or whether and which one course would be sufficient depending on someone’s role. There was some overlap in course content and the target audience set out for each course did not always seem appropriate. For example, the target audience for the three-day domestic abuse accredited prosecutor course is all COPFS staff. While portions of that course will be helpful to VIA staff, some will not. The course could be structured in such a way to allow some staff to dip in and out as needed (Recommendation 1(a)).
63. The one-hour domestic abuse course was useful and easily accommodated within a busy working day. However, it was also a challenge to get through the material in the time available. There was little time for discussion, although the trainer was willing to stay on and answer questions afterwards. We were concerned that this was the only course completed by many of the prosecutors we interviewed.
64. In the past, the three-day domestic abuse accredited prosecutor course included a half-day shadowing with a support organisation such as ASSIST. We heard that this stopped during the pandemic, and has not yet fully restarted. This should be reinstated given how positively both prosecutors and support organisations spoke of it.²⁹ Building positive relationships with support organisations and gaining a better understanding of their work is essential given the role they play in so many domestic abuse cases.
65. The domestic abuse e-learning for VIA staff was useful to some extent, but some key information was missing and it would benefit from being updated. Some of the information was available in other e-learning modules for VIA staff, but it would be more helpful if key issues relating to domestic abuse cases were consolidated in one place. The e-learning was not mandatory, but should be. Few VIA officers we

²⁹ Further comment is made on shadowing opportunities in paragraph 520.

interviewed said they had experienced any domestic abuse training which is concerning given that domestic abuse cases make up a substantial proportion of their workload (Recommendation 1(d)).

66. Staff working with National Enquiry Point (Enquiry Point) said they had not had domestic abuse training but would like it. Given that so many of the enquiries they deal with relate to domestic abuse and they are increasingly taking on contact with victims that would previously have been done by VIA (see paragraph 439), training on domestic abuse should be provided.
67. Those who had attended the one-day and three-day domestic abuse courses found them valuable. They developed their understanding of the dynamics of domestic abuse and helped them identify less obvious cases of abuse. One prosecutor said the training had really transformed their thinking on domestic abuse and how they approached their work. Prosecutors who had attended these courses said that all prosecutors dealing with domestic abuse cases should attend.
68. Given the availability of the domestic abuse courses and how positively prosecutors spoke of the benefits of attending, we were surprised more had not done so. Many of the prosecutors we interviewed, who were dealing with domestic abuse cases daily, had only attended the one-hour course. Attendance at the more in-depth courses was limited even among the specialist prosecutors in the Glasgow Domestic Abuse Unit. While they will build knowledge and expertise more quickly due to their focus on prosecuting domestic abuse cases, training would still be helpful. Many said they would like to do the training, but that it was impossible to get away from their daily duties to attend a one or three-day course. Part-time staff said it was particularly difficult to find time for training. VIA officers also told us they struggled to find time to attend training. The current resourcing of summary prosecution and VIA teams was regularly cited as a barrier to staff development. We were concerned that for some of those we interviewed, there was an evident need for more training on domestic abuse (Recommendation 1(c)).
69. Some prosecutors felt that trainee prosecutors were at an advantage because they must complete set courses as part of their traineeship. They said trainees were more readily released from their duties to attend courses. In contrast, solicitors recruited from outside COPFS had more limited opportunities to attend training. Despite the one-day domestic abuse course being mandatory for new prosecutors, that requirement did not always appear to have been fulfilled.
70. Throughout our inspection, we heard about the inexperience of prosecutors in summary teams. More experienced colleagues often move from summary to solemn teams or into specialist units. We heard that inexperienced prosecutors in summary teams have few experienced colleagues from whom to learn. This highlights the need for training and ongoing support from managers to help summary prosecutors to deliver their role effectively.
71. Managers said they were keen for staff to attend training, but that a lack of resources made it difficult to find cover for court work. There was a strong feeling that specialist units are well resourced at the expense of summary teams, leaving summary prosecutors with little time for learning and development. In a recent staff survey, only 56% of local court staff said they can access the right learning and development opportunities when they need to. This was 3% lower than for COPFS overall, and 11% lower than for the civil service generally.

72. Given that addressing domestic abuse is a strategic priority for COPFS and given the volume of summary court business that involves domestic abuse, COPFS should ensure that staff have the necessary skills and knowledge to manage these cases effectively. While attendance rates for some mandatory courses are reported to the Scottish Prosecution College Steering Committee,³⁰ in light of the low take-up of domestic abuse courses we found, more should be done to monitor staff learning. We heard that COPFS will introduce a new learning management system in 2024 to allow it to more easily monitor courses and learning plans, which we welcome (Recommendation 1(b)).
73. Since the pandemic, training has largely been delivered online. While this is cost effective and less resource intensive, we also heard that it can inhibit discussion between participants and with the trainer. We were told that a phased return to in-person training commenced recently. COPFS should consider holding the more in-depth courses in person, to encourage participants to ask questions and share the challenges they encounter in their work.

Being trauma-informed

74. In 2023, a knowledge and skills framework for working with victims and witnesses was launched.³¹ This recognised the importance of staff in justice agencies having an understanding of the impact of trauma on witnesses and the appropriate knowledge and skills to do no harm, minimise re-traumatisation and support recovery. COPFS has supported the development of the framework and has committed to delivering a trauma-informed service.³²
75. In 2022, COPFS launched a 'Becoming Trauma Informed' e-learning module. It covers the psychological impact of trauma and re-traumatisation, and how experiencing one or both might impact a person when they are accessing essential services. The module is mandatory for all staff. We saw reminders being issued to staff about completing the module, and we saw data suggesting that the module has been taken by the majority of staff. Staff who had completed the module felt it had helped them to better understand victim and witness attitudes and behaviour. They found it valuable.
76. However, many of the staff we interviewed seemed unaware of the module and of trauma-informed approaches more generally. Victims and advocacy workers we interviewed felt that some COPFS staff could be more compassionate and empathetic in their contact with victims. They said there could be more understanding of how trauma might affect a victim's engagement with COPFS and the justice process.
77. We understand that the e-learning module is only the first phase in COPFS supporting its staff to become trauma-informed. Further work is being taken forward via COPFS's Service Improvement Programme.³³ We welcome further work in this area as more needs to be done by COPFS to ensure its workforce and processes are trauma-informed. This work will help prepare COPFS for anticipated new duties in this area: the Victims, Witnesses and Justice Reform (Scotland) Bill currently being considered by the Scottish Parliament includes a duty on justice agencies to treat

³⁰ Chaired by the Deputy Crown Agent for Operational Support, this committee meets quarterly. It is made up of a range of senior staff from across COPFS who collectively inform training and learning policy.

³¹ NHS Education for Scotland, [Trauma-informed justice: A knowledge and skills framework for working with victims and witnesses](#) (2023).

³² COPFS, [Strategic Plan 2023-27](#) (2023).

³³ COPFS, [Executive Board meeting minutes](#) (4 October 2023).

victims and witnesses in a way that accords with trauma-informed practice during and after investigation and proceedings.

Other training needs

78. We asked staff if any other training would help them to manage and prosecute domestic abuse cases more effectively. Prosecutors said they would appreciate more training on how new technologies can be used to commit offences, and how such evidence should be handled. VIA officers, and some prosecutors, said they would welcome more training on how to interact with victims and how best to support victims who are not engaged or at risk of not engaging with the justice process. Staff also said they would like more guidance on dealing with victims and witnesses, particularly child witnesses and those with additional support needs.
79. Several staff said they would like more support in dealing with victims who may be contemplating suicide. Staff felt they were dealing with this more often, and they would like to know more about how best to provide support and advice. We heard that Enquiry Point operators often dealt with such calls and had received training to help those in distress. Some local teams had received similar training, but it was clear from our interviews that there is a need for such training to be available more widely.
80. Staff have access to a 24-hour employee assistance programme and to a vicarious trauma support service, but they also wanted to know about less formal ways of supporting themselves and colleagues after they had dealt with a victim in significant distress or who was contemplating suicide.

Recommendation 1

With regard to training of staff, COPFS should:

- (a) review and streamline the content of its domestic abuse training taking into account the target audience
- (b) review the take-up of mandatory and other training, and identify and address the reasons for low take-up
- (c) ensure that all staff managing and prosecuting domestic abuse cases and engaging with domestic abuse victims have appropriate training (including prosecutors, VIA officers and National Enquiry Point operators)
- (d) review the domestic abuse e-learning module for VIA officers and make it mandatory.

Information technology

81. When we asked COPFS staff whether they had the tools to manage and prosecute domestic abuse cases efficiently and effectively, the issue they raised most often was the poor performance of the electronic case management system. They felt that the system hampered their productivity and their ability to do their job well. For example:
 - administrative staff described systems as slow and said they crashed often. They experienced problems when trying to update court results on the system or when trying to prepare cases for court
 - VIA officers said the system held them back, and contributed to backlogs in their work. They said they sometimes had difficulty even getting into the system
 - prosecutors felt the system was inadequate and inefficient, with those who had worked for COPFS for a long time not realising that such poor systems were not the norm in other organisations.
82. All staff spoke of time lost while dealing with system problems. We found our own review of cases was hampered by the case management system stalling or shutting

down unexpectedly and repeatedly. In a recent staff survey, only 54% of staff in local court teams said they had the tools needed to do their job effectively. This was 6% lower than for COPFS overall, and 20% lower than for the civil service generally.

83. As well as hampering productivity and significantly affecting how efficiently cases are processed and managed, poor systems affect staff morale. Staff spoke of their frustration at losing and having to redo work. They felt poor systems restricted their ability to provide a better service to victims.
84. We have noted these issues in previous inspection reports. In a report published in 2022, we noted COPFS was aware of the deficiencies of its case management system and was planning to replace the current system.³⁴ While we welcome this and appreciate the delivery of a new case management system is a significant task, this work should be expedited. COPFS should not underestimate the daily toll poor systems are taking on staff, their productivity and the service provided to victims.

Digital Evidence Sharing Capability

85. In contrast to poor case management systems that hamper their work, staff were more positive about a new IT initiative. The Digital Evidence Sharing Capability (DESC) is a collaborative programme between the Scottish Government and various justice agencies including COPFS. DESC involves the collection, storage and sharing of digital evidence throughout a criminal investigation and prosecution.
86. Since 2023, DESC has been piloted in Dundee to positive feedback from police and prosecutors. We heard that the quality of images shared via DESC was much improved. By allowing for evidence to be shared more easily and quickly, including with the defence, it is hoped that DESC will contribute to the earlier resolution of cases as well as efficiencies in the justice system.

³⁴ IPS, [Inspection of COPFS practice in relation to sections 274 and 275 of the Criminal Procedure \(Scotland\) Act 1995](#) (2022).

Reporting and marking cases

87. During our inspection, we assessed how well COPFS prepares, manages and prosecutes domestic abuse cases. Our focus was on cases in which proceedings are initiated at sheriff summary level. It did not include cases that proceeded at solemn level, or where the accused person was offered an alternative to prosecution. We considered how prosecutors mark reports received from the police of offending behaviour for prosecution, and how those cases are managed until their conclusion, including where they conclude by way of a guilty plea, a trial, or a decision to bring proceedings to an end.

Standard Prosecution Reports

88. The police report cases to COPFS by way of a Standard Prosecution Report (SPR). Its purpose is to provide the relevant, accurate and comprehensive information needed by a marking depute³⁵ to help them make the most appropriate prosecutorial decision. Usually, the SPR will be the only information available to a depute at the marking stage, so its contents are the foundation on which prosecutorial decisions are made. SPRs follow a nationally agreed format including, for example, details of the charge and the accused person, any previous convictions of the accused, a summary and analysis of evidence, and a list of witnesses and productions.

89. All cases involving an element of domestic abuse should be reported using a tailored SPR format. This requires reporting officers to include additional information specific to domestic abuse, including:

- the nature of the relationship between the accused and victim
- any previous history of domestic abuse, including incidents not previously reported
- the victim's views on court proceedings, bail conditions and non-harassment orders
- information about risks to the victim, any children and other witnesses. This should include the outcome of a risk assessment carried out by the police
- information about any children, including whether they were present during the incident and any expressed views (and those of their parents or carers) on giving evidence
- whether the address of the victim is known to the accused
- any vulnerabilities or support needs of the victim, witnesses or accused.³⁶

90. We reviewed 60 domestic abuse cases. It was not our intention to review the quality of SPRs as that would properly be the role of HM Inspectorate of Constabulary in Scotland (HMICS). However, we did assess the extent to which SPRs supported effective and timely decision making by the marking depute, and how the content of SPRs affected the management of the case by COPFS.

91. In the 60 cases we reviewed, 22 (37%) SPRs fully supported prosecutorial decision making. We found examples of excellent, detailed reports. These reports made good use of the domestic abuse reporting format and addressed the points noted at paragraph 89. A further 34 (57%) SPRs partially supported decision making. These SPRs were generally adequate, but lacked some information that would have better

³⁵ A marking depute is a prosecutor who makes an initial prosecutorial decision in relation to a report received from the police.

³⁶ A full list of the additional information to be included in domestic abuse SPRs is available in [Joint protocol between Police Scotland and COPFS – In partnership challenging domestic abuse](#) (2023) at paragraph 49.

supported the marking depute in their decision making. We considered that four (7%) SPRs did not support decision making at all.

92. Where SPRs only partially supported prosecutorial decision making, common issues included:
- a history of domestic abuse between the parties or on the part of the accused was missing
 - there was insufficient information on risk
 - the views of the victim were missing
 - there was a lack of clarity about counter allegations.
93. These issues are explored in more detail below. Examples of SPRs that did not at all support decision making included:
- one SPR in which the identity and evidence of the victim was unclear. The victim's vulnerabilities were not explored and this led to significant delays later in the case
 - one SPR in which there was a complete absence of the additional information that should feature in domestic abuse cases. The reporting officer also omitted consideration of the children as he considered they would not be affected by domestic abuse due to their young age
 - in two cases, the domestic abuse SPR format had not been used, resulting in key information being left out.
94. The standard of SPRs was consistently better in the Glasgow cases. Twelve out of the 20 Glasgow cases fully supported decision making, compared to seven in Dundee and only three in the Rest of Scotland cases. All of the SPRs in Glasgow fully or partially supported decision making. We could not establish why SPRs in Glasgow were better – it is possible that there was some legacy effect from work to improve reporting in support of the Glasgow Domestic Abuse Court. It should also be noted that our samples were not statistically significant, although we did feel there appeared to be a clear pattern of reports that better supported decision making in Glasgow across several of the measures we applied.
95. While we considered that the standard of SPRs was consistently better in Glasgow, we heard positive feedback from prosecutors in Dundee that the standard of SPRs in their cases had significantly improved as a result of the summary case management pilot. We interviewed prosecutors several months into the pilot, whereas the Dundee cases we reviewed were all reported to COPFS in the early stages of the pilot. We appreciate that the standard of SPRs would have evolved as the pilot embedded.

History of domestic abuse

96. In the 60 domestic abuse cases we reviewed, all SPRs featured information about the nature of the relationship between the accused and victim, while 54 (90%) SPRs featured a good amount of information about any previous history of domestic abuse. In two of the six SPRs that did not include sufficient information about any history of abuse, the reporting officer had not used the tailored domestic abuse SPR format. The other four SPRs had used the correct format but had nonetheless not been completed adequately.
97. SPRs sometimes focused on a specific incident of domestic abuse but failed to address the wider circumstances, patterns of offending or history of abuse. Sometimes these SPRs alluded to other offending, but it appeared this had not been further investigated by officers. This should have resulted in further information being requested by the marking depute. Such requests were made by deposes, although

there were also cases where this should have happened but did not. Victims and advocacy workers we interviewed felt that the police, and consequently COPFS, failed to ask about or take account of the totality of the victim's circumstances or the full history of abuse. They felt the focus was on the specific incident that prompted police attendance and that this led to an under-use of section 1 of the Domestic Abuse (Scotland) Act 2018. In the cases we reviewed from both Dundee and the Rest of Scotland, we were pleased to note examples of cases initially being reported as assaults and threatening and abusive behaviour being amended by COPFS to contraventions of section 1.

98. The joint protocol notes that domestic abuse encompasses a wide spectrum of behaviour, and that this includes cases involving isolated incidents as well as cases involving a course of conduct, and both violent and non-violent abuse.³⁷ This is emphasised in the training available to deposes. Nonetheless, we were concerned that a small number of deposes appeared insufficiently aware of the non-violent ways in which a perpetrator can seek to exercise coercive control. This risked them being unable to recognise, when marking cases, conduct that could amount to psychological harm as defined in the 2018 Act. This reinforces the need for deposes to undertake training so they can develop an up to date understanding of domestic abuse.

Risk assessment

99. The Domestic Abuse Questions (DAQ) is a list of questions posed by the police to a victim to help identify the level of risk to the victim. Completion of the DAQ provides a score for each victim based on their answers. A score of 14 or above means the victim is deemed to be at high risk of homicide or serious harm. The outcome of the risk assessment should be used by deposes, alongside other information, to inform their decision on whether to oppose bail or whether to request special conditions of bail.
100. In the cases we reviewed, the DAQ was completed and the outcome noted in 44 (73%) SPRs. In 11 (18%) cases, the SPR noted that the victim refused to answer the risk assessment questions. In the remaining five (8%) cases, the SPR did not mention whether a DAQ had been carried out or its outcome.
101. Where a victim refused to answer the risk assessment questions, there appeared to be inconsistencies in how this was managed by officers. Some officers did not complete the DAQ, while others sought to answer the DAQ themselves, based on their knowledge of the incident and surrounding circumstances. We also saw examples of the DAQ generating a low risk score for victims, but officers stating in the SPR that the victim was at high risk.³⁸ The reason for the disparity between the score and the level of risk was not generally explained, leaving deposes unsure whether it was an error. This affected deposes' ability to make their own evidence-based decisions about risk.
102. Guidance to deposes indicates that the DAQ outcome should be a key factor in their decision making, and the DAQ features in their training. However, some deposes told us they did not pay particular regard to the scores. They felt that without a note of the answers to specific questions, its utility was limited. In one of the cases we reviewed,

³⁷ [Joint protocol between Police Scotland and COPFS – In partnership challenging domestic abuse](#) (2023) at paragraph 4.

³⁸ In its review of domestic abuse, HMICS notes that complainers may be reluctant or not ready to answer the risk assessment questions, leading to an artificially low score and inaccurate assessment of risk. Officers are permitted to raise the level of risk, using their professional judgement and experience from their observations of the incident. HMICS, [Thematic inspection of domestic abuse – Phase 1](#) (2023) at paragraph 168.

the reporting officer had included all the risk assessment questions and answers in the SPR, not just the score and level of risk. This helped deutes understand the specific risks to the victim.

103. Under section 1(3) of the Bail and Release from Custody (Scotland) Act 2023, when making decisions about bail, courts may request prosecutors provide ‘information in relation to the risk of harm to the complainer’. While not yet in force, this provision will require deutes to have accurate and detailed information about the risks to individual victims. It is therefore essential that COPFS and Police Scotland work together to ensure risk assessments are carried out effectively, and that sufficient information is shared with and acted upon by deutes (Recommendation 2(a)).

Victims’ views

104. SPRs should detail the views of the victim regarding three issues: court proceedings; bail conditions; and non-harassment orders. Almost all of the SPRs in our Glasgow and Dundee case samples (90% in each sample) set out the views of the victim regarding at least one of the three issues. However, only 45% of SPRs from the Rest of Scotland sample included this information. Across all areas, it was not uncommon for the victim’s views on at least one of the three issues to be missing. This is another area in which the information detailed in SPRs should improve, so as to provide the marking depute with more information on which to base their decisions. The information is also needed by the local court deutes who go on to prepare and prosecute the case.

105. Some SPRs used outdated language to describe victims. Victims were described as ‘hostile’. This language was sometimes also used by COPFS staff. While there may be some victims who do not support a prosecution at all, it seemed likely that many who were unsupportive were likely unsure or afraid of the prospect of prosecution and the impact this might have on their safety or their lives generally. Indeed, victims and advocacy workers told us that victims described as hostile were often afraid of reprisals from the accused if they engaged in the justice process, or were concerned about the impact this might have on their children, other family members or their work. VIA officers we interviewed said that victims who had been described as hostile in SPRs were sometimes not at all hostile or unsupportive of a prosecution when they spoke to them. The language used to describe victims was often not trauma-informed, and neither did it help a deute understand the reasons why a victim may not engage with the justice process. This limits the effectiveness of the deute’s decision making, and their ability to address concerns the victim may have. Senior police leaders told us they were keen to remove outdated language from SPRs, such as referring to victims as hostile, however it was clear from the SPRs we reviewed that there was still some work to be done in this regard (Recommendation 2(b)).

Counter allegations

106. In domestic abuse cases, sometimes both parties will make allegations against the other person. The joint protocol states that, ‘The police must thoroughly investigate the full circumstances of the incident in order to identify and report the principal perpetrator to the Procurator Fiscal. It will not generally be appropriate to arrest and report both parties to the Procurator Fiscal.’³⁹

107. In nine (15%) of the cases we reviewed, the SPRs made reference to counter allegations (four cases each in Rest of Scotland and Dundee, and one in Glasgow). While there were references to counter allegations, it was not always clear whether

³⁹ [Joint protocol between Police Scotland and COPFS – In partnership challenging domestic abuse](#) (2023) at paragraph 33.

the 'principal perpetrator' approach was being followed, or whether a counter allegation had also been recorded and reported to COPFS. We heard from victims, advocacy workers and marking deutes who felt this aspect of the protocol could be applied more robustly.

108. Marking deutes told us that the police continued to report both parties where counter allegations had been made. They felt that counter allegations were investigated poorly, and reporting officers appeared reluctant to provide a view on the principal perpetrator. They said when both parties were reported, the police sometimes did not mention this in the individual SPRs. The individual SPRs were therefore likely to be marked by different deutes, meaning no one was taking an overview of the circumstances. The police reports could also be submitted to COPFS at different times, meaning a decision in the first case may already have been made before the second report was submitted.
109. Where reporting officers specified that both parties were being reported, and where reports were cross-referenced, it was much easier for one marking deute to review both cases, allowing them to revisit the issue of the principal perpetrator. They often felt, however, that it was the officer who had attended the incident and who had spoken to both parties who was best placed to form a view on the principal perpetrator, rather than a deute reading a report. Should the officer be unable to identify a principal perpetrator, then the SPR should clearly say so and explain the reasons why. Marking deutes also acknowledged there was scope to raise awareness of this aspect of the protocol among their own colleagues. This highlights a training need for both the police and deutes on how to manage counter allegations in accordance with the protocol, and on how the making of counter allegations may itself be part of the perpetrator's abuse of the victim (Recommendation 2(c)).

Further enquiries

110. Before deciding how a case should proceed, the marking deute may request further enquiries or information from the police. Sometimes the information is needed urgently, before any decision can be made. Other times, a decision on how to proceed can be made but the information is needed for a later stage in the case.
111. Of the 60 cases we reviewed, further information was needed from the police in 15 (25%). Further information was needed in two Glasgow cases, seven Rest of Scotland cases, and six Dundee cases. Examples of further information requested included:
- evidence required to corroborate the identification of the accused
 - full statements to be submitted earlier in the process
 - further history of domestic abuse for possible additional charges
 - clarification of the circumstances of the offence
 - the complainer's views on non-harassment orders (this information is needed if the accused pleads guilty at the first calling).
112. The response time for the requests ranged from receiving a response the same day, to the request still being outstanding at the time of our review (several months after the request was made). We heard that the police generally respond promptly where further information is needed about cases in which the accused is in custody. However, we were concerned about the delayed response in cases where the accused had been released on an undertaking (see paragraph 122).

113. In one case, the marking depute requested that the reporting officer provide further information about a more serious allegation that was mentioned in the SPR but which did not appear to have been explored further. The reporting officer failed to respond. Because the accused pled guilty to other charges at his first appearance in court, the case was closed without the outstanding request being followed up. We brought this case to the attention of COPFS. The outstanding request in this specific case was followed up, and the need to manage the broader risk of cases being closed while enquiries remain outstanding was added to guidance to marking deputies.

Digital evidence

114. From the cases we reviewed and from our interviews with prosecutors, we noted that essential evidential information can be missing from SPRs or be poorly described. This can prolong the marking depute's consideration of the case and lead to delays while they request further investigation or additional information from the police.

115. Many cases now feature some form of digital evidence. This includes, for example, footage from CCTV, mobile phones or doorbell cameras, recordings of calls to the police, screenshots of messages, and photographs of injuries. Often, digital evidence can be compelling. It can help deputies obtain an early guilty plea or can be useful evidence at trial. Such evidence may be particularly important in domestic abuse cases where the victim or a child witness may be unable or unwilling to give evidence. We were concerned that some types of digital evidence are not being used to their fullest extent in domestic abuse cases.

116. Digital evidence is usually described in the SPR, rather than being submitted alongside it. While we saw some examples of digital evidence being well used and described by reporting officers, we also heard from deputies that this was an area for improvement in many SPRs. They felt that digital evidence – including 999 calls and CCTV – was often not well described or was inaccurately described, impacting the marking depute's decision making, labelling of accurate charges, and their ability to provide instructions on how the case should be prepared and prosecuted. In particular, we heard that descriptions of 999 calls tend not to convey the seriousness of the incident. This may be because the reporting officer has not listened to the call at the point of reporting or even considered its evidential value. For example, in one case we reviewed involving an adult victim and a child witness, the SPR suggested that part of the domestic abuse incident was captured on a 999 call. This may have provided corroboration of the victim's account, rather than requiring the child witness to give evidence. However, no effort was made by the reporting officer to obtain the call recording as evidence. Unfortunately, this was also not requested by the marking depute (Recommendation 2(d)).

Reporting method

117. Where there is a sufficiency of evidence in domestic abuse cases, there is an expectation that the police will arrest the accused and report them to COPFS while they are held in custody, or while they have been released on an undertaking to appear at court.⁴⁰ This is in recognition of the particular risks associated with domestic abuse cases. Accused who have been released on an undertaking can be subject to conditions, such as not approaching the victim or the victim's home. Whether the accused is held in custody or released on an undertaking will depend on an assessment of risk by the police. It is also possible for the police to report the accused to COPFS with no conditions being in place. Where there is not yet a sufficiency of evidence and the police require to carry out further enquiries, the

⁴⁰ [Joint protocol between Police Scotland and COPFS – In partnership challenging domestic abuse](#) (2023) at paragraph 38.

accused may be released on investigative liberation, during which time protective conditions regarding the victim may be put in place although only for a limited period.

118. In 2022-23, 91% of domestic abuse cases were reported to COPFS while the accused was in custody or subject to an undertaking, in line with the expectation set out above. Although there is no guidance in the joint protocol as to which cases may be suitable for reporting when the accused is neither in custody nor subject to conditions, a small proportion of cases are reported this way.
119. Of the 60 cases we reviewed, four (7%) were reported to COPFS where there was a sufficiency but the accused was neither in custody nor subject to conditions:
- in one case, this appeared appropriate given the circumstances
 - in another case, we thought it was likely appropriate. However, in this case, the SPR stated that the DAQ risk score was 14. We thought it likely this was an error in light of all the other information provided, however this should have been checked by the marking depute
 - in two cases, it was not clear why the police risk assessment had led to the accused being reported while not in custody or subject to conditions. In the first of these cases, we were concerned that more than 90 days passed between the report of the offence and the accused's first appearance at court, during which time no protective conditions were in place for the victim. In the second case, we were pleased to note that on reviewing the case, the marking depute immediately requested a warrant to initiate proceedings against the accused. He was arrested, appeared in court promptly and was thereafter subject to bail conditions.
120. While marking deputies we interviewed felt that it was rare to see accused in domestic cases being reported while neither in custody nor subject to conditions, we were encouraged that where this happens, they said they would take a similar approach to that described in the final case above. They said they would reassess the risk to the victim, and consider taking action to bring the accused before court as soon as possible so that protective bail conditions could be put in place.

