



Inspectorate of Prosecution in Scotland

Annual Report 2018-19



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TO THE RIGHT HONOURABLE JAMES WOLFFE QC
THE LORD ADVOCATE

The Fourteenth Annual Report to the Scottish Parliament

December 2019

Laura Paton
HM