



annual report

INSPECTORATE OF PROSECUTION IN SCOTLAND

2012-2013



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SCOTTISH GOVERNMENT

annualreport

INSPECTORATE OF PROSECUTION IN SCOTLAND 2012-2013

TO THE LORD ADVOCATE

I HAVE THE HONOUR TO
SUBMIT MY EIGHTH ANNUAL
REPORT TO THE SCOTTISH
PARLIAMENT

JULY 2013

JOSEPH T O'DONNELL
HM CHIEF INSPECTOR
INSPECTORATE OF PROSECUTION
IN SCOTLAND

LAID BEFORE THE SCOTTISH
PARLIAMENT BY THE LORD
ADVOCATE in pursuance of s79(8)
of the Criminal Proceedings etc.
(Reform) (Scotland) Act 2007

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FOREWORD

To the Right Honourable Frank Mulholland QC The Lord Advocate

This is my eighth and final annual report as Her Majesty's Chief Inspector of Prosecution in Scotland before demitting office in August 2013. The Inspectorate was put on a statutory basis in 2007 having been launched in 2003 on a non-statutory basis.

The creation of an independent inspectorate for the Crown Office and Procurator Fiscal Service (COPFS) was the first recommendation of the Jandoo Report into the Crown Office handling of the Chhokar case. Initially the work concentrated on race issues but expanded to cover all aspects of the work of COPFS (as required now by the 2007 Criminal Proceedings etc. (Reform) (Scotland) Act).

In total to date we have produced 17 thematic reports on a wide range of topics including knife crime, proceeds of crime, victims and wildlife. Additionally, 45 individual reports on Procurator Fiscal Offices and five reports on the function of Procurator Fiscal Areas have been produced.

The past 10 years have seen arguably the biggest changes in the criminal justice system in generations. These have included decisions of the House of Lords and Supreme Court with far-reaching implications for the criminal justice system. Decisions on disclosure (Holland & Sinclair) and legal representation at police interview (Cadder) have necessitated urgent and extreme action by prosecutors and others in the criminal justice system. The inspection programme has as a consequence had to factor these and other changes into the inspection process.

Changes to the structure of criminal justice partners have also impacted significantly on COPFS including recently the creation of a single police service for Scotland and the current proposals for reform of the judiciary and courts. At the time of writing the Carloway Report's central recommendation of abolition of the requirement of corroboration has enormous potential impact for COPFS, police, victims and others.

Against this changing landscape COPFS itself underwent radical structural change in April 2012 with the creation of four Federations (replacing the previous 11 Areas) with a move away from work being dealt with geographically to staff in the new Federations being responsible for discrete areas of work.

An emphasis on specialisation (always present) has grown apace in recent years, the era of the generalist being largely over. This brings obvious advantages, not least in the efficient disposal of work and savings in work moving, rather than people. The obvious disadvantage of potential de-skilling and monotony is

something that will have to be addressed. These of course are not problems exclusive to COPFS as other agencies including defence lawyers also go down this route.

When the Inspectorate was created it was at the time of closer scrutiny of inspection and regulation on both sides of the border. Various reports examined the role of inspection resulting in the promulgation of the agreed 10 principles of inspection which we follow.

Events in the financial and health sectors have focused attention on what is expected of inspection bodies. Recent reports into, eg Mid-Staffordshire Hospital and others, have highlighted the importance of robust, independent scrutiny.

As reported in previous Annual Reports I am concerned about self assessment in COPFS. The primary responsibility for improvement lies with the bodies themselves and as I reported last year the self assessment regime (which was based on summary cases) was suspended in 2011. We previously reported on patchy performance in relation to the previous self assessment regime and await the new system with interest.

The original intention when the Inspectorate was created was that self assessment would be available as an aid to inspection. This has not happened. I do believe there is a real role for self assessment in COPFS.