Undertakings and investigative liberation

121. In summary cases, where the police have not yet identified sufficient, corroborative evidence, reports should not be submitted to COPFS.⁴¹ Despite this, there was a strong sense among deputies we interviewed that cases are being reported prematurely, before a sufficiency of evidence has yet been established. They felt that, rather than releasing the accused on investigative liberation (which has a 28-day time limit), the police were releasing the accused on an undertaking and submitting reports to COPFS without sufficient evidence. This often resulted in deputies instructing further enquiries to be carried out by the police before they were in a position to mark a case. Further enquiries were instructed in 25% of the cases we reviewed, although not all of these related to gathering corroborative evidence.
122. Sections 27 and 28 of the Criminal Justice (Scotland) Act 2016 allow for undertakings to be modified or cancelled by the procurator fiscal. Where further enquiries are instructed, this often results in an undertaking being postponed by a marking depute. We found that the police did not always respond to instructions for further enquiries timeously, meaning undertakings were postponed even further. There was a general sense among those we interviewed that undertakings should not be postponed beyond a maximum of three months, however the 2016 Act places no limit on the

⁴¹ [Joint protocol between Police Scotland and COPFS – In partnership challenging domestic abuse](#) (2023) at paragraph 30.

number of postponements nor does it impose an overall time limit. Two cases were brought to our attention in which undertakings were postponed four and six times respectively, each one being for a three or four-week period. This significantly delays progression of the case, for both the accused and the victim.

123. Poor reporting and delays in carrying out further enquiries by the police are not the only cause of postponed undertakings. We also heard about capacity issues within local court teams resulting in undertakings not being marked timeously, leading to last minute marking or instructions to police.
124. Where the police do require further time to investigate, the accused should be released on investigative liberation. This allows the police time to gather more evidence to support its reports to COPFS, while also allowing conditions to be applied to the accused that support victim safety. Investigative liberation (and any associated conditions) may only be used for 28 days, thus any further evidence gathering would require to be carried out expeditiously. In 2022-23, the proportion of accused released by Police Scotland on an undertaking was 23.9%, while the proportion released on investigative liberation was 0.7%⁴² (Recommendation 2(e)).

Summary case management pilot (Dundee)

125. A key feature of the summary case management pilot is the early disclosure of key evidence to the defence in domestic abuse cases. This requires Police Scotland to identify the key evidence and to provide it to COPFS at the time of reporting, rather than at a later date. This allows COPFS to disclose the key evidence to the defence on receipt of a letter of engagement.
126. Key evidence is the essential evidence required to prove the charge, as well as any further evidence which will ensure its effective presentation. Examples of key evidence in domestic abuse cases include statements from victims, police officers or other eyewitnesses, or photographs, video or audio recordings. To help the police submit key evidence at this earlier stage, a cloud-based solution (known as Egress) was introduced. In Dundee, this solution was supplemented by the piloting of the Digital Evidence Sharing Capability (DESC) from early 2023.
127. Submitting key evidence at the same time as the SPR not only facilitates early disclosure to the defence, it also provides a stronger foundation on which the marking depute can make decisions about the case and how it should proceed. For example, in two of the Dundee cases we reviewed, the marking depute was able to watch video footage prior to marking the case:
- in one case, a doorbell camera captured high quality images of the criminal conduct. We considered the footage was more shocking than what was described in the SPR
 - in one case, an audio recording of comments by the accused in the presence of police officers was not clear, meaning the marking depute was aware from the outset that more reliance should be placed on the police witnesses than on the recording.
128. Key evidence was submitted within target in only eight of the 20 Dundee cases we reviewed. In the 12 cases where key evidence was not submitted when required, all but one featured missing digital evidence (such as CCTV or other video or audio recordings). Key witness statements were also missing in five of those cases. In no

⁴² Police Scotland, [Quarter 4 YTD Performance Report: April 2022 to March 2023](#), at page 92. This data is in respect of all offences, not just those relating to domestic abuse.

cases where key evidence was missing did the SPR contain an estimated timeframe for submission of the evidence, as is required.

129. We appreciate that the Dundee cases we reviewed were reported during the early stages of the summary case management pilot, and the requirement to submit key evidence at the time of reporting was still new and not yet embedded. The interim evaluation of the pilot also notes that the process for submitting key evidence had posed a significant operational challenge for Police Scotland.⁴³ Nonetheless, the two cases outlined at paragraph 127 indicate the value of submitting key digital evidence at the time of reporting, not just to facilitate early disclosure, but also to allow the marking depute to make the best prosecutorial decision, assess the quality of evidence against the accused and provide appropriate marking instructions that allow the case to be managed more effectively from the outset.

130. While the Dundee cases we reviewed were submitted during the early stages of the pilot, we interviewed deposes working in Dundee several months into the pilot. They felt the information provided by the police in SPRs had significantly improved. They said that by submitting key evidence alongside the SPR, the police in Dundee were helping deposes make better and more timely decisions in domestic abuse cases. They felt there had been a significant reduction in the number of requests they had to make for further information. They also felt this approach was having a positive knock-on effect on the information provided in SPRs in other types of case.

Recommendation 2

In relation to the reporting of domestic abuse cases, COPFS should work with Police Scotland to:

- (a) ensure that prosecutors have sufficiently detailed information on the risk to victims which can be passed on to the court when required
- (b) ensure that Standard Prosecution Reports fully address the victim's views on court proceedings, bail conditions and non-harassment orders. Reasons for victims' views should be fully explored and should be described, by both COPFS and Police Scotland, in appropriate and accurate language
- (c) ensure that the approach to counter allegations set out in the joint protocol on challenging domestic abuse is followed in practice by both reporting officers and marking deposes. Managing counter allegations should form part of training
- (d) ensure that calls to 999 and 101 are assessed for their evidential value by both reporting officers and marking deposes
- (e) address the premature reporting of cases and delays in carrying out further enquiries. Consideration should be given to increasing the use of investigative liberation, while ensuring that the risk to victims is assessed and managed through the use of protective conditions.

Marking

131. Within COPFS, members of the National Initial Case Processing (NICP) team specialise in marking cases. This team marks the majority of cases where the accused is reported while in custody. Currently, most cases where the accused is released on an undertaking are marked by prosecutors working in the six sheriffdom local court teams. However, NICP has taken on the marking of undertakings from the summary case management pilot areas, and there are plans for NICP to take on the marking of more undertakings in future. Of the 60 cases we reviewed, 39 (65%) were marked by NICP. Half of the Glasgow and Rest of Scotland cases were marked by

⁴³ SCTS, [The summary case management \(SCM\) pilot: Interim evaluation](#) (2023) at paragraphs 1.5 to 1.8.

NICP and half were marked by local court deutes. All but one of the Dundee cases was marked by NICP.

132. All of the cases we reviewed were marked for prosecution at sheriff summary level. We considered whether this marking decision was in accordance with COPFS policy on domestic abuse. The marking decision was appropriate in 58 of the 60 (97%) cases. We considered that one Rest of Scotland case should have been referred to the sheriff and jury team pending further enquiries to establish whether allegations about more serious offending could be corroborated. One Dundee case may have been marked appropriately but no reasons were given for the decision, making it difficult to properly assess. This case involved a breach of solemn bail that was dealt with at summary level. During our interviews, we heard about a more general issue regarding solemn marking deutes dealing with breaches of bail in solemn cases not recording the rationale for instructing proceedings at the lower summary level.
133. We also made an overall assessment of the quality of the marking in each of the 60 cases, including whether this was in accordance with COPFS policy. We assessed whether marking was fully, mostly, to some extent, or not at all in line with requirements set out in all COPFS policy and guidance. We took into account matters such as:
- the timeliness of marking decisions
 - the use of appropriate charges and aggravations
 - the drafting of charges (including not making reference to the victim's address where this was not known to the accused)
 - instructions regarding remand or bail
 - instructions regarding the further preparation of the case, including any need for advance preparation
 - the identification of evidence capable of agreement
 - the consideration given to supporting victims who had been identified as non-engaging witnesses, or at risk of not engaging
 - the citing of child witnesses.
134. In respect of the Dundee cases, we also took into account additional requirements set out in the summary case management pilot guidance, including whether marking instructions noted:
- a reasonable plea and the basis for it
 - whether key evidence was disclosed to the defence at the time of marking
 - the evidential basis for proceeding
 - whether there is a sufficiency of evidence without the victim giving evidence.
135. We considered that the marking in 18 (30%) cases fully complied with all requirements; 22 (37%) mostly complied; and 15 (25%) complied to some extent. In five (8%) cases, we considered that while some requirements were present, those missing were of such significance that the marking was poor overall.
136. Below, we set out some of the issues we noted in case marking. Elsewhere in this report, we also highlight the consequences of inadequate initial marking decisions and instructions.
137. There was no correlation between the quality of marking decisions and the team marking the case. Good and poor marking decisions and marking instructions were evenly distributed across both NICP and local court teams. This is perhaps surprising – it may have been expected that the quality of marking would be consistently better when carried out by NICP, the specialist marking team.

138. The quality of marking in the Glasgow cases we reviewed was substantially better than elsewhere. We were not able to definitively establish why this was so. We considered whether the Glasgow Domestic Abuse Unit played a role in better marking decisions in undertaking cases. While this may have been a factor in some cases, most of the undertakings were marked by members of the local court team, rather than the Domestic Abuse Unit. The better standard of SPRs in Glasgow appeared to play a stronger role in the quality of marking decisions – indeed, across the cases we reviewed, there appeared to be a correlation between the standard of the SPR and the quality of the marking decision. While there were examples of a marking depute taking steps to address the deficiencies in SPRs, a correlation between the standard of the SPR and the marking decisions highlights the importance of the police getting it right from the start of the case’s journey through the justice process. It also highlights the need for marking deputies to take steps to address any deficiencies in the SPR at the earliest opportunity.

139. The quality of marking in Dundee was also better than in the Rest of Scotland cases, although where it fell short, this was often because the additional requirements associated with the summary case management pilot were not followed. This suggests a need for greater training and awareness raising of additional requirements when implementing the pilot, and has implications for the pilot’s rollout to other areas.

Charges

140. When reporting a case to COPFS, the police must select the most appropriate charge and include any relevant aggravations. It is normal practice for marking deputies to add, amend, or remove the charges put forward by the police after careful consideration of the circumstances and taking into account evidential rules and how charges require to be corroborated or proved by evidence led at trial.

141. Of the 60 cases we reviewed:

- in 41 (68%) cases, the charges on the complaint matched those on the SPR
- in nine (15%), the marking depute changed the charge
- in seven (12%), a charge was added
- in three (5%), charges were removed or merged.

142. We saw examples of marking deputies making appropriate changes to charges when required. For example, in two cases, after instructing further enquiries, the marking depute changed the original charges (assaults and threatening and abusive behaviour) to contraventions of section 1 of the Domestic Abuse (Scotland) Act 2018.

143. Selecting the appropriate charge can be a complex and finely balanced decision. In 55 (92%) cases, the charges were correct. However, in five (8%) cases, we considered the charges were either not appropriate or that there were missing charges. For example, in some cases, there was additional criminal conduct that was not libelled. In other cases, the charges chosen by the marking depute were competent, but may have caused evidential difficulties at a later stage that should have been foreseen.

Aggravations

144. In Scotland, criminal offences can be aggravated by factors which make the offences more serious and therefore likely to increase any sentence upon conviction. A wide range of aggravations exist, including those relating to hate crime, serious and organised crime, and offending while subject to a court order. Section 1 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 introduced a domestic

abuse aggravation. Deputes can apply the aggravation to any offence where, in committing the offence, the accused intends to cause or was reckless about causing their partner or ex-partner to suffer physical or psychological harm. If the accused is convicted of the aggravated offence, the court must record the offence as being so aggravated and take it into account when sentencing. Another consequence of this particular aggravation is that, upon conviction, the court must consider, without application by the prosecutor, whether to make a non-harassment order.⁴⁴

145. A domestic abuse aggravation was applied appropriately in most of the cases we reviewed. However, there were some exceptions: in four cases, the domestic abuse aggravation was used inappropriately or unnecessarily; and in three cases, it was missing.
146. We reviewed several cases which included a charge that the accused had breached special conditions of bail, in contravention of section 27(1)(b) of the Criminal Procedure (Scotland) Act 1995. We noted inconsistencies in how this was approached by marking deputes and this was echoed in our interviews with them. There appeared to be particular confusion about the approach to be taken when the accused and the victim were found in one another's company. Some felt this meant the aggravation, requiring proof of the accused's intention to cause or recklessness as to causing physical or psychological harm, was not competent. While some thought that the victim was 'complicit' in the breach of bail and therefore the aggravation was not appropriate, other deputes were keen to explore the circumstances and the accused's behaviour in more detail, mindful of the possibility, for example, that the victim may be with the accused under duress. One senior prosecutor we interviewed had noted inconsistency among their team on this issue and had provided them with further guidance.
147. Section 5 of the Domestic Abuse (Scotland) Act 2018 created an aggravation to reflect the harm caused to children by domestic abuse. It can be applied to an offence under section 1 of the 2018 Act where the accused committed the offence in a way which involved a child. This child aggravation was missing from the complaint in two of the cases we reviewed. It had also been missing from an SPR, although this was rectified by the marking depute. COPFS has been alert to the issue of missing child aggravations and has been monitoring and quality assuring cases to ensure it is used appropriately. This has resulted in operational reminders being sent to all staff, and feedback being given to those who have failed to apply it correctly.
148. We also noted errors relating to other aggravations. For example:
- an aggravation relating to disability was missed in three cases and used unnecessarily in one case
 - an aggravation relating to offending occurring in breach of bail was missed in one case.
149. Given that so many cases were marked by NICP, a national team, we would have expected more consistency in the appropriate use of aggravations. However, we found a far greater number of errors in the use of aggravations in the Rest of Scotland cases, compared to those in Glasgow and Dundee.
150. The errors we found relating to the use of aggravations generally, as well as the inconsistency in applying the domestic abuse aggravation to breaches of bail, show this is an area for improvement. Some efforts have already been made to address this, such as monitoring the use of child aggravations and individual leaders

⁴⁴ Section 234AZA Criminal Procedure (Scotland) Act 1995.

providing further guidance to teams. These approaches should be employed more widely however to ensure aggravations are applied when appropriate. This is particularly important in domestic abuse cases given that they may lead to more protection being offered to victims in the form of non-harassment orders.

Recommendation 3

COPFS should ensure that statutory aggravations are applied where appropriate. This could be done via additional training and guidance, as well as quality assurance and feedback to staff.

Marking instructions

151. When marking a case, the marking depute is required to provide instructions to the court depute who will manage the case at its first calling. Marking deputies have the opportunity to consider the circumstances of the case in full, meaning they are best placed to assess what might be an acceptable plea, what evidence might be agreed, and to assess whether bail should be opposed and, if granted, whether special conditions of bail should be sought. The court depute will likely be managing multiple cases at once and will therefore place significant reliance on the marking depute's instructions.

Bail

152. In the SPR, the police should provide an initial assessment of the risk posed by the accused should they be granted bail and, if so, whether special conditions should be sought. The marking depute takes the information supplied by the police as well as COPFS policy and any other relevant information into account, before recommending to the court depute whether the Crown should oppose any bail application made on behalf of the accused.

153. While the Crown may oppose any bail application, the decision whether to remand or bail the accused and what conditions should be applied is one for the court. In the cases we reviewed, there were 21 cases where the Crown opposed bail. The accused was remanded in two. In the remaining 19 cases, the Crown opposed bail but it was nevertheless granted by the court.

154. In domestic abuse cases, in addition to standard bail conditions, special conditions of bail are frequently sought by the Crown.⁴⁵ These special conditions offer additional protection to the victim and, where relevant, other witnesses. The most common special condition of bail is that the accused must not approach or contact, or attempt to approach or contact, or communicate directly or indirectly with the victim. Another common special condition of bail is that the accused must not enter a property or street where the victim resides. While both these special bail conditions are common in domestic abuse cases, it is important that careful consideration is given to whether they are required in every case. If, for example, a victim does not want one or either these conditions, the marking depute is reliant on the SPR saying so. This information was not always provided by the police.

155. Following a domestic abuse incident, some victims may move to an address not known to the accused for safety reasons, and this would be revealed should the second of the special conditions mentioned above be sought. In cases where

⁴⁵ When an accused is granted bail, they are subject to 'standard conditions' that they must appear at every court hearing, must not commit an offence, must not interfere with witnesses or obstruct the course of justice, must not behave in a manner which causes fear, alarm or distress to witnesses, and must be available for any enquiries or reports that may be required to assist the court (section 24(4)(a) of the 1995 Act).

offending occurs via electronic communication, the accused may be unaware of the victim's address. To safeguard the victim's safety, it is essential that COPFS does not reveal the victim's address to the accused. This is highlighted in policy and guidance, and reminders have been issued to staff to be mindful of the risks of disclosing confidential information to the accused. Nonetheless, in two of the Rest of Scotland cases we reviewed, the marking depute instructed that special conditions of bail be sought that named the victim's address. This was despite information in the case that suggested the address was not known to the accused. Victims and advocacy workers also told us that the disclosure of confidential information to the accused continued to be an issue.

156. We noted that some marking deputies used an aide memoire for their marking instructions, which encouraged them to confirm that they had considered whether the victim's address was known to the accused. This appeared to be effective, but it was not a service-wide practice.

157. Victims and advocacy workers also told us that the victims' children were not always protected by special conditions. There was one case in our review in which the marking depute failed to specify that the children should be covered by the bail conditions, but this was addressed by the court depute. There was a sense among those we interviewed that deputies and sheriffs were reluctant to include children in special bail conditions as this would interfere with the accused's right to family life. However, some sheriffs we interviewed said it was not always made clear in the complaint or by the court depute whether children were involved or witnessed the domestic abuse, or how they were impacted by it. One potential barrier to highlighting the role of children in domestic abuse incidents is that the child aggravation can only be applied to contraventions of section 1 of the 2018 Act, but not any other offences.

158. While the approach taken by COPFS to bail was good in most of the cases we reviewed, there is generally a need for both the police in their SPRs and for marking deputies to take a more tailored approach that focuses on the individual circumstances of the victim and any child witnesses. To facilitate this, relevant information should be included in SPRs. Where it is missing, it should be requested by marking deputies so that the most appropriate bail conditions can be put in place.

Non-engaging victims

159. An important consideration for marking deputies is the victim's attitude towards any prosecution and whether they are likely to engage in the process and give evidence if required. Where it appears the victim may not engage, we consider that the marking depute should highlight that action be taken to ascertain the victim's latest position (which may have changed since they spoke to police), to provide information and reassurance about the prosecution process, and to signpost the victim to support services if needed. We consider that COPFS should be more proactive at an earlier stage in its efforts to engage and support victims who are at risk of not supporting a prosecution.⁴⁶

160. Consideration should also be given to whether the victim's evidence is needed – it is possible that the charges may prove without the victim and on the basis of other evidence such as CCTV and 999 calls. In England and Wales, this is known as an evidence-led prosecution (that is, a prosecution that does not rely on the victim's evidence). We consider that in domestic abuse cases, marking instructions should always specify whether the prosecution can proceed without the victim. This recognises the distinct nature of domestic abuse cases, and the fact that domestic

⁴⁶ See from paragraph 346 and Recommendation 17.

abuse victims are more likely not to engage or change their mind about supporting a prosecution (often in response to pressure from the accused or in light of concerns about the impact of a prosecution on their family life). Specifying whether the prosecution can proceed without the victim is already a requirement in the marking of cases falling within the summary case management pilot, but is not yet widespread. We consider that it should become the norm in all domestic abuse cases and will assist in the ongoing management of the case. COPFS should not wait for a national rollout of the pilot before making this a requirement.

Recommendation 4

In domestic abuse cases, COPFS should require that marking instructions specify whether there is a sufficiency of evidence without the victim giving evidence.

Summary case management pilot (Dundee)

161. As noted at paragraph 134, deposes marking summary case management pilot cases are required to address additional issues in their marking instructions. From the cases we reviewed and from our interviews with court deposes in Dundee, we noted that these additional requirements are having a positive impact on case management. While some marking deposes we interviewed were not sure whether the additional instructions they provided were helpful, court deposes were clear that the more detailed instructions were a significant improvement. The instructions helped them to better manage multiple cases while in court, not just at the case's first calling but throughout the preparation and prosecution process. They said marking deposes had sometimes highlighted relevant case law as well as strategies on how to manage charges that may be difficult to prove, all of which court deposes found helpful. COPFS should ensure that such positive feedback is shared with marking deposes so they are aware that the additional work they are doing is valued and has a positive impact on cases at court.

Preparing and prosecuting cases

162. Case preparation begins when the marking depute marks the case for prosecution and provides instructions to those who will manage the case as it progresses. Generally, the same depute does not manage a summary case on its journey through the prosecution process. Instead, different deputies may deal with the case at different stages, including at the accused's first appearance in court, at any other pleading diets, at pre-intermediate diet meetings, at intermediate diets and at trial diets.
163. If the accused pleads not guilty, a number of standard case preparation steps are triggered. This includes contacting the reporting officer to request that witness statements be submitted electronically and that productions and labels be lodged. We noted that some instructions to the police simply state, 'send in all productions and labels'. This instruction was given even in cases where there were no productions or labels, or where the police had already submitted the evidence. We saw cases where this caused confusion and delay. To avoid this, instructions to reporting officers regarding the submission of evidence should be tailored to the individual case.

Advance Notice Trials and Advance Preparation Trials

164. Marking deputies are able to flag any cases which they consider require additional attention. This is helpful, and allows non-routine cases to receive early or additional preparation by court deputies. Cases can be flagged as either an Advance Notice Trial (ANT) or an Advance Preparation Trial (APT). Guidance on what is an ANT or an APT is inconsistent however, and practice varies between deputies.
165. Case marking instructions published by COPFS state that cases with complex or unusual legal or evidential issues, or in which there are particular sensitivities, should be flagged as an ANT. No mention is made of APTs in the instructions.
166. A separate summary legal guidance manual mentions both ANTs and APTs and notes the distinction between them. The manual states that cases involving a child witness or which are high profile, but which are also routine and do not require significant preparation, should be flagged as ANTs. In contrast, cases which require significant advance preparation should be flagged as APTs. Such cases may require a nominated depute to prepare and manage the case to completion. In the domestic abuse context, APTs might include a complex stalking case.
167. We considered it likely that the manual sets out the most up to date approach, but that the case marking instructions had not been amended accordingly and that efforts to raise awareness of the new approach had been inadequate. During our interviews, we heard varying explanations of when a case should be flagged as an ANT or an APT. Some deputies had never heard of the latter. Some deputies said they automatically flagged all domestic abuse cases as requiring some form of advance notice or preparation, regardless of complexity.
168. In the cases we reviewed, we noted that marking deputies took different approaches to whether they marked cases as ANTs or APTs. Practice generally did not align with the guidance set out in the manual. Of the 60 cases we reviewed, 49 (82%) were marked for some form of advanced notice or preparation. We considered that only seven merited being flagged in this way. We also considered that one case which should have been flagged for advance preparation was not. If such a large proportion

of cases had in fact required some form of advance preparation, there is a risk the current model and resourcing for managing summary cases would not be sustainable.

169. The failure to appropriately identify ANTs or APTs at the marking stage means that once cases pass to the local court team, they require to be reassessed. In one area, a Principal Depute reviewed all flagged cases before deciding how they should be managed. In another area, it was left to the depute dealing with the intermediate diet to decide whether cases should be ANTs or APTs, by which point vital preparation time has already been lost.
170. While there will always be a role for Principal Deputes to make decisions about the handling of cases in light of their greater knowledge of the experience levels within their teams, we consider that identifying whether a case requires advance notice or preparation should happen at the earliest opportunity (that is, by the marking depute). Routinely revisiting the marking depute's decision involves unnecessary duplication. What is key to this 'getting it right first time' approach however, is all deputes having a shared understanding of ANTs and APTs and the thresholds that cases must reach before being so designated, so that local deputes can have confidence in the marking depute's assessment.
171. We were also concerned that even where a case was identified as requiring advanced preparation, this was not always acted upon. One case we reviewed involved a charge under section 1 of the 2018 Act. The charge spanned three years, and the SPR noted the victim was not fully engaged and had extensive health issues. The marking depute noted that advance preparation was needed, but this was not actioned. At a later date, a court depute also noted that the case required to be allocated to a depute for additional attention, but this was not done. It was only when a second court depute made the same observation that the case was allocated to a named depute. There were significant delays in this case, including five intermediate diets (the case was still ongoing at the end of our review period and further diets had been scheduled). These delays could have been avoided had a depute been given ownership of the case at an earlier stage.
172. Even where court deputes were allocated ANTs and APTs, we heard they lacked time to prepare cases adequately. Some deputes said their workload was such that they prepared the next day's cases in the evening after spending the day in court, or at weekends.⁴⁷
173. The need to allocate a depute to a case can also emerge later in the process, in light of new information or the case's lack of progression. For example, we heard from an advocacy worker about a case that experienced repeated adjournments. These were having a negative impact on the victim. A depute dealing with the case at one of the later adjournments acknowledged the impact on the victim and committed to retaining the case himself, ensuring that the outstanding issues were resolved prior to its next calling. The victim and advocacy worker greatly appreciated the attention the depute gave to the case.

Recommendation 5

COPFS should ensure there is a shared, service-wide understanding of Advance Notice Trials and Advance Preparation Trials. There should be a clear, efficient process for

⁴⁷ Lack of preparation time for deputes is explored further at paragraph 210.

identifying cases that require advance notice or preparation and for ensuring that they receive the additional attention they require.

Lack of ownership

174. Unless a case requires advance preparation, it is generally not allocated to a specific court depute. Instead, as noted above, different deposes may deal with a case at different stages. While no one 'owns' a case throughout its journey, the rationale behind this model of case preparation is that it allows summary cases to be managed more efficiently.⁴⁸ In some cases, this model works well. However, in too many cases we reviewed, a lack of ownership and a failure to address issues promptly during preparation led to delayed and/or poor outcomes.
175. We consider that this model of case preparation risks unintended consequences that require to be managed. Cases that illustrate these consequences are highlighted throughout this report.
176. One consequence is that when issues emerge in a case, they may not be dealt with immediately. Emerging issues could include new information being submitted by the police, or a request from a victim for information or an enquiry about an excusal. These issues are often only picked up by the depute who is preparing the case for its next calling, by which point valuable time to deal with those issues may have been lost. We also saw examples of deposes not picking up on new information when they prepared cases, or noting the issue but failing to consider how it affected the case as a whole.
177. Administrative staff are often the first to be aware of new issues and will try to bring them to the attention of a depute. However, they told us that often there were no deposes available to deal with them. They said in the past, there was often a depute working in the office who would deal with queries as and when they arose. Now, deposes were often either in court or preparing cases at home, or simply lacked capacity to deal with queries. Because of this, administrative staff felt it was not unusual for issues to go unactioned until the case was prepared for its next calling.
178. It is not just new issues that risk being left unaddressed until the case's next calling. We also saw examples of deposes failing to address during their case preparation issues which were known about since the outset. For example, in some cases, it was known from the police report that the victim was either not supportive or even resistant to a prosecution. Nonetheless, no proactive steps were being taken to address this, such as monitoring whether the victim's position changed over time, or providing additional support or reassurance. The victim's attitude towards the prosecution then became problematic at a later stage, including their non-attendance at trial diets. In reviewing our cases, it sometimes appeared as though the approach was one of hoping for the best, without sufficient steps being taken to achieve a positive outcome. In both Glasgow and Dundee, an 'enhanced engagement' model with victims had been introduced to help resolve these issues (see from paragraph 346).
179. Another consequence of the model used for preparing summary cases is that when a depute preparing the case instructs a task, it is often not followed up promptly. Thus, tasks that remain unactioned, or not actioned appropriately, are often not noticed or dealt with until the next calling of the case. For example, in one case we reviewed,

⁴⁸ For example, a depute prepares and manages all the cases calling in an intermediate diet court on the same day, rather than having deposes come and go to deal with their own cases.

the same request was made to the reporting officer several times over a period of a few months. No action was taken to escalate to the police the lack of an appropriate response. The failure to fulfil the request eventually led to an adjournment and then a plea being agreed to amended charges as the evidence requested was still unavailable.

