



Inspectorate of Prosecution in Scotland

Thematic Report on the

Victims' Right to Review

and

Complaints Handling and Feedback Follow-Up Report

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Part I – Victims' Right to Review



Introduction

Victims' Right to Review

The Victims' Right to Review (VRR) scheme was introduced by the Crown Office and Procurator Fiscal Service (COPFS) on 1 July 2015.¹ The VRR scheme gives victims the right to request a review of a decision by COPFS not to prosecute a criminal case or to discontinue criminal proceedings that have commenced.²

For victims of crime or bereaved relatives, contact with the criminal justice system is unfamiliar and often traumatic. Providing reasons for such decisions is essential to retain confidence and to deliver accountability and transparency to those whose lives have been affected and allows victims to make an informed decision on whether to submit a VRR.

To place the number of VRRs in context, between 1 April 2016 and 31 March 2017, COPFS received 195,731 criminal reports³ of which there were 50,729 cases where there was a decision not to prosecute or to discontinue a prosecution.⁴ Over the same period, 166 applications seeking a review were received⁵ equating to one review for every 306 cases where a decision was taken not to prosecute or to discontinue criminal proceedings. Of these 146 were upheld or withdrawn and 17 (10%) were overturned.

Aim

The aim of the inspection was to assess the operational effectiveness of the COPFS Victims' Right to Review Scheme having regard to:

- The effectiveness of procedures and processes;
- The quality and robustness of reviews; and
- The communication and contact with victims.

Methodology

We adopted a mixed-method approach which combined the following evidence-gathering methods:

Interviews with key personnel involved in allocating, monitoring and conducting reviews in COPFS and personnel involved in VRR schemes in other UK jurisdictions;

Document Review: A review of COPFS departmental protocols, policies, rules, guidance and management information and VRR schemes in other UK jurisdictions; and

Case Review: We examined a significant sample of 55 cases – in two there were two victims who submitted a VRR – resulting in 57 VRR applications.

Acknowledgement

We wish to thank all who participated in the review and shared their experience and knowledge.

¹ The Right to Review was introduced into Scots Law by Section 4 of the Victim and Witnesses (Scotland) Act 2014.

² VRR gives effect to the principles laid down in Article 11 of the European Directive 2012/29/EU on establishing minimum standards on the rights, support and protection of victims of crime: Article 11 enables victims to verify that a correct decision has been made not to prosecute by the prosecuting authorities.

³ Excludes death reports.

⁴ Performance Statistics – 'No action cases reported to COPFS' – <http://www.copfs.gov.uk/publications/statistics>

⁵ RIU statistics.



Key Terms

Accused

Person charged with committing a crime.

Advocates Depute

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

Bail

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

Charge

The crime the accused is alleged to have committed.

Committal for Further Examination (CFE)

First appearance of an accused at court in solemn proceedings.

Complaint

Formal document initiating proceedings in the Sheriff summary court or Justice of the Peace court.

Crown Counsel

Collective term for the Law Officers (Lord Advocate and Solicitor General) and Advocates Deputes.

Crown Office and Procurator Fiscal Service (COPFS)

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

Crown Prosecution Service (CPS)

Principal prosecuting authority for England and Wales, acting independently in criminal cases investigated by the police and others.

European Union Directive

A legal act of the European Union, which requires member states to achieve a result without specifying the means of achieving that result.

High Court of Justiciary

The Supreme Criminal Court in Scotland with sole jurisdiction to deal with the most serious crimes such as murder and rape.

Indictment

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

Law Officers

The Lord Advocate and the Solicitor General for Scotland: The Lord Advocate is the Ministerial Head of COPFS and is the senior of the two Law Officers.



No Action decision (NA)

A decision made by a prosecutor not to prosecute an accused for an offence that has been reported by the police or other reporting agency.

No Further Action decision (NFA)

A decision made by a prosecutor to discontinue a prosecution against an accused for an offence that has commenced in Court.

Petition

Formal document served on the accused in solemn proceedings at first appearance, giving notice of the charges.

Place on Petition

Decision by the prosecutor to commence solemn criminal proceedings.

Procurators Fiscal

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

Public Prosecution Service, Northern Ireland (PPSNI)

The department of the Northern Ireland Executive responsible for public prosecutions of people charged with criminal offences.

Solemn proceedings

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

Summary proceedings

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

Victim

Someone who has suffered harm, including physical, mental or emotional harm or economic loss directly caused by a criminal offence, including:

- family members of a person whose death was directly caused by a criminal offence, and who have suffered harm as a result of that person's death; and
- businesses and other organisations that have suffered loss.⁶

Victim Information and Advice (VIA)

The dedicated service provided by COPFS to victims, witnesses of certain crimes and bereaved relatives.

⁶ As specified in the Lord Advocate's Rules – see paragraph 1.



Key Findings

- ❖ Different approaches were applied by those undertaking reviews.
- ❖ The VRR process was robust with reviewers overturning decisions where they found the initial assessment of sufficiency and/or the public interest to be **incorrect** or **unreasonable**.
- ❖ Of the 57 applications examined, we found 91% (52) were conducted independently, thoroughly and to a high standard.
- ❖ Specialist areas of law require the reassurance of a specialist undertaking the review.
- ❖ There is a correlation between victims not being notified of decisions not to prosecute or to discontinue proceedings and delays in VRRs being submitted.
- ❖ The optimum approach would be to notify all victims of decisions not to prosecute.
- ❖ There was a commitment in the Response and Information Unit (RIU) to conduct full and thorough reviews and responses were generally empathetic. In the majority of the 57 applications reviewed, efforts had been made to respond to all issues raised and where there was fault or poor service, it was generally acknowledged, often with an apology.
- ❖ 70% (40) of the responses were issued more than 20 working days after receipt of the application.



Recommendations

Recommendations 1 and 2

COPFS should provide guidance on the factors to be considered and the approach to be taken to conducting VRRs – it should be supplemented by workshop training for the core participants involved in such reviews.

COPFS should ensure that the factors taken into account and the reasons for the initial decision and the outcome of the review are recorded in a consistent and standardised manner.

Recommendation 3

COPFS should ensure that reviews, involving specialist areas of law, including sexual crimes, are conducted by a prosecutor with the relevant specialist skills and expertise regardless of whether the offence(s) is likely to be prosecuted at solemn or summary level.

Recommendation 4

COPFS should clarify who is responsible for notifying victims of any decision to discontinue proceedings in summary cases that do not fall within the VIA remit and reinforce and embed existing policies regarding notification of decisions not to prosecute and to discontinue proceedings.

Recommendations 5 and 6

COPFS should work towards a system of notifying all victims of decisions not to prosecute, whether through the use of IT solutions or otherwise.

COPFS should undertake a review of the VIA remit to assess whether it remains appropriate following the prosecution policy review.

Recommendation 7

COPFS should undertake a review to identify all summary offences, involving victims and a statutory time limit, where there is no suitable alternative charge, with a view to extending notification of decisions not to prosecute to such offences.

Recommendation 8

COPFS should raise awareness in the Procurator Fiscal Offices of the importance of identifying requests from victims to review decisions not to prosecute or to discontinue proceedings and to transfer them without delay to RIU to enable reviews to be completed within any time limits.

Recommendation 9

COPFS should provide substantive and understandable reasons for initial decisions not to prosecute or to discontinue proceedings to victims who are notified of such decisions.

Recommendation 10

COPFS policy should reflect that the VRR response should be communicated in a manner consistent with previous communication, in terms of the victim strategy or, in death cases, with the Family Liaison Charter and in accordance with any equality considerations.

Recommendation 11

COPFS should avoid issuing multiple template holding replies and provide an explanation for the delay and an indication of the timescale for completion for all cases that are likely to take longer than 20 days.



VRR Policy, Processes and Procedures

The Lord Advocate's Rules

1. The process and procedural rules for reviewing a decision of a prosecutor⁷ not to prosecute a person for an alleged offence, on the request of a victim, are set out in the Lord Advocate's Rules: Review of a Decision not to prosecute.⁸ (The rules)
2. The rules exclude some decisions including those made by the court to end proceedings; any offer of a direct measure, including a Fiscal Fine⁹ or warning letter,¹⁰ or to accept a plea.¹¹

Role of Response and Information Unit (RIU)

3. The RIU in COPFS handles all VRRs. RIU is part of the Policy and Engagement Division. The Head of Policy and Engagement is responsible for the strategic oversight and efficient running of the Unit. The Unit is run on a day to day basis by a senior legal manager who oversees a team of three members of legal staff and a six person administrative team. The team is based in various locations with a central unit in Edinburgh. In addition to VRR applications, RIU deals with all complaints, Ministerial correspondence,¹² and Freedom of Information and data subject access requests.

Applications

4. Victims can submit an application for a VRR in a variety of ways; by an online form accessible on the COPFS website, email or written correspondence.
5. An application for a review should be submitted as quickly as possible and normally within one month of the date a victim learns of the decision. While COPFS will accept applications submitted after a month, any delay may impact on the action that can be taken by COPFS.

What Happens in a Review?

6. On receipt of a VRR, it is recorded on the COPFS RIU management system. An acknowledgement is sent via an automated email or within three days by letter, depending on how the VRR was received. Each VRR is allocated by the senior legal manager to a member of the RIU team to investigate, review and prepare a draft response.

⁷ Prosecutor is defined as Lord Advocate, Crown Counsel or Procurator Fiscal

⁸ COPFS, [Lord Advocate's Rules: review of a decision not to prosecute - Section 4 of the Victims and Witnesses \(Scotland\) Act 2014](#).