The Inspectorate is a very small body and cannot be the sole source of quality assurance. Done properly self assessment can be a useful management tool highlighting problems before it is too late, sharing good practice and as an aid for training. Although there are well documented recent examples of self assessment being delusional and, while that is a danger, with proper oversight it should be beneficial.

The year 2012/13 saw the publication of three major thematic reports. The first on the prosecution's preparation of summary Sheriff Court cases which account for about 60% of all cases taken to court. This report was set against a background of unacceptable delays (referred to as 'churn') in the criminal justice system.

The second report was on the working of the Health and Safety Division in Crown Office. The creation of the Health and Safety Division was an example of the move towards greater specialisation in COPFS and mirrored greater specialisation on the part of defence lawyers in this field.

The third report was on the operation of the COPFS Enquiry Point. This had been set up in 2008 with the purpose of improving delivery of service to the public (including victims, witnesses, accused persons and their representatives)

by providing a high quality and prompt telephone enquiry service building on best practice and supported by appropriate training.

During my time as the Chief Inspector I have come strongly to the view that inspection is primarily based on three things:-

- Accountability (we publish all our reports)
- Quality assurance (where appropriate) and
- Most of all, as a catalyst for improvement

In that last regard I note recently the Scottish Government used our joint victims thematic (with HM Inspectorate of Constabulary for Scotland) as part of the background evidence for the current Victims Bill and also aspects of our wildlife crime report (again done jointly with HMICS) are being considered for statutory implementation.

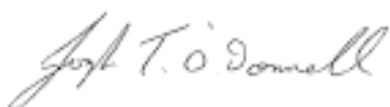
We continue to pursue joint working where possible and hope to return to joint work with HMICS once the single police force has bedded down.

Review of past reports and recommendations remains a challenge for a small unit.

As reported last year our budget has reduced to £320,000. I am pleased to say, however, that we delivered this year's programme within budget but I expect pressure on budgets will inevitably increase in future years.

I wish to record my thanks to all the various people and organisations who have, over the past 10 years, so freely given of their time, assistance and advice. If I had to pick out one single major change that has been particularly significant over the span of my own 40 years then it has to be much greater co-operation and partnership working among the various criminal justice partners, the days of silo working (if they ever existed) are long gone.

Finally, I wish to put on record my thanks to my own staff both present and past without whose good natured and tolerant approach nothing would have been possible. It has been a privilege to have them as colleagues. I know my successor will also enjoy their support.



Joseph T O'Donnell
HM Chief Inspector
July 2013

1. STAFF AND ACCOMMODATION

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

The number of staff remains small (equivalent to 3.6 full-time because of part-time working) but has been bolstered by the recruitment of an additional Associate Legal Inspector on a fixed-term contract basis primarily to carry out specific tasks in relation to the examination of casework.

Although overall numbers are modest the present arrangements work well in practice with staff having extensive practical experience of COPFS and the criminal law.

2. LORD ADVOCATE'S ADVISORY GROUP

This consists of a number of ex officio members, invited members and two lay members recruited by public advertisement.

Its primary function is to provide advice on the work programme of the Inspectorate and to keep under review the working relationship between the Inspectorate and the Crown Office and Procurator Fiscal Service.

The Group meets every four months and currently consists of:

Colin Troup, Legal Secretary to the Lord Advocate (Chairman)

Joe O'Donnell, HM Chief Inspector

Catherine Dyer, Crown Agent and Chief Executive, COPFS

Catriona Dalrymple, Head of Policy, COPFS

Keir Starmer, Director of Public Prosecutions, England and Wales

Claire Loftus, Director of Public Prosecutions, Republic of Ireland

Marsha Scott, Principal Officer for Health, Policy and Planning, West Lothian Council

Tim Huntingford and **Rosemary Llewellyn** (lay members)

The Inspectorate is well served by the Group, having the heads of two external prosecution systems provides a useful external perspective for the Inspectorate, its work and its manner of operation helping it to achieve a balanced view against real world issues.