180. Deputes' focus on preparing the case for its next calling can result in a failure to consider the case as a whole, including to continuously re-evaluate whether the prosecution should proceed. Cases passing from one depute to the next can result not only in a lack of ownership but also a lack of accountability for effective case preparation and management. It is often the trial depute who is left dealing with the consequences of this, including by having to seek an adjournment or decide to discontinue at a late stage.
181. COPFS's model for preparing and managing domestic abuse cases at summary level, whereby cases pass from depute to depute at different stages, was not working well in too many of the cases we reviewed. It is possible that some issues will in part be addressed by the further rollout and effective implementation of the summary case management pilot. However, there is still a need to ensure there is effective oversight and grip of cases by COPFS throughout the preparation process. If COPFS is to retain its current model of preparing domestic abuse cases at summary level, it must do more to mitigate and manage the associated risks. It should ensure that:
- new information is brought to the attention of deutes and acted on promptly
 - deutes are available to deal with urgent and unexpected queries as they arise
 - tasking is followed up timeously
 - action is taken to address any risks to the efficient progression of the case
 - deutes have sufficient time to address issues during their case preparation.
182. If the risks associated with the current model are not more effectively managed, then a more fundamental review of the model of domestic abuse summary case preparation by COPFS is required.

Recommendation 6

COPFS should ensure that domestic abuse cases at summary level are prepared effectively. This will require that:

- (a) new information is brought to the attention of deutes and acted on promptly
- (b) deutes are available to deal with urgent and unexpected queries as they arise
- (c) the tasking of reporting officers is followed up timeously
- (d) action is taken to address any risks to the efficient progression of the case
- (e) deutes have sufficient time to address issues during their case preparation.

First appearance and pleading diets

183. At their first appearance before the court, the accused is asked how they plead to the charges on the complaint. One aim of a first appearance is to resolve cases in accordance with the 'acceptable plea' that has been set out by the marking depute. This brings cases to a swift conclusion, meaning that neither victims nor any witnesses are required to give evidence at court and freeing up court time to deal with cases that cannot be resolved. Of the 60 cases we reviewed, a third resolved at the first appearance: in 11 cases, the accused pled guilty as libelled; and in nine cases, the accused pled guilty to an amended charge.

184. In the Glasgow cases, six accused pled guilty as libelled and only one pled guilty to an amended charge. The numbers were exactly reversed in the Rest of Scotland

cases. Our case samples were not statistically significant, and we were unable to establish whether this finding was random or whether it reflected a broader approach to pleas in Glasgow compared to elsewhere. It may also have been linked to the better quality of police reporting we noted in Glasgow.

185. Of the 40 cases that did not resolve at first appearance:

- 21 accused pled not guilty
- 17 cases were continued without plea
- two accused failed to appear in court and a warrant was taken for their arrest.

186. Of the cases that were continued without plea (CWP), 13 of these were from Dundee. Most cases were continued for one or more of the following reasons:

- for COPFS to disclose key evidence to the defence
- for the defence to take instructions from the accused
- for there to be engagement between COPFS and the defence.

187. Cases being continued without plea by the court is an intended feature of the summary case management pilot in Dundee. The expectation is that early disclosure of key evidence leads to the earlier resolution of cases, and that this is supported by early proactive case management by the sheriff. Where cases cannot be resolved at first appearance, the goal is to continue to seek to resolve the case at a case management hearing, rather than a trial date being assigned unnecessarily. The pilot's interim evaluation found that 19.4% of Dundee cases resolved at a CWP diet, up from 13.6% pre-pilot.⁴⁹

188. While a reduction in the number of trials being assigned unnecessarily is to be welcomed, there is a need to monitor the frequency with which individual cases are CWP by the court and the overall length of time for which they are CWP. There will be a need to guard against repeated CWPs inadvertently prolonging the journey time of cases.

Disclosure

189. COPFS has a duty to disclose all material information to the defence, including that which strengthens or weakens the case against the accused.⁵⁰ In standard summary procedure, once COPFS has requested full statements, the police require to submit them within seven days if the accused is in custody or within 28 days if the accused is on bail. COPFS staff then review the statements and disclose all material evidence no later than seven days (custody) or 28 days (bail) prior to the intermediate diet. The defence require to provide COPFS with a letter of engagement before evidence can be disclosed.

190. Of the cases we reviewed, those from Glasgow and the Rest of Scotland should have followed the rules relating to standard summary procedure. In these 40 cases, only 26 proceeded to a pre-intermediate diet meeting (PIDM) and/or an intermediate diet where a request was made to the police for statements and other evidence which required disclosure. Disclosure was completed within target in only six of the 26 cases (23%).

191. In 18 cases where disclosure was not achieved within target, this was for reasons outwith COPFS control. The most common reasons were the police had not yet submitted evidence to COPFS, or that the defence had not yet submitted a letter of engagement. In two cases, COPFS appeared to be at fault for not disclosing the material within target.

⁴⁹ SCTS, [The summary case management \(SCM\) pilot: Interim evaluation](#) (2023) at page 17.

⁵⁰ Further information about disclosure can be found in COPFS, [Disclosure Manual](#) (2014).

192. In some cases we reviewed, we saw good examples of COPFS disclosing evidence on the same day it was received from the police or on the same day a letter of engagement was received. However, we also noted that where evidence and a letter of engagement had been submitted, COPFS did not always respond promptly. In one case, a letter of engagement was not received until 15 days before the intermediate diet, but disclosure was not made until after the intermediate diet. Staff told us that delays in disclosure were the result of administrative backlogs and a lack of resources. They said cases were often not looked at until immediately before or after the next court hearing.
193. Delayed disclosure by COPFS can result in cases being adjourned, which wastes valuable court time and prolongs the justice process for both the victim and the accused. COPFS should ensure that once evidence is submitted by the police or a letter of engagement is received from the defence, it is able to carry out disclosure promptly.
194. COPFS has shown strong performance in relation to disclosure in the summary case management pilot, particularly in Dundee. A key feature of the pilot is the early disclosure of key evidence to the defence. This is to encourage guilty pleas to be made at an earlier stage, and to reduce the number of cases set down for trial unnecessarily. In its interim evaluation of the pilot, SCTS note that in Dundee, 94% of key evidence was disclosed to the defence within three days of receipt of a letter of engagement. This exceeds the target of 90%.⁵¹

Agreeing evidence

195. In the cases we reviewed, we saw efforts by COPFS to agree evidence at the earliest opportunity which we welcomed. Section 257(1) of the Criminal Procedure (Scotland) Act 1995 places a duty on the prosecutor and the accused to identify facts which they seek to prove and which are likely to be undisputed by the other party. Agreeing evidence reduces the evidence that requires to be led at trial, saving court time and potentially reducing the number of witnesses that need to be cited.
196. In domestic abuse cases, where the victim and accused are known to one another, it is usual to agree the identification evidence of the victim at the first calling of the case (that is, that the partner or ex-partner of the victim is the accused). In the majority of the cases we reviewed, the marking depute had instructed the court depute to seek to agree identification evidence at the outset. This avoided the victim having to identify the accused at an identity parade, which was beneficial for the victim and also saved police and court time.

Pre-intermediate diet meetings

197. Pre-intermediate diet meetings (PIDMs) were introduced in 2020.⁵² Their purpose is to ensure that meaningful communication takes place between the Crown and the defence with a view to resolving cases early. Where cases cannot be resolved and are ready to go to trial, a trial diet will be assigned and parties only need attend an intermediate diet where necessary. It was also hoped that preparing for the PIDM would prevent court time being lost through last minute adjournments.
198. There was a high level of scepticism among deutes and defence agents about the value of PIDMs and whether they were achieving their purpose. Deutes felt that a lack of engagement from many defence agents limited the value of PIDMs. They also said they lacked preparation time, meaning discussions at PIDMs were not as

⁵¹ SCTS, [The summary case management \(SCM\) pilot: Interim evaluation](#) (2023) at pages 14 and 17.

⁵² For further information, see Practice Note No. 3 of 2022.

productive as they should have been (this lack of preparation was also evident in the cases we reviewed). Defence agents told us the value of PIDMs varied depending on the depute, their level of preparation and whether they felt authorised to make decisions. Deputes and defence agents told us that sheriffs varied in their approaches, with some content to move straight from PIDM to trial, while others insisted on intermediate diets, leaving them wondering why a PIDM had been necessary.

199. Deputes also told us that guilty pleas still tended to occur at either first appearance or at the trial diet, rather than at the PIDM. Of the cases we reviewed in Glasgow and the Rest of Scotland, 24 had a PIDM.⁵³ In only one case, from the Rest of Scotland, was a plea agreed at the PIDM and tendered at the subsequent intermediate diet.

200. We also found that, in almost all cases, key issues were not resolved at PIDMs and that intermediate diets were continued for reasons which should have been addressed at or even before the PIDM. Examples of issues not resolved at PIDMs that necessitated intermediate diets included:

- COPFS was awaiting evidence from the police or the outcome of enquiries
- it was not known whether witnesses had been successfully cited
- disclosure by COPFS was incomplete
- there was no letter of engagement from the defence or the defence had only recently been instructed
- the defence had ongoing enquiries
- evidence was still to be agreed by the parties.

201. From the evidence we gathered, it was clear that there is still some work to be done before PIDMs will fulfil their purpose. This will require more timely completion of enquiries by the police, as well as a greater focus on effective preparation by COPFS and the defence.⁵⁴

202. In the cases we reviewed, we observed poor recording of discussions and outcomes of PIDMs in case files. Staff told us there was no clear guidance on whether and where to record information about PIDMs in case files, resulting in varying practice. In one case we reviewed, the depute preparing for the PIDM decided to take no further action. This decision was recorded in a document sent to the sheriff clerk, but the case file was not updated. This meant the victim was not informed of the outcome. It also led to another depute re-raising the case several months later, after they mistakenly thought the case had been missed. This was successfully challenged by the defence.

Recommendation 7

COPFS should ensure that an accurate record of discussions and decisions at pre-intermediate diet meetings is made in the electronic case file.

⁵³ In the summary case management pilot cases in Dundee, the focus was on case management hearings, rather than PIDMs.

⁵⁴ A new plea surgery in Glasgow was introduced in late 2023 to facilitate early pleas and avoid the number of cases calling at trial. We were not able to consider this initiative in detail as it was introduced after our evidence gathering had concluded, but early indications were that it was promising. SCTS, [New initiative leads to early resolution of over 130 cases at Glasgow Sheriff Court in three days](#), 13 November 2023.

Intermediate diets

203. The intermediate diet is usually set between two and four weeks before the trial diet. Its purpose is for the court to establish the state of preparation of COPFS and the defence and whether the trial diet is likely to go ahead. The intermediate diet should be the end of the period of case preparation, rather than the beginning.
204. Within COPFS, preparation for intermediate diets is a role for both administrative and legal staff. We found good examples of administrative processes which make it clear whether key preparation steps have been completed, such as whether disclosure is complete and the number of witnesses successfully cited. However, in the cases we reviewed, we noted that some of the issues that had been unresolved at the PIDM remained unresolved at the intermediate diet. In fact, of the 24 cases from Glasgow and the Rest of Scotland in which PIDMs took place, one case was discontinued, a plea was agreed in another case, and in just two cases, the issues which were outstanding at the PIDM were resolved by the time of the intermediate diet. Consequently, 20 cases called for intermediate diets with issues still unresolved from the PIDM.
205. We also noted that various deposes were involved in preparing cases for PIDMs, carrying out PIDMs, preparing cases for intermediate diets, and carrying out intermediate diets. This contributed to the sense that there was a lack of ownership of cases and seeing any issues through to completion. We noted that some of the same issues that arose early in the case remained unresolved throughout the process, and that there was a lack of clarity about who was responsible for actioning and following up tasks. For example, in one case, three deposes were involved in case preparation at various points within a few days of one another, and each depute made a different request to the reporting officer.
206. We did also see good examples of deposes taking action which was followed up by other deposes at later stages in the case.
207. Failing to address issues before the intermediate diet can affect the overall journey time of cases and can take up additional court time. While some cases continue to the first trial diet in the hope that preparation will be complete by that date, other cases require an additional intermediate diet before the first trial diet. In some cases, the first trial diet is adjourned and further intermediate and trial diets are set. In the Glasgow and Rest of Scotland cases we reviewed, around half the cases had trial diets adjourned at intermediate diets. In one Glasgow case, the trial diet had been adjourned six times at numerous intermediate diets.
208. In the summary case management pilot in Dundee, case management hearings were generally replacing PIDMs and intermediate diets. The pilot's interim evaluation notes that robust case management meant intermediate diets were often no longer required.⁵⁵ One benefit of case management hearings compared to PIDMs was that, because the accused was generally in attendance, the defence could immediately take instructions, increasing the likelihood that issues could be resolved.

Citations

209. A key aspect of trial preparation is knowing whether or not the victim and any other witnesses have been successfully cited for the trial diet. We heard about inconsistent practice across sheriffdoms as to whether courts checked that witnesses had been successfully cited before proceeding to trial. Some did not on the basis that COPFS was not always able to provide up to date information on the execution of citations.

⁵⁵ SCTS, [The summary case management \(SCM\) pilot: Interim evaluation](#) (2023) at paragraph 1.22(i).

This meant cases were continued to trial diets with no certainty as to whether witnesses were available or attending. We also heard from victims about cases which had called at a trial diet without them having received a citation. This sometimes resulted in the case being discontinued, on the mistaken assumption that the victim was not supportive of the prosecution. The citing of witnesses to give evidence at court is an area that the inspectorate will revisit in our future work programme.

Trial diets

210. Final preparation for the trial diet is carried out by the depute who will prosecute the case in court. We heard from deputes that they often lack sufficient time to prepare cases for trial to the standard they would like. Some were worried they were providing a poor service to victims. They said trial preparation was often done at home the evening before the trial after spending the day in court or at weekends. They also said that court loadings made preparation more difficult. While the number of cases set down for trial each day varied from court to court, deputes felt that the numbers were often too high. This meant they had to prepare multiple cases, knowing that only a few would go ahead. Some deputes said they were relieved when certain cases did not proceed to trial as they felt insufficiently prepared and hoped that the cases would get more attention at their next calling. A recurring theme in our discussions with victims and advocacy workers was that when they met trial deputes at court, they felt the deputes did not know the details of the case.

211. In courts across Scotland, more cases are scheduled to go to trial in a particular court each day than is possible to accommodate. This is because many cases will not go ahead. This may be for a range of reasons, including that the accused pleads guilty at the last moment or because witnesses or the accused do not turn up at court. Courts with a high number of trials scheduled result in at least some trials proceeding, meaning the court's time is not wasted. However, where the prosecutor, defence and witnesses prepare and attend at court for trial but it does not go ahead, it is their time that is wasted. This is, unfortunately, a current feature of the justice system. More positively, we heard that court loadings at the Glasgow Domestic Abuse Court were deliberately lower than those in other mainstream courts in Glasgow.

212. In the cases we reviewed, 35 had trial diets fixed and 31 of those proceeded to a trial diet (this included 12 cases in Glasgow, 10 cases in the Rest of Scotland and nine in Dundee). The outcomes were:

- in 10 cases, the accused pled guilty at the trial diet
- nine cases were adjourned and were still ongoing at the conclusion of our review
- five cases were discontinued
- evidence was led at trial in three cases and the accused was found not guilty
- three cases were deserted simpliciter
- in one case, the accused failed to appear at the trial diet, a warrant was granted and he was arrested and appeared from custody when he pled guilty.

Adjournments

213. While nine cases were adjourned and still ongoing at the conclusion of our review, another 10 cases also experienced adjournments prior to their conclusion. Trial diets can be adjourned for a range of reasons, and some trials can be adjourned more than once. At the conclusion of our review, one case already had a third trial diet scheduled, while another already had its fourth trial diet scheduled. It is possible that there will be further adjournments in these cases, as well as in the other seven cases that were still ongoing at the conclusion of our review.

214. Delays or adjournments were caused by:

- the victim or other witnesses failing to attend court
- the accused failing to appear
- the defence experiencing funding issues
- late disclosure by COPFS
- COPFS awaiting evidence.

215. In some cases, a combination of the above factors caused a trial to be adjourned. Adjournments were requested by the Crown or the defence, and sometimes by both parties. In two cases, the trial was adjourned by the court itself.⁵⁶

216. While the Crown is not responsible for some adjournments, there is more that it could do to minimise its responsibility for others. This includes through better case preparation and addressing issues such as late disclosure. Given that the most common reason for adjournments in the cases we reviewed was the failure of the victim to appear, we consider that there is more the Crown could do while preparing cases to anticipate and manage this. This could include providing more support and reassurance to victims to increase their likelihood of attendance. Alternatively, where the victim is adamant they will not attend, deutes should be proactively reviewing whether the case can or should proceed without the victim's evidence. We return to this issue from paragraph 346.

217. Although not the most common feature in the cases we reviewed, we heard during our interviews that adjournments are often caused by evidence not being ready for trial. We were told about delays in formatting evidence appropriately for court – this included, for example, the reformatting of CCTV or mobile phone footage. This is an issue which should be addressed through the rollout of DESC. Until then, it requires to be better managed during case preparation by both COPFS and the police.

218. We were also told that forensic or cybercrime reports, or transcripts of joint investigative interviews of children, have often not been received by COPFS within the shorter timescales set for summary domestic abuse cases. This suggests that, in cases where such evidence is needed and if the evidence itself cannot be expedited, then more realistic timescales for trial diets should be considered.

Recommendation 8

To avoid unnecessary adjournments, COPFS should ensure that, where it is clear during case marking or case preparation that the complexity of the case or the nature of the evidence required will mean early trial diets are not achievable, then more realistic trial diets should be sought.

Discontinuations

219. Throughout the life of a case, the decision to prosecute should be kept under continuous review. The marking depute's initial decision may no longer be appropriate if new evidence emerges or circumstances change. As court deutes manage and prepare the case, they should also be reassessing whether there is a sufficiency of evidence and whether it is in the public interest to prosecute. Where that is no longer so, they may decide to discontinue proceedings.

220. COPFS has issued extensive guidance to staff setting out the policy and process for discontinuing cases. In domestic abuse cases, there is a presumption against

⁵⁶ The court can adjourn a case *ex proprio motu* (at its own discretion) in certain circumstances, such as lack of available court time.

discontinuation. Any decision to discontinue proceedings where a sufficiency of evidence still exists must be approved by a Principal Depute or more senior prosecutor who has also completed the domestic abuse accredited prosecutor training. Reasons for discontinuations must be recorded. Approval to discontinue proceedings is not needed where there is no longer available and admissible evidence to secure a conviction.

221. Of the 60 cases we reviewed, seven (12%) were discontinued. One was discontinued at a further pleading diet and one at a PIDM. Four were discontinued at the trial diet, while one was discontinued the day before the trial. In all five cases that were discontinued at trial or the day before trial, we were concerned that had the case been managed and prepared more effectively, the decisions to discontinue would either not have been necessary or could have been made at a far earlier stage. This included cases where there were missed evidential opportunities, and cases where the reluctance of victims or witnesses, evident at an early stage, was not addressed.
222. In one case, the victim was supportive of the prosecution. The main corroborating witnesses were members of the accused's family who appeared reluctant witnesses from the outset. The accused was charged with assault, but the marking depute failed to include an additional charge of threatening and abusive behaviour. Once submitted, it was clear the witness statements made no reference to an assault. However, one witness statement supported the victim's allegation of threatening and abusive behaviour. The depute at the intermediate diet failed to notice the witnesses did not corroborate the assault. At the trial diet, the victim and other witnesses attended, but the depute made a motion to desert the case *pro loco et tempore*, stating that there was now insufficient admissible evidence. The position had not changed since the statements had been submitted however, meaning this decision could have been taken earlier. Moreover, a trial could have proceeded in respect of a charge of threatening and abusive behaviour, had that been included on the complaint.
223. In another case involving an adult victim and a child witness, it was clear from the SPR that the domestic abuse incident had been captured on the victim's call to the police. The call recording, which may have provided additional corroborative evidence, was never requested. The victim refused to provide a statement to the police and did not support the prosecution. The child witness had provided a statement but was anxious about attending court. No efforts were made to engage or support the victim or the child witness beyond routine written communication from VIA. The victim contacted COPFS in the lead up to the trial over the child's concerns about court. There was no record of the victim receiving any response. The victim attended court although made clear they were still not supportive of the prosecution. The child witness did not attend. The trial depute decided to discontinue proceedings. In this case, opportunities to explore the child's anxiety about attending court, including whether alternative special measures would have relieved their anxiety, were missed.⁵⁷
224. In addition to the seven discontinued cases in our sample, there was one case in which the trial depute chose not to seek a conviction after the trial had commenced. The accused was therefore found not guilty. In this case, the issue causing the trial depute to effectively discontinue the case was known about for some time. It had been flagged by the defence at the PIDM but not addressed. In this case, the victim had already given evidence at the trial before proceedings ended.

⁵⁷ This lack of exploration of appropriate special measures is examined in more detail from paragraph 320.

225. It is not unusual in domestic abuse cases for the victim to request that proceedings be discontinued. COPFS provides guidance to staff on how this should be managed. The guidance helpfully sets out a range of reasons why a victim may make such a request, and requires deposes to consider requests carefully. The police can be instructed to carry out further enquiries, including to verify that the victim has not been subject to manipulation, control, fear or intimidation by the accused. Deposes can also request further information from any organisations involved in supporting the victim.
226. We were concerned that this guidance was not always being followed in Glasgow. Rather than email requests from victims to discontinue proceedings being considered by deposes, a practice had developed where administrative staff were sending template responses saying that it was not possible for victims to withdraw and that proceedings would continue. This practice was not in line with guidance, which requires requests to be considered by deposes and a more tailored approach to be taken depending on the circumstances of the request and the case. This should be addressed.
227. One case that we reviewed was discontinued the day before trial. This was a result of a phone call by the trial depute to the victim. From the outset of the case, based on the information in the SPR, it was clear the victim did not support the prosecution. There was also information in the SPR about the personal circumstances of the accused that suggested prosecution may not have been in the public interest. The victim confirmed the details of these personal circumstances in the telephone call with the depute. The call revealed no new information, yet led to a decision to discontinue, two months after a decision to initiate proceedings. This case highlights an issue that was also raised with us by deposes during our interviews. While the initial decision by the marking depute to prosecute was not inconsistent with the policy, court deposes felt that initial decisions sometimes failed to take full account of the public interest and the value of a prosecution compared to other prosecutorial options. There is a need for communication between court and marking deposes about case outcomes. Regular reviews of discontinuations, for example, would facilitate feedback to marking deposes to inform future decisions.
228. In the cases we reviewed, we were concerned that guidance and processes surrounding decisions to discontinue were not always followed. The approval of a Principal Depute to discontinue cases was not always sought when it should have been. Conversely, approval was sometimes sought when it was not required. Decisions to discontinue proceedings on the day of trial meant that seeking approval was often not achievable. The reasons for discontinuation were not always recorded or, when recorded, they were not always clear.
229. There also appeared to be some confusion about the circumstances in which VIA should write to the victim to advise of a decision to take no further action, to 'not call' a case, or to desert pro loco et tempore.⁵⁸ This affected whether victims were appropriately advised of their right to review the decision.

⁵⁸ If a prosecutor decides to 'not call' a case then it automatically comes to an end without it calling in court and without any judicial decision on it. To desert a case pro loco et tempore is a motion made by the prosecutor after calling the case in court, before the sheriff, to bring proceedings to an end without the case being heard. In both these situations, there is the option for the Crown to re-raise these cases in the future in certain circumstances.

Recommendation 9

COPFS should provide clear guidance to staff on when a domestic abuse victim should be informed of a decision to discontinue a case and of their right to request a review of that decision.

230. At interview, we heard that deputies were generally wary of discontinuing domestic abuse cases. They were well aware of the robust approach that should be taken to domestic abuse set out in COPFS policy. Some deputies said they would repeatedly request adjournments in cases where the victim failed to attend court, in the hope the victim would attend a future trial. Others said they would not call the case or make a motion to the court to desert pro loco et tempore instead, in order that the case could be re-raised in the future.
231. When cases are not called or deserted pro loco et tempore, there appeared to be no clear review process to decide what action should be taken next. In one case we reviewed, the trial deputy decided at the first trial diet not to call the case due to the non-attendance of the victim and a witness. Both had been cited, but only two days prior to the trial. The victim had emailed COPFS saying that she did not wish proceedings to continue, but received no response. The case was reviewed around six months later and marked for no further proceedings. The victim was not informed of that decision.
232. Some guidance on deserting a case pro loco et tempore can be found on the COPFS intranet, including in its Book of Regulations, however it is outdated. While some Principal Deputies told us they reviewed such cases, this did not seem consistent across areas or sufficiently frequent. Regular and timely reviews of such cases ensures that decisions are made on what should happen next and, consequently, victims can be kept informed. Reviews also offer an opportunity to check the victim's current view on a prosecution, which may have changed during the intervening period, and to check whether there has been any further offending by the accused which may allow cases to be prosecuted together. Reviews also offer an opportunity to monitor deputy decision making, including at court, where seeking a Principal Deputy's approval to discontinue cases in line with guidance is not always practicable. They also provide an opportunity to learn lessons from cases that have not proceeded as planned.

Recommendation 10

Where cases are discontinued at court, COPFS should ensure that they are reviewed timeously by a Principal Deputy. The Principal Deputy should review whether the discontinuation decision was appropriate, identify if there is any learning arising from the case, and determine how the case should proceed.

233. Our findings regarding adjournments and discontinuations show that a greater proportion of cases would proceed to trial if case preparation was more effective. In the cases we reviewed, we found that too often, issues which caused adjournments or led to discontinuations in the latter stages of the case, including at trial, were known about either from the outset of the case or at a significantly earlier stage. There was, however, a failure to take ownership of the issues and to ensure they were resolved. This leads to a vicious circle:
- court loadings are high because so many cases do not proceed

- cases do not proceed for a range of reasons, but including because they are not effectively prepared
- cases are not properly prepared, in part because court loadings are too high.

234. As noted above, we anticipate that the rollout and effective implementation of the summary case management model may help address some of these issues, but further action, as suggested at Recommendation 6, also requires to be taken by COPFS in respect of its internal operations.

Progressing cases efficiently

235. There is a collective goal among justice agencies that domestic abuse cases should be prioritised and that early trial diets should be sought. For several years, they have worked towards a target of scheduling the first trial diet in a summary domestic abuse case within 10 weeks of the first calling of the case. The target was extended to 12 weeks during the pandemic. This target is referred to as the domestic abuse waiting period or waiting time. The Vision for Justice in Scotland, published in 2022, notes that domestic abuse cases were prioritised prior to and during lockdown but that, 'it is anticipated that it will take several years to manage the backlog and return to the waiting time of 10 weeks for domestic abuse'.⁵⁹
236. The target is monitored by COPFS, with data being available about the waiting period across Scotland as a whole and in each sheriff court. Monitoring the data allows COPFS to liaise with SCTS to assess performance across different courts and to explore why the target is not being met in certain areas and even in individual cases.
237. Between February 2023 and January 2024, the average waiting period for cases involving a domestic abuse charge or aggravator across Scotland was 11 weeks.⁶⁰ The average waiting period ranged from 8.3 weeks to 16.2 weeks, although it should be noted that some of the lower waiting periods are achieved in courts with a very small number of cases. Glasgow Sheriff Court has the highest volume of cases but has achieved an average waiting period of nine weeks. Edinburgh Sheriff Court, with the next highest volume of cases, achieved an average waiting period of 15.7 weeks.
238. These results are reflected in the cases we reviewed. In Glasgow, the waiting period was an average of 10.7 weeks, compared to 13.8 weeks in the Rest of Scotland. The waiting period may be shorter in the year up to January 2024 than in the cases we reviewed, because there appears to be a welcome general trend of the waiting period reducing in more recent months. This suggests that, in domestic abuse cases, the summary justice system is recovering from the pandemic.
239. The more positive results in Glasgow could be attributed to the existence of the Glasgow Domestic Abuse Court. Indeed, an evaluation of the Glasgow Domestic Abuse Court in 2007 found the court had impacted the speed of dealing with cases, with nearly three quarters of cases calling in the court reaching a trial diet in six weeks, compared to only one in eight in comparison courts.⁶¹
240. Data from SCTS shows how summary domestic abuse cases are prioritised compared to other summary cases. Table 2 shows that domestic abuse cases were being prioritised both before and during the pandemic. We welcome the efforts COPFS and SCTS will have made, and continue to make, to prioritise domestic abuse cases.