⁹ A financial penalty offered to an accused by the prosecutor instead of prosecuting in court. If the fine is paid the accused does not go to court or get a criminal conviction but the fine is recorded for 2 years and can be referred to if they offend again.

¹⁰ A warning offered to an accused by the prosecutor instead of prosecuting in court. If accepted the accused does not go to court or get a criminal conviction. The warning is recorded for 2 years and can be referred to if they offend again.

¹¹ All exceptions are listed in the Lord Advocate's rules.

¹² While responsibility for handling such correspondence rests with RIU, there is a degree of liaison between the Ministerial Private Office and RIU in co-ordinating responses.



7. The reviews are undertaken by an **independent** prosecutor who was not involved in the original decision. If the original decision was taken by Crown Counsel, the review will be carried out by another member of Crown Counsel who will prepare a report for RIU detailing their decision and a member of RIU will advise the victim of the outcome. In all other cases the review is undertaken by a prosecutor in RIU. All responses are approved by the senior legal manager.
8. The reviewer will consider the information available to the person who made the original decision, the reasons for the decision, information provided in the application and whether any further information is required from the police or other agencies and decide whether the original decision should be upheld or overturned.

Remedies/Outcomes

9. Following a review the reviewer may decide to:
 - Uphold the original decision.
 - Overturn the original decision and, if prosecution is an option, RIU will advise the appropriate office to commence/re-commence court proceedings.
 - If the decision is overturned and it is not possible to prosecute then an explanation will be provided and, if appropriate, an apology.

Test Applied to Reviews

10. The Lord Advocate's rules provide that the reviewer will consider if the decision not to prosecute the case was **reasonable** having regard to all the circumstances, the Prosecution Code, applicable law and prosecution policies.

Reasonableness Test

11. The reasonableness test¹³ requires the reviewer to consider:
 - Whether in making the decision, the prosecutor took into account factors that ought not to have been taken into account;
 - Whether the prosecutor failed or refused to take into account factors that ought to have been taken into account; or
 - The decision was so unreasonable that no reasonable prosecutor would have made it.

¹³ Also referred to as the "Wednesbury" test as the factors to take into account were set out in the case of Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 K.B. 223 at page 233.



Other UK Jurisdictions

12. The Crown Prosecution Service (CPS) in England and Wales and the Public Prosecution Service in Northern Ireland (PPSNI) also operate VRR schemes.¹⁴
13. While it is useful to compare and contrast the various schemes, differences in the respective legal systems, such as the requirement for corroboration¹⁵ in Scotland and the different time limits¹⁶ that apply in the different jurisdictions, may influence the procedures and approach taken to dealing with reviews.
14. One difference is the legal approach applied to VRRs in England and Wales and Northern Ireland. The CPS approach is to consider the case afresh to determine whether the original decision was right or wrong having regard to the Full Code Test, as detailed in the Code for Crown Prosecutors.¹⁷
15. The PPSNI approach depends on whether new evidence or information is provided by the victim. In such cases, the review will be carried out by the prosecutor who made the original decision taking account of the new information. If the prosecutor decides the test is now met, then a prosecution or a diversionary disposal can be instructed.¹⁸ If the prosecutor remains of the view that the test for prosecution is not met then the case is referred to another, generally more senior, prosecutor to consider the case afresh. In all other cases, the reviewing prosecutor will consider the case afresh, applying the test for prosecution, and make a new decision.

Case Review Sample

16. COPFS received 140 VRR applications between April and November 2017.¹⁹ We examined a significant sample of 55 cases – in two there were two victims who submitted a VRR – resulting in 57 VRR applications in total.²⁰ In 82% (47) the decision was upheld; in 18% (10), the decision was overturned.
 - Of the 57 applications, 25 related to solemn proceedings, 28 to summary proceedings, 2 concerned allegations of criminality by the police and 2 were associated with death investigations.
 - 46 concerned no action decisions and 11 related to decisions to discontinue proceedings.
 - The ten cases where the decision was overturned encompassed a wide range of offences including serious sexual crimes, assaults, frauds, theft, road traffic and dangerous dogs' contraventions. Five concerned offences that would be prosecuted by summary proceedings and five were more serious offences that would normally be prosecuted by solemn proceedings.

¹⁴ CPS introduced the [Victims' right to Review Scheme](#) in June 2013 and it has been incorporated in the PPSNI Code since it was established in 2005: [Victims of Crime: Requesting a Review of a Decision Not to Prosecute](#).

¹⁵ See Annex A.

¹⁶ See Legal Obligations at pages 10-12 in IPS [Thematic Report on the Management of Time Limits](#).

¹⁷ CPS, [The Code for Crown Prosecutors](#).

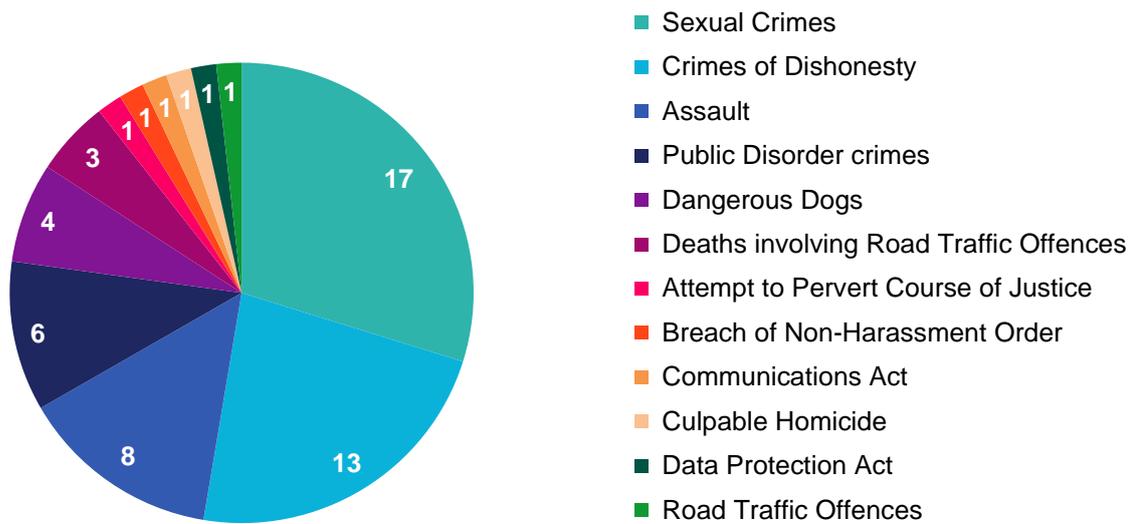
¹⁸ For example restorative cautions, informed warnings and youth conferences.

¹⁹ As at 20 November 2017.

²⁰ All cases, where there was a decision to overturn the original decision in this period, were included in the sample.



17. The chart below provides a breakdown of all VRRs in our sample by offence type.



Application of the Reasonableness Test

18. We heard mixed accounts from reviewers on how they approach reviews, with some indicating that they consider the case afresh and others advising that they apply the reasonableness test. There were also different approaches to recording the reasons for decisions with some completing a template form for VRRs and others setting out their reasoning in emails. The former provided a more comprehensive record.
19. Whatever the approach, all advised that they took account of the information available to the initial decision maker and any new information arising from any further inquiries or provided by the applicant.

Case Review

20. We examined each review to assess the approach taken. Without speaking to each reviewer, to definitely determine the thought process applied to each review, our assessment was based on the discussion recorded, the reasons noted for the decision and the language used in the reply to applicants.



Upheld cases

21. In the 47 applications where the original decision was upheld, we assessed that there were three broad categories of decision-making.
- The reviewer upheld the decision on the basis that the initial assessment of sufficiency was **correct** in 28 applications;
 - The reviewer characterised the decision as **reasonable** on the basis that they agreed with the assessment of sufficiency in nine applications;
 - The reviewer agreed with the assessment of sufficiency, then considered whether the decision was in the public interest²¹ and concluded that the decision was **reasonable** in 10 applications.

Overtured cases

22. Of the 10 cases where the decision was overturned we assessed.
- The reviewer overturned the initial decision on the basis that the assessment of sufficiency was **incorrect** in five applications;
 - In one, the reviewer concluded that the original decision was reasonable but taking account of new information, the reviewer determined that there was now sufficient evidence and overturned the decision.
 - In one, the reviewer concluded that the original assessment of the evidence was flawed as it had misapplied the law and therefore the decision was **unreasonable**.
 - The reviewer agreed with the assessment of sufficiency, then considered whether the decision was in the public interest and concluded the decision was **unreasonable** in three applications. In two, the decision to discontinue proceedings was based on erroneous information, and in the remaining case the decision was overturned due to new information regarding the seriousness of the injury sustained by the applicant.
23. The finding of different approaches being taken accords with what we were told by the reviewers.

Key Finding

Different approaches were applied by those undertaking the reviews.

24. Of note, there were no cases where the initial decision maker and reviewer disagreed on the assessment of sufficiency and the reviewer subsequently upheld the decision on the basis that it was reasonable.
25. We are aware that, as part of a wider review of VRR policies and procedures, COPFS is currently considering whether the reasonableness test should continue to be the approach taken by reviewers.

²¹ Factors taken into account by prosecutors in making decisions, including the interests of the victim, accused and the community.



26. Whatever test is applied, to achieve a consistent approach, guidance on the review process, including the factors to be considered and the legal test, should be provided to all those involved in conducting reviews.
27. The factors considered and the reasoning for the initial decision and the outcome of the review should be recorded in a consistent and standardised manner.
28. To retain public confidence, all reviews must be thorough providing a fully reasoned decision, setting out the evidence/information and law taken into account and the conclusions drawn.