The Inspectorate's approach is risk based in the selection of topics for inspection and having two external lay members (with considerable experience in the field of criminal law and inspection) also greatly assists in input into the choice of topics.

3. INSPECTION REFORM AND THE PUBLIC SERVICES REFORM (SCOTLAND) ACT 2010

The Act continues to impact on the work of the Inspectorate as has the Crerar Review (published in September 2007).

In accordance with the principles of the Act and related guidance the Inspectorate continues to take a 'user perspective' when producing reports. In the reports published this year use was made of, eg questionnaires sent to users of Enquiry Point, and contact was made in relation to the Health and Safety report and Summary Case Preparation report with many different types of users including defence solicitors, Sheriffs, Sheriff Clerks, police, forensic scientists and others.

On the evidence base for reports extensive use is made of examining real cases including significant sampling in the production of the Health and Safety report and in the Summary Case Preparation report.

On the efficiency, effectiveness and economy front the work continues to be risk based and proportionate. As with last year the move away from Area reports to more targeted thematic reports has accelerated. Joint working with the police inspectorate will resume once the single police force has settled into operation. Opportunities will be taken wherever possible to co-operate with other inspectorates.

The Chief Inspector continues to be a member of the UK-wide Heads of Inspectorates Forum with the opportunity to compare methodology, risk etc with other mainstream UK inspectors and regulatory agencies.

All legal staff are members of the International Association of Prosecutors with the benefit of networking with prosecutors from around the world.

As mentioned in the foreword close attention will need to be paid to the new system of self assessment once introduced by COPFS.

IT, HR and other services continue to be supplied by the Scottish Government.

4. EQUALITIES ACT

The Inspectorate came into being as a result of an equalities issue and equality issues are considered in the production of reports. Some topics are more obvious candidates than others.

As mentioned last year the production of a report on sexual offences and the working of the new Sexual Offences (Scotland) Act 2009 will require careful consideration of equality issues, not least as a result of recent work by the Equality and Human Rights Commission (published in September 2011).

As in previous years the Inspectorate continues to maintain close links with the Crown Office Equality Advisory Group and the Working Group on Interpreting and Translation which bring together all the major criminal justice players.

Of particular note is the addition to the Advisory Group of Marsha Scott to advise on equality issues. Originally the Equal Opportunities Commissioner for Scotland was a member but left the Group after she demitted office. Marsha's membership of the Group will strengthen the advice available to the Inspectorate in this field.

5. COMPLETED WORK

This report covers the period of one year to the end of May 2013.

During this period a further three thematic reports were completed and published.

The first on Summary Case Preparation was published on 16 August 2012 and is detailed in Annex A.

The second was the report on the Health and Safety Division (published on 22 April 2013) and is detailed in Annex B.

The third report on the Enquiry Point was published on 29 May 2013 and is detailed in Annex C.

Annex D contains a list of all 17 thematic reports published since the inception of the Inspectorate, Annex E contains a list of the five Area reports and Annex F the 45 office inspection reports.

The full text of these can be read at <http://www.scotland.gov.uk/ipis>.

6. CURRENT AND FUTURE WORK PROGRAMME

As previously stated the selection of topics for inspections is risk based and based on general principles of inspection, there is no cyclical element.

Current work consists of the preparation of a thematic report on the work of the International Co-operation Unit of COPFS which deals with among other things the issue of extradition both to and from Scotland. It also deals with more general co-operation issues such as seeking assistance from witnesses in Scotland and abroad. Suggested changes to the UK's EU membership could have significant implications for this work especially in the area of European Arrest Warrants which are currently widely used.

The other thematic underway is on the Crown Office Knowledge Bank which is an in-house tool to disseminate policy, guidance and best practice. Again, a user perspective is being adopted in both of these reports including questionnaires and contact with those engaged in the field.

Beyond that selection of the next topics has been deliberately left to the new Chief Inspector. Freedom to choose the topics for inspection is an important part of the independence of the post.