⁵⁹ Scottish Government, [The Vision for Justice in Scotland](#) (2022), at page 29.

⁶⁰ Cases being dealt with under the summary case management pilot in Dundee, Hamilton and Paisley are currently excluded from the data. Data provided by COPFS.

⁶¹ Reid Howie Associates, [Evaluation of the pilot domestic abuse court](#) (2007) at paragraph 4.3.

Table 2 – Period (in weeks) until first available trial diet when plea made⁶²

	2019-20	2020-21	2021-22
All summary cases	13	20	19
Summary cases with a domestic aggravator	10	15	13
Summary cases with no domestic aggravator	14	21	21
Difference between domestic and non-domestic cases	4	6	8

241. The domestic abuse waiting period is a useful indicator of how quickly court business is progressing. It helps measure the prioritisation given to domestic abuse and performance in different courts and nationally. However, it only provides a partial picture of case journey times.⁶³

242. Many cases do not proceed at the first trial diet, and so the waiting period data gives no indication of the actual length of time cases take to conclude. From the point of view of the victim, the accused and any witnesses, a more helpful, additional indicator of the speed with which cases are managed would be the date the offence was reported to police, and the date the accused was reported to COPFS, to the date the case was concluded.

243. Where a domestic abuse case is adjourned at the first trial diet, we heard that in some areas, the case was no longer prioritised. Adjourned trial diets can be set months rather than weeks later. National data from SCTS shows the time between pleading diets and evidence-led trials for domestic cases is shorter than for other summary cases. For example, in 2021-22, the average length of time between the pleading diet and evidence-led trial in domestic cases was 36 weeks, compared to 52 weeks for non-domestic cases.⁶⁴

244. However, in the cases we reviewed, we noted substantial differences in how cases were scheduled for second and subsequent trial diets. In Glasgow, the average time between the first and second trial diets was 5.6 weeks, whereas it was 11.1 weeks in the Rest of Scotland and 19.9 weeks in Dundee. While we only reviewed 20 cases in each area, not all of which required a first and second trial diet, this data suggests that domestic abuse cases continue to be prioritised in the Glasgow Domestic Abuse Court, but to a lesser extent in other areas.

245. We appreciate COPFS cannot control how quickly trial diets are rescheduled by the courts. However, it was not clear to us the extent to which COPFS and its partners were monitoring and actioning overall journey time, as well as the 10-week waiting period. This would be a more person-centred and outcome-focused approach to measuring performance.

246. Public statements around the 10 or 12-week waiting period may give victims, the accused and the public the impression that this is the total journey time for domestic abuse cases where a trial is scheduled. Victims we interviewed described journey times as being much longer.

247. In the cases we reviewed, we calculated the average number of weeks from the date of receipt by COPFS of a report from the police, to the date the case was

⁶² Scottish Government, [Domestic Abuse \(Scotland\) Act 2018 – Interim reporting requirement](#) (2023) at page 51.

⁶³ The target also only measures custody and undertaking cases, but not report cases. While they only made up 9% of cases in 2022-23, we have noted elsewhere (paragraph 119) that these can experience delays.

⁶⁴ Scottish Government, [Domestic Abuse \(Scotland\) Act 2018 – Interim reporting requirement](#) (2023) at page 51.

concluded.⁶⁵ This average journey time data includes those cases where the accused pled guilty at the first calling of the case. We completed our case review in 2023 and 12 cases remained ongoing. We revisited those cases in February 2024 to gather further information about their journey time. Five cases were still ongoing. For the 55 cases that had concluded, the average journey time was 15.2 weeks. This ranged from zero weeks⁶⁶ to 78.9 weeks. The average journey time in Glasgow was 12.9 weeks, compared to 14.8 weeks in the Rest of Scotland and 17.9 weeks in Dundee.

248. Of the five cases that were still ongoing, their journey times were all over one year (so far).

249. For some cases with very long journey times, there was little COPFS could have done to progress the case any faster. For example, some of these cases involved the accused failing to appear at court and warrants being taken for their arrest. Several victims we interviewed felt that the police made little effort to execute warrants, even when they passed on information about the whereabouts of the accused or when the accused appeared at court on other matters. However, in one case we reviewed where the warrant remained outstanding, the fault lay with COPFS rather than the police. In that case, COPFS decided not to pass the warrant to the police but to instead invite the accused to attend court. No invitation was sent.

250. Where journey times are prolonged, the need for COPFS to communicate with victims, to keep them updated on developments and to support them to remain engaged in the justice process is all the greater.

251. Although COPFS is contributing to the efficient progression of many cases, there is more that could be done by it and its partners to reduce overall journey times and deliver justice more quickly. Given the timing of our inspection, the pandemic will also have contributed in some part to efficient progression and the poor experience we heard about from some victims. However, from the evidence we gathered, we consider that factors listed below contribute to delays. These factors are not present in all cases, but across the summary justice system, they contribute to delay, wasted court time and poor victim experience:

- poor quality SPRs and premature police reporting to COPFS
- unclear or delayed instructions to the police about further enquiries and the submission of evidence
- the late submission of evidence by the police and the sometimes slow response to requests for further information or enquiries
- inadequate marking instructions
- insufficient time for case preparation
- inadequate case preparation, particularly failing to address issues at the earliest opportunity
- failing to provide appropriate support to victims who are not supportive of a prosecution or who are at risk of not supporting a prosecution

⁶⁵ We considered the case to be concluded when a plea was entered, when a verdict was returned or when a decision was made to take no further proceedings. We did not include any additional time taken for sentencing, as that is outwith the control of COPFS. It should be noted though, that sentence was deferred in many cases meaning that, from the victim's perspective, they may not have considered the case to be 'concluded' until much more time had passed. In some cases which were discontinued, the initial decision to discontinue was not formalised until a later date. We used the date of the initial decision to calculate the case's journey time. Had we used the date of the formal decision to discontinue, the journey time for those cases would have been much longer.

⁶⁶ These were cases where the accused was reported to COPFS while in custody, the case was marked immediately, and the accused pled guilty at the first calling.

- failing to engage effectively with victims about going to court and special measures
- victims and witnesses failing to appear at court, sometimes due to missed or late citations
- the accused failing to appear at court
- the defence not receiving instructions and not submitting letters of engagement timeously
- setting unrealistic trial dates, when the case is particularly complex or when it is clear evidence such as forensic reports or transcripts of joint investigative interviews will not be ready on time.

252. Other factors which also contribute to delay are highlighted elsewhere in this report.

Recommendation 11

As well as monitoring the domestic abuse waiting period, COPFS should work with its partners to monitor the overall journey time for domestic abuse cases. This monitoring should lead to action to address any barriers to progressing cases efficiently.

Supporting, protecting and engaging with victims

253. During our inspection, we sought to assess how well COPFS supports and protects, and communicates and engages with victims of domestic abuse in summary cases. We considered the extent to which victims are receiving a person-centred and trauma-informed service. Our findings draw on the 60 cases we reviewed (featuring 61 victims), our engagement with 23 victims and more than 50 advocacy workers, as well as interviews with those working for COPFS and other stakeholders.

254. Many of our findings in this chapter will relate equally to victims and witnesses, however our focus in this inspection was victims. We also considered child witnesses specifically (see from paragraph 458).

255. Sections 1 and 1A of the Victims and Witnesses (Scotland) Act 2014 set out general principles to which the Lord Advocate (and, consequently, COPFS) must have regard. In relation to victims, these include:

- a victim should be able to obtain information about what is happening in the investigation or proceedings
- the safety of a victim should be ensured during and after the investigation and proceedings
- a victim should have access to appropriate support during and after the investigation and proceedings
- in so far as it is appropriate, a victim should be able to participate effectively in the investigation and proceedings
- victims should be treated in a respectful, sensitive, tailored, professional and non-discriminatory manner
- victims should, as far as is reasonably practicable, be able to understand information they are given and be understood in any information they provide
- victims should have their needs taken into consideration
- when dealing with victims who are children, the best interests of the child should be considered, taking into account their age, maturity, views, needs and concerns
- victims should be protected from secondary and repeat victimisation, intimidation and retaliation.

256. In accordance with section 2 of the 2014 Act, Standards of Service for Victims and Witnesses have been published by COPFS in partnership with other justice agencies.⁶⁷ These standards set out the service victims can expect to receive and state the justice agencies' collective commitment to 'putting the rights of victims and witnesses at the heart of Scotland's justice system' and to 'helping victims and witnesses feel supported, safe and informed at every stage of the criminal justice process'.

257. All those working for COPFS require to have regard to the general principles of the 2014 Act and the service standards. In the context of domestic abuse cases, they are particularly relevant to:

- prosecutors
- the Victim Information and Advice (VIA) service. Part of COPFS, VIA provides information and advice to certain categories of victims and witnesses. All victims of domestic abuse should be referred to VIA

⁶⁷ Police Scotland, COPFS, SCTS, Scottish Prison Service and Parole Board for Scotland, [Standards of service for victims and witnesses 2023-24](#) (2023).

- Enquiry Point. This is COPFS's customer contact centre and is the first point of contact for many victims seeking information about their case.

258. In a domestic abuse case that is being prosecuted at sheriff summary level, VIA will generally proactively contact the victim and provide information at the following stages:

- following the accused's first appearance in court, VIA will advise the victim of the outcome by phone and by letter. VIA will advise if the accused has been remanded or released on bail and what the bail conditions are
- following an intermediate diet, VIA will write to the victim only if a plea has been tendered, if a trial date has changed or if the bail conditions have been amended
- following a trial diet, VIA will write to the victim with the outcome. VIA will also write to the victim if the trial was adjourned
- following sentencing. If sentencing is deferred, VIA will write to the victim only after the first deferment and following the final sentencing decision.

259. The above sets out the minimum level of contact with a victim. Additional contact may take place depending on the circumstances of the case, including if contact is initiated by the victim. In addition to VIA, prosecutors may also have contact with a victim if the victim attends court. In Glasgow and in the summary case management areas, prosecutors also seek to make contact with the victim during their case preparation (see from paragraph 346).

260. In this chapter, we consider how COPFS:

- helps to protect the safety of victims, through its approach to bail conditions and non-harassment orders
- supports victims to give evidence at court, by applying for appropriate special measures
- communicates with victims, keeping them informed of developments in their case.

Safety

Bail conditions

261. The decision to remand an accused person or to release them on bail is one for the sheriff. If releasing the accused on bail, it is also for the sheriff to decide whether standard or special conditions of bail should apply, and what any special conditions should be. The sheriff's decision should, however, take into account any representations made by a prosecutor. In deciding whether to oppose any bail application by an accused person or request special conditions of bail, a prosecutor will consider the SPR, including any assessment of risk provided by the police, as well as COPFS policy and any other relevant information.

262. In the cases we reviewed, special bail conditions were imposed on the accused by the court at first appearance to protect 45 (74%) of the 61 victims. For the remaining 16 victims, the court dealt with the accused as follows:

- in six (10%) cases, standard bail conditions were imposed on the accused
- the accused was remanded in one (2%) case
- the accused was ordained to appear in three (5%) cases
- in one (2%) case, a warrant was taken for the arrest of the accused
- in five (8%) cases, the accused pled guilty and was sentenced.

263. These results suggest prosecutors are regularly seeking special conditions of bail to support victims, which we welcome. However, we were concerned that special conditions were not always sufficiently tailored to the protection needs of the victim.
264. Some of the victims we interviewed said bail conditions made them feel safer. One victim in particular welcomed the accused in her case having broad special bail conditions not to enter the town where she lived. However, most victims we interviewed were frustrated that special bail conditions were not more tailored to their circumstances and did not help reduce the risk posed by the accused. For example, more than one victim said the accused in her case was not permitted to enter her street but, due to the location of her house, was able to continue his harassment and intimidation from a side street or rear alley. Victims felt they could have helped shape more appropriate conditions for their situation had they been consulted by the police or COPFS.
265. There would be little time for a marking depute to consult a victim about bail conditions when marking a custody case. While more time is available to deputies marking other types of cases, it would be most efficient if the police would provide detailed information about victims' views on bail conditions in SPRs. Too often however, the information provided by the police relates to whether bail conditions are wanted by the victim, rather than what those conditions should be. We were concerned that special bail conditions have themselves become standardised, rather than tailored to the risk posed by the accused and the safety of the victim.
266. Support organisations can also be a useful source of information about appropriate bail conditions. Advocacy workers told us they submit reports to COPFS about victims' views on bail. However, they said they rarely received a response and wondered whether the reports had been considered when the conditions imposed by the court did not reflect victims' views. Examples of requests they felt had been ignored included one victim who wanted to have her workplace covered by bail conditions, and another victim who wanted to have her street covered. In the latter case, the victim's views not being reflected in the bail conditions resulted in the accused trying to rent the house next door (Recommendation 12(a)).

Breaches of bail

267. A recurring theme from our interviews with victims was their view that breaches of bail are not taken seriously by the justice system. Victims reported breaches to the police, but felt the police did little to investigate. Victims felt the onus was on them to provide the police with evidence of the breach. One victim told us that police suggested she approach her neighbours herself to ask if they had doorbell footage of the accused breaching bail.
268. Even when accused were reported for breaching bail and prosecuted, victims felt there were no consequences. They described the accused being released with the same bail conditions as before. This left them demoralised and more likely to disengage from the justice process. Several victims told us they had given up reporting breaches of bail because they were not taken seriously.

'Given that he has breached bail so often, it feels like he can just do whatever he wants without consequence.'

269. Many of the frustrations expressed by victims regarding breaches of bail were aimed mostly at other justice agencies, particularly the police and the courts. Where COPFS receives a report of a breach of bail, it will prosecute if there is sufficient evidence.

Decisions on whether to release the accused on conditions that they have already breached are for the courts. In response to concerns raised by support organisations that accused were being released on the same conditions as those they had just breached, the National Lead for Domestic Abuse undertook to review some cases where this had occurred to check the role played by COPFS. In all the cases reviewed, prosecutors had opposed bail.

Changes to bail conditions

270. A review of bail conditions can be requested by a prosecutor although are more commonly requested by an accused seeking to remove or vary conditions. COPFS guidance states that a prosecutor must notify VIA of any application to review bail and the decision of the court. In turn, VIA must pass the information to the victim. The guidance emphasises the importance of doing so immediately in domestic abuse cases. The guidance also notes the importance of obtaining the victim's view on a bail review application. Their views will be taken into account by the prosecutor when deciding whether to oppose the application.

271. A victim's view on a bail review application can be obtained through the police, VIA or a support organisation. We found that practice varies across Scotland – in some areas, VIA contact the victim while in others, prosecutors instruct the police to do so. We heard that instructions to contact the victim are often not issued until the day before the bail review hearing, leaving little time for a victim to be consulted. We also heard that some victims were not informed of bail review applications and their views were not sought, despite this being contrary to the guidance.

272. Advocacy workers and victims told us that sometimes they only find out about a change to bail conditions once the decision has been made. This limits their ability to plan for their safety. Victims found it difficult to understand how bail conditions which affect them could be changed without them being informed or consulted. One victim we interviewed moved house within a specific area, believing it to be protected by bail conditions. She discovered the bail conditions had been changed and the area was no longer covered when she tried to report a breach of bail to the police. Advocacy workers also told us that if they were informed of bail review applications, they would be happy to find out victims' views and pass these to COPFS.

273. In the cases we reviewed, eight featured applications to review bail conditions. All applications were made by the defence. In one case, the victim was not informed of the application as they were not affected by the conditions while in another case, the victim was present in court when the application was made. In the remaining six cases:

- there was no record of the victim being advised of the bail review in advance
- only three of the six victims were informed of the bail review outcome. This was done by letter from VIA. In one of these cases, VIA issued a further letter to the victim five weeks later which wrongly referenced the original bail conditions.

274. If victims are to be kept informed of developments in their case and able to participate in proceedings that affect them, and if the safety of victims is to be ensured – all in line with the general principles of the 2014 Act – then COPFS should respond to bail review applications appropriately and in line with its own guidance.

This will require SCTS to set a realistic date for hearing applications, such that COPFS has sufficient time to obtain the victim's views. It will also require COPFS to:

- routinely notify domestic abuse victims of bail review applications that affect them

- seek victims' views on the application either directly or via the police or a support organisation
- inform victims of the outcome (Recommendation 12(c)).

275. Prosecutors can also apply to the court for a review of bail conditions, although we heard this rarely happens. Advocacy workers said they sometimes raised the possibility of a review of bail conditions with VIA, but felt that VIA acted as a 'gatekeeper' to prosecutors who would be best placed to assess the need for a review. We did hear that where there had been a breach of bail but this could not be prosecuted due to a lack of corroborative evidence, marking deputies would contact court deputies to consider whether a review of bail in the substantive case was merited instead. However, in light of concerns raised by victims and advocacy workers about breaches not being taken seriously, there is a possibility that any application to review bail conditions may not be granted.

Informing victims of bail conditions

276. Following the first calling of a case, when the accused first appears in court, victims are advised of the outcome including whether the accused is on bail and the nature of any bail conditions. Victims highlighted to us the importance of finding out this information immediately – it helped them take steps to protect themselves if needed, and meant they were aware of conditions and able to report the accused to police if they were breached.

277. VIA has committed to attempting to phone domestic abuse victims to advise them of bail conditions promptly. If VIA is unable to contact the victim, the police are asked to make contact instead. The initial phone call to the victim is followed up with a letter. This letter will be the victim's first from VIA. It sets out the role of VIA and the outcome of the first calling of the case. It also includes a copy of any bail order. VIA will attempt to send these letters the same day as the first calling and, if not achieved, the following day.

278. In the cases we reviewed, there were 58 victims who VIA required to inform of the outcome of the first calling of the case. We found that:

- for 15 (26%) victims, VIA successfully made contact with the victim within 24 hours
- for 15 (26%) victims, VIA attempted to make contact with the victim within 24 hours but were unsuccessful
- for 15 (26%) victims, there was no record of VIA attempting to make contact with the victim
- for 13 (22%) victims, no telephone number was available for the victim and so no attempts to make contact were made.

279. For the 43 victims where VIA did not successfully make contact, VIA asked the police to notify 13 victims of the outcome of the first calling. There was no record of the police being asked to notify the remaining 30 victims. It is possible that the police were asked in some of these cases, but this information was not included in the case file.

280. Letters about the outcome of the first calling of the case were sent to 51 (84%) victims. No letter was sent to one victim in the Rest of Scotland and to two victims (in one case) in Glasgow. No letter was sent to seven victims in Dundee. For one victim

in Dundee where a letter was sent regarding the outcome of the first calling, we were concerned that this letter was only sent seven weeks later.⁶⁸

281. VIA's commitment to contacting the victim promptly is described differently in various documents, which impacts how it is delivered in practice. In a joint protocol with other justice agencies regarding victims and witnesses generally, the commitment is to attempt contact with the victim on the same day as special bail conditions are imposed.⁶⁹ This is echoed in internal VIA guidance, which says contact should be made 'on day of court'. In its joint protocol with the police regarding domestic abuse, COPFS states that notification of the outcome will be done 'that day or within a maximum of 24 hours of the accused appearing in court'.⁷⁰

282. The lack of clarity as to whether the victim should be notified on the same day as the first calling, or within 24 hours of it, has led to different understandings of the commitment among VIA staff and varying practice. While we heard of some VIA staff making significant efforts to notify victims on the same day, others were content to wait until the following day.

283. COPFS requires to be consistent in its public facing protocols and its internal guidance to staff. This will ensure that victims know what to expect, and that practice is consistent across Scotland. In our view, VIA should attempt to contact the victim on the same day as the first calling of the case. Where they are unsuccessful, the police should be asked to notify the victim instead. It is important that victims are informed of the outcome whether the accused is remanded, released with bail conditions or with no conditions. One VIA officer said they did not tell the victim if an accused had been remanded until the following day as there was no risk if he was in prison. However, this failed to take account of the fact that the victim was unaware of the absence of risk.

284. In light of the results of our case review, we explored why victims are not being more routinely informed of the outcome of first calling of the case by phone and by letter. We heard from VIA staff that this is one of their most challenging tasks, given how busy they are and how time-sensitive the task is. They also highlighted three key barriers to delivering this commitment:

- the police have provided no phone number for the victim in the SPR, or the number is incorrect
- the outcome at court is not known until late in the day (an issue which has been exacerbated at times by courts sitting later due to well-documented issues with the prisoner escort contract)⁷¹
- the victim does not answer the phone.

285. It is vital that the police include accurate contact details for the victim in SPRs. This is particularly important in reports concerning domestic abuse, where COPFS will require to make contact with the victim urgently after the first calling of the case. Ideally the police would include the victim's phone number and email address, and ensure that these are accurate. We saw too many cases where this information was missing. When it is missing, COPFS can take steps to find the information, by searching systems or by instructing officers to provide it. Practice varied however, with some COPFS staff taking these steps and others not.

⁶⁸ It is possible that in the cases where no letter was sent during our review period, a letter was sent at a later date. However, this would have meant the letter was sent months after the first calling.

⁶⁹ COPFS, SCTS, Police Scotland and Victim Support Scotland, [Working together for victims and witnesses](#) (2021)

⁷⁰ COPFS and Police Scotland, Joint protocol, paragraph 66.

⁷¹ [Scottish Courts and Tribunals Service statement on prisoner escort services](#) (31 August 2023).

286. VIA obtain the outcome of the first calling of the case from the 'criminal online portal' operated by SCTS. Clerks upload the outcome and check ('validate') that they are accurate. The time at which the results are validated varies day to day and by court and jurisdiction. We heard that SCTS requires this to be done within 24 hours, but most clerks ensure it is done on the same day. One clerk told us they validate the results at the end of the day rather than on an ongoing basis, as it requires concentration and attention to detail that are not possible when the court is still operating.
287. Generally, VIA staff await the court outcome being validated before they notify the victim. This is because the validated results are the official public record of what has happened in court. While this ensures accuracy, it means VIA staff may have to wait until late in the day before they are able to notify victims. Sometimes the results are not validated until later in the evening, by which time a VIA officer may have finished work. We heard from several committed VIA officers who stayed late or who finished work but went online again later in the evening to obtain results and ensure victims were notified promptly. While we welcome the dedication shown by these VIA officers, this approach is not sustainable and relies on the goodwill of individuals.
288. To help staff deliver a commitment to notify victims in domestic abuse cases of the outcome of the first calling of the case on the same day, COPFS could:
- work with SCTS to ensure court results are validated promptly (with consideration being given to prioritising certain types of cases)
 - review the working pattern of the VIA officer role
 - consider whether the depute's record of what happened in court should be made available to VIA staff immediately and that this be used to update victims where clerks are late in validating court results (we heard this approach is already being used in some areas)
 - consider whether the unvalidated result should be shared with victims, with appropriate caveats. We heard from some support organisations that this is the approach they take to updating victims when court results are late in being validated.
289. Another barrier to VIA successfully notifying victims of the outcome of the case's first calling is that some victims do not answer their phone. This is often because VIA are calling from an unfamiliar, corporate COPFS number. VIA officers estimated that only around half of the people they phone pick up on the first attempt. This is a broader issue for VIA and does not just affect the pick-up rate for calls about the first calling of the case. It may be exacerbated for these calls, however, because this is usually the first contact VIA will have had with the victim. COPFS should consider how to manage this issue better. All VIA officers have been issued with mobile phones. Pick-up rates would improve if more effective use was made of them. We heard from one VIA officer who often texted victims from his mobile phone to explain who he was, then followed up with a phone call. His pick-up rate was significantly better as a result.
290. As noted above, where VIA are not able to make contact with the victim after the case's first calling, they will ask the police to notify the victim instead. This was done in different ways across the country, and in some areas, it was possible that police were notifying the victim even where this had already been done by VIA. There was also inconsistency in whether VIA were informed by the police that they had successfully made contact with the victim. In some areas, the police provided an incident number to VIA, signifying that officers had been deployed to the victim's address. We had preliminary discussions with Police Scotland about how this

process could be streamlined, to make it more efficient, avoid duplication and improve the victim experience. They were committed to taking this forward in partnership with COPFS, which we welcome (Recommendation 12(b)).

Recommendation 12

With regard to bail in domestic abuse cases, COPFS should:

- (a) ensure that prosecutors provide sheriffs with information about whether victims want special bail conditions and, if so, what those conditions should be, tailored to each victim's needs
- (b) work with justice partners, particularly the police and the Scottish Courts and Tribunals Service, to ensure that victims are informed of the outcome of the accused's first appearance on the same day, and update all guidance and protocols accordingly
- (c) ensure that victims are informed of bail review applications, their views are sought and put before the court, and they are informed of the outcome timeously.

Non-harassment orders

291. A non-harassment order (NHO) is a protective order that features conditions that require an offender to refrain from specified conduct in relation to the victim for a specified period. Victims told us that obtaining an NHO is a priority for them. They are looking for the security and protection an NHO offers once any bail conditions come to an end at the conclusion of the criminal case.

292. The Domestic Abuse (Scotland) Act 2018 introduced a requirement that, following a conviction for a contravention of section 1 of the 2018 Act or any charges to which the domestic abuse aggravator applies, a court must consider and make an NHO for the victim and any children⁷² unless satisfied that this is not appropriate or necessary for their protection. Where these criteria are not met, the prosecutor can still apply to the court to make an NHO in certain circumstances. In deciding whether to make an NHO, the court must hear the views of the prosecutor. COPFS guidance makes clear that any representations made by prosecutors should include the views of the victim regarding an NHO to assist the court.

293. Prosecutors therefore require to know victims' views on NHOs. This information is needed at the earliest stage in the case, in case the accused pleads guilty at the first calling. It therefore should be included by the police in SPRs. While this information was often (but not always) included in the SPRs we reviewed, the quality of the information varied.

294. A victim's views on the need for an NHO may change with the passage of time and as their circumstances change. It is therefore important that prosecutors obtain the most up to date position of the victim so this can be shared with the court. This means returning to the victim during the course of the case and checking the latest position. Prosecutors may themselves ask victims for their views or may instruct VIA to do so. If the victim is receiving support from an organisation such as ASSIST, that organisation will usually submit a report to COPFS setting out the victim's views.

295. Prosecutors we interviewed understood the importance of obtaining the victim's latest position on an NHO. However, this understanding was not always shared by VIA. Some VIA staff we interviewed were frustrated and embarrassed by the number of times they were asked to contact a victim about an NHO, when the information was

⁷² This applies to any children usually residing with the victim and/or the accused, or in respect of whom the statutory child aggravator applies.

already in the case file. There appeared to be a lack of understanding on their part about domestic abuse and why victims might change their mind as time passed.

296. Some victims told us they had never been asked for their views on an NHO by COPFS, only by their advocacy worker. Advocacy workers told us that when COPFS staff do seek the victim's views, they are simply ascertaining whether the victim wants an NHO, rather than having a meaningful discussion that may inform the tailoring of the order to meet the victim's needs. Both victims and advocacy workers felt that children were often missing from the terms of an NHO (Recommendation 13(a)).

297. When a victim is engaged with a support organisation, their advocacy worker will submit reports to COPFS about the victim's views regarding an NHO. Prosecutors said they found these reports to be a valuable source of information. However, advocacy workers were concerned that the reports were not reaching the appropriate prosecutor timeously. The reports are submitted electronically to a central mailbox and should then be added to the relevant case by COPFS staff. Advocacy workers were concerned that they received no acknowledgement that the reports had been received and processed. Advocacy workers also told us that, in some cases, it seemed as though the reports had not been read. For example, when they attended court, no mention was made of the information in their reports. One victim we interviewed was involved with two support organisations. Both organisations submitted reports regarding her desire for an NHO. Despite this, the court did not grant an NHO because of a 'lack of engagement' from the victim (Recommendation 13(b)).

298. While there was information about the victim's views on an NHO in most of the cases we reviewed, there were also cases where this information was not recorded and therefore appeared not to have been sought. In the cases that had reached trial however, it is possible that the prosecutor sought this information from the victim when they met at court.