Recommendations 1 and 2

COPFS should provide guidance on the factors to be considered and the approach to be taken to conducting VRRs – it should be supplemented by workshop training for the core participants involved in such reviews.

COPFS should ensure that the factors taken into account and the reasons for the initial decision and the outcome of the review are recorded in a consistent and standardised manner.



Quality of Reviews

Effectiveness of Review

29. We found that the applications in the ten cases where the decision was overturned had been carefully considered.
30. In seven, the reviewer sought additional information including; further information from the prosecutor who made the initial decision; statements, productions,²² information from the police and other agencies; CCTV evidence; and medical updates.
31. The provision of additional information, in some cases, resulted in the decision being overturned as illustrated in the case study below.

A VRR application was submitted regarding a decision not to prosecute an allegation of assault.

After considering the information provided in the application and, in particular, the impact of the crime on the victim, the reviewer requested:

Medical reports on the injuries sustained by both parties (the case involved a counter allegation of assault); statements from all witnesses; information on the availability of witnesses, some of whom did not normally reside in Scotland.

Taking account of the new medical information and eye witness accounts, the reviewer overturned the original decision concluding that a prosecution was in the public interest.

32. The finding that 18% of cases reviewed in our sample were overturned is reassuring and provides confidence that the VRR process is effective and providing access to justice for victims.

Key Finding

The VRR process was robust with reviewers overturning decisions where they found the initial assessment of sufficiency and/or the public interest to be **incorrect** or **unreasonable**.

²² Documents that may be used in evidence.



Quality of the VRR Process

Key Finding

Of the 57 applications examined, we found 91% (52) were conducted independently, thoroughly and to a high standard.

33. There were five cases where we identified areas for improvement:
- In two, the review did not address all of the issues raised or information provided by the victim. One application referred to other allegations regarding the same accused and the other raised the possibility of a potential witness. Neither response alluded to the information provided. Although the information may not have altered the outcome of the review, failure to pursue all lines of inquiry or to explain why they may not be relevant is likely to result in a lack of confidence in the robustness of the decision-making.
 - In one, the reviewer overturned the initial decision not to prosecute but, erroneously thought that the charge was time barred²³ for prosecution on indictment resulting in the case being prosecuted on summary complaint.
 - In one, involving a sexual crime, there was no reference to a potential source of evidence in the original decision-making or during the review indicating that it had not been taken into account.
 - In the remaining case involving a number of sexual crimes, the law relating to crimes that had taken place outwith Scotland was misapplied and not considered during the review.
34. The two cases, referring to sexual crimes, highlight a potential area of risk. As both cases were considered suitable for summary proceedings the review was conducted by a member of RIU rather than Crown Counsel in the National Sexual Crimes Unit (NSCU) or by an accredited member of a specialist sexual crimes team,²⁴ who would be more familiar with recent developments in law regarding proof of sexual crimes, including the ability to lead evidence of crimes that took place outwith Scotland.²⁵
35. This raises the question of whether in specialist areas of law, the reviewer, in addition to being independent, should also have the relevant specialist knowledge, experience and skill sets to conduct the review.
36. The CPS VRR process provides that reviews of decisions made by prosecutors in their Central Casework Divisions, dealing with more complex areas of the law such as counter terrorism, election offences and frauds, are conducted by a different specialist prosecutor from that area.

²³ The end of the time limit is commonly referred to as the “time bar.” See Annex A for more detailed explanation.

²⁴ All specialist prosecutors and case preparers involved in sexual cases must go through a system of accreditation which must be completed within three months of taking up a specialist post. This involves: completion of mandatory e-learning and attendance at compulsory training courses and demonstrating competency by submitting cases to be assessed against the required standards.

²⁵ Lauchlan and O’Neill [2014] HCJAC 62.



Key Finding

Specialist areas of law require the reassurance of a specialist undertaking the review.

37. Increasing complexity in certain areas of law, including sexual crimes, health and safety law, and the investigation of deaths, has resulted in the development of a number of specialist teams within COPFS. To provide robust and effective reviews, VRRs relating to specialist areas of law, including sexual crimes, should be reviewed by prosecutors with the relevant skills and expertise regardless of whether the offence(s) is likely to be prosecuted at solemn or summary level.

Recommendation 3

COPFS should ensure that reviews, involving specialist areas of law, including sexual crimes, are conducted by a prosecutor with the relevant specialist skills and expertise regardless of whether the offence(s) is likely to be prosecuted at solemn or summary level.

Notification of Decisions

38. While all victims are entitled to seek a review of a decision to take no action or to discontinue proceedings (subject to exceptions listed in the Lord Advocate's rules), there are, however, different policies that apply to how/whether decisions not to prosecute or to discontinue proceedings are notified to victims. The policy differs depending on the category of the offence.
39. Notification of the decision must always occur in solemn cases falling within the VRR scheme. However, summary cases fall into two categories, only one of which requires notification of no action decisions.
40. The three categories/processes are outlined below:
 - **Solemn cases** – No action decisions must be notified to the victim who must be given reasons for the decision along with details of their rights to information and to request a review of the decision. This can be communicated by letter or if there has been prior contact with the victim by a phone call or at a meeting or in accordance with any victim strategy.²⁶

No further action decisions must also be notified in a manner consistent with any previous communication with the victim. If the decision to discontinue is made at court, where possible, the decision should be explained directly to the victim and they should be advised of their right to request a review. If it is not possible to speak to the victim at court, VIA should intimate the decision to the victim in accordance with instructions provided by the prosecutor.

²⁶ Individual communication strategy tailored to each victim.



- **Summary cases requiring notification** – This encompasses all cases falling within the Victim Information and Advice (VIA) service remit and cases of football and knife crime where there is a victim. The category of cases within the VIA remit is set out at **Annex B**.

Such cases are referred to VIA officers in the local offices who forward the referrals to the VIA officer at Enquiry Point²⁷ who notifies the victim of the reasons for the decision along with details of their rights to information and to request a review of the decision. Notification will generally be made using template letters unless the case is reported with the accused in custody²⁸ or as an undertaking,²⁹ in which case the victim will be contacted by phone.

No further action decisions in these cases are notified by VIA in the relevant local Procurator Fiscal (PF) office. If the decision to discontinue is made at court, where possible, the decision should be explained directly to the victim and they should be advised of their right to request a review. If it is not possible to speak to the victim at court, VIA should notify the decision to the victim in accordance with instructions provided by the prosecutor.

- **Other Summary cases** – If the decision to discontinue is made at court, where possible, the decision should be explained directly to the victim and they should be advised of their right to request a review. If it is not possible to speak to the victim at court, the prosecutor should arrange for notification to be made to the victim.

Unless the victim is considered vulnerable in terms of the VIA remit, there is no notification of decisions to take no action.

Such cases can encompass a wide spectrum of offending behaviour, including:

- Assaults – including those with serious injury
- Offences involving dishonesty – including frauds and embezzlement
- Public disorder offences
- Road traffic offences including dangerous and careless driving where someone is injured
- Dangerous dogs offences

Instead, the onus is placed on victims to enquire what has happened with their case.

In absence of notification of decisions not to prosecute victims are made aware of their rights by the following means:

- On making an initial complaint, they are provided with a Victim Care Card (VCC) by the police. The VCC provides an incident reference number and refers them to the Scottish Government's Victims' Code³⁰ where they can find details of their rights as a victim.
- The Victims' Code sets out minimum standards of service that victims and witnesses should expect from the core criminal justice agencies, including the right to be told the reasons why a victim's case is not prosecuted and to request a review of the decision from COPFS.

²⁷ COPFS contact centre that fields early stage queries and complaints.

²⁸ Accused is kept in custody by the police when reported to the Procurator Fiscal.

²⁹ Accused is released on condition to appear at court on a certain date.

³⁰ Scottish Government Victims' Code: <https://www.mygov.scot/victims-code-for-scotland/>



- The COPFS website (at the victims and witnesses section) provides information regarding the VRR scheme, including the Lord Advocate's Rules and an application form for requesting a review.

The COPFS approach to notifying decisions not to prosecute or to discontinue proceedings differs and is less inclusive than in the other UK jurisdictions.

CPS Approach

41. While the VRR scheme operated by the CPS excludes some regulatory offences, notably offences of careless driving, **all** victims of recordable offences³¹ receive intimation of decisions not to prosecute. This is undertaken, in most cases, by the prosecutor emailing a standardised form to the police providing; the reason for the decision not to prosecute; what the victim should be told; any relevant time limits and a timescale for advising the victim. The police will then notify all decisions within five days or 24 hours if the victim falls within the definition of an enhanced victim.³²
42. For more serious offences or where a decision is taken post charge to discontinue the case, the prosecutor will write to the victim providing detailed reasons for the decision and advising of their right to review.

PPSNI Approach

43. Likewise in Northern Ireland, **all** victims, with the exception of some minor road traffic offences, are told of decisions not to prosecute. Prosecutors advise staff within the Victim and Witness Care Units (VWCUs),³³ via an automated electronic system, who in turn write to victims informing them of the decision, the reasons and their right to seek a review. For more vulnerable victims, the police or an identified third party may notify the victim directly and for more serious offences detailed reasons for the decision are provided by the prosecutor and a meeting is offered.

Case Review

44. We found that victims were notified of the decision not to prosecute in 68% (39) of the applications.

Impact of Lack of Notification

45. To ascertain the impact, if any, of the lack of notification of the decision not to prosecute, on the right of review we examined the 18 applications where there was no notification of the decision.