7. FREEDOM OF INFORMATION

We publish FOI information on our website and have adopted the Information Commissioner's own standard publication scheme.

Publication of all reports appear on our website and is an important part of holding COPFS accountable to the Law Officers, victims, witnesses and the public at large.

During the period to the end of May 2013, nine Freedom of Information requests were made under the act for information and these were all dealt with within the appropriate statutory time limit.

As stated in last year's report the Public Records (Scotland) Act 2011 came into force and a publication scheme complying with the new requirements will be published shortly.

8. BUDGET

The Inspectorate's budget for 2012-13 was £320,000.

The expenditure was as follows:

Staff salaries	259,739
Admin expenses	29,337
Total	<u>£289,076</u>

In terms of the Public Services Reform (Scotland) Act 2010 there are duties now to publish proactively certain information. These are to provide information in connection with the following matters:

Public relations

In connection with public relations (as a division of Scottish Government) we publish reports through the Scottish Government Internet. In the financial year 2012-13 publishing of the summary case preparation report and annual report amounted to £2,099.42.

Fees paid for conferences attended by staff £4,035.55.

Overseas travel

In connection with overseas travel, three conferences were attended by members of staff and the expenditure was as follows:

£ 582.15	(Rome - June 2012)
£1,973.15	(Thailand - October 2012)
£ 924.12	(The Hague - March 2013)
<u>£3,479.42</u>	

Hospitality and entertainment

Provision of a working lunch for three meetings of the Lord Advocate's Advisory Group cost £745.58.

External consultancy

No fees were paid under this heading.

Efficiency, effectiveness and economy

As in previous years reports are not printed but placed on the internet with accompanying press release. During the year the use of ad hoc inspectors was replaced by the recruitment of an inspector on a fixed-term basis.

Two members of staff left at the end of their secondment and were replaced. Salary costs represent 90% of the expenditure and good use is made of part-time working, these costs are closely monitored.

Selection of topics for inspection is risk based with as little impact on operational staff as possible.

Joint working with other bodies to produce 'whole system' reports is the approach and discussions continue with HM Inspectorate of Constabulary (Scotland) in particular on future joint work.

Remuneration in excess of £150,000

No member of staff is in this category.

ANNEX A

SUMMARY CASE PREPARATION THEMATIC

(published 16 August 2012)

Of the total cases taken to court by COPFS approximately 60% are heard at Sheriff Court summary level (before a Sheriff sitting without a jury). There had been concern for some time about the efficiency of the summary courts and a growing need to make efficiency savings. The question of 'churn' or the unnecessary continuation of cases had received much attention particularly in Audit Scotland's 2011 Report - an Overview of Scotland's Criminal Justice System.

This report looked at the prosecution's role in the process and focused on the quality and timeliness of the Crown's preparation and the extent to which unnecessary delays were attributable to action or inaction on the part of the prosecutor.

Eight Procurator Fiscal Offices of varying sizes were chosen as focus points for the case review which looked at 250 individual cases. The word 'summary' rather understates what is in fact a complex process requiring the co-operation of various parties in the Criminal Justice System.

We found examples of good practice but too frequently necessary follow-up work was either not done or not collated for court. We found that generally 'disclosure' was well done and greater co-operation with police, Sheriff Clerks and others was evident.

Overall, we found that the policies were in place to deliver improvements but there were gaps in implementation.

Some (but not all) 'churn' was attributable to COPFS. Sheer volume of cases frequently (especially in the larger offices) militated against good timely preparation and courts were often found to be 'overloaded' placing a burden on staff trying to prepare them.

We made 16 recommendations designed to improve the process, all bar two were accepted along with a COPFS plan for implementation.

ANNEX B

HEALTH AND SAFETY DIVISION THEMATIC

(published 22 April 2013)

The selection of the Health and Safety Division as a topic for inspection was made in the context of growing specialisation within COPFS.

The current (and previous) Law Officers had promoted greater specialisation in this area following the successful prosecution against Transco in 2005 and ICL Plastics in 2007.