299. Thirty cases we reviewed, involving 31 victims, had reached the stage where the accused had pled guilty and the court had considered an NHO:⁷³

- for 12 victims, an NHO was made. The lengths of the NHOs ranged from one to five years
- for 19 victims, no NHO was made. The most common reason given was that the victim did not want an NHO. Other reasons included that the victim had not been supportive of the prosecution, the sheriff thought an NHO was disproportionate, and the sheriff considered an NHO was not competent, given the nature of the plea accepted by COPFS.

300. Support organisations often provide information and guidance to victims about NHOs and the specific conditions of the orders made in their cases. Some support organisations told of difficulties they had obtaining a copy of the NHO. Where this is the case, or where a victim is not receiving support from another organisation, victims are reliant on COPFS informing them of the existence and contents of any NHO. Unfortunately, in some of the cases we reviewed, this information was not sent to them for some time.

⁷³ In four other cases, the accused had pled guilty but the sentence and consideration of an NHO remained outstanding.

Recommendation 13

In domestic abuse cases, COPFS should ensure that:

- (a) throughout the case, the victim's views on the need for a non-harassment order and its contents should be sought, whether directly or through a support organisation
- (b) reports containing the views of the victim about non-harassment orders should be processed and brought to the attention of prosecutors timeously, and the victim's views put before the court.

Undertakings

301. Where an SPR is submitted to COPFS and the accused has been released on an undertaking to appear at court on a specified date, the marking depute may need to postpone the undertaking to, for example, allow further enquiries to take place. Notice of the change in date is served on the accused or their solicitor. Template letters can be adapted by prosecutors for this purpose. However, there is no equivalent template letter to notify the victim of any change in date. There was no consensus among those we interviewed about who was responsible for notifying victims of a postponed undertaking or on how this was to be done. This was not helped by inconsistent guidance.
302. The joint protocol between COPFS and Police Scotland on domestic abuse states that, when an undertaking date is first set, it is for the police to notify the victim that the accused has been liberated and the conditions that apply, one condition being the date the accused must appear in court. It also states the police will also notify the victim of any change to a condition affecting them. COPFS's internal guidance is, however, inconsistent on who should notify the victim if an undertaking is postponed:
- one source of guidance states that the prosecutor must refer the case to VIA. VIA inform the police who in turn inform the victim
 - another source states the prosecutor informs VIA, and VIA inform the victim
 - another source states that prosecutor instructs the police to inform the victim.⁷⁴
303. The inconsistent guidance is further complicated by existing processes. Cases are not referred to VIA until they are marked for prosecution in court. There is no step in the current electronic process by which VIA can be informed of a postponed undertaking. VIA will therefore be unaware of the case unless informed of it by a prosecutor.
304. We heard a range of views from prosecutors, VIA officers and administrators about who is responsible for advising the victim of a postponed undertaking. Some prosecutors felt it was a VIA role, but were unclear how VIA became aware of the case and the need to get in touch with the victim. Some VIA officers said they had no involvement in a case until it called in court. Some staff said it was the responsibility of the police, but were not clear who advised the police. More positively, we heard from several prosecutors who said they took personal responsibility for either instructing the police or VIA to notify the victim.
305. There is a need to provide staff with clear guidance to ensure that victims are notified of postponed undertakings, and to ensure this guidance is supported by appropriate processes. If victims are not informed, they will believe a case has already called on a certain date and that they have simply not been told the outcome.

⁷⁴ We compared operational instructions, a manual on victims and witness, a manual on the Criminal Justice (Scotland) Act 2016 and guidance issued to NICP staff.

Recommendation 14

COPFS should review its guidance to ensure there are clear, consistent instructions to staff about who is responsible for notifying victims of postponed undertaking dates. Guidance should be supported by appropriate processes, and staff should be made aware of the approach to be taken.

Special measures

306. Most victims we interviewed were worried about going to court to give evidence. Concerns included not knowing what to expect, seeing the accused at court and giving evidence. A few victims said they were particularly fearful of aggressive questioning and the way they would be treated by the defence. A few victims who had given evidence said that it felt like they were on trial. One victim told us she had attended court to give evidence, but had been too scared of the accused to speak out. Even those who told us they were keen to have their say in court nonetheless also felt apprehensive about giving evidence.
307. Special measures are steps that can be taken to help vulnerable witnesses give evidence at court. In domestic abuse cases, all victims are deemed vulnerable and therefore entitled to special measures.
308. A standard special measure is one which a court will automatically grant to a deemed vulnerable witness upon application. These are:
- a live television link from within the court building (TV link) or from a remote site (remote TV link)
 - a screen
 - a supporter.⁷⁵
309. These standard special measures can be used in combination – for example, a victim may wish to use both a screen and a supporter.
310. VIA includes information about special measures in its letter to victims in domestic abuse cases following the accused's first appearance at court.⁷⁶ The letter references an online booklet which contains information about special measures. It also invites the victim to get in touch with VIA to discuss the measures that would be suitable for them. The letter states that if the victim does not get in touch, VIA will by default apply to the court for the victim to use a screen and a supporter. Due to the short timescales for summary proceedings, the letter states that victims should get in touch with VIA to discuss special measures within two weeks of the date of the letter if the accused is in custody, and within four weeks if the accused is not in custody.
311. Where the victim gets in touch with VIA, this provides an opportunity to discuss any additional vulnerabilities and whether non-standard special measures may better help the victim give evidence. Non-standard special measures are:
- the taking of evidence by a commissioner
 - evidence in chief in the form of a prior statement
 - a closed court, by excluding the public when the witness is giving evidence.⁷⁷
312. Non-standard special measures are not automatically granted by the court when applied for. Their use can be opposed by the defence and/or refused by the court.

⁷⁵ Sections 271J to 271L of the Criminal Procedure (Scotland) Act 1995.

⁷⁶ For summary case management pilot cases, this information does not appear in a letter until after the case management hearing.

⁷⁷ Sections 271I, 271M and 271HB of the Criminal Procedure (Scotland) Act 1995.

313. COPFS must lodge a Vulnerable Witness Application (VWA) with the court in relation to a deemed vulnerable witness for the use of standard or non-standard special measures, a combination of the two, or no special measures. In summary proceedings, the VWA must be lodged with the court 14 days prior to the trial diet. As there is no automatic entitlement to non-standard measures, any application for these must contain the views of the witness and the reason why the measures requested are the most appropriate.

Vulnerable Witness Applications

314. At summary level, VWAs are prepared by VIA officers and signed by prosecutors before being lodged with the court and intimated to the defence. The process for dealing with VWAs varies between offices. This variation is sometimes prompted by different procedures within different sheriff courts. In the main, VWAs are signed electronically by prosecutors although some offices still require prosecutors to sign paper copies. While some sheriff courts accept VWAs electronically, others require paper applications to be lodged.

315. We heard that as almost all VWAs at summary level are template applications for standard measures for deemed vulnerable witnesses, they are generally not read or checked by prosecutors before signing. In one office, VIA officers added the prosecutors' signature electronically, without the prosecutor seeing the applications. While this approach is more efficient, it removes an opportunity for quality assurance of the VWAs prepared by VIA. Where VWAs are for standard special measures for deemed vulnerable witnesses, we consider that any checking could be done by a more senior VIA officer, rather than a prosecutor. Care would have to be taken however, to ensure that non-standard applications or those relating to witnesses who are not deemed vulnerable are more closely scrutinised by a prosecutor.

316. We heard about backlogs in processing VWAs and delays in lodging them at court. This was caused by:

- lack of capacity among VIA officers to draft and process VWAs promptly due to the volume of other work
- lack of capacity among prosecutors to sign VWAs due to the volume of other work.

317. Delays in processing VWAs result in the applications being submitted late – sometimes they are not lodged before the intermediate diet and sometimes not even before the trial diet. We heard of instances where this resulted in trials being adjourned due to special measures not being in place. Where VWAs are prepared on time but not signed promptly, this can result in the applications having to be re-dated before lodging with the court. A sheriff clerk told us they often receive VWAs from COPFS dated several weeks prior to being lodged. If they are lodged late, the clerk has to return them to COPFS to be revised to include an explanation of why they are late. This results in double handling by both COPFS and the clerk.

318. More positively, we heard that sheriffs are open to verbal motions from prosecutors in domestic abuse cases if VWAs have been submitted late or missed. Sheriffs were also open to late changes to special measures where victims had changed their minds about what they wanted. Similarly, a deputy told us that they would never start a trial if the victim did not have the special measures they needed.

Types of special measures

319. In the cases we reviewed, VWAs were made for most victims to have a screen and a person from Victim Support Scotland as a supporter. In the 31 cases that proceeded to a trial diet, there were 32 victims:

- 26 victims had a screen and a supporter, the default special measures for a domestic abuse victim in a summary case
- two victims requested a supporter only
- four victims requested a TV link (three of whom requested a supporter in addition to the TV link). For one of these victims, a VWA was initially made for a screen and supporter, but by the third trial diet, this had been amended to a TV link.⁷⁸

320. Applications for the default special measures are often made because there has been no discussion between the victim and VIA about the victim's preference. In the cases we reviewed, there was a record of discussion between the victim and VIA about special measures in only nine of the 35 cases in which a trial diet was fixed. No discussion may take place because the victim is satisfied with the default measures specified in VIA's letter, because they are not supportive of the prosecution generally or, in some cases, because they have not received the letter from VIA saying they should get in touch to discuss special measures. If the victim does not want the default measures, the onus is on them to contact VIA either to request different measures or no measures.

321. Some of the victims we met were not aware of the full range of special measures available to them. They were also often not satisfied with the measures that had been put in place for them. Some victims wanted no measures, and were keen to face the accused in court. Some victims said they had no contact from VIA about special measures, only their advocacy worker. In contrast, other victims said they had good contact from VIA about arranging special measures.

322. VIA officers told us they did not often hear from victims about special measures in summary cases. However, we also heard from victims that where they do make contact with VIA, they do not feel they are being offered an informed and free choice of special measures. This was borne out in some of our discussions with prosecutors and VIA officers.

323. Some VIA officers acted as a 'gatekeeper' to special measures rather than a facilitator. There appeared to be an effort – deliberately by some and unconsciously by others – to ensure victims in summary cases only had the default special measures. Some VIA officers said they would not offer alternatives unless they were requested by the victim and sometimes only when the victim had a 'good reason' or was somehow perceived as more deserving. We also heard that some VIA officers would resist any requests for a change to the default measures that were made close to the trial diet, saying that they were 'out of time'. Unless VIA explains the full range of special measures available to a victim and is willing to take forward the victim's preference, the victim is not making an informed and free choice. This is not the person-centred and trauma-informed approach to justice to which COPFS aspires. One victim felt she had to 'campaign' for the special measures she wanted.

324. Advocacy workers echoed the comments we heard from victims. They also felt practice was inconsistent across areas. In some areas, it was rare for VIA to put in place anything other than the default special measures and requests from advocacy workers to discuss victims' needs went unanswered. They also reported some resistance by VIA to allowing the advocacy worker to be a named supporter for the victim. One victim who wanted an advocacy worker as their supporter was told it was not possible. Instead, she was allocated a supporter she had never met, and the supporter was a different person on each day she attended court.

⁷⁸ Trial diets were fixed in a further four cases but did not proceed. In all four cases, a screen and a supporter had been applied for.

325. Advocacy workers provided examples of VIA acting as gatekeepers to special measures. In one case, the court had granted a TV link for the victim to give evidence, but VIA later phoned the victim and asked if they would consider a screen instead. In another case, an advocacy worker advised VIA that the victim wished a TV link. VIA contacted the victim directly and persuaded them a screen and supporter would suffice. We noted that some VIA officers appeared to resent what they saw as interference by advocacy workers. In contrast, other VIA officers welcomed the workers' input. Advocacy workers were clear that in some areas, the service provided by VIA was better, and more person-centred.
326. It was not clear why some VIA officers took this gatekeeping approach. For some, there was a clear training need around victims' entitlement to special measures, trauma-informed practice and a better understanding of domestic abuse. We also wondered whether a lack of availability of TV links was causing some officers to restrict their use to victims in what they considered more serious cases. This would be short-sighted, as it masks the true demand for TV links that requires to be met by SCTS. Indeed, we heard sheriffs had no issues with granting VWAs for TV links, although they said they did not see many such applications in summary cases.
327. It is important to note that the gatekeeping approach described above was not universal. Some VIA officers we interviewed clearly had no problem moving beyond default special measures for victims who asked. They described focusing on the needs and wishes of the victim, rather than what might be easiest for staff or justice agencies more generally. Their approach was trauma-informed and person-centred, and should be that employed across the entire VIA service (Recommendation 15(a)).
328. Some victims who used screens while giving evidence said they did not know in advance that while they could not see the accused and others, they themselves could still be seen. They were disappointed by the protection offered by the screen and felt it did not make them feel safe or support them to give their best evidence. One victim said that a screen, 'still leaves a feeling of intimidation... you can still feel that person staring at you'.
329. Victims said a TV link from a remote location was a more effective special measure as it helped manage the anxiety of seeing the accused at court (whether inside or outside the courtroom). One victim said she would have preferred to give evidence this way because not only would she have avoided seeing the accused, but a remote location would have been more convenient to her home, would have helped her manage childcare and would have increased her availability to give evidence.

'It's hard enough for a women to get up, get ready and come to court to give evidence. If a woman is going to court and expects a video link, then prosecutors should make that happen.'

330. We also heard of cases where VIA tried to arrange a remote TV link for the victim, but this was not possible because of lack of availability. There were also cases where special measures had been arranged for the victim, but they were not in place when the victim attended court. An advocacy worker told us of a case where a remote TV link had been arranged months before the trial, but was not in place on the day. The trial was adjourned as a result. A victim told us they arrived at a remote site to give evidence, but no staff were present. These errors are frustrating for victims and risk their disengagement from justice process. They also result in delays to case progression. While these issues are not always within the control of COPFS, it should

ensure that it feeds back such failures to SCTS with a view to ensuring they do not recur.

331. Building on the piloting of virtual summary trials during the pandemic in 2020, there are plans for a 'trauma informed domestic abuse court model'.⁷⁹ This model will seek to create specialist online courts to deal with domestic abuse cases, with a view to reducing trauma for victims and moving cases out of the physical courtroom, while making use of technology to manage court business virtually. The delivery timescale for this work is not yet clear. While we welcome innovation in making the justice process more effective and efficient, given the number of victims who told us they would prefer to give evidence by remote TV link, justice agencies could focus in the first instance on ensuring all victims in domestic abuse cases are offered the opportunity to give their evidence virtually, and ensuring there is sufficient capacity to meet demand. This may be a more achievable goal in the shorter term, rather than focusing on the entire trial being virtual (Recommendation 15(b)).
332. Arrangements can be made for victims to give evidence from a remote site outside of Scotland. The victim may have moved away since the incident, and this means they do not have to return to Scotland to give evidence at court. Instead, they can attend a local court in their area and give evidence remotely. Where the victim is abroad, this is arranged by the COPFS International Co-operation Unit. Where the victim is elsewhere in the UK, we heard it varied area to area whether this was arranged by local prosecutors or VIA. We heard that arranging links to other courts in the UK can be complicated, time consuming and can cause delays. If giving evidence remotely is to become more common, COPFS may wish to consider whether a centralised resource would allow this to be done more efficiently, and allow for expertise and a network of contacts in courts across the UK to be developed (Recommendation 15(c)).

Informing victims of the outcome of VWAs

333. VIA does not routinely inform a victim when the court grants an application for special measures. Even where a victim has requested specific special measures and these have been applied for, it is not standard practice to inform the victim if the application has been successful. This means victims attend court to give evidence not always knowing what to expect. This increases their anxiety and undermines some of the benefits special measures are supposed to provide.
334. When special measures are granted, VIA should record this information on the case management system. This means if a victim phones Enquiry Point for an update, the information can be shared with them. However, we heard that in some areas, VIA does not update the system due to backlogs of work.
335. Advocacy workers and victims said they were often aware of what special measures had been requested, but not what had been granted. Advocacy workers said they made enquiries about this to VIA, but often only heard back immediately before the trial diet. This left little time for workers to support victims to prepare themselves for going to court (Recommendation 15(d)).

⁷⁹ See, for example, Scottish Government, [The Vision for Justice in Scotland Three Year Delivery Plan 2023/24 to 2025/26](#) (2023).

Recommendation 15

With regard to special measures, COPFS should:

- (a) ensure that when victims make contact to discuss special measures, they are offered the full range of measures available. This will allow victims to choose the standard special measure or measures that will help them give their best evidence, or request non-standard measures
- (b) work with its justice partners towards ensuring all victims in domestic abuse cases have the opportunity to give their evidence remotely, and that there is sufficient capacity to meet demand
- (c) review the process for arranging remote TV links from other nations in the UK and consider whether this should be done by a centralised resource
- (d) inform victims about the special measures that have been granted. This information should be provided as early as possible.

Simplified notification procedure

336. Section 6 of the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 provides for the simplification of the process for applying for standard special measures for deemed vulnerable witnesses. Section 6 has not yet been implemented. As noted above, COPFS is currently required to prepare and lodge a written VWA with the court for deemed vulnerable witnesses even to use the standard special measures to which they are automatically entitled.

337. Ahead of the implementation of section 6 of the 2019 Act, COPFS and SCTS have been working together to develop an automated process for transferring the information usually contained in a VWA to the court. Rather than preparing and lodging a VWA, COPFS will complete key fields on its case management system and the data will transfer to SCTS. This would result in substantial time savings in drafting and processing VWAs for both COPFS and SCTS staff. Critically, it would free up VIA officers for other tasks. One VIA officer estimated that it could free up as much as 30% of their time if they no longer had to prepare VWAs, get them signed by prosecutors and lodge them with the court. Given the potential efficiencies to be achieved, we would encourage section 6 to be commenced by the government and implemented without delay.

Other measures

338. Aside from standard and non-standard special measures, other steps can be taken to help victims give their best evidence at court and to improve the overall victim experience. These include arranging for the victim to access the court via a separate entrance, court familiarisation visits and allowing the victim to view their statement before trial.

339. Victims were particularly supportive of the idea of separate entrances to court, which can be organised by VIA. This reduces the chances of seeing the accused outside the courtroom, and avoids the possibility of standing beside the accused and the accused's friends and family while queuing to get into court. Separate entrances are not available at all courts however. Even where they are available, we heard that their use had reduced since the pandemic. We also heard examples of arrangements being made for the victim to use a separate entrance only for the entrance to be locked. COPFS should work with SCTS to ensure such instances do not recur. In one area where the court has no separate entrance, we heard that VIA allow particularly vulnerable victims to attend at their office until it is confirmed the accused is in the courtroom. A VIA officer then escorts the victim to the witness room at court.

340. Court familiarisation visits can help victims prepare themselves for court and know what to expect when they attend court to give evidence. Some victims we met had made visits to the court in advance and found these helpful. Victims are referred to Victim Support Scotland who then organise the visit. Advocacy workers said there were inconsistencies in how referrals were made across areas. In some areas, they could refer a victim directly to Victim Support Scotland, while in others, VIA made the referral.⁸⁰ VIA do not make referrals until after the intermediate diet, when it is clear the case is progressing to a trial diet. However, this can leave insufficient time for the visits to be organised.
341. COPFS may allow a witness to view their witness statement prior to giving evidence. In contrast to solemn proceedings, this opportunity is not proactively offered to witnesses in summary proceedings. While the possibility of viewing a statement is highlighted on the COPFS website, it is not mentioned in any of VIA's correspondence with victims in summary domestic abuse cases. Some victims are made aware of this by an advocacy worker, but we found some advocacy workers were also unaware of the possibility. Some of the victims we interviewed had viewed their statement before the trial and found this helpful, particularly where they were involved in multiple cases against the accused. One victim described repeatedly rehearsing the domestic abuse incident in her mind in the months between the incident and the trial. She was concerned she would forget important details. She said if she had known she could request to view her statement, she could have avoided re-traumatising herself in this way.
342. Where victims do view their statement, this often happens on the day of the trial although COPFS policy does provide a process for earlier access (one VIA officer told us they would offer to meet the victim virtually and share the statement with them on screen in advance of trial). We heard that reading a statement immediately before the trial may not be the best time. Victims are in a heightened state of anxiety and some may struggle to read the statement in such circumstances. It can also be difficult for prosecutors dealing with multiple cases to find the time to share a statement with a victim.
343. COPFS should consider whether a trauma-informed approach requires it to proactively offer victims in summary domestic abuse cases the chance to view their statement in advance of the trial. This offer could be included in VIA's initial letter to victims, alongside information about special measures.

Recommendation 16

COPFS should ensure that victims in summary domestic abuse cases are proactively made aware of the possibility of viewing their statement in advance of the trial.

344. In our interviews with victims and advocacy workers, a recurring theme was the lack of childcare which reduced the availability of victims to give evidence at court. Victims were often the sole carer for their children and relied on support from friends and family so they could attend court. We heard that women from some minority ethnic communities struggled in particular to arrange childcare when they had been isolated by their communities for reporting domestic abuse. Victims also talked about repeatedly having to organise childcare when trials were adjourned. They also noted the impact of receiving citations late. For example, a victim receiving a citation on a

⁸⁰ Victim Support Scotland advised us that they will accept referrals for court familiarisation visits from advocacy workers, VIA or any other organisation. Victims are also able to self-refer.

Saturday for court on a Monday may not be able to organise childcare at such short notice or to inform COPFS of this.

Communication between prosecutors and victims

345. Throughout the life of a domestic abuse case, communication with the victim is key. COPFS should provide them with updates on developments in the case and information about the justice process, and provide reassurance to victims and check whether they are engaged in the process. While much of this communication falls to VIA, there is also a role for prosecutors. Communication between prosecutors and victims may take place:

- prior to the trial when the case is being prepared
- on the day of the trial.

Prior to trial

346. Prosecutors may have contact with the victim while they are preparing cases for trial. While prosecutors should respond to any queries from the victim when VIA is not able to do so, they do not routinely make proactive contact with the victim under the standard approach to preparing summary cases. In some areas, however, initiatives are underway to enhance the engagement between prosecutors and victims during case preparation. This includes in Glasgow and Dundee.

347. In Glasgow, prosecutors working in its Domestic Abuse Unit seek to phone the victim as part of their preparation for the pre-intermediate diet meeting. This welcome initiative began in 2022. The phone call provides an opportunity for prosecutors to provide information to the victim about the justice process and to check how the victim is feeling and address any concerns and provide reassurance. The call is also an opportunity to check whether the victim has been cited, discuss special measures and non-harassment orders, and offer the victim the chance to view their witness statement.

348. Unfortunately we saw limited evidence of these phone calls in the Glasgow cases we reviewed. This may be because the call was not made, because the victim did not answer, or because the call did take place but it was not recorded in the case file. We explore the barriers to successfully making these calls below.

349. In Dundee, COPFS took the opportunity to enhance its engagement with victims as part of its work to implement the summary case management pilot. This has two elements:

- in all domestic abuse cases, prosecutors phone the victim approximately two weeks after the pleading diet and prior to the case management hearing. The purpose of this call is generally similar to that made to victims in Glasgow
- in cases involving a charge under section 1 of the 2018 Act, in addition to the phone call, victims are offered an in person meeting with the trial depute. This meeting should take place around two weeks prior to the trial.

350. In the Dundee cases we reviewed, a phone call was not necessary in six cases as the accused pled guilty at the first calling of the case. Of the remaining 14 cases:

- in three cases, the prosecutor contacted the victim to discuss the case
- in five cases, the prosecutor attempted to contact the victim but was unsuccessful (although two of these attempts were made well outwith the intended timescale)
- in six cases, there was no record of contact or an attempt at contact.

351. There were two cases amongst those we reviewed in Dundee that featured a charge under section 1 of the 2018 Act. In both cases, the victim was offered a meeting with the prosecutor. In one case, the victim took up the offer and, in the other case, the victim declined.
352. With regard to the phone calls made by prosecutors during their case preparation in both Glasgow and Dundee, many of the prosecutors we interviewed in those areas thought calling victims was beneficial. They found the discussions with victims to be helpful. They were able to answer questions and gather information that was useful during case preparation. They were better able to tailor their case preparation as a result. Prosecutors were able to reassure victims that their case was being dealt with and that they were aware of victims' situations. They felt these discussions alleviated concerns the victims had and encouraged them to engage in the justice process. The discussions also helped them identify those who were not engaged, or at risk of not engaging. Prosecutors were able to explore the reasons for this and provide reassurance or take appropriate action. Prosecutors also felt that these discussions could lead to earlier resolution of a case – being able to share with the defence that the victim was fully supportive of a prosecution sometimes led to a guilty plea. Engaging with victims at an early stage also reduced the pressure on prosecutors to speak to victims at court – prosecutors said it was easier to have a discussion during case preparation than when they were dealing with multiple cases at court.
353. Advocacy workers were also positive about this enhanced engagement with victims during case preparation. None of the victims we interviewed had yet experienced it, but they did tell us how keen they were to discuss their case with prosecutors at an early stage in proceedings.
354. Some prosecutors we interviewed were less positive about contacting victims during case preparation. They were less certain about the benefits of any discussion. They tended to focus on the absence of benefits for their own case preparation, however, and did not consider how the discussions may still have been beneficial for victims.
355. Regardless of how prosecutors viewed contacting victims during case preparation, they told us about barriers they faced to doing this more frequently and more effectively.
356. Most prosecutors were concerned that they lacked time during case preparation to have discussions with victims. They said they often lacked time to prepare properly even without this additional task. Discussions with victims could be lengthy and prosecutors were usually preparing multiple cases at once. This meant they may not get a chance to contact all the victims in their cases, despite their best efforts. Some prosecutors lacked confidence about contacting victims, and said they would appreciate more training and guidance on this. This was linked to the relative inexperience of many prosecutors currently working on summary level cases.
357. Prosecutors highlighted other barriers to successfully contacting victims. These included that some victims have no interest in speaking to prosecutors about the case, and some victims who do not support the prosecution can become abusive towards them. Other barriers included those already highlighted elsewhere, such as the absence of contact information in SPRs and the poor take-up of calls from an unfamiliar number. In the cases we reviewed, we noted prosecutors responded in different ways when victims' contact information was missing. Some appeared to make no efforts to trace victims, while others searched systems or instructed the police to find contact information. Advocacy workers often know how to contact victims and more use could be made of them.

358. With regard to the poor take-up of calls, we welcomed efforts in Dundee to increase the number of times prosecutors had to try to contact victims. We heard this was having a positive effect. We also welcome efforts being made to monitor take-up – data collected in Dundee in September 2023, for example, showed that successful contact was made with victims by prosecutors in 34% of cases. In a further 45% of cases, unsuccessful attempts were made to contact the victim. COPFS could do more to improve the take-up of calls, including by working with victims to understand why they may not answer and what might increase the chances they will. Prosecutors could also be encouraged to share a direct dial number when they leave messages for victims. In Dundee, we heard they usually provide the Enquiry Point number and this can delay or inhibit victims responding to them.

359. With regard to the meetings with victims that take place in Dundee in cases with a charge under section 1 of the 2018 Act, not many had yet taken place. VIA officers attend these meetings alongside prosecutors and they were very positive about them. They felt they provided victims with a safe space to talk openly with prosecutors. VIA officers also found watching the interaction between the prosecutors and victims to be a valuable learning opportunity that they could use in their own contact with other victims.

360. In all their contact with victims, one challenge faced by prosecutors is the need to convey their role as acting in the public interest rather than being a representative for the victim. While the interests of victims and the public interest may sometimes align, this is not always so. This is not always well understood by victims and even by some advocacy workers. This can lead to disappointment in how prosecutors manage cases. While we expect there to be greater contact between prosecutors and victims in future, there is a risk this may generate even more confusion about the proper role of prosecutors. This risk requires to be managed.

Recommendation 17

COPFS should ensure that in all summary domestic abuse cases, prosecutors seek to make contact with the victim as part of their early case preparation. Prosecutors should have sufficient capacity to carry out this task effectively.

At trial

361. Victims consistently told us that they wanted to meet the prosecutor conducting their case at court. Prosecutors recognised the importance of meeting victims, even if simply to introduce themselves and help put them at ease. However, many prosecutors said they did not always get a chance to discuss the case with the victim or even meet them briefly. While some prosecutors always tried to do so, for others it did not appear to be part of their standard practice.