³¹ All offences where the police must keep records of conviction and offenders on a Police National Computer, including convictions, cautions, reprimands and warnings.

³² Persons identified as vulnerable, persistently targeted or victims of the most serious crime.

³³ A joint PPS/Police Service unit to improve the experience of victims and witnesses in the criminal justice system.



46. Of the 18, there were 14 where the original decision was upheld and four where the decision was overturned. The cases encompassed a wide range of criminal offences some of which were relatively serious in nature, including an assault to permanent disfigurement and high value thefts/frauds. In addition, some of the offences had had a considerable impact on the victims involved. We identified the following patterns/trends:
- In **nine**, in accordance with COPFS policy, the victims should have been notified of the decision. In four, the victim was not advised of a decision to discontinue proceedings and in five, there was no referral to VIA even though they fell within the VIA remit; one was a solemn case and four qualified under the older persons' policy;
 - In **six**, there was a delay in the VRR being submitted ranging between three to ten months. In two, the delays were compounded by statutory time limits that applied to the offences.³⁴ In four the victims were not advised of the decision not to prosecute even though they had been in contact with the PF office.
 - In the remaining **three**, no issues were identified as a result of the lack of notification. However, one victim had worked in the criminal justice sector and would have a greater awareness of how to obtain information and another had been independently informed by the police of the no action decision.

Key Finding

There is a correlation between victims not being notified of decisions not to prosecute or to discontinue proceedings and delays in VRRs being submitted.

47. Any period of delay can adversely impact on:
- the operational momentum of investigations, particularly if new information is provided in the VRR – investigations characterised by lengthy periods of inactivity run the risk of becoming fragmented and lacking continuity; and
 - the confidence and well-being of victims.
48. The COPFS VRR guidance is silent on who is responsible for notifying victims of a decision to discontinue proceedings in summary cases that do not fall within the VIA remit. This may account for the failure to notify the four victims referred to in the first bullet point above.

Recommendation 4

COPFS should clarify who is responsible for notifying victims of any decision to discontinue proceedings in summary cases that do not fall within the VIA remit and reinforce and embed existing policies regarding notification of decisions not to prosecute and to discontinue proceedings.

³⁴ Discussed at paragraph 67.



VIA Remit

49. Of the 28 summary cases we examined, 12 fell within the VIA remit.
50. Following a recent review of COPFS prosecution policy, there is the possibility of more serious offences, including aggravated assaults,³⁵ being prosecuted summarily.
51. Given the profile of cases prosecuted summarily, including some quite serious offences, and cases where statutory time limits apply,³⁶ the policy of not notifying all victims of decisions not to prosecute has the potential to deny victims access to an effective remedy, in the form of a prosecution, if the decision is overturned.

Key Finding

The optimum approach would be to notify all victims of decisions not to prosecute.

52. Notifying all victims of decisions not to prosecute has resource implications and, unlike England and Wales, the option of the police assisting with notification is not available. In the longer term, it may be possible to utilise IT solutions – perhaps through the provision of information on the status of cases via a witness portal³⁷ using a unique reference number.
53. We acknowledge, in the current climate of budgetary restraint, the rights and expectations of victims require to be balanced with a proportionate response. If notification to all victims is considered prohibitive, in light of the recent review of COPFS prosecution policy, we advocate that COPFS should undertake a corresponding review of the categories of cases included in the VIA remit to assess whether they remain appropriate. For instance, offences that previously normally gave rise to solemn proceedings, such as aggravated assaults, may merit being included, regardless of whether they are prosecuted in summary or solemn proceedings.

Recommendations 5 and 6

COPFS should work towards a system of notifying all victims of decisions not to prosecute, whether through the use of IT solutions or otherwise.

COPFS should undertake a review of the VIA remit to assess whether it remains appropriate following the prosecution policy review.

Time Limits

54. In solemn proceedings, time limits regulate the maximum length of time that can elapse between the first time a person appears in court charged with an offence and the start of their trial on that charge. Different time limits apply depending on whether an accused person is in custody or on bail.

³⁵ More serious assaults involving, for example, serious injury.

³⁶ Discussed at paragraph 55.

³⁷ A public accessible witness website which would allow secure access to case progress, information and statements.



55. In summary proceedings, if a person is remanded in custody, the trial must commence within 40 days of first appearing in court.³⁸ In addition, there are some statutory offences where proceedings must commence within six months after the date of the last offence.³⁹
56. The end of the time limit is commonly referred to as the “time bar.” **Annex A** provides a more detailed explanation of the law and procedure applicable to solemn and summary time limits.
57. The responsibility of complying with statutory time limits, which are among the tightest in comparable jurisdictions across the world, rests with COPFS.
58. On applying for a review of a decision not to prosecute, the desired outcome is to have the decision overturned and the offence prosecuted. If the statutory time limit has expired, this option is not available, unless the prosecutor has grounds to seek an extension of the time limit. To seek an extension, the prosecutor must show sufficient cause and demonstrate that it is in the interests of justice.⁴⁰
59. In the absence of grounds to seek an extension, to preserve the option of prosecution, in the event of the original decision being overturned, COPFS requires to consider whether there are any applicable time limits on receipt of an application and, if so, ensure that they are prioritised and fast-tracked.

Case Review

60. Of the 57 VRR applications reviewed, we found nine applications where time limits impacted on the review.
61. Of these, five concerned solemn proceedings and four summary proceedings. They covered a range of offences including sexual crimes, road traffic offences and culpable homicide. Five applications concerned a decision to discontinue proceedings and four related to a decision not to prosecute.

Discontinued Cases

62. In all five cases, the accused had been placed on petition and appeared at court, activating the solemn statutory time bar.
63. Of the **five** cases:
In **four**, the decision to discontinue proceedings was upheld:
 - In **two** of these cases, COPFS actively managed the review process – fast-tracking the review to ensure any decision was taken prior to the expiry of the time bar for serving an indictment – as demonstrated in the case study below.

³⁸ S147(1) of the Criminal Procedure (Scotland) Act 1995.

³⁹ S136(1) of the Criminal Procedure (Scotland) Act 1995.

⁴⁰ Management of Time Limits thematic report para 37 <http://www.gov.scot/Publications/2015/02/1907>



The accused appeared on petition for a sexual crime. A decision had been taken not to prosecute a charge of rape. Aware of the approaching time bar, the specialist sexual crimes team contacted the victim to advise her of the decision and ascertain if she wished to submit a VRR. A VRR application was received 11 days before the expiry of the time bar for the service of an indictment.

Recognising the urgency to review the decision within the statutory time limit, the prosecutor in the sexual crimes team liaised with RIU, Crown Counsel and the High Court Division to fast-track the VRR. The VRR was considered by Crown Counsel within five days of receipt.

While the original decision was upheld, if the decision to discontinue the charge had been overturned, the fast-tracking of the review would have enabled COPFS to timeously serve an indictment.

- In **one**, the review was completed before the expiry of the time bar, although there was no evidence of the review being fast-tracked.
- In **one**, the review was not finalised until after the expiry of the time bar. Had the review concluded that the decision not to prosecute should be overturned, the only remedy would have been an apology.

64. In the remaining case although COPFS wrote advising the victim that proceedings had been discontinued, the victim did not receive the letter and only became aware of the decision on contacting the office for an update. As a consequence, the VRR was received after the expiry of the time bar. The outcome of the VRR was to refer the case back to the local PF office to reconsider the original decision taking account of productions that had become available. If the decision is to re-raise criminal proceedings, the charge will require to be prosecuted on summary complaint.

Decisions Not to Prosecute

65. All no action decisions that were impacted by time limits involved cases that would normally be prosecuted in the summary courts.
66. As explained, in summary proceedings, certain offences require to be commenced within six months from the date of the last offence. This can cause difficulties for the VRR process as illustrated in the case study below.

Following an extensive investigation, the police submitted a report containing a contravention of the Dangerous Dogs Act four months after the date of the offence. The decision not to prosecute, due to insufficient evidence, was notified to the victim who submitted a VRR application containing additional information, which if accurate, would have provided sufficient evidence. Unfortunately, the charge was time barred prior to receiving the VRR and the offending conduct could not be prosecuted using an alternative charge.



67. The difficulties caused by statutory time limits are compounded by a lack of notification of decisions not to prosecute for victims that do not fall within the VIA remit as evidenced by the following three cases:
- In a case involving, among other charges, a charge of careless driving, the victim was only made aware of the decision not to prosecute when they contacted COPFS for an update, resulting in the VRR being submitted within days of the expiry of the time bar.
 - Similarly in a case involving the statutory offence of vandalism, the victim was only advised of the decision not to prosecute when they contacted the PF office seeking an update, resulting in the VRR being received just before the expiry of the time bar.
 - In a case involving a statutory contravention of s127 of the Communications Act 2003, the lack of notification of the decision not to prosecute resulted in the VRR being submitted after the expiry of the time limit.
68. In some circumstances the prosecutor can use an alternative offence if a statutory time bar has expired. For example, the reviewer overturned the decision not to prosecute the careless driving charge, discussed above. While the careless driving charge was time barred, in the particular circumstances, the conduct was prosecuted as a statutory breach of the peace,⁴¹ where time limits do not apply.
69. The original decisions were upheld in the other two cases but had they been overturned the prosecutor would have had to consider whether alternative charges such as malicious mischief or a breach of the peace were suitable.
70. While the option of using an alternative charge may be available in some cases, it is preferable to use the charge that best fits the circumstances. The inability to prosecute some statutory charges may also impact on the penalties available to the court on conviction. For example, the inability to prosecute road traffic offences may exclude the accused's driving licence being endorsed or a period of disqualification being imposed.
71. Given the six month time limit that applies to many statutory offences, even where there is notification of decisions not to prosecute or to discontinue proceedings, the timescales for dealing with any VRRs are extremely tight.
72. To mitigate the risk posed by the combination of a lack of notification and the time limits, applicable to many summary offences, we advocate that COPFS should undertake a review, to identify offences involving victims and where there is no suitable alternative charge, with a view to extending the notification of decisions not to prosecute to such offences.
73. One such category which featured in our case review was Dangerous Dogs Act contraventions, where there is little scope for using an alternative charge. We heard also from those conducting reviews that it is not uncommon to receive a VRR in relation to such offences.