The methodology included extensive contact with those working in the field including the Health and Safety Executive (HSE), local authorities, sheriffs, defence lawyers and others. Case examination played a significant part, 72 cases were examined in detail being 31% of the total number received by the unit.

Overall, we found that the work which had been concluded was done to a high standard and favourably commented on by many contributors. The unit made for early, meaningful discussions and good liaison with HSE and other reporting agencies.

Our main concern, however, was the time taken to conclude cases, several of which were several years old and the 'time to clear' figure was increasing rather than decreasing.

We made 38 recommendations mainly intended to speed up disposal of cases with better use of existing resources and better management information and tracking.

Seven of our recommendations were not accepted but a detailed response to all has been received from COPFS.

ANNEX C

ENQUIRY POINT THEMATIC

(published 29 May 2013)

COPFS Enquiry Point is a 'call centre' type of facility set up in 2008 with the purpose of improving delivery of service to the public (including victims, witnesses, accused persons and their representatives) by providing a high quality and prompt telephone service, building on best practice and supported by appropriate training.

We found a willingness in the unit to continually improve services and increase service delivery through involvement in new projects and collection of feedback for analysis in testing new concepts.

In addition to the unit's own feedback collected we conducted our own independent survey of various users. Overall, customer satisfaction in both the unit's own survey and ours was positive, in particular to the attitude of call centre staff. There was, however, some dissatisfaction with calls being transferred and time 'hanging on' etc. A comparison with industry standards was favourable in some respects but less so in others such as waiting time.

We made 15 recommendations, all bar two were accepted and COPFS indicated these would be incorporated into the Business Plan for a new Customer Care Unit which was being created.

ANNEX D

LIST OF THEMATICS PUBLISHED BY THE INSPECTORATE OF PROSECUTION IN SCOTLAND

Thematic Report on COPFS Enquiry Point

Thematic Report on Health and Safety Division

Thematic Report on Summary Case Preparation

Joint Thematic Report on Victims in the Criminal Justice System (Phase 2)

Thematic Report on Knife Crime

Thematic Report on Community Engagement

Thematic Report on Learning and Development in COPFS

Joint Thematic Report on Victims in the Criminal Justice System

Thematic Report on Compensation Offers

Joint Thematic Report on The Proceeds of Crime Act 2002

Thematic Report on Fiscal Fines

Natural Justice: A Joint Thematic Inspection of the Arrangements in Scotland for Preventing, Investigating and Prosecuting Wildlife Crime

Thematic Report on Complaints Against the Police

A Thematic Report on Liaison in Death Cases with Particular Reference to Organ Retention

A Case Study: A Joint Thematic Inspection of Case Management

Joint Thematic Report on the Provision of Services to Witnesses

Thematic Report on Crown Office and Procurator Fiscal Service's Response on Race Issues

ANNEX E

LIST OF COMPLETED AREA REPORTS

Dumfries and Galloway Area Inspection Report

Grampian Area Inspection Report

Ayrshire Area Inspection Report

Highlands and Islands Area Inspection Report

Lanarkshire Area Inspection Report

ANNEX F

**LIST OF COMPLETED OFFICE
INSPECTION REPORTS**

Aberdeen	Hamilton
Airdrie	Inverness
Alloa	Jedburgh
Arbroath	Kilmarnock
Ayr	Kirkcaldy
Banff	Kirkwall
Campbeltown	Lanark
Crown Office, Human Resources Division	Lerwick
Cupar	Linlithgow
Dingwall	Lochmaddy
Dumbarton	Oban
Dumfries	Paisley
Dundee	Perth
Dunfermline	Peterhead
Edinburgh	Portree
Elgin	Selkirk
Falkirk	Stirling
Forfar	Stonehaven
Fort William	Stornoway
Glasgow A Division	Stranraer
Glasgow G Division	Tain
Greenock	Wick
Haddington	



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