362. Prosecutors described various barriers to meeting victims at court:

- witnesses are cited for 9.45am and the court starts at 10am, leaving little time for prosecutors to meet victims or follow up on those who have not attended
- prosecutors are juggling many other demands on their time, including the need to engage with defence agents
- summary court loadings can be high and many of these cases relate to domestic abuse. It may be impossible for prosecutors to meet with all the victims or other vulnerable witnesses in their cases
- during the course of the day at court, prosecutors can seek adjournments so they have time to meet with victims however not all sheriffs are supportive of this.

We heard that sheriffs in the Glasgow Domestic Abuse Court were more consistently amenable to adjournments for this purpose.

363. The difficulties prosecutors face in meeting victims at court was highlighted in a 2017 review of victim care. Little appears to have changed in the interim. That review noted that it was easier for prosecutors in higher courts as court loadings were lower. In summary courts, there was a tension between providing a service to victims and the responsibility of the presiding judge to ensure the best use of court time.⁸¹

364. Another issue which may contribute to prosecutors not being able to meet victims at court or having more perfunctory meetings is that many prosecutors in summary cases are less experienced. They may find it harder to juggle meeting victims with trial management and feel less confident in requesting adjournments for this purpose.

365. Advocacy workers commented how beneficial it was for domestic abuse victims to meet the prosecutor at court, noting it made victims feel more human and less like a 'piece of evidence'. While they appreciated the efforts prosecutors made, they also noted that victims felt discussions were rushed. Given the barriers prosecutors in summary courts face when trying to engage with domestic abuse victims on the day of trial, consideration should be given to making contact with victims as part of their final trial preparation, if they have not already done so. Other ways of reducing pressure on prosecutors on the day of trial, while also meeting victims' needs, should also be considered. If there has been effective engagement with the victim at an early stage in case preparation (in line with Recommendation 17), this may reduce the need for further engagement immediately before the trial.

Recommendation 18

In summary domestic abuse cases, COPFS should address victims' desire to speak with the trial prosecutor in court. To alleviate the pressure on prosecutors at court, this could include requiring prosecutors to make contact with victims during trial preparation to introduce themselves and address any outstanding issues. Prosecutors should have sufficient capacity to carry out this task effectively.

366. Prosecutors are generally engaged all day in court. Where cases are adjourned or pleas are considered, they may not be able to step away from court to speak with or update victims.

367. Some prosecutors said they would speak to victims about proposed pleas, while others would not. While prosecutors should not pass responsibility for the decision about a plea to the victim (we heard of this happening in one case), it can be useful to discuss a plea with the victim and ascertain their attitude towards it. This can be a factor prosecutors then take into account when deciding how to proceed in the public interest, but prosecutors have to be clear with the victim that the final decision is a matter for COPFS. Many victims and advocacy workers considered that a plea could be a positive development. It meant the victim did not have to give evidence. However some pleas are only agreed on the day of trial and, by this stage, many victims have prepared themselves to give evidence and have waited considerable time to do so. They can feel disappointed the trial is not going ahead and that they will not be heard. Victims were also frustrated when pleas were agreed to reduced charges – they felt this emboldened the accused and made the accused feel that he had gotten away with some offending.

⁸¹ Dr Lesley Thomson QC, [Review of victim care in the justice sector in Scotland](#) (2017) at paragraph 4.11.

368. Victims and advocacy workers regularly told us of difficulties in finding out the nature of any plea. They also said it was difficult to find out the reasons for any adjournments. Again, this was often because prosecutors were still engaged in court and not able to speak to victims about the adjournment. However, we also heard that victims and advocacy workers were often not told about the reasons for adjournments even when they made contact with prosecutors or VIA in the following days. They would either be told the information could not be shared or they would simply receive no response to their enquiry. This was one of the most common frustrations expressed during our interviews. Not knowing why cases had been adjourned, sometimes repeatedly, left victims at risk of disengaging from the process. A prosecutor described a case to us in which the victim was adamant she would not return to court after the case was adjourned on a defence motion. On that occasion, the prosecutor had time to explain what had happened, resulting in the victim changing her mind, but noted they would not have time to do this in all cases.

369. We also heard that victims could leave court with no one having explained to them the final outcome in the case. For example, in one case where a victim had given evidence, the sheriff found all charges not proven. Neither the victim nor the advocacy worker could understand why. No one from COPFS was available to explain it to them. When they are able to get in touch with VIA, VIA officers will often repeat what a prosecutor has written in their court minute. This has limited value as phrases such as 'insufficient evidence' or 'not in the public interest' are meaningless to many without further explanation and context.

370. We also heard of positive practice by prosecutors. One victim said the prosecutor in her case offered to meet her after proceedings to explain the outcome which she appreciated. When they could not get away from the courtroom, prosecutors would also ask SCTS staff to advise victims what had happened in a case, pass their contact information to the victim, or to say that if they wanted to wait, the prosecutor would speak to them when they were free.

371. As demand on summary prosecutors has increased over the years and expectations are higher about the service provided to victims and witnesses, consideration should be given to how victims' need for and right to information can be met. Various options could be considered, including a more proactive and prompt role for VIA in updating victims. Consideration should also be given to allocating VIA resource to courts, to assist with communication in real time and to relieve the pressure on prosecutors. They could also assist with sharing statements with witnesses to read.⁸²

372. A final barrier to communication between prosecutors and victims at court is the lack of appropriate accommodation in many courts. Often prosecutors require to discuss sensitive issues in open areas or in corridors. This is not conducive to an effective discussion.

General communication

373. As well as considering communication between prosecutors and victims, we considered how COPFS generally communicates with victims in domestic abuse cases. Much of this communication falls to VIA, although victims will also often come into contact with Enquiry Point. At paragraph 258, we set out the key stages in summary domestic abuse cases where VIA will generally proactively contact the victim. This is the minimum expected level of contact. There may be a need for additional contact depending on the circumstances of the case, and other contact may take place where this is sought by the victim.

⁸² Although the need for this should reduce upon rollout of the Witness Gateway (see paragraph 435).

374. In the 60 cases we reviewed, we assessed the extent to which the 61 victims were advised of key dates in their case:

- 20 (33%) victims were fully or mostly advised of the key dates in their case
- 27 (44%) victims were advised of some key dates
- 14 (23%) victims were not advised of key dates at all.

375. On this measure, the service provided to victims in Glasgow and the Rest of Scotland was broadly similar. However, the service provided to victims in Dundee was worse (only two victims in Dundee were fully or mostly advised of key dates, and nine victims were not advised of any key dates at all) (Recommendation 19(a)).

376. In the cases we reviewed, we also noted that there were key stages where VIA does not routinely make contact with the victim. These included:

- where a case is continued without plea. A case could be continued without plea on several occasions. In such circumstances, months could pass where a victim knows from the police that a case has been reported to COPFS but without them receiving any update on progress
- where a case is continued at the intermediate diet to the trial diet
- where an accused pleads or is found guilty, VIA informs the victim of the outcome and if sentence has been deferred. The court may defer sentence several times but VIA will only inform the victim of the first deferment and the final sentence. Several months may pass in the interim where the victim is unaware of developments.

377. Prosecutors we interviewed felt that contact with victims was insufficiently frequent. They saw cases where there was VIA contact with the victim at the beginning and end of a case, but nothing in the interim. They felt this provided victims with insufficient support. Victims we interviewed also felt there could be more communication from VIA. Some said they had received no communication at all, or that communication was missing at key points in the case (Recommendation 19(b)).

378. As well as there being key stages of the case when victims were not updated, there were also key matters about which victims were not always informed. These issues were raised frequently in our interviews with victims and advocacy workers and included not being told of the reasons for adjournments, for discontinuing or not calling cases.

379. We also heard that victims may not be told the precise nature of the charges against the accused. This meant they were unsure what they would be asked about when giving evidence, heightening their anxiety about going to court. It also presented challenges for victims involved in multiple cases – one victim told us they had a court date approaching but had no idea which incident it related to. Similarly, victims were often not told about the charges to which the accused had pled guilty (which may differ from those on the complaint). A VIA officer told us they were not permitted to discuss charges with the victim without seeking clarification from a prosecutor. Other VIA officers said they would discuss initial charges, but would not discuss any aspects of a charge which have been deleted following a plea. This may result in the victim being less informed about the case than the accused (Recommendation 19(c)).

Overall quality of communication

380. We assessed the overall quality of communication with victims in the cases we reviewed. This covered all and any communication between COPFS and victims

(including communication with prosecutors, VIA and Enquiry Point). We assessed whether the overall quality was good, reasonable or unsatisfactory for each of the 61 victims:

- for two (3%) victims, the communication was good
- for 10 (16%) victims, the communication was reasonable
- for 49 (80%) victims, the communication was unsatisfactory.

381. Again, the quality of communication in Glasgow and the Rest of Scotland was broadly similar. In Dundee, the communication with all 20 victims was assessed as unsatisfactory.

382. Where cases were assessed as good, this was because the victim was contacted at the key stages of the case and contact was timely and accurate.

Case study – communication assessed as good

The victim was advised by VIA by phone of the special bail conditions imposed following the accused's first appearance in court. An initial letter was also sent to the victim the following day. The accused pled guilty. The victim was advised of the final outcome in a letter sent two days after the plea was tendered in court. All details in the letters were accurate.

383. Where cases were assessed as reasonable, it was because the communication was good in places, but there were also either some missed contact or delays or errors in contact.

Case study – communication assessed as reasonable

VIA advised the victim of the outcome of the first calling of the case and the special bail conditions imposed by phone. An initial letter was sent the same day. The accused pled guilty at the trial diet. A letter was sent two days later advising the victim of this and of the date of the deferred sentence. Following sentencing, a letter was not sent to the victim to advise of the sentencing outcome until 25 days later. During this time, the victim was unaware that the special bail conditions had come to an end, and that an NHO had been made.

384. Where communication was assessed as unsatisfactory, it was because either no contact was made when it should have been, or any good examples of contact were substantially outweighed by missed contact or delays or errors in contact.

Case studies – communication assessed as unsatisfactory

In one case, VIA advised the victim of the outcome of the first calling of the case and the bail conditions imposed by phone. An initial letter was also sent. Despite being a summary case management pilot case, no contact was made with the victim by the prosecutor during case preparation. The accused pled guilty at a case management hearing. At the conclusion of our case review, several months after the hearing, VIA had still not informed the victim of the plea or provided any information about the sentencing outcome.

In another case, the accused pled guilty at the first calling of the case. The case was referred to VIA but was never acted upon. There was no communication between VIA and the victim. There was no information in the case to suggest the victim's views on an NHO had been ascertained.

385. Examples of missed contact or delays or errors in contact included:

- no letters being sent to the victim at all
- letters at key stages not being sent, including victims not being informed of the final outcome of the case
- substantial delays in letters being sent
- poor quality letters, including errors, poor wording or the omission of key information
- letters not being translated when needed
- letters that refer victims to the COPFS website but which use broken links or which provide a link to the website generally rather than the specific information needed
- not advising victims of applications for bail review
- not advising victims of adjourned trials
- not responding to communication from victims or advocacy workers, or substantial delays in responding
- victims not being asked for their views on NHOs
- VIA not following instructions from prosecutors to update the victim
- not taking account of the victim's additional support needs in communication.

386. Some of these issues have already been highlighted elsewhere in this report, while others are explored in more detail below.

Letters

387. Much of VIA's communication with victims is through letters sent by post. Template letters covering key stages in a case are available to VIA officers to adapt and tailor to the circumstances and needs of individual victims. If care is not taken when adding or removing information from the templates, the resulting letter to the victim can be difficult to read and understand or even inaccurate.

388. VIA officers told us the templates are lengthy and can be challenging to edit taking into account the various scenarios that can arise in a case. They said they had little guidance on how to complete the templates and that training for new staff could be onerous. Quality assurance of letters sent to victims was limited, meaning opportunities to correct letters and to learn lessons were lost.

389. Some victims felt that the letters from VIA were acceptable. One described them as 'factual and to the point'. Other victims felt the letters were too long. It was suggested that a glossary of legal terms enclosed with the letter would be beneficial, as would more detailed information about the case. For some domestic abuse victims involved in multiple cases, it was not always clear which incident a letter referred to. Support organisations said they often had to explain the letters to victims, as did staff working within the Enquiry Point who often received queries about the letters from victims.

390. The need to improve the quality of letters to victims has been a recurring theme in our inspections over several years. While efforts have been made to improve them, they continue to attract adverse comment and we continue to find poor quality letters in the cases we review. We therefore welcome a commitment to revise template letters as part of COPFS's VIA Modernisation Programme (see paragraph 427). This should be supported by improved guidance, training, additional support for new VIA staff and quality assurance of correspondence sent by VIA.

391. Advocacy workers felt that VIA should explore the use of other methods of communication, such as emails and text messaging, and should make more effort to establish a victim's preferred method of contact.

Accessibility and responsiveness of VIA

392. Many victims and advocacy workers highlighted difficulties in making contact with VIA. When they tried to phone, email or write to VIA, they often did not receive a timely or any response. They felt that in some areas, there was a reluctance by VIA to give out direct contact information, and they often required to make use of generic mailboxes or Enquiry Point to reach VIA. However, Enquiry Point operators also reported difficulties in making contact with VIA (see paragraph 440).
393. One advocacy worker cited a case where she had emailed VIA four times over several months about a victim's case and only received a response on the day before the trial. Other advocacy workers provided similar examples. Advocacy workers were often trying to share victims' views and wishes with COPFS, but got no response from VIA and felt they had no means to escalate the issue. They felt VIA acted as gatekeepers to bringing issues to prosecutors' attention or having discussions with prosecutors.
394. In contrast, some advocacy workers were positive about the accessibility and responsiveness of their local VIA officers. This was often where regular meetings and shadowing opportunities between a support organisation and VIA were in place.
395. Victims were frustrated that they had to initiate contact with COPFS to find out more about their case, rather than receiving information timeously. One victim said they had written to COPFS repeatedly but never received a response.
396. A common issue we heard in interviews is that despite VIA being informed of a change of address by the victim or an advocacy worker, correspondence and citations continued to be sent to a victim's previous address. This was because the address requires to be updated on two systems, and this was only being done on one.

Equality issues

397. Victims of domestic abuse, in addition to being deemed vulnerable due to the nature of the offending, may also have additional support needs. Additional support needs vary, but could include the victim not speaking English, not being able to read, or having a learning disability. We considered the extent to which additional support needs were taken into account by COPFS in its communication with victims.
398. In the cases we reviewed, there were 13 victims who we considered had or likely had some form of additional support need based on either the information in the SPR or other information held in the case record. In most of these cases, we considered there was more that could have been done to find out how the victim could be supported and to deliver that support. For example:
- in two cases, COPFS was aware that an interpreter was required for the victim but there was no evidence of letters or citations being translated
 - in one case, the victim used a wheelchair and repeatedly contacted COPFS to request a taxi to court. It was not until the fifth scheduled trial diet that enquiries were made into whether the victim could give evidence via another means
 - in one case, the victim had learning difficulties. They indicated a preference for contact by phone, but VIA continued to send letters.
399. In contrast to these cases, we also heard of others where VIA officers had taken steps to meet the additional support needs of victims. For example, one officer was working alongside a support agency to help a victim with poor mental health through

the justice process. In another case, special measures were tailored to allow a victim with particular needs to give evidence via a TV link in their home.

400. Staff are able to use an interpretation service to support communication with victims who require it. While Enquiry Point operators told us they made frequent use of it, confidence in its use was low among prosecutors, VIA officers and administrative staff. This requires to be addressed.
401. We interviewed an advocacy worker who was dedicated to providing support to women from Black, Asian and Minority Ethnic communities. She felt there was more that justice agencies, including COPFS, could do to understand the additional barriers they may face in speaking out against abuse and their support and communication needs. For example, some of the women she supported were reluctant to ask for correspondence in a different language, and were reluctant to say they did not understand the information being given to them. If agencies had a better understanding of this, they could take more steps to confirm that information has been understood, and to refer them to specialist support agencies.
402. Generally, it appeared that the additional support needs of victims in summary domestic abuse cases were not always being addressed timeously or at all. The backlog of work faced by VIA officers (described below) will no doubt be contributing to this, with pressures to deal with cases as quickly as possible rather than taking the time to check and provide what victims need. We heard of a 'one size fits all' approach being taken, rather than tailoring a service to suit victims. This not only contributes to a poor victim experience of the justice process, but may lead to cases being delayed and court time wasted (Recommendation 19(d)).

Recommendation 19

In relation to communicating with victims in summary domestic abuse cases, COPFS should:

- (a) take immediate steps to ensure that victims are receiving basic information about their case, including its outcome, timeously
- (b) work towards providing information to victims at additional key points in the progression of cases
- (c) develop guidance for all staff to ensure that there is consistent practice regarding what a victim is told about charges and accepted pleas
- (d) ensure that staff are able to identify and respond to the additional support needs of victims.

Why is communication unsatisfactory?

403. The issues we identified in our case review regarding the overall quality of communication between COPFS and victims were echoed in our interviews with victims and advocacy workers. During our interviews with COPFS staff, we sought to understand why the overall quality of communication with victims was so unsatisfactory.⁸³
404. We heard that across COPFS, VIA officers working on summary cases have backlogs in their work. They have prioritised updating victims about the outcome of the accused's first appearance in court and whether they are remanded or released with bail conditions. Other work has been delayed as a result. While this has included applications for special measures in some areas, it mostly relates to updating victims

⁸³ Some issues that contribute to ineffective communication have already been highlighted above, such as the poor take-up rate of calls to victims.

at the key stages in their case, including the outcome of intermediate, trial and sentencing diets. It also means VIA officers have either not been responding to queries from victims or advocacy workers or have been delayed in responding. We interviewed VIA officers from across Scotland – all reported backlogs, although these varied in scale from four weeks to five months. The impact of such backlogs on a victim in a summary domestic abuse case is substantial – an entire case could be concluded before the victim hears about the outcome of an adjourned intermediate diet.

405. A lack of management data about the work of VIA meant we were unable to accurately compare the scale of the backlogs across different offices, to establish exactly when the backlogs arose or to understand why the backlogs were worse in some areas compared to others.
406. There were inconsistencies in how VIA officers were choosing to manage the delays caused by the backlog in individual cases. There appears to have been no national leadership on this issue. On being alerted to a victim requiring to be updated about a case that had called in court, VIA officers in some areas would simply send the relevant update even if the court date had occurred some time previously and the case had progressed in court in the meantime. This was confusing for victims who might be aware of subsequent developments by, for example, being cited for trial or hearing from advocacy workers, the accused or members of their community. In other areas, VIA officers would take the opportunity to establish the latest development in the case and send a letter only about that. More sensibly, we heard from some VIA officers who would send a letter about the latest position, but also incorporate any other information the victim should have received previously.
407. One VIA officer described coming across a case in which a final outcome letter required to be sent. The outcome had been finalised three months previously. They were advised by a colleague not to bother sending the letter as too much time had passed. The VIA officer was concerned that this meant the victim would remain unaware of the outcome of the prosecution.
408. The impact on victims of not being kept up to date about their cases, and sometimes not being informed of the final outcome, was substantial. Our findings about communication explained why VIA was largely absent from conversations we had with domestic abuse victims. Overall, most victims felt they did not receive enough information about their case, and would prefer to be contacted more frequently and more timeously after key developments. They said:
- they did not receive much information beyond the initial letter from VIA
 - there were long gaps in communication from VIA
 - they waited a long time to find out the final outcome of the case. Often the case was concluded and the accused no longer subject to bail conditions for a significant period before the victim was informed.
409. Victims were frustrated that they had to initiate contact with COPFS to find out about the progress of their case and did not always receive a response. Many victims said they relied on their advocacy workers for information in the absence of updates from VIA. We were concerned about those victims who are not engaged with support organisations (only 26% of victims in the cases we reviewed appeared to be receiving support from a third sector organisation). Poor communication risked victims becoming unsupportive of the prosecution and losing confidence in VIA, COPFS and the justice system overall. One victim said, 'No wonder women don't report domestic abuse, if this is how the justice system responds'.

410. Most VIA officers were aware they were not providing a good quality of service to victims. They were frustrated, demoralised and keen to do a better job. One officer said she felt 'completely overwhelmed'. Some told us that they had considered leaving VIA. They regretted that they did not have more routine contact with victims and the opportunity to develop better relationships with them. This was an aspect of the job that they enjoyed and that motivated them. We were concerned, however, that some VIA officers did not seem to fully grasp the negative impact the backlogs might have on victims. They seemed to think that if a victim wanted an update, the victim could just initiate contact with VIA.
411. VIA officers said backlogs were caused by a lack of resources and an increasing workload since the pandemic. Staff felt that vacancies were not being filled when VIA officers retired or moved to other roles in COPFS. While resourcing for COPFS as a whole has increased substantially since the pandemic, VIA officers (and prosecutors) working on summary cases felt the additional staff were being allocated to specialist teams rather than high volume summary business.
412. Some efforts had been made to address the backlogs, however it was not clear whether these were effective. These efforts could also have unintended negative consequences.
413. Traditionally, VIA officers working on summary cases were attached to local procurator fiscal offices. They dealt with all the summary work of that office and provided support and information to victims in local cases. Some areas have moved away from this model towards area-based working. The area to be covered was generally an entire sheriffdom. Under this model, VIA officers are assigned specific tasks on a rota. Each day, they carry out the task for the whole sheriffdom (tasks could include updating victims about the first calling of cases, monitoring the mailbox or drafting letters).
414. Area-based working on a rota system was introduced to drive efficiency and provide more resilience and flexibility. Staff can be easily reassigned to tasks that require more resource. Some managers told us this model was helping to reduce the backlogs. While reducing the backlogs is imperative, we also heard that many VIA officers were dissatisfied with this way of working. They felt:
- there was a loss of knowledge of local cases and victims
 - there was no opportunity to develop relationships with victims and they were unable to deviate from their rota duties to support a victim they had dealt with previously
 - VIA officers' direct contact details were no longer being added to letters, forcing victims to contact VIA through Enquiry Point
 - there were lost opportunities to discuss cases with local prosecutors (a VIA officer based in the Kirkcaldy office, for example, had likely never met the prosecutor managing the case in Dundee).
415. In areas that had recently moved to area-based working, some VIA officers felt the change had been managed poorly, they had not been consulted and had not had an opportunity to feed back on how it was going. They also noted that different offices had different processes, and this was not sufficiently recognised when the change was being planned (the most obvious example of this was that VIA officers working outside of Dundee were expected to deal with cases falling within the summary case management pilot but were not fully briefed on key differences in how those cases should be managed).

416. We were concerned that area-based working appeared process-driven rather than person-centred, and seemed at odds with the COPFS commitment to put victims at the heart of the justice system and a trauma-informed approach.

Summary case management pilot (Dundee)

417. When we assessed the overall quality of communication in the cases we reviewed, we were disappointed by the poor results. While the results were poor across all three of our case samples, it is notable that the quality of communication with all 20 victims in Dundee was assessed as unsatisfactory. This was unexpected given the introduction of the enhanced engagement model as part of the summary case management pilot. Despite this engagement between prosecutors and victims featuring in some of our cases, we did not consider it sufficient to rectify errors or delays in the minimum service that VIA should have provided to victims.

418. The barriers to effective communication between VIA and victims described above, including backlogs and a lack of resources, applied equally to Dundee. We considered there were also additional issues that affected the work of VIA in Dundee.

419. We heard that it was 'business as usual' for VIA in relation to cases falling within the pilot. This was not accurate however and the role of VIA appeared to have been overlooked in planning and implementing the pilot. VIA processes and template letters, for example, may not have been fully aligned with the different ways in which pilot cases progressed. For example, pilot template letters sent to victims implied only one case management hearing would take place, but this was often not so. It was also possible that, because of the different way cases progressed, victims in Dundee were more likely to experience prolonged periods with no contact. Moreover, because of the move to area-based working, VIA officers from outside Dundee managed some of the communication with victims in pilot cases, but their awareness and understanding of the pilot was more limited. This meant the wrong template was sometimes used as the basis for letters to victims, with the standard initial letter being issued to victims rather than one tailored to the pilot. This misled victims as to how their case would progress.

420. Given the significant investment of time and resources from COPFS into successfully implementing the pilot, more thought should have been given to how backlogs in VIA's work would affect the pilot and VIA's ability to, for example, update victims after each case management hearing. It is unfortunate that these issues undermined the more positive work being done in respect of enhanced engagement between prosecutors and victims in pilot cases.

The way forward

421. For some victims, advocacy and other support organisations stepped in to fill the gap in communication from COPFS. Victims highlighted the importance of advocacy workers and many thought they were critical in helping them navigate and understand the justice process. One victim described their support organisation as being, 'like scaffolding, holding me up'. One victim said they would have disengaged from the justice process had it not been for the advocacy worker. Another was worried about what happened to those victims without this kind of support.

422. While it is encouraging to hear of the work being done by support organisations, not all victims are referred for support or take up the offer of support. There will also be geographic variations in the availability of certain kinds of support or in the availability of specialist support targeted at particular groups. Moreover, however good support is, COPFS has statutory obligations in respect of victims that must be delivered.

423. While there had been attempts to address backlogs in VIA's workload locally, we were concerned that there did not appear to be a wider appreciation of the extent of the unsatisfactory service being delivered by VIA. Three issues may have contributed to this.
424. The first is that there is no national leadership within COPFS for VIA. The service is largely delivered locally, with VIA staff being supervised by local managers. This contributes to inconsistency in practice, processes and decision making across areas. It also limits any national monitoring or oversight of the service being delivered by VIA. This requires to be addressed.
425. The second is that there is a lack of management data about the service provided by VIA. Management data would help in monitoring the demand for the VIA service, and in monitoring whether demand is being met and in what timescales. Performance should be compared across areas. Senior leaders should be sighted on this data. The data should inform decisions about the resourcing needed to deliver the VIA service and where and how resources should be allocated.
426. The third issue is that there appears to be little quality assurance of VIA's work – this means that not only is the volume of work not being monitored, but neither is its quality.
427. The first and second issues have been recognised as part of COPFS's VIA Modernisation Programme. This programme was announced in November 2021 with a view to improving the VIA service. The expected completion date for key aspects of the work is April 2024. A range of workstreams have been identified, including a review of VIA processes, a review and revisal of template letters, the creation of an IT solution to monitor and manage VIA workload, and a review of the governance and structure of VIA. We welcome these initiatives.
428. However, we were concerned that the modernisation programme did not go far enough and did not seem to be getting to grips with some of the key issues highlighted above. In light of the current level of service being delivered, any review should be focusing on the more basic issue of whether VIA is fit for purpose in summary level cases. We were therefore pleased that, in response to our sharing early findings from our inspection and following an internal review of the programme's objectives, COPFS indicated that a second, more fundamental phase of the programme, exploring a redesign of the service, will commence in April 2024.
429. A more fundamental review of VIA should consider its purpose within the context of the broader strategic aims of COPFS and the justice system. COPFS has committed to putting victims at the heart of the justice process, and to taking a more person-centred and trauma-informed approach. This will require a significant shift in how VIA currently approaches its work at summary level. It will require equipping staff with training, the tools and the time to do their job effectively. From the cases we reviewed and the people we interviewed, a picture emerged of a struggling and under-performing service. It is staffed by many who are committed to delivering a better service, but who feel constrained and frustrated by the limitations of their role and their workload. Too often, VIA appeared to be more of a letter-writing service than one in which staff proactively support and engage with victims in a way that is tailored to individual need. This must change. This will improve communication with victims and witnesses, but will also contribute to better case preparation and higher job satisfaction among VIA officers.

430. Any review of VIA should consider how it is presented to victims. Many victims are confused about the role of VIA and are not clear that it is part of COPFS. Sometimes they were under the impression that no one from COPFS had been in touch about their case when they had in fact received a call or letter from VIA. VIA was sometimes confused with Victim Support Scotland.