⁴¹ S38 of the Criminal Justice and Licensing (Scotland) Act 2010.



Recommendation 7

COPFS should undertake a review to identify all summary offences, involving victims and a statutory time limit, where there is no suitable alternative charge, with a view to extending notification of decisions not to prosecute to such offences.

74. We found reviewers were aware of the need to prioritise cases with statutory time limits. RIU has recently issued guidance highlighting the importance of identifying any time bar issues on receipt of a VRR and, if applicable, processes to be implemented to fast-track such reviews.
75. We found evidence, however, of a lack of awareness within local PF offices of the importance of identifying VRRs and the need to transfer them to RIU without delay.⁴² Increasing awareness may be achieved by incorporating a section on VRRs in existing COPFS training, for example, the Managing Time Limits training module or through issuing a summary of key obligations and duties imposed by VRR, with examples of good practice.

Recommendation 8

COPFS should raise awareness in the Procurator Fiscal Offices of the importance of identifying requests from victims to review decisions not to prosecute or to discontinue proceedings and to transfer them without delay to RIU to enable reviews to be completed within any time limits.

⁴² See paragraph 103.



Communication and Contact

Communication of Initial Decision

76. By their very nature, solemn cases, concerning more serious crimes, tend to involve more direct engagement with victims. Communication of decisions not to prosecute or to discontinue proceedings will, in many cases, be conducted in accordance with any victim strategy and will normally involve providing an explanation and reasons for the decision.
77. Whereas, in summary cases, victims are normally notified of decisions not to prosecute or to discontinue proceedings by letter. We reviewed the 12 letters sent to victims, falling within the VIA remit, to assess whether the information given would provide the victim with an understanding of the reasons for the decision.
78. In the majority, we found little or no explanation was given to the victim.
79. For example, in **two** cases, the letter simply stated that “no action will be taken in this case”. As one case involved a victim with learning difficulties, this was particularly disappointing.
80. In another **four** cases, the letter advised that there was insufficient evidence and explained that in Scotland there requires to be more than one source of evidence to prove a crime was committed and the identity of the person who committed it without any further explanation of why in the particular case it was considered there was insufficient evidence. In one of the four cases, relating to a decision to discontinue proceedings, the victim was advised there was no longer sufficient evidence, again without any explanation of the change in circumstances that had resulted in the proceedings coming to an end.
81. Given the lack of information provided, it is unsurprising that the victims chose to submit a VRR.
82. While the letters do advise victims of their right to get more information, good customer service dictates that victims should be provided with substantive and understandable reasons at the outset. In order for VIA to provide more detailed reasons, prosecutors require to record clear and accountable explanations for their decisions.
83. In all **six** cases, RIU provided a full explanation for the decision taken at the review.
84. In one case, involving a contravention of the Road Traffic Act, the victim was advised that there was insufficient evidence to prove that the accused was the driver of the vehicle and narrated all lines of enquiry that had been explored. While it does not achieve the outcome desired by the victim, understanding the reason for the decision is more likely to gain a measure of acceptance.



85. The more open and transparent the decision-making process, the more trust and confidence it is likely to instill in victims and consequentially reduce the need to submit a VRR.

Recommendation 9

COPFS should provide substantive and understandable reasons for initial decisions not to prosecute or to discontinue proceedings to victims who are notified of such decisions.

Quality of Communication of RIU

86. We assessed the quality and timeliness of RIU communication with victims.
87. In assessing the standard of communication we took into account: the method of communication; whether all the issues raised by the victim were addressed; whether the response provided a clear explanation of the decision and provided reasons using language that would be readily understandable; and the timeliness of the response.
88. Although the assessment focused on the response issued by RIU, the manner of the communication of the decision not to prosecute or to discontinue proceedings was also considered, as it provided the context for RIU's dealings with the victim. From the victim's perspective, a co-ordinated, consistent approach to the manner of communication, rather than dealing with each piece of correspondence in isolation, is likely to provide an enhanced level of service.
89. Of the 57 applications, we assessed the standard of response as excellent in 7% (4) and satisfactory in 63% (36). However, for 30% (17) communication was assessed as below standard.

Key Finding

There was a commitment in RIU to conduct full and thorough reviews and responses were generally empathetic. In the majority of the 57 applications, efforts had been made to respond to all issues raised and where there was fault or poor service, it was generally acknowledged, often with an apology.

Cases Assessed as Excellent

90. Of the **four** cases assessed as excellent, there were some common features:
91. On completing the review, RIU communicated the outcome to each victim in a manner consistent with previous contact and tailored to their individual needs.
- In **two** the decision was communicated by personnel who had previous contact with the victim and with whom they had developed a rapport.
 - In the other **two**, empathetic letters, clearly setting out the reasons for the decision and addressing all points raised in the application, were issued. A meeting, to discuss any remaining concerns, was also offered.



92. In two of the four cases the application was completed by the case preparer on behalf of the victim, one with the assistance of an appropriate adult,⁴³ taking account of their equality issues and individual needs.

Cases Assessed as Satisfactory

93. We assessed communication of the response as satisfactory in 36 cases.
94. Efforts were made to explain the reasons for the decision in understandable language, to offer reassurance and to address all the concerns raised in the application.
95. In some, we identified pockets of excellence. For example, in one case involving a victim with learning difficulties, in addition to contacting the victim to explain the decision, RIU arranged for a social worker to attend to read and explain the response. In another, a large volume of documentation to support the application was given careful consideration to assess whether there was any additional evidence.
96. However, deficiencies with earlier communication, including not providing updates or delays in dealing with the application by the PF office, detracted from the responses being assessed as excellent.
97. Conversely, in a case involving a death, where personnel in the PF office met with bereaved relatives to explain a decision to discontinue proceedings and RIU subsequently made personal contact to advise them of the outcome of the review, repeated contact by a relative attempting to receive an update on what was happening during the review process, no doubt causing additional distress, impacted on the overall standard of communication.

Cases Assessed as Below Standard

98. There were, however, 17 cases where we assessed that the standard of communication fell below what was expected.
99. Of the 17 cases, we identified the following themes:
- **Method of communication inappropriate** – in **five**, no account was taken of equality issues when communicating the outcome of the review, despite the needs/vulnerabilities of the victims being well documented. There were other issues, including delay, with one taking six months to complete and where, following review, Victim Support Scotland⁴⁴ advised that the victim required further reassurance and more information.
 - **Content of response** – in **six**, the response did not address all of the issues raised in the application or contained inaccurate information or used legal jargon that would not be readily understandable. Of note, in four, there had already been issues with communication prior to the application being received which should have prompted a higher quality of service. In two, there were delays in issuing the response, with the longest period being five months.

⁴³ An independent person who safeguards the interests of a vulnerable person by ensuring they are treated fairly and understand and participate effectively.

⁴⁴ An organisation that provides support and information services to victims and witnesses of crime in Scotland.



- **Victims not kept updated** – in **four**, where the decision not to prosecute was overturned, the victims were not updated during the review. In two, there were long periods with no communication coupled with delay in conducting the review. In another, the only record of communication was the victim being advised that the case had been passed to the local PF office to reconsider whether to re-raise proceedings and no further monitoring/updates took place. In the remaining case the victim complained about the lack of information and that proceedings had been raised without receiving a final response.
- **Other** – in **one**, where a complaint had already been upheld in relation to failures to respond to requests for information prior to the VRR being received, the request from the victim for clarification of the final response was ignored. In **another**, where there had been complaints regarding failures to respond to requests for information, there was a delay in the case being allocated resulting in a delay in acknowledging the VRR and completing the review.

Sensitive Cases

100. Providing the outcome of the review in writing is appropriate for most cases, but for more vulnerable victims, including some bereaved relatives, victims of sexual crimes and those with equality issues, communication needs to be tailored to the individual and consistent with the manner of the previous contact and the victim strategy. The VRR guidance emphasises the need for such communication when notifying no action or no further action decisions but is silent on how the outcome of the review should be communicated. It does, however, provide that in some categories of cases where the decision is overturned, consideration should be given to meeting with the victim before commencing or re-commencing proceedings.
101. **20** of the 57 applications involved sexual crimes or cases involving a death.
102. We found:
 - In **15**, the communication was made in a manner consistent with the previous contact and tailored to individual needs.
 - In **five** cases, the issuing of a letter that failed to take account of the individual needs of the victims, including equality considerations, was inappropriate. In three cases, RIU had recognised the need to tailor communication to the victims' needs but failed to apply this when issuing the response.
 - To provide consistency, for cases where there is an existing victim strategy or where the Family Liaison Charter⁴⁵ applies, the outcome of the review should be communicated with the victim or bereaved family in a manner consistent with previous communication.

⁴⁵ A document for relatives that sets out the timescales and type of information they can expect to receive during the different stages of an investigation, criminal proceedings or fatal accident inquiry arising from a death.



Recommendation 10

COPFS policy should reflect that the VRR response should be communicated in a manner consistent with previous communication, in terms of the victim strategy or, in death cases, with the Family Liaison Charter and in accordance with any equality considerations.

Internal Communications

103. We identified areas for improving internal communications in 13 cases. The issues included:
- Delays in local PF offices identifying and referring VRR applications to RIU or providing information required by RIU to deal with the review.
 - Difficulties locating productions necessary to conduct the review caused delay in one case.
 - A lack of contingency arrangements during periods of staff absences.
 - A lack of monitoring of reviews referred to local PF offices to re-consider where new information had been received.
104. Such issues impacted on the ability of RIU to meet internal timescales and/or on the time taken for proceedings to be raised.
105. Greater awareness in the PF offices of the importance of transferring VRRs to RIU immediately on receipt will mitigate some of these delays.

Timeliness of the VRR Process

106. COPFS aim to inform victims of the review decision within 20 working days of receiving their application for a review, although it is recognised that for some more complex cases further investigation may be required which may take longer.
107. It is important that reviews are not only conducted thoroughly but timeously to alleviate anxiety for victims and to prevent cases becoming time barred.
108. We examined the time taken for the review in each of the 57 applications. We found:

Key Finding

70% (40) of the responses were issued more than 20 working days after receipt of the application.

109. In 20 the response took more than three months, the longest period being 10 months. Of those a relatively high proportion (35%) resulted in the original decision being overturned. The time taken in these cases is perhaps indicative of the thoroughness of the consideration of the VRR.
110. We examined the 20 cases taking more than three months to identify any common themes.



Analysis of reviews exceeding three months

111. Of the **20** cases:

- In **10**, the time taken to obtain the additional information requested by RIU was a significant factor. In two, this was attributable to delays in requesting the additional information.
- In **seven**, the time taken to allocate to Crown Counsel and for them to conduct the review substantially added to the time line.
- In **one**, a delay of one month in allocating the case to the reviewer, contributed to an overall period of three and half months before the response was issued.
- In the remaining **two**, no ascertainable reason could be identified for the delay.

112. Revised guidance, recently issued by RIU, introduces a more rigorous process for allocating and monitoring VRRs conducted by Crown Counsel and should assist with addressing delays that have arisen when VRRs are allocated to Crown Counsel.

113. Where there are further inquiries or new information is provided, it is understandable that it may take longer than 20 working days to obtain and consider all relevant information.

114. In some cases that took longer than 20 days, rather than issuing multiple template holding replies, which is unhelpful, RIU provided an explanation for the delay and an indication of the timescale for completion. This provides more meaningful communication and manages the expectations of victims. We commend this approach and advocate that it is consistently applied in **all** cases that are likely to take longer than 20 days.

Recommendation 11

COPFS should avoid issuing multiple template holding replies and provide an explanation for the delay and an indication of the timescale for completion for all cases that are likely to take longer than 20 days.



Annex A – Criminal Law and Procedure

Criminal Procedure

The statutory provisions regulating time limits are contained in the Criminal Procedure (Scotland) Act 1995.

There are two types of criminal procedure – “solemn” and “summary”. In summary procedure, a trial is held in the Sheriff or Justice of the Peace Court before a judge without a jury. In solemn procedure the trial, whether in the High Court or the Sheriff Court, is held before a judge sitting with a jury of 15 people.

Time Limits

Summary Proceedings

Time limits apply in summary cases. In general statutory charges, that can be prosecuted in the summary courts only,⁴⁶ will time bar from six months from the date of the last mentioned offence.⁴⁷ In summary cases if a person is remanded in custody, the trial must commence within 40 days of first appearing in court.⁴⁸

Solemn Procedure

Solemn Proceedings generally commence with the accused person appearing in court “on petition” or being “placed on petition”. The petition is the initiating warrant in such proceedings and sets out the nature of the criminal allegations (charges). When the accused first appears at court, the most likely outcome is that s/he will be “committed for further examination” (CFE). The accused will then either be released on bail or remanded in custody pending trial.⁴⁹ If remanded in custody, the accused must be brought back to court within 8 days and then they will likely be “fully committed” (FC) for trial. Time limits apply from the point at which the accused is either CFE’d on bail or FC in custody.⁵⁰ Time limits apply to every charge for each accused. Time limits for solemn cases are different for accused persons on bail and those who are remanded in custody.

⁴⁶ S136(2) of the Criminal Procedure (Scotland) Act 1995.

⁴⁷ S136(1) of the Criminal Procedure (Scotland) Act 1995.

⁴⁸ S147(1) of the Criminal Procedure (Scotland) Act 1995.

⁴⁹ Criminal Procedure Act 1701n (c.6); see also *Herron v A.B.C. & D.*, 1977 S.L.T. (Sh.Ct.) 24.

⁵⁰ S65 of the Criminal Procedure (Scotland) Act 1995.



Bail

If the accused is granted bail the first diet (Sheriff Court) or preliminary hearing (High Court) must commence within 11 months of CFE⁵¹ and the trial diet within 12 months.⁵² In bail cases the prosecution must serve an indictment – the document narrating the charges, witnesses and productions for the case – on the accused or their legal representative not less than 29 days prior to the first diet or preliminary hearing.⁵³ The purpose of the first diet or the preliminary hearing is to determine the state of preparation of the defence and the prosecution and ensure outstanding issues are resolved before trial.⁵⁴ The first diet in Sheriff and Jury proceedings must take place not less than 15 clear days after service of the indictment and not less than 10 clear days before any trial.⁵⁵

Custody

If the accused is remanded in custody the prosecution must serve an indictment on the accused or their legal representative within 80 days of FC.⁵⁶ The Preliminary Hearing or First Diet must be held within 110 days of FC⁵⁷ and not less than 29 clear days after service of the indictment. The trial is fixed by the court at the Preliminary Hearing and must commence within 140 days of FC.⁵⁸

Failure to adhere to any of these custody time limits results in the accused being granted bail and released from custody.⁵⁹

Time limits in solemn custody cases run from the date of the FC, whereas time limits in bail cases run from the date of the CFE.

In all cases, if the 11 and 12 month bail time limits are not complied with, the proceedings come to an end and the accused can never be prosecuted on those charges.⁶⁰

However, time limits can be extended in both bail and custody cases.⁶¹ In any application for an extension, the test is whether the prosecution has shown sufficient cause to justify the extension sought. If the prosecution satisfies that test, the second stage is for the court to decide whether or not to exercise its discretion in favour of the prosecution in all the circumstances.⁶² The prosecutor must therefore be prepared to address the court in detail on the procedural history of the case and provide a full explanation for the reason why an extension is necessary and why it is in the interests of justice that the application should be granted. The grant or refusal of any application for extension may be appealed to the High Court.⁶³

⁵¹ S65(1)(a), unless the hearing has been dispensed with under s72B of the Criminal Procedure (Scotland) Act 1995 (High Court) or s65(1)(aa) of the Criminal Procedure (Scotland) Act 1995 (Sheriff Court).

⁵² S65(1)(b) of the Criminal Procedure (Scotland) Act 1995.

⁵³ S66(6)(a)(ii) of the Criminal Procedure (Scotland) Act 1995 (Sheriff Court) or s66(6)(b) of the Criminal Procedure (Scotland) Act 1995 (High Court).

⁵⁴ S72 of the Criminal Procedure (Scotland) Act 1995.

⁵⁵ S66(6)(a)(i) of the Criminal Procedure (Scotland) Act 1995.

⁵⁶ S65(4)(a) of the Criminal Procedure (Scotland) Act 1995.

⁵⁷ S65(4)(aa)(i) of the Criminal Procedure (Scotland) Act 1995 (High Court) or s65(4)(b)(i) of the Criminal Procedure (Scotland) Act 1995.

⁵⁸ S65(4)(aa)(ii) of the Criminal Procedure (Scotland) Act 1995 (High Court) or s65(4)(b)(ii) of the Criminal Procedure (Scotland) Act 1995.

⁵⁹ S65 (4) (a) and (aa) of the Criminal Procedure (Scotland) Act 1995.

⁶⁰ S65 (1A) (a) and (b) of the Criminal Procedure (Scotland) Act 1995.

⁶¹ S65 (3) and (5) of the Criminal Procedure (Scotland) Act 1995.

⁶² HMA v Fitzpatrick 2002 SCCR 758.

⁶³ S65(8) of the Criminal Procedure (Scotland) Act 1995.



Legal Considerations

Corroboration

A distinctive feature of Scots law is the requirement for corroboration of evidence in criminal cases.

Corroboration was described by Lord Carloway⁶⁴ as:

“There must first be at least one source of evidence (i.e. the testimony of one witness) that points to the guilt of the accused as the perpetrator of the crime. That evidence may be direct⁶⁵ or circumstantial.⁶⁶ Secondly, each “essential” or “crucial” fact,⁶⁷ requiring to be proved, must be corroborated by other direct or circumstantial evidence (i.e. the testimony of at least one other witness).”

Generally, there are two crucial facts requiring proof in every crime: (1) that the offence was committed; and (2) that the accused committed it.

⁶⁴ The Carloway Review published November 2011. Paragraph 7.2.6 <http://www.gov.scot/resource/Doc/925/0122808.pdf>

⁶⁵ E.g. eyewitness evidence identifying the accused as the perpetrator of the offence.

⁶⁶ Otherwise known as “indirect”, i.e. evidence of a fact (e.g. fingerprint) or facts from which another fact (e.g. presence of accused at the scene) may be inferred.

⁶⁷ Walker & Walker: Evidence (1st ed) para 380, p402 et seq; (3rd ed) para 5.2.2.