431. We raised this issue in a previous inspection and recommended that COPFS consider rebranding VIA to emphasise its role within COPFS.⁸⁴ COPFS considered the issue, but decided that it could achieve clarity about the role of VIA by means other than rebranding.⁸⁵ Despite efforts being made to achieve this, it was clear from our interviews that they have not yet been successful. COPFS should revisit this issue as part of its review of VIA's purpose.

Recommendation 20

COPFS should review whether the current VIA service in summary cases is fit for purpose and whether, in its current form, it will be able to deliver a person-centred and trauma-informed service to victims. As part of its review, COPFS should consider the need for effective national leadership and oversight of the VIA service.

432. When we asked victims about how they would improve the VIA service, one of the most common responses was that they would like a single point of contact at COPFS. In light of this feedback and given the strategic importance of domestic abuse, we believe COPFS should provide domestic abuse victims in summary cases with a dedicated VIA officer. This will provide victims and their advocacy workers with a single point of contact for any queries and allow VIA staff to more effectively support victims and monitor their cases. It would also avoid victims having to repeat their stories and circumstances to multiple individuals, which was another recurring theme in our interviews. Unfortunately, providing a dedicated officer may not be achievable in the short term given the current state of the VIA service. Nonetheless, COPFS should work towards this aim.

433. Dedicated VIA officers were made available to victims in more serious cases following a recommendation made by the inspectorate in 2017.⁸⁶ We believe a single point of contact would be particularly beneficial to victims in domestic abuse cases because of the particular nature of the offending and how it affects victims. Victims in domestic abuse cases are more likely to be repeat victims. Almost half of the victims in the cases we reviewed were described in SPRs as hostile, reluctant or non-engaging. We have already noted that victims in domestic abuse cases may not be supportive of a prosecution or may not engage with the justice process for a range of reasons, and that their position may change as the case progresses. We have also noted that more needs to be done to reassure and support victims. While this can be done by prosecutors during their case preparation, there is also a role for VIA. However, opportunities for VIA to provide reassurance and support are being missed in many areas. Many VIA officers expressed a desire to do more proactive work to support and engage victims, but felt unable to do so because of backlogs in completing basic tasks. Some VIA officers also felt that to provide this support more effectively, they would need more training.

⁸⁴ IPS, [Thematic review of the investigation and prosecution of sexual crimes](#) (2017), Recommendation 9.

⁸⁵ IPS, [Follow-up review of the investigation and prosecution of sexual crime](#) (2020) from paragraph 104.

⁸⁶ See IPS, [Thematic review of the investigation and prosecution of sexual crimes](#) (2017), Recommendation 8 and [Follow-up review of the investigation and prosecution of sexual crime](#) (2020) from paragraph 98.

434. Advocacy workers said that where VIA officers had been able to take the time to provide information, support and reassurance to victims, this had a hugely positive impact. Keeping victims informed of adjournments and other developments in the case also helped maintain their engagement.

Recommendation 21

COPFS should provide victims in domestic abuse cases with a dedicated VIA officer.

Witness Gateway

435. For several years, COPFS has been working to deliver the ability for victims and other witnesses to track the progress of their case online. In evidence to the Justice Committee in 2016, it stated this work was underway.⁸⁷ We understand a 'Witness Gateway' is being piloted in early 2024, with a view to rolling it out further. While the scope of what would be delivered online appears to have narrowed since it was originally mooted, we understand that in its initial phase, Witness Gateway will allow for witnesses to access their statements online, confirm availability for trial diets, and express a preference as to how they want to be updated about their case.

436. As long ago as our Annual Report 2017-18,⁸⁸ the inspectorate welcomed this development. We hope that its full delivery is now imminent, that it will improve the victim and witness experience and that it will free up COPFS resources to be re-invested in other aspects of its service to victims.

National Enquiry Point

437. Enquiry Point is COPFS's customer contact centre. It is the first point of contact for many victims seeking information about their case. It can be contacted via phone, email, letter or text. Enquiry Point comprises a team of operators who will either deal with the enquiry or redirect the enquirer to the most appropriate person or team within COPFS.

438. Enquiry Point can play a substantial role in domestic abuse cases. There was a record of contact between victims and witnesses and Enquiry Point in 40% of the cases we reviewed. Enquiry Point operators felt that more than half of the calls they received related to domestic abuse cases. Enquiries generally relate to:

- the accused's bail conditions
- the outcome of cases calling in court
- the reasons for adjournments
- victims wishing the prosecution to be 'dropped'
- victims seeking an excusal from giving evidence in court
- victims asking for the content of and jargon in VIA letters to be explained
- victims asking for special measures to be explained.

439. Many letters to victims from VIA now include contact details for Enquiry Point rather than the VIA officer who wrote the letter. If victims have questions about the letter and want to respond to its contents, they must contact Enquiry Point in the first instance. This has the effect of shifting demand from VIA to Enquiry Point. Enquiry Point operators aim to answer enquiries themselves, rather than transferring the victim to VIA. While operators are keen to resolve enquiries at the first point of contact, they do not have the same training as VIA officers and do not have immediate access to local prosecutors in the same way that many VIA officers do.

⁸⁷ COPFS, [Written submission to the Justice Committee's Inquiry into the role and purpose of the Crown Office and Procurator Fiscal Service](#) (16 October 2016).

⁸⁸ IPS, [Annual Report 2017-18](#).

440. Enquiry Point operators are keen to resolve enquiries at the first point of contact because this is in line with effective customer service standards. However, they are also avoiding the need to transfer callers to VIA because they often receive no response. We heard that there has been an emerging pattern in recent years of some VIA officers not accepting transferred calls from Enquiry Point. We heard that this varied across offices, with VIA officers in Dundee, for example, always being willing to accept calls. This was not a universal approach, however, with Enquiry Point operators estimating that the majority of their calls to VIA are not answered. As a result, operators feel obliged to do what they can to help callers, but this may result in them straying beyond their field of expertise. We were concerned that VIA officers were not fulfilling this aspect of their role, and that this shift in demand from VIA to Enquiry Point had not been appropriately planned for or supported by way of guidance and training.
441. While this situation may have arisen due to the backlogs of work experienced by VIA noted above, it cannot continue and is a further indicator of VIA not providing a minimum level of service. The issue of VIA staff not accepting calls from Enquiry Point has been recognised by senior leaders and staff have recently been reminded of the standards of service expected from them. We welcome this reminder, although more needs to be done to address the underlying cause of the issue.
442. When a victim contacts Enquiry Point, a record of their enquiry and the response given is logged by the operator on the 'witness contact' screen on the case management system. If the enquiry requires further follow up or requires to be brought to the attention of the prosecutor or VIA, the operator sends an email to the relevant office dealing with the case. We heard that operators have been told not to add the enquiry or the record of the contact to the VIA minute sheet. The minute sheet is held in the electronic case file and is a record of contact with the victim. This means that a record of contact with the victim is kept in (at least) two separate places on COPFS systems.
443. Enquiry Point operators were under the impression that the information they logged on the witness contact screen would be seen and used by prosecutors and VIA. This was not so – we were concerned that COPFS staff outwith Enquiry Point were generally unaware enquiries were recorded and where they were recorded. This meant they did not use the information when dealing with the case.
444. There was a record of calls to Enquiry Point in 24 (40%) cases we reviewed. The enquiry was from the victim in 16 cases. In these 16 cases, almost two thirds had more than one call from the victim. In three cases, there was a record of the victim making five or more calls to Enquiry Point.
445. Because most prosecutors and VIA staff were unaware of the information recorded in the witness contact screen and therefore not checking this, key information was being missed. Sometimes, the information was simply evidence of the victim's engagement in the case. Other times, the information was key to the preparation and management of the case either by prosecutors or VIA. There were missed opportunities to deal with issues prior to the case calling in court.
446. Where Enquiry Point also sent an email to the local office, the information should have come to the attention of prosecutors or VIA through that means. Staff in the local office should import the email to the case file where it should be seen by those dealing with the case. However, there was often no record of an email being imported and no record of, for example, VIA responding to the victim's enquiry.

447. Examples of information we found in the witness contact screen included:
- a victim advising COPFS of their views on bail conditions. Enquiry Point also sent an email to the local office with this information, but there was no record of the email in the case file. A bail review hearing was subsequently adjourned to establish the victim's views on bail conditions despite this information already being known to COPFS
 - a victim requesting bail conditions in respect of her children. Enquiry Point told her to email the local office, but wrongly advised her that bail conditions could not be granted as the children were not witnesses. The victim also noted she had an operation scheduled before the trial and may be unfit to attend. This information was not imported to the case file and prosecutors and VIA appeared to be unaware of it
 - a victim requesting updates from Enquiry Point on six occasions. Because the information was recorded on the witness contact screen but not included in the VIA minute sheet or elsewhere in the case file, it would appear to the prosecutor that there was little engagement from the victim
 - a victim wishing to discuss special measures. Enquiry Point sent an email to VIA but this was not imported to the case and there was no evidence VIA returned the victim's call.
448. There were also a few positive examples of information supplied by Enquiry Point being acted upon by VIA. In one case, Enquiry Point was not able to answer a victim's query about bail. The operator emailed VIA. The email was imported to the case file and VIA responded to the victim's query.
449. One prosecutor we interviewed had not previously been aware of information recorded on the witness contact screen until he was interviewed by inspectors. He subsequently contacted us, saying he had since been using the information when preparing cases and found it useful.
450. Important information about contact with victims (and witnesses) is currently being recorded in different places. This can lead to a poor victim experience and negatively impact case preparation. This issue affects not just summary domestic abuse cases, but all cases. We raised this issue with COPFS prior to publication of this report so that immediate remedial action could be taken.
451. COPFS requires to update its systems so that all contact with victims is recorded in one place, accessible to all staff. This will minimise the risk of enquiries going unnoticed or unactioned. We appreciate that this may take some time to deliver, although work towards delivery should be expedited. In the meantime, action should be taken to address the issues we have raised here. This could mean the VIA minute sheet being updated with all victim contact. While this would be helpful in domestic abuse cases, it is not a solution for other cases where there may be no VIA involvement and hence no VIA minute sheet. Moreover, while the VIA minute sheet is often the source of much information about victim contact, it cannot be the long term solution in its current form. Too often, we heard from staff about the document becoming corrupted and inaccessible. COPFS requires to identify a more appropriate solution to recording victim and witness contact.

Recommendation 22

COPFS should ensure that all victim and witness contact is recorded in one centralised place accessible to all staff. In the short term, COPFS should take immediate action to ensure that all staff are aware where victim and witness contact with Enquiry Point is recorded, and that staff use this information when preparing and managing cases.

Administrative backlogs

452. Administrators in summary teams play an important role in processing domestic abuse cases at various stages. This will include tasks such as updating the case management system following court dates or actioning a prosecutor's instruction. It also includes monitoring electronic mailboxes, importing emails into case files and ensuring these are drawn to the attention of the appropriate team or person when needed. We heard that there were backlogs in processing emails in many offices. Administrative staff felt they had insufficient resources to cope with demand.
453. We heard of backlogs in processing summary court outcomes resulting in delays in countermands being sent to cited witnesses. This can result in victims and other witnesses attending court to give evidence when the trial diet has been adjourned or the accused has already pled guilty at an intermediate diet.
454. Emails processed by administrative staff include those from victims, witnesses, advocacy workers, justice partners and Enquiry Point. Backlogs of emails contribute to the delayed responses we heard about from victims and advocacy workers,⁸⁹ and issues only being dealt with immediately before the next calling of the case or even after the need for a response has passed. When a response is not received, another email may be sent or a follow-up call made. This further increases the volume of emails that need to be processed. This is known as 'failure demand' – when a service's failure to deal with an issue the first time prompts further demand. The need for victims to call Enquiry Point to clarify the contents of poor quality letters from VIA, or to request an update in a case when VIA has failed to send information timeously, are further examples of failure demand. We consider that if COPFS were to focus on a 'right first time' approach, demand across various channels of its service would reduce and efficiencies could be achieved.

Recommendation 23

To improve the efficiency of its service, COPFS should identify and reduce failure demand.

Overlapping services

455. During our inspection, we heard that some victims can get calls from more than one agency about the same thing. For example, we heard that some receive calls from both VIA and the police about the outcome of the case's first calling. If they are engaged with a support organisation, they may receive a third call. Victims can find this frustrating. There is a need to ensure that all victims are notified of key information, but that this is done efficiently, particularly given that so many services are publicly funded.
456. Addressing this issue is not without difficulty however. COPFS has a statutory duty to provide information to victims, while a support organisation may be updating a victim about a court outcome but also providing other forms of support at the same time.
457. A review of victim care in the justice sector published in 2017 outlined how victims require to engage with multiple organisations throughout their justice journey. It noted that victims wanted, 'one point of contact – a single source which could co-ordinate a response to all of their individual needs for practical assistance, support, information and explanation'.⁹⁰ This was echoed in our own interviews with victims. The Victims

⁸⁹ We heard that some advocacy workers send information and enquiries to VIA mailboxes rather than general office mailboxes, so some delays are attributable to VIA rather than administrators.

⁹⁰ Dr Lesley Thomson QC, [Review of victim care in the justice sector in Scotland](#) (2017) at paragraph 7.3.

Taskforce currently has a 'victim-centred approach' workstream which is considering the development of a single point of contact model for victims.⁹¹ We look forward to seeing the outcome of that work.

⁹¹ The Victims Taskforce is co-chaired by the Lord Advocate and the Cabinet Secretary for Justice and comprises various justice agencies, support organisations and academia. Its role is to coordinate and drive action to improve the experience of victims and witnesses.

Supporting child witnesses

458. In domestic abuse cases, corroborative evidence may be provided by children who witnessed the incident. Child witnesses are those who were under 18 at the commencement of proceedings. In summary cases, this is the date the complaint is served on the accused.

459. During our inspection, we considered how well COPFS supports child witnesses in domestic abuse cases. We considered the role of child witnesses in the cases we reviewed, and we sought to understand more about child witnesses' experience of the justice process through our interviews. While we did not interview any child witnesses directly, many of the adult victims we interviewed described, through their perspective, the experiences of their children and the impact of the justice process on them. Around a quarter of the advocacy workers we interviewed worked specifically with children.

460. Many of the issues highlighted elsewhere in this report apply equally to children, whether they are a victim of domestic abuse or a witness to the abuse of a parent or another person. In this chapter, we have sought to highlight specific issues relating to child witnesses, and some which may affect children differently.

461. In the cases we reviewed, four (7%) of the 61 victims were aged under 18. There was a widely held perception among those we interviewed that they were seeing an increase in domestic abuse cases where the victim is aged under 18. We were not able to verify this through available data.

Reporting cases involving child witnesses

462. The joint protocol between COPFS and Police Scotland requires SPRs about domestic abuse to address a range of issues relating to children, including:

- whether there are any children from the relationship or whether either the victim or the accused has children and where they reside
- whether there are any concerns about the safety of the children
- whether children witnessed or were present during the incident
- if the offence involves a contravention of section 1 of the 2018 Act, whether the offence is aggravated by involving a child
- the children's expressed views, and the views of their parents or carers (other than the accused), on giving evidence against the accused
- any expressed views of the children in relation to the need for a non-harassment order.⁹²

463. In the cases we reviewed, we noted that SPRs did not always address all the issues listed above.⁹³ For example, even where the reporting officer had listed children as witnesses, the SPR did not always provide the views of their parents or carers on the children giving evidence against the accused. Marking deputes also told us that some SPRs did not provide other information that would better assist them, such as children's ages. Missing information can delay the marking of the case and case preparation while further information or clarification is sought from the reporting officer.

⁹² [Joint protocol between Police Scotland and COPFS – In partnership challenging domestic abuse](#) (2023) at paragraph 49.

⁹³ See paragraph 147 on the use of the child aggravation.

Special bail conditions and non-harassment orders

464. Some of those we interviewed were concerned that children were not always included in special bail conditions or non-harassment orders. Victims felt they had to maintain contact with the accused, despite the existence of conditions or orders, to facilitate the accused's contact with children. While the court would expect this to be arranged through a third party to avoid the need for the victim and accused to have any contact, victims said this was often not realistic or achievable. Victims also felt that the accused's right to contact with children seemed to trump their own safety or that of their family.
465. Prosecutors said they would seek to include children in special bail conditions where it was appropriate and proportionate to do so. As noted elsewhere though, we were concerned that prosecutors did not always have sufficient information from SPRs on which to base their decision. Advocacy workers felt children tended to be included in special bail conditions only when the children were directly involved in the incident in some way, either as a victim or a witness.

Citing child witnesses

466. In the 60 cases we reviewed, 13 children were listed by the police as witnesses in seven cases. Some children present during the domestic abuse incident were not listed as witnesses due to their very young age. Eight children in five cases were ultimately cited as witnesses by COPFS.
467. COPFS has clear guidance for staff on when it is appropriate to cite child witnesses. Whether to cite a child as a witness will ultimately be case and child-dependent. Some children will be keen to have their say, while others may be reluctant to give evidence. Children may be hesitant to give evidence for all the same reasons that any witness may be hesitant but they may also be particularly apprehensive about the thought of speaking out against a parent.
468. We considered that in two cases, children may have been cited unnecessarily. In one case, the child's evidence was needed to corroborate the victim's allegation. However, alternative evidence may have been available but was not pursued. Similarly, in another case where the child was cited to provide corroborating evidence, corroboration could have come from another source.
469. Of the eight children who were cited as witnesses, only one has gone on to give evidence so far. This child gave evidence by TV link and used a supporter. Of the other seven children cited as witnesses:
- for four children, the case resolved by way of a guilty plea at the trial diet
 - for one child, the case was discontinued at a trial diet
 - for two children in the same case, the case was adjourned. This case remains ongoing and, by the time of the next scheduled trial diet, the children will have waited over 18 months to give evidence. The case has involved numerous defence adjournments and six trial diets being fixed by the court. It appears that at least one of the child witnesses has recently disengaged from the process.
470. Some of the victims we interviewed said their children had witnessed their abuse and provided a statement to the police. Their children were cited to give evidence in some cases but not in others. Victims felt there was often a lack of clarity from COPFS about whether a child would be cited, and they wished this information could be shared at an earlier stage. They said citations for children often arrived shortly before a trial diet. Advocacy workers said they contacted COPFS to find out whether children would be cited, but they did not always get a timely response. This limits

their ability to help prepare cited children for giving evidence, and causes unnecessary anxiety to children who are not going to be cited.

471. COPFS will generally be aware of whether a child is to be cited as a witness at the marking stage or at another early stage in proceedings. While a child who is to be cited will receive communication from VIA, a child who is not cited will receive nothing. There is therefore scope for children who have provided statements but who are not to be cited to be informed of this fact at an early stage in proceedings.

Recommendation 24

At an early stage in proceedings, COPFS should proactively advise child witnesses who provide statements to the police in domestic abuse cases (and/or their parents or guardians) whether or not they will be cited to give evidence.

Special measures

472. All witnesses under the age of 18 are referred to VIA. VIA will send an initial letter to the child witness and/or their parent or guardian setting out the right of the child to special measures to support them to give evidence. Similar to the initial letter sent to victims in summary domestic abuse cases, VIA states that they would like to discuss the special measures available but that if the child or parent/guardian does not get in touch, then VIA will apply for the default special measures. The onus is therefore on the child or parent/guardian to make contact with VIA.

473. The standard special measures for child witnesses in a summary domestic abuse case are the same as those for adults. They are a TV link from within the court building or from a remote site, a screen and a supporter.

474. The default special measures which VIA will apply for if it does not hear from the child depend on the child's age:

- for children aged under 12, the default special measures are a TV link and a supporter
- for children aged 12 to 15, the default measures are a screen and a supporter
- for children aged 16 to 17, the default measure is a supporter.

475. The default measure for a child witness aged 16 or 17 in a domestic abuse case is a supporter, while the default measures for a victim in a domestic abuse case are a screen and a supporter. In many cases, the child may not be the direct victim of an incident of domestic abuse, but they may be living in a household where domestic abuse persists. As our understanding of how domestic abuse affects children develops, and given that many child witnesses in domestic abuse cases will be giving evidence against a parent, consideration could be given to reviewing the default special measures available to child witnesses in domestic abuse cases. While we appreciate that they are simply the default measures and other special measures can be applied for, in light of our findings about the accessibility and responsiveness of VIA, we would be concerned that there is insufficient exploration of a child witness's need and preference for alternative special measures.

476. We have already noted a perception that VIA acts as a 'gatekeeper' to non-default special measures for victims. The same perception existed in relation to child witnesses. Where a child witness has an advocacy worker, the worker will assess the child's ability to give evidence and will discuss with the child what special measures may be most helpful. This information is submitted to VIA. However, child advocacy workers told us that securing non-default special measures can depend on the area

and the VIA officer dealing with the case. They felt their emails to VIA about child witnesses can go unanswered, and said some VIA officers are not receptive to the worker's input. An advocacy worker told us of a case where they requested a TV link for a child witness over the age of 12, but VIA would not support it. At trial, the prosecutor met with the child and the advocacy worker and made a verbal motion to the court for a TV link. This was granted. While the prosecutor's intervention was welcome, VIA's failure to request the most appropriate special measure for the child at an earlier stage will have heightened the child's anxiety about giving evidence and hampered their ability to prepare more effectively.

477. Similar to victims, we heard that child witnesses and their families are not always informed when special measures have been granted by the court. This too affected their ability to prepare effectively to give evidence.
478. In certain circumstances, a prior statement made by a witness can be used as all or part of their evidence in chief. Prosecutors may seek to use a prior statement by a child witness as a special measure to avoid the child giving evidence in court. Where the witness still requires to be cross-examined by the defence, the use of a prior statement can at least minimise the time the witness gives evidence in court. Child witnesses may have been the subject of a joint investigative interview (JII) carried out shortly after the incident. A JII is a video recorded interview by a police officer and often a social worker in which the child describes their account of the incident. Where the JII is of sufficient quality, prosecutors may use it as the prior statement of the child in a trial.
479. We heard that prosecutors will make use of a JII where possible in domestic abuse cases as a child witness's evidence in chief. We heard that they are often used in the Glasgow Domestic Abuse Court. Prosecutors felt that the quality of JIIs had been improving since the Scottish Child Interview Model was introduced.⁹⁴ However, we also heard about issues which impact prosecutors' ability to make use of a JII:
- JIIs of child witnesses are not carried out in all cases. Some victims are not supportive of their child taking part in a JII
 - there can be delays in the police submitting the recording and transcript of the JII to COPFS
 - prosecutors need to check the recordings and transcripts of JIIs to ensure they are suitable for use as a child's prior statement. They then require to be redacted, disclosed and agreed with the defence. This can take time which a prosecutor in a summary case does not always have. Case preparation time is reduced for prosecutors in summary cases compared to solemn cases, and there is more support for prosecutors in solemn cases with tasks such as redaction of JIIs
 - some prosecutors have experienced difficulties playing JIIs on the equipment available in court.
480. Prosecutors working on summary cases said they would appreciate more guidance on using JIIs as evidence and on redacting JIIs. They felt this would result in JIIs being used more often. Where child witnesses are required to give their evidence in chief in court, prosecutors felt they would benefit from further training on questioning child witnesses.

⁹⁴ The purpose of the Scottish Child Interview Model is to ensure that the investigative interviewing of children is trauma-informed and delivers the best evidence through careful planning and interviewing techniques and a comprehensive training programme for interviewers. The aim is to increase the quality of JIIs to allow them to be used more often in criminal proceedings.

481. We heard that children and their families are often encouraged to take part in JIIs after being told by the police that they will not have to give evidence at court. It is not always made clear to them that the JII may only be the child's evidence in chief, and that they may still require to go to court to be cross-examined by the defence. When a citation for the child to attend court is later received, children and families can feel misled, and their confidence in the justice process and in justice agencies can be affected.
482. We heard that there can be a lack of joined up thinking about the special measures put in place for a child witness and those put in place for the victim who is often the child's primary carer. For example, if the child is giving evidence from a remote site but the parent is giving evidence in the courtroom, it can be challenging for the parent to manage this logistically and to ensure the child has appropriate support.
483. Trials may sometimes be part-heard. This often benefits witnesses who have attended and are able to give their evidence, even if other witnesses are not available. However, we heard that a lack of care can be taken when citing witnesses for the remainder of the trial. In one case we heard about, a child completed their evidence on the first day of the trial. The child was re-cited to give evidence on two further occasions, despite their evidence being complete. We also saw insufficient care being taken in relation to the citing of witnesses in our case review. In one case, an adult victim was re-cited for a trial diet despite the charges involving her having been resolved by way of a plea at an earlier trial diet.
484. We heard that it is important for child witnesses to meet the prosecutor in their case when they attend court and were told of examples in which this had made a significant difference to the child. In one case, a prosecutor met with a 14-year-old witness at court and discussed the need for an NHO and its contents. In another case, the same prosecutor spent time with a child witness, reassuring them about the trial process.
485. Within Scotland, significant efforts are being made to limit the need for children to give evidence at court. This includes the Scottish Government's commitment to developing support for child victims and witnesses based on the Barnahus concept⁹⁵ and increasing the pre-recording of children's evidence in High Court cases.⁹⁶ The desire to provide more support to children by pre-recording evidence in solemn proceedings in the first instance is understandable – such cases involve more serious offending and typically take longer. Nonetheless it is important to be transparent about what support is available for child witnesses in summary proceedings. Support measures proactively offered by COPFS in solemn cases are not as widely available in summary cases. Advocacy workers were frustrated that child witnesses in summary cases do not currently receive the same support at court as those called to be witnesses in solemn proceedings, despite being just as vulnerable.

Delay

486. While delays in the justice process can negatively affect all victims and witnesses, most of the victims and advocacy workers we interviewed felt that delays had an even greater impact on the wellbeing of children. They said children often felt unable to move on with their lives until the case had concluded and they faced disruption to their schooling. Some victims said they would not report offending again, in light of the impact it had on their children.

⁹⁵ Scottish Government, [Bairns' Hoose – Scottish Barnahus: vision, values and approach](#) (2023).

⁹⁶ Section 271B and section 271BZA of the Criminal Procedure (Scotland) Act 1995

Case study

One victim told us about how the domestic abuse case had affected her young child. The victim allowed the child to take part in a JII because she was assured, incorrectly, this would mean the child would not have to give evidence at court. The child was nonetheless cited to give evidence. The trial has been adjourned on multiple occasions. On some occasions, the victim and her child were advised of the adjournment in advance so they did not attend court. On other occasions, they attended a remote site to give their evidence by TV link. On these occasion, they were advised to leave because of an adjournment, sometimes after a lengthy wait. They were not advised of the reasons for the adjournments until an advocacy worker sought this information on their behalf. A few months passed between each trial diet. A few years have now passed since the incident, and the trial has not yet taken place. The victim said the child becomes distressed each time the trial is adjourned.

Communicating with child witnesses

487. Currently, VIA's approach to communicating with child victims and witnesses is based on the child's age:

- if a child is aged under 12 years, information is sent to the parent or guardian in a letter. There is no direct communication with the child
- if a child is aged between 12 and 15, a letter is sent to the parent or guardian enclosing a letter to the child. The parent or guardian may then choose whether to pass the letter to the child
- if a child is aged 16 or 17, a letter is sent to the child directly. No information is sent to the parent or guardian.

488. This approach is based on the view that a parent or guardian is better placed to explain matters to a younger child. The approach can be tailored to the needs of an individual child by VIA, if it is thought another approach would be most appropriate. A new policy on communicating with children has been developed in line with the principles of the United Nations Convention on the Rights of the Child, but is not yet operational.

489. We saw some examples of effective communication with child witnesses in the cases we reviewed. For example, in one case, a victim was anxious about her child attending court to give evidence. VIA responded promptly to her calls, provided reassurance, arranged appropriate special measures, and put her in touch with a prosecutor who could answer specific questions.

490. However, communication with child witnesses was not so effective in other cases. For example, in one case, a mother requested that VIA send all communication to the 16-year-old child witness via the mother, as she was concerned that the child would struggle to understand letters due to having autism. Despite this request, VIA continued to send letters directly to the child. More positively, there were several phone calls between VIA and the mother regarding special measures for the child.

491. The issues highlighted elsewhere in this report in relation to communication with victims apply equally to communication with child witnesses. Therefore, addressing recommendations made elsewhere should help address similar challenges in communication with child witnesses. Additionally, there is a need to provide more support and training to VIA staff who engage with children. We heard that many VIA staff are reluctant to speak directly to children, however mature, and would rather speak to a parent. This stemmed from a lack of confidence in dealing with children.