Annex B – Victim Information and Advice (VIA) Remit

The current VIA remit ensures that victims are provided with information in the following categories of case:

- Victims in all serious cases, where the nature of the offence merits solemn proceedings. If, however, a case is only to proceed on indictment because of the status of the accused, as opposed to any feature of the victim, that victim will not be eligible.
- The next of kin in cases involving deaths which are reported for consideration of criminal proceedings and death cases where a Fatal Accident Inquiry is to be held.
- The next of kin in all cases where there are likely to be, or it becomes clear after initial investigation, that there will be significant further inquiries, or where, in all the circumstances, it is considered that the assistance of VIA would be appropriate.
- Victims in cases of domestic abuse (not just assault but any incident of a domestic nature e.g. breach of the peace).
- Victims in cases with a racial aggravation and cases where it is known to the Procurator Fiscal that the victim perceives the offences to be racially motivated.
- Cases involving children (as victims and/or as witnesses).
- Victims in cases involving sexual offences.
- Cases involving vulnerable witnesses, i.e. witnesses who:
 - have learning difficulties
 - have physical disabilities
 - suffer from mental health problems
 - are Asylum Seekers or witness with language difficulties
 - are terrified of accused and/or of reprisals
 - are victims in cases where sexual orientation or gender identity may give rise to vulnerability
 - Victims of domestic abuse involving abuse by children against their parents or parents against adult children.

**Part II – Complaints Handling and Feedback
Follow-Up Report**



Introduction

1. The thematic report on Complaints Handling and Feedback was published in December 2015.⁶⁸

Complaints Handling and Feedback Report

2. COPFS has a diverse and divergent 'customer base'. While some people have regular, professional contact with the service, for others, such as those bereaved by sudden or unexplained death, such contact is rare and probably unwelcome, occurring at a time of significant personal crisis or distress. Responding promptly, in easily understandable language, addressing their concerns and explaining decisions can make a difference and improve public confidence.
3. Complaints provide valuable insight into areas where there is scope for improvement in an organisation.
4. The aim of the inspection was to review and assess the effectiveness of COPFS complaints handling procedure (CHP).

Key Findings⁶⁹

5. There were a number of positive findings. In particular:
 - We found that the complaints handling staff in the Response and Information Unit (RIU), the specialist unit that handles complaints and feedback, were helpful and skilled, and that there was a genuine willingness and commitment to improve the complaints handling process.
 - In the majority of cases examined efforts had been made to respond in full to all issues raised and where there was fault or poor service on behalf of COPFS, it was acknowledged, often with an apology. We rated the response from RIU to be excellent or good in 80% of replies.
 - The appointment of a senior prosecutor to 'champion' customer service.

We also identified areas for improvement:

- The use of legal terminology or jargon and a lack of empathy evidenced by being overly defensive, using formulaic paragraphs and failing to provide reassurance were the most common features that detracted from the quality of the response.
- 30% of the complaints flowed from a perceived or real lack of service by COPFS.
- While staff in RIU and the Enquiry Point were committed to improving the complaints handling process, there was less evidence of 'buy in' from the wider organisation about the need to learn from complaints and to resolve complaints at the point of service delivery.
- Learning from complaints was not systematic. There was no register of themes, actions taken, lessons learnt and outcomes.

⁶⁸ <http://www.gov.scot/about/public-bodies/ipis/reps>

⁶⁹ See report for complete list of Key Findings.



Victims' Right to Review

6. At the time of publication, the Victims' Right to Review (VRR) a prosecutor's decision not to prosecute or to discontinue proceedings had only recently been introduced⁷⁰ and did not fall within the scope of the review. Dissatisfaction about decisions not to prosecute or to discontinue prosecutions was previously dealt with as complaints. In our complaints handling report, the largest number of complaints related to prosecutorial decision making. It is both timely and appropriate, therefore, to incorporate a thematic inspection of the Victims' Right to Review in the follow-up report on complaints handling.

Follow-Up

7. It is the practice of the Inspectorate to conduct follow-up inspections to promote improvement and assess the effectiveness of recommendations and their outcomes.
8. This report details the findings of the Inspectorate's follow-up review of the complaints handling report.

Methodology

- Follow up interviews with key personnel dealing with complaints;
- Review of COPFS practices, procedures and policies; and
- Dip sample of complaints received by COPFS in November 2017.

Background

9. In our report, in 2014, COPFS recorded 731 complaints.⁷¹ Of these, 44 (6%) were dealt with by quick resolution (QR)⁷² and 687 (94%) by the formal investigative procedure.
10. Between April 2017 and March 2018, COPFS recorded 563 complaints.⁷³ Of these 62 (11%) were dealt with by quick resolution (QR) and 501 (89%) by the formal investigative procedure. Taking account of the 214 VRR applications, received over the same period, the overall number of complaints remains relatively static.
11. While there has been an increase in the number of complaints dealt with by quick resolution there is considerable scope to resolve more complaints at the point of service delivery.
12. Since the publication of the thematic report, there have been significant changes in COPFS that have impacted on the relevance and applicability of some of our recommendations.

⁷⁰ Introduced by s4 Victims and Witnesses (Scotland) Act 2014 which came into force on 1 July 2015.

⁷¹ Source: RIU spreadsheet – 27/01/2015: Includes complaints that would now be recorded as VRRs.

⁷² Process of resolving complaints at the initial point of contact.

⁷³ RIU Statistical Information 2017-18.



13. The most significant change was a redesign of management structures, governance and working practices. In 2016, COPFS moved from a structure where the business was delivered via four Federations⁷⁴ to a national and functional model.
14. There are four functions; Local Court; Specialist Casework; High Court and Operational Support.
 - The Local Court function provides a local prosecution service dealing with both summary⁷⁵ and sheriff and jury⁷⁶ business across Scotland. It has six geographic business units aligned with Sheriffdoms. It also incorporates the National Initial Case Processing Unit (NICP), which has responsibility for initial decision making for all cases likely to be prosecuted in summary courts;
 - Specialist Casework comprises of a number of specialist units including Health and Safety Division, Scottish Fatalities Investigations Unit and Serious and Organised Crime;
 - The High Court deals with all High Court cases; and
 - Operational Support includes Policy and Engagement Division; and other support functions including Human Resources and Information Systems Division.

⁷⁴ Three geographical Federations – the East, West and North; and a National Federation comprising of a number of specialist units.

⁷⁵ Cases dealt with in the Sheriff or Justice of the Peace Court before a judge without a jury.

⁷⁶ Cases dealt with in the Sheriff Court with a jury.



Other Developments

15. Following publication of the report, COPFS has undertaken the following actions designed to improve customer service:

Institute of Customer Service (ICS)

16. COPFS became a member of the Institute of Customer Service (ICS) – an independent, professional membership body for customer service. It aims to help members promote their values and improve their customers' experience and their business performance.

Business Plan

17. Two objectives focussed on improving customer service were incorporated in the COPFS 2016-17 Business Plan:
 - To provide a level of service which takes account of individual needs and characteristics.
 - To treat victims, nearest relatives and witnesses and those accused of an offence with dignity and respect.

Service Improvement Strategy

18. Following a workshop involving staff and ICS representatives, COPFS published a Service Improvement Strategy with the overarching aim:
19. “to engage our employees to deliver excellent customer service to victims, witnesses and other people in contact with COPFS”.
20. The Strategy underpins actions being taken forward by teams, including local action plans and service improvement charters.

Service Improvement Board

21. Within the functional structure, it became apparent that there were different issues and types of interaction requiring a more tailored approach to delivering the aims of the strategy rather than a uniform “one size fits all”.
22. To meet this need COPFS has established the Service Improvement Board (SIB). It includes representation from across all functions and is chaired by the Customer Service ‘Champion’ who is a member of the COPFS Executive Board. The SIB will assess how best to improve customer service, including dealing with complaints, in each of the respective functions and commission actions to deliver improvements. In doing so, the SIB will take account of any thematic issues arising from complaints data.



Service Improvement Office

23. In August 2017, COPFS launched the Service Improvement Office – a six month project to evaluate the efficiency of procedures and processes of an operational summary unit – to create a prototype ‘Model Office’. Processes which demonstrate exemplary standards of service will be developed and implemented in the unit with a view to rolling them out nationally.

Improving service for victims of sexual crime

24. COPFS has recently entered into a Memorandum of Understanding (MOU) with Rape Crisis Scotland (RCS) whereby RCS will share anonymous feedback, with the victim’s consent, on their experiences of the criminal justice system and their views on the service provided by COPFS. This will enable the voice of the victim to be heard on a more systematic basis, and help to shape and improve the work of the service in engaging with victims.



Recommendations

25. We made 15 recommendations designed to strengthen and improve the complaints process and promote a culture focused on people rather than process, where complaints are valued as a key indicator of customer satisfaction, and as a source of feedback to identify recurrent themes and systematic issues.
26. We assess and report on the progress that has been made against our recommendations.



Progress against Recommendations

27. The thematic review made 15 recommendations. All were accepted by COPFS. We have rated the COPFS response to the recommendations as follows:

Achieved – COPFS has completed what was required

Substantial progress – COPFS has made significant progress in taking forward the recommendation

In progress – COPFS has taken some action to take forward the recommendation

Not progressed – COPFS cannot demonstrate any progress

The table below sets out the recommendations and actions taken by COPFS.

Number	Recommendations	Status
1	<p>In its revised complaints and feedback policy, COPFS should also include the following:</p> <ul style="list-style-type: none"> • a reference to COPFS core values – being professional and showing respect; • a reference to COPFS Standards of Service for victims and witnesses; • a diagrammatic representation of the complaints and feedback process, eg a flow chart; • a standard complaint form; and • a list of potential remedies/outcomes and a request to the complainant to specify which remedy/outcome they seek, eg an explanation or corrective action. 	
Action taken	<p>Following consultation with the Scottish Public Services Ombudsman (SPSO), COPFS published a revised Complaints Handling Procedure (CHP)⁷⁷ in September 2017. It was circulated to all COPFS staff via the COPFS intranet (PF Eye).</p> <p>The revised policy includes:</p> <ul style="list-style-type: none"> • A reference to COPFS core values – being professional and showing respect – and COPFS Standards of Service for Victims and Witnesses.⁷⁸ • A diagrammatic flowchart explaining the complaints and feedback process. • Guidance on how to make a complaint, including what information is required from the complainant and an example of how a complaint may look. • Guidance on potential remedies/outcomes and a request to the complainant to specify which remedy/outcome they seek, for example, an explanation or corrective action. 	Achieved

⁷⁷ COPFS, [Complaints Handling Procedure](#) September 2017.

⁷⁸ See Complaints and Comments page of COPFS website.



	A standard complaint form has been finalised and will be accessible via the COPFS internet imminently. An online function for the transmission of complaints is under development.	
2	COPFS should include guidance on the inappropriate use of social media in the unacceptable actions section of the complaints and feedback policy.	
Action taken	Reference to conduct that may constitute abusive behaviour has been incorporated into the Unacceptable Actions section of the CHP.	Achieved
3	The Response and Information Unit (RIU) should undertake an options appraisal/value for money analysis of their complaints handling system and introduce a single system to record, monitor, analyse and manage complaints handling.	
Action taken	<p>A revised system to record, monitor, analyse and manage complaints handling has been approved by the COPFS Business Improvement Committee (BIC). It is, however, one of a number of IT priorities that is awaiting approval for development.</p> <p>Meantime, COPFS is exploring other options including the possibility of utilising the functionality of a system currently being developed by the Scottish Government to record and manage correspondence, including complaints.</p>	In progress
4	COPFS should review the role of the Area Co-ordinators and issue revised guidance on the use of the complaints management system.	
Action taken	<p>Within the new Local Court Function, which attracts the bulk of complaints, Area Co-ordinators have been replaced by local management teams. To streamline procedures, a protocol has been agreed, setting out the responsibilities of RIU and the local court management support teams in allocating, co-ordinating and managing complaints.</p> <p>In the specialist teams, where there is greater ownership of cases, RIU can easily identify the appropriate person to contact.</p>	Achieved
5	Complaints and feedback should be a standard item discussed at team briefings.	
Action taken	<p>All upheld and partially upheld complaints are shared with the senior legal managers and management teams in each function. The legal managers are responsible for raising any systematic issues at local management team meetings.</p> <p>Engaging staff in identifying measures to improve service is a priority for COPFS. The absence of a systematic mechanism to capture feedback on customer service issues, including complaints, from team briefings and local management meetings is an action that requires to be progressed by the SIB.</p>	In progress



6	RIU should provide feedback to the Operational Boards on the compliance of the offices and Federations to provide information to RIU within internal timescales.	
Action taken	<p>RIU provides a monthly performance report to the head of each function and the Operational Performance Committee⁷⁹ on workload, outcomes and trends, chaired by the Deputy Crown Agent of Serious Casework.</p> <p>It provides a breakdown of:</p> <ul style="list-style-type: none"> • The number and nature of complaints; • Complaints upheld or partially upheld; • Compliance with internal timescales; and • Any action or outcome. 	Achieved
7	COPFS should strengthen procedures to ensure that complainants are provided with progress updates in line with COPFS complaints and feedback policy.	
Action taken	<p>Between April 2017 and March 2018, RIU responded to 78% of formal complaints within 20 working days.⁸⁰</p> <p>We reviewed all new complaints received in November 2017. In 66%, responses were issued within 20 working days. Of those that were issued more than 6 days after 20 days,⁸¹ a holding reply was issued to the complainant in 90%.</p>	Achieved
8	RIU should provide responses in plain English and, in particular, should avoid using legal and procedural jargon without adequate explanation.	
Action taken	<p>We conducted a dip sample of 32% of new complaints received in November 2017.⁸²</p> <p>All responses provided a detailed explanation addressing all issues raised and in general avoided legal terms or jargon. Where appropriate, the replies were empathetic and the complaint was upheld.</p>	Achieved
9	The COPFS Customer Service 'Champion' should embed complaints handling as a key indicator of customer satisfaction and promote organisational learning from complaints.	
Action taken	<p>The COPFS Customer Service 'Champion' is the Chair of the newly established SIB.</p> <p>It is envisaged that the SIB will promote and drive the Service Improvement Strategy that aims to engage employees to deliver excellent customer service to anyone who comes into contact with COPFS;</p> <p>The remit of the SIB includes:</p>	In progress

⁷⁹ Responsible for the oversight of performance and delivery of targets, efficiency of front line operations and co-ordination of engagement with key stakeholders.

⁸⁰ RIU Statistical Information 2017-18.

⁸¹ 10 cases.

⁸² 12 cases.



	<ul style="list-style-type: none"> • Reviewing complaints data and identifying thematic issues. • Commissioning Functional or Departmental action to deliver service improvement. • Agreeing and monitoring progress of any Service Improvement KPIs. • Approving the publication of the annual COPFS Comments and Complaints Report. • Reporting quarterly to the Executive Board, including a detailed analysis of complaints, performance to date and lessons learned. • Reporting quarterly to the Risk Management Committee on any corporate risks identified through complaint analysis and actions to mitigate such risks. 	
10	COPFS should issue guidance on complaints handling to all staff.	
Action taken	A step by step guide for staff on dealing with complaints was issued in June 2016.	Achieved
11	COPFS should ensure that all staff who have direct contact with members of the public complete the Delivering Customer Service courses. The e-learning Delivering Customer Service module should be included as part of the COPFS induction process.	
Action taken	<p>The Delivering Customer Service module is included as part of the induction process.</p> <p>A bespoke customer service training course – First Impressions – is also being rolled out. Participants who complete the course receive an industry recognised qualification in customer service. It aims to provide confidence to deal with frontline resolution of complaints and to harness ideas from the participants on how to improve service for those who come into contact with COPFS.</p> <p>COPFS has trained a member of their People and Learning team to deliver the training to other staff.</p>	Achieved
12	COPFS should include the complaints handling process as a specific control in the COPFS Risk Register.	
Action taken	The complaints handling process is included as a specific control in the COPFS Risk Register.	Achieved
13	The remits of COPFS Operational Boards should include a specific reference to monitoring and learning from complaints.	
Action taken	The role of the Operational Boards has been superseded by the SIB. The remit of the SIB is set out at Recommendation 10 and includes specific reference to analysing complaints to identify thematic issues, corporate risks and lessons learned.	Achieved
14	COPFS should introduce a system to record, analyse and report on complaint outcomes, trends and improvement actions.	



Action taken	<p>As discussed at Recommendation 6, RIU collates and circulates monthly management information on complaints to functional heads and the Operational Performance Committee. The information has not been systematically analysed to inform actions and to provide evidence of lessons learnt.</p> <p>The new SIB has been tasked with utilising the data to provide an analysis of complaints, identify trends and most importantly identify risks and improvement actions.</p> <p>Strategic use of such information will in turn inform lessons learnt.</p>	Not progressed
15	<p>COPFS should establish a set of key performance indicators to measure complaints handling performance and drive improvements.</p>	
Action taken	<p>The remit of the recently established SIB provides that it will:</p> <ul style="list-style-type: none">• Where appropriate, agree Service Improvement Key Performance Indicators (KPIs).• Monitor progress of any agreed KPIs. <p>Any KPIs have still to be agreed.</p>	Not progressed



Concluding Remarks

28. COPFS has implemented a substantial number of the recommendations made, resulting in:
 - More user friendly CHP;
 - Improvements in the communication of responses, with updates being provided to those that take longer than 20 days, using language that would be readily understandable;
 - Greater awareness of procedures and processes for dealing with complaints which should expedite more complaints; and
 - Increased confidence of frontline staff, who have attended the bespoke customer service First Impressions training, to deal with complaints.
29. The recommendations that remain outstanding do, however, have the potential to make a substantial difference.
30. The lack of progress on the recommendations aimed at monitoring, identifying trends and learning from complaints and using key performance indicators to drive improvements and provide a base line to measure service performance is disappointing.
31. Critical to improving service delivery is a culture that values complaints and commits to learning from them. Tackling the underlying causes of complaints is more effective than having to repeatedly apologise or rectify an act or omission as a result of a complaint.
32. We are assured that, this will be taken forward by the SIB. It is anticipated that there will be demonstrable evidence of progress in the next six months. With that in mind IPS will revisit Recommendations 14 and 15 and the work of the newly established Service Improvement Board and any outcomes arising from the Service Improvement Office, and report on progress made in its Annual Report to be published later this year.



Inspectorate of Prosecution in Scotland
Legal House 2nd Floor
101 Gorbals Street
Glasgow G5 9DW

Telephone: 0141 420 0378

E-mail: IPS@gov.scot

About the Inspectorate of Prosecution in Scotland

IPS is the independent inspectorate for the Crown Office and Procurator Fiscal Service. COPFS is the sole prosecuting authority in Scotland and is also responsible for investigating sudden deaths and complaints against the police which are of a criminal nature.

IPS operated on a non-statutory basis from December 2003. Since the coming into effect of the Criminal Proceedings etc (Reform) (Scotland) Act 2007 Sections 78 and 79 in April 2007 the Inspectorate has been operating as a statutory body.

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