Supporting continuous improvement

492. To support continuous improvement in its management and prosecution of domestic abuse cases at sheriff summary level, we would expect COPFS to use quality assurance and to monitor performance data, information arising from complaints and Victims' Right to Review applications, and feedback from service users and stakeholders. While we found some evidence of these approaches being used to varying degrees, there did not appear to be a systematic, organisational approach to identifying and acting upon issues or to sharing good practice. There is scope for some of these approaches to be developed further, and for their use to be less ad hoc, so that continuous improvement can be more readily achieved.

Quality assurance

493. Carrying out quality assurance is a useful means of ensuring that cases are being managed consistently and to the desired standard. During our inspection, we found limited evidence of quality assurance being used to routinely monitor the quality of summary case management and to provide senior leaders with confidence about the quality of the service being delivered. There was also limited evidence of quality assurance being used to monitor the service being delivered by VIA. We heard about some initiatives in particular teams or in respect of newly appointed staff, but there appeared to be no embedded, systematic and organisation-wide use of quality assurance to drive service improvement in cases prosecuted at sheriff summary level.

494. This is in contrast to, for example, the Crown Prosecution Service (CPS) in England and Wales which has a national system of quality assurance of case work whereby a manager checks a certain number of cases per prosecutor each year. Other quality assurance approaches used by the CPS include peer review, dip sampling of particular types of cases (such as those where the victim has withdrawn due to delay) and the quality assurance of correspondence with victims.

495. While quality assurance appears generally to be under-used within COPFS, we did find some examples of effective quality checking. For example, following the introduction of the child aggravation for an offence under section 1 of the Domestic Abuse (Scotland) Act 2018, COPFS carried out an audit of all cases featuring section 1 charges to ensure the aggravation had been used appropriately. This audit included checking all uses of the child aggravation so that it could be removed from any charges where it was not competent and added to those charges where it had been wrongly omitted. Feedback was provided to COPFS staff with a view to encouraging the appropriate use of the child aggravation. Auditing of the child aggravation was later repeated, with an operational reminder being sent to all staff, feedback being provided to individual staff members and the appropriate use of the aggravation being reinforced during staff meetings and training.

496. Ad hoc quality assurance, such as that relating to the use of child aggravations, is a useful tool and should continue to be used to address specific areas of practice or concern. We consider, however, that COPFS should review whether it is making sufficient use of routine quality assurance to support continuous improvement in summary case management. Quality assurance activity should cover not only the legal management of cases and their efficient progress, but also communication with victims and witnesses. Some of the COPFS staff we interviewed expressed a desire to carry out quality assurance more frequently, but felt constrained by a lack of resources.

Recommendation 25

COPFS should review its use of quality assurance to support continuous improvement in the management of summary cases and in communication with victims and witnesses.

Complaints

497. Complaints are a valuable source of information about the quality of a service. As well as investigating and addressing an individual complainant's concerns, an organisation should analyse all complaints and the lessons learned with a view to improving its service design and delivery.
498. Within COPFS, Stage 1 complaints are those which are capable of frontline resolution. These complaints are often straightforward, requiring little or no investigation, and can be resolved quickly and usually at a local level. Stage 2 complaints are those which are not resolved at the frontline, or which are more complex and require further investigation. Stage 2 complaints are managed by COPFS's Response and Information Unit (RIU).
499. COPFS records the volume of both Stage 1 and Stage 2 complaints. RIU also records the subject matter of Stage 2 complaints. For example, in 2021-22, the most common issue raised by complainants was a failure in communication.⁹⁷ Complaints data, as well as recurring issues and lessons learned from Stage 2 complaints, are shared within COPFS and are reported to its Service Improvement Board. The Board has acknowledged, however, the need to further develop how it uses information arising from complaints – including Stage 1 complaints – to support continuous improvement in service delivery. At the time of our inspection, work was ongoing in this regard which we welcome.⁹⁸
500. Currently, the nature of complaints is not recorded in such a way that it is possible to easily identify all complaints relating to domestic abuse cases. This is a missed opportunity to gather feedback and identify corrective actions.

Victims' Right to Review

501. The exercise of Victims' Right to Review can be a useful indicator of the quality of decision making by prosecutors. The Victims' Right to Review is a mechanism by which victims can request a review of a decision by COPFS not to prosecute or to discontinue a prosecution that has already commenced. Unlike complaints however, COPFS is able to identify the number of applications for review which relate to offences involving domestic abuse (see Table 3). In 2022-23, 23% of all review applications related to offences involving domestic abuse.

Table 3 – Victims' Right to Review of decisions relating to offences involving domestic abuse⁹⁹

	2022-23	2021-22	2020-21	2019-20
Number of Victims' Right to Review applications	45	49	39	62
Number of applications that resulted in the initial decision being overturned	6	6	3	6

⁹⁷ COPFS, [Complaints handling procedure annual report 2021-22](#) (December 2022).

⁹⁸ COPFS, [Executive Board Meeting Minutes – 4 October 2023](#).

⁹⁹ COPFS, Victims' Right to Review Annual Reports 2019-20 to 2022-23, available on the COPFS website. This data relates to both summary and solemn cases.

502. Applications for review are dealt with by RIU. We asked RIU whether it could identify any themes arising from the review applications for offences involving domestic abuse. In respect of decisions that were overturned in 2022-23, RIU indicated that no recurring themes to inform wider learning could be identified. RIU considered that clear policy and guidance supported decision making in domestic abuse cases. Moreover, the requirement to seek approval not to prosecute domestic abuse cases with a sufficiency of evidence helped to minimise the likelihood that decisions would be overturned.

503. While RIU could discern no themes in overturned decisions in 2022-23, it will be useful for COPFS to continue to monitor review applications for recurring issues (including those where the decision is not overturned but where the applicant's dissatisfaction has led to a review being requested). This information, together with themes arising from complaints and other feedback, should be considered at a strategic level within COPFS, with a view to improving service delivery.

User feedback

504. Regularly seeking the views of service users and acting on their feedback is another means by which an organisation should seek to improve its service. As yet, COPFS has no mechanism in place by which it can routinely gather the views of victims and witnesses in domestic abuse cases or to measure their user satisfaction. It has, however, committed to seeking user feedback to support continuous improvement more generally in its recently published service improvement strategy.¹⁰⁰ It is expected this work will be taken forward under its VIA Modernisation Programme. We welcome this commitment and consider that efforts should be made not only to gather user feedback generally, but also to gather feedback specifically around its management of domestic abuse cases. Such work is already carried out by other justice organisations. For example, Police Scotland carries out monthly user experience surveys and, in 2023, launched an online survey specifically for victims of domestic abuse, rape or sexual crime to inform improvements to policing.

505. While COPFS currently has no routine mechanism for gathering user feedback from victims and witnesses in domestic abuse cases, we nonetheless identified various ways in which COPFS has identified and acted upon feedback from users and support organisations. This has included, for example:

- COPFS involvement in the Victims' Taskforce
- COPFS participation in an advisory group for government-commissioned research on victims' and witnesses' experience of court since the introduction of the 2018 Act
- engagement with domestic abuse support organisations at local and national levels to discuss both operational and strategic issues
- monitoring of COPFS-related issues highlighted in the weekly bulletin distributed by ASSIST.

506. While COPFS's involvement in these activities is welcome, the feedback arising from them appears to be gathered in an informal and ad hoc manner, and it is not always clear how the information is disseminated and acted upon across COPFS. There should be a means by which feedback from such activities, as well as data on domestic abuse cases and information arising from quality assurance, complaints, Victims' Right to Review applications, is monitored and acted upon. A regular domestic abuse forum, attended by key individuals from across COPFS, could, for example, be one means of exercising appropriate governance over the management and prosecution of domestic abuse cases. The agenda of an existing forum that

¹⁰⁰ COPFS, Improving our service: Strategy 2023-2027 (2023).

allows for cross-sheriffdom discussion of domestic abuse issues could be developed further to incorporate these issues. We consider domestic abuse cases merit this attention given their strategic importance and the need to safeguard public confidence in COPFS's response to domestic abuse, as well as the fact they represent a substantial proportion of COPFS's case work and often feature issues not seen in cases involving other crime types.

Recommendation 26

COPFS should gather feedback from victims and witnesses about their experience in domestic abuse cases. This feedback should be used to support improvements in its service.

Recommendation 27

COPFS should ensure there is a national mechanism by which information about its management of domestic abuse cases (including the results of quality assurance activity, complaints, Victims' Right to Review applications, feedback from service users and support organisations, and performance data) is monitored, discussed and acted upon, with a view to supporting continuous improvement in its service.

Summary case management pilot

507. In respect of the summary case management pilot, we found a far greater degree of monitoring of cases, processes and data to help assess the pilot's implementation and identify improvements. We heard that feedback was being shared more routinely between teams, issues were discussed and escalated, and action was taken to address challenges or support further improvements. This included COPFS assessing its own progress in implementing the pilot, as well as liaising with partner justice agencies to assess implementation more broadly.

508. While work was being done by COPFS to enhance its engagement with victims in pilot cases and to monitor how well this was being taken up by victims, gathering information about victims' experience of the enhanced engagement and of the pilot generally remained a gap.

Working in partnership

509. To manage and prosecute cases involving domestic abuse effectively, to progress cases efficiently and to improve the experience of victims and child witnesses, COPFS must work with various partners. This includes its statutory partners such as the police and SCTS, as well as a range of organisations providing support to victims. Good partnership working is required nationally and locally, and at strategic and operational levels.
510. We heard that COPFS engages well with its national partners in their efforts to address domestic abuse. COPFS is represented, for example, on the Joint Strategic Board for Equally Safe, the national strategy to prevent and address violence against women and girls. The designation of a lead prosecutor for domestic abuse provides a helpful focal point through which partner organisations can engage with COPFS about domestic abuse. This can be particularly helpful for support organisations who may lack other formal mechanisms through which they can raise issues. The National Lead for Domestic Abuse regularly engages with support organisations and has, for example, contributed to training for independent domestic abuse advocates.
511. We also heard about effective working relationships between COPFS and Police Scotland in particular. This includes the National Lead for Domestic Abuse taking part in Police Scotland's quarterly, multi-agency domestic abuse forum and working alongside the police to keep the joint protocol on domestic abuse under review. The National Lead for Domestic Abuse and other COPFS representatives also regularly engage with the police in other ways, such as feeding back any issues relating to the quality of police reports, working together to implement new legislation such as the 2018 Act, and taking part in police training around domestic abuse. This latter activity is reciprocated, with specialist police officers taking part in domestic abuse training delivered to COPFS staff. The ongoing liaison between COPFS and the police has established effective working relationships between the two organisations and allows any issues with the investigation, reporting and prosecution of domestic abuse cases to be raised and addressed.
512. COPFS also requires to work with its partners locally. Sheriffs we spoke to were generally positive about efforts made by COPFS to work with local partners to manage cases efficiently and to support the justice process. At one court, we observed various types of proceedings involving domestic abuse over a number of days, and noted that the prosecutors had good relationships with defence agents, sheriffs, clerks and other organisations working in the court building.
513. Outside of court however, feedback about local partnership working, particularly with support organisations, was more variable. Some support organisations described regular meetings with a local procurator fiscal or VIA representative (sometimes both). These provided a useful forum in which to raise and resolve local issues or discuss specific cases. They were also sometimes used to discuss upcoming court business and to ensure all necessary arrangements were in place to support victims and witnesses. In contrast, other support organisations found it more difficult to raise local issues with COPFS.

514. During our inspection, we attended a national meeting of local Violence Against Women Partnerships.¹⁰¹ When asked about their local engagement with COPFS, the response was mixed. Some noted that a COPFS representative attended their local partnership, while others said they had regular engagement with their local procurator fiscal outside of partnership meetings and that this was sufficient. One area noted that a VIA representative contributed to their partnership. In contrast, some said they struggled to engage their procurator fiscal in local issues and would welcome more engagement, even if only through ad hoc activities such as training.
515. One theme that arose during our discussion with both COPFS staff and partner organisations was that some relationships that had been effective and productive prior to the pandemic had fallen away. While we heard that work was being done to reinstate those relationships in some areas, there was clearly still more work to be done in others.
516. Support organisations also spoke to us about barriers to more effective partnership working with COPFS. One of the most commonly mentioned barriers was the accessibility and responsiveness of COPFS at an operational level. They found it hard to contact a prosecutor or VIA when needed.¹⁰² They often did not get a response timeously or at all. Support organisations often had to make contact through Enquiry Point in order to reach the person they needed, and found this frustrating. They expected that, as professional colleagues, direct contact information should be more forthcoming.
517. Other barriers to more effective partnership working included a lack of awareness and understanding among some advocacy workers and COPFS staff about each other's role and processes, and the attitudes of some COPFS staff towards advocacy workers. This latter point was evident in our own discussions with a small but concerning number of COPFS staff. Rather than viewing advocacy workers as playing a key role in supporting domestic abuse victims through the justice process, they were seen as causing additional work or stepping on VIA's toes. This was in contrast to the views expressed by the majority of COPFS staff we interviewed – they considered that advocacy workers had become an integral part of the justice process and that their contribution was invaluable.
518. One barrier to more partnership working highlighted by COPFS staff themselves was a lack of resources. They felt they lacked capacity to engage in more joint work with other organisations.
519. In one area, we heard that some of these barriers were overcome or mitigated by the co-location of services. The sharing of office space meant that COPFS, the police, court staff and advocacy workers had better relationships, were more accessible to one another and shared information more easily.
520. In some areas, we heard that opportunities for prosecutors and VIA staff to shadow domestic abuse advocacy and support workers, and for those workers to shadow VIA staff, had been hugely beneficial. All those who had participated in shadowing were positive about their experience. They felt that it helped build relationships across organisations, improved their understanding of each organisation's role and how they could help each other, provided an opportunity to discuss issues and processes,

¹⁰¹ Violence Against Women Partnerships are the local, multi-agency mechanism to deliver on Equally Safe, the national strategy to prevent and eradicate violence against women and girls, including domestic abuse. Every local authority area is expected to have a Violence Against Women Partnership.

¹⁰² On the accessibility and responsiveness of VIA, see from paragraph 392.

facilitated future contact about issues or specific cases, and provided them with a new perspective on managing domestic abuse cases and supporting victims. Some of those we interviewed wanted to have shadowing opportunities, but felt constrained by a lack of time. As noted at paragraph 64, shadowing a domestic abuse advocacy organisation should form part of the training for accredited domestic abuse prosecutors but this had fallen away during the pandemic. Given the value placed on shadowing by those who have experienced it, COPFS should ensure domestic abuse prosecutors shadow an advocacy organisation before achieving their accreditation. Shadowing should also form part of the professional development of VIA staff.

521. Given the strategic importance of domestic abuse, the volume of domestic abuse cases dealt with by COPFS and the need to safeguard public confidence in how such cases are managed, COPFS should consider reviewing its approach to partnership working in the domestic abuse context. Drawing on good practice already in place in some areas, this should include consideration of:

- what partnerships are critical to the effective and efficient management and prosecution of domestic abuse cases, and ensuring staff have the capacity and skills to develop and sustain those partnerships
- how COPFS engages with local strategic partnerships, taking into account its status as a national organisation and the need to make best use of its resources
- how partner organisations can easily raise issues with COPFS, and whether there is any role for external partners in internal governance arrangements (such as the domestic abuse forum suggested at paragraph 506).

Summary case management pilot

522. The design and implementation of the summary case management pilot has been overseen by a Pilot Project Board, chaired by a Sheriff Principal. COPFS is represented on the board, alongside a range of other partners including the police, SCTS, the Law Society of Scotland, the Scottish Legal Aid Board and the Scottish Government. Each of the three pilot sites has a Local Implementation Group which monitors local delivery of the pilot. COPFS is represented on each of the local groups and has invested significant resource in supporting the pilot's aims.

523. We interviewed key partners about COPFS's contribution to the pilot, and we observed a meeting of the Local Implementation Group in Dundee. We heard very positive feedback about the role of COPFS in the pilot, including from sheriffs and other partners. We also observed the collaborative approach taken by COPFS and its partners in Dundee to monitoring implementation of the pilot, discussing progress and seeking further improvements. The partners had developed positive cross-agency relationships and were working well together to deliver a shared vision. One member of a partner agency told us that the pilot was one of the best examples of collaborative working he had seen, and that good communication between the partners had been key to the progress being made. This sentiment was echoed in the pilot's interim evaluation, which noted strong cohesion between all justice partners in Dundee.¹⁰³

¹⁰³ SCTS, [The summary case management \(SCM\) pilot: Interim evaluation](#) (2023) at paragraph 2.32.

Appendix – Key terms

1995 Act: Criminal Procedure (Scotland) Act 1995.

2014 Act: Victims and Witnesses (Scotland) Act 2014.

2018 Act: Domestic Abuse (Scotland) Act 2018.

Accredited domestic abuse prosecutor: a prosecutor who has completed the three-day domestic abuse training course. Only a Principal Depute or a grade above who is an accredited domestic abuse prosecutor can decide to take no proceedings in a domestic abuse case where there is a sufficiency of evidence.

Accused: person charged with committing a crime.

Acquittal/acquitted: a verdict of a jury, or a decision of a judge, sheriff or justice of the peace. It means that the accused person is not guilty, or the case is not proven.

Adjournment/adjourned diet: a break in court proceedings. This can be for a matter of hours, over lunch or the case can be put off to another date.

Advocacy worker: a person who supports a victim through the justice process, including by assisting them to express their views and have those views heard. Usually employed by a third sector/support organisation.

Aggravation: criminal offences can be aggravated by factors which make the offences more serious and therefore likely to increase any sentence upon conviction.

Alternative to prosecution: instead of prosecuting an accused in court, the prosecutor may decide that it is more appropriate and in the public interest that an alternative to prosecution is offered.

Bail: an accused person's status when they have been allowed to remain at liberty (that is, not imprisoned) pending trial or sentence, subject to conditions.

Bail conditions: conditions imposed by the court on the accused usually designed to protect victims and the public. These can be standard conditions of bail or additional special conditions to protect a witness. If an accused person does not follow these conditions they may be in breach of bail and reported to the procurator fiscal by the police.

Case management hearings: a feature of the summary case management pilot that involves early judicial case management. Sheriffs may continue cases to these hearings to ensure the defence has had sight of the key evidence in a case before a decision is made by the accused to plead guilty or not guilty.

Case marking instructions: essential guidance and direction for prosecutors making initial decisions on reports from the police and other agencies.

Charge: the crime that the accused person is alleged to have committed.

Child: a person under the age of 18, as defined in the Children (Scotland) Act 1995.

Citation: document sent to a witness requiring them to attend at court on a certain time and date to give evidence.

Complaint: a court document in summary proceedings which details the alleged charges against the accused.

Continued without plea: where the case is continued to a later date without the accused pleading guilty or not guilty.

Corroboration: requirement for each essential element of a crime to be corroborated by another source of direct or circumstantial evidence (for example, the testimony of at least one other witness).

Court depute: prosecutor who appears in court to prosecute or process criminal cases.

Court loadings: the number of cases that are scheduled by SCTS to call in a particular courtroom in a court each day.

Crown: see COPFS

Crown Office and Procurator Fiscal Service (COPFS): the independent public prosecution service in Scotland. It is responsible for the investigation and prosecution of crime, the investigation of sudden, unexplained or suspicious deaths, and the investigation of criminal allegations against the police. Also referred to in this report as 'the Crown'.

Custody/custody case: when a person is kept in police custody until the case is heard in court.

Deferred sentence: after conviction, the court may defer a case to a date in the future before imposing a final sentence on an accused.

Depute: abbreviated term for a procurator fiscal depute.

Discontinued: when a prosecutor decides to stop the prosecution in a case that has commenced in court.

Desert pro loco et tempore: when the prosecution is brought to an end on the motion of the prosecutor before any final judicial verdict in the case is made. The case may be re-raised by a prosecutor in the future.

Desert simpliciter: when a prosecution is brought to an end by the court before any final judicial verdict in the case is made. The case cannot be re-raised by a prosecutor.

Direct measure: option available to procurator fiscal following an alleged offence. Direct measures include a warning, a fine or unpaid community work.

Disclosure: COPFS has a duty to disclose all material information to the defence, including that which strengthens or weakens the case against the accused.

Evidence by Commissioner: where a witness can give evidence at a different time or place than the actual trial. The witness is asked questions in the usual way, but the evidence is recorded and will be played during the trial and will normally be regarded as the evidence in chief of the witness.

Evidence in chief: the first set of questions the witness is asked by the party who asked the witness to come to court (the prosecutor or the defence). After examination in chief the opposing party then has an opportunity to cross-examine the witness.

Failure demand: demand for a service caused by a failure to do something or do something correctly for the service user. The service user makes additional demands of the service, which could have been avoided, and unnecessarily takes up further time and resources.

First appearance/calling: the first time a case is called in court.

Intermediate diet: its purpose is for the court to establish the state of preparation of the prosecutor and the defence and whether the trial diet is likely to go ahead.

International Co-operation Unit (ICU): a unit within COPFS which functions as the central authority in Scotland for all aspects of international criminal co-operation.

Investigative liberation: a person suspected of a crime can be released on investigative liberation by the police following a risk assessment. This occurs where the police require to undertake further enquiries and they can be completed in 28 days. The police can impose conditions on the person when they are released.

Insufficient evidence: where there is no corroboration of the alleged offence and therefore not enough evidence to allow a criminal prosecution to be considered by a prosecutor.

Joint protocol: the joint protocol between Police Scotland and COPFS 'In partnership challenging domestic abuse'. Last updated in June 2023.

Label/labels: an item shown and lodged in court as evidence. This is the term used for any physical items that are not a document or paper. It includes any objects such as discs, pen drives and mobile phones.

Letter of engagement: a letter that must be submitted by the legal representative of an accused prior to disclosure being made by COPFS.

Lord Advocate: ministerial head of COPFS. She is the senior of the two Law Officers, the other being the Solicitor General.

Marking: decision of action to be taken in a case. Initial marking is the first decision made in a case reported to COPFS by the police, usually by the marking depute

Marking depute: the prosecutor who makes the initial decision on how to proceed with a case.

Motion: an application made by the prosecutor or defence solicitor during court proceedings for a decision to be made by a sheriff on a particular matter. These can usually either be made in writing or verbally in court. Usually either party can oppose the other's motion.

National Enquiry Point (Enquiry Point): COPFS's customer contact centre. The first point of contact for many members of the public seeking information from COPFS. Where appropriate, calls are transferred to local procurator fiscal offices.

National Initial Case Processing Unit (NICP): the national unit within COPFS where initial decisions are made in relation to alternatives to prosecutions and prosecutions in the Justice of the Peace Courts or Sheriff Courts before a judge without a jury.

No action: a decision made by a prosecutor not to prosecute or to take any action for an offence reported by the police or other reporting agency.

No further action/proceedings: a decision made by a prosecutor to discontinue a prosecution against an accused for an offence that has commenced in court.

Non-harassment order (NHO): a non-harassment order is a protective order that features conditions that require an offender to refrain from specified conduct in relation to the victim or another person for a specified period.

Not called: when a prosecutor stops a case from proceeding any further in the court process. The case may be re-raised in the future by the prosecutor.

Operational instructions: internal guidance that informs COPFS staff of essential policies and updated guidance.

Part-heard trial: where a trial cannot conclude, usually due to the absence of a particular witness. The trial begins and the available witnesses give evidence. It is then adjourned to a later date for the remainder of the evidence.

Pleading diet: the date assigned for a case to call in court where they will usually be asked whether they plead guilty or not guilty

Plea(s): the answer an accused gives to the court at the beginning of a case when they are asked if they are guilty or not guilty of an offence. It also can refer to a plea where the prosecutor accepts that the accused will plead guilty to all or a reduced number of charges or part of a charge in order to resolve the case with a guilty verdict. Plea negotiation is a legitimate exercise of a procurator fiscal's discretion.

Procurator fiscal/prosecutor: legally qualified prosecutor who receives reports about crimes from the police and other agencies and makes decisions on what action to take in the public interest and, where appropriate, prosecutes cases.

Pre-Intermediate Diet Meetings: a meeting between the prosecutor and the defence outwith the courtroom to discuss a case. The purpose is to help ensure that only cases which cannot be resolved by a plea and which are ready for trial proceed to the trial date and parties are present at an intermediate diet only when necessary.

Pre-recording of evidence: see Evidence by Commissioner.

Principal Depute: a more senior prosecutor who has line management responsibility for procurator fiscal deputies.

Prior statement: where a statement given to the police by a witness can in certain circumstances be used in court by the prosecutor as part or all of the evidence in chief of the witness. A prior statement is one of the non-standard special measures.

Production: an item shown in court as evidence. It includes items such as letters and other documents, printed photographs and forms which may be used as evidence in the case.

Public interest: in addition to considering whether a police report discloses sufficient admissible, reliable and credible evidence of a crime alleged to have been committed by the accused, prosecutors also consider if any prosecutorial action is in the public interest. Assessment of the public interest often includes consideration of competing interests, including the interests of the victim, the accused and the wider community. The factors taken into account in assessing the public interest will vary according to the circumstances of each case.

Report case: where a person has been released after arrest and a report is sent to the procurator fiscal, who will decide what action to take.

Reporting officer: the police officer who submits the SPR to COPFS.

Scottish Prosecution College: alternative name of COPFS training division. Also refers to the dedicated training space within the COPFS estate used to hold training courses.

Special measures: different ways to help vulnerable witnesses, including all children, to give evidence.

Specialist prosecutor: prosecutors who focus on one particular type of criminal offence for a period of time and therefore build a degree of knowledge and skill in that area.

Specialist units: teams within COPFS where prosecutors focus on a particular specialised area of criminal law, such as serious sexual offences or health and safety offences.

Sheriff Clerk: responsible for the organisation of the work of the Sheriff Court. In the courtroom, the clerk will call out the case, keep a formal procedural record and record the decision of the sheriff.

Sheriffdom: the court system in Scotland is divided into six areas called sheriffdoms. These areas are Glasgow and Strathkelvin; Grampian, Highland and Islands; Lothian and Borders; North Strathclyde; South Strathclyde, Dumfries and Galloway; and Tayside, Central and Fife.

Solemn proceedings/cases: prosecution of serious criminal cases before a judge and a jury in the High Court or Sheriff Court.

SPR: Standard Prosecution Report (also sometimes called Standard Police Report).

Sufficiency of evidence: evidence from at least two independent sources that the crime was committed, and that the accused was the perpetrator of the crime.

Summary proceedings/cases: prosecutions in the Sheriff or Justice of the Peace Court before a judge without a jury.

Supporter: a person at court who offers support and reassurance to a witness prior to giving evidence and who sits near the witness in the courtroom while they are giving evidence.

Trainee: a trainee solicitor. Within COPFS, trainees receive training on the skills required to be a procurator fiscal depute.

Trauma-informed: being aware of how trauma or experiences that have harmed or threatened a person will negatively impact their behaviour over time. It involves taking steps within your working practice to recognise this, address what the person needs and avoid distress and re-traumatisation.

Trial diet: a court hearing where evidence is led before a judge (and a jury in solemn proceedings) to determine if a person is guilty of a crime.

Undertaking: the document signed by someone who has been arrested and released on police bail after promising to come to court at a later date and agreeing to certain conditions, such as not committing any other crimes.

VIA minute sheet: a written record of any contact between VIA officers and victims and vulnerable witnesses in a case where VIA is involved. It may also record actions taken by VIA officers in relation to the case. Prosecutors may also record notes from contact with a victim on the minute sheet.

Victim Information and Advice (VIA) service: a service provided by COPFS which offers information and assistance to some victims and witnesses. While VIA does not provide emotional support to victims, it can signpost victims to other services for such support.

Victims' Right to Review: in certain circumstances victims have a statutory right to ask for a review of a decision not to prosecute or to stop or discontinue a case once proceedings have started in court.

Warrant: a document granted by the court usually at the request of the prosecutor, giving police the authority to arrest someone. A warrant may be issued for the arrest of the accused if they have failed to attend court.



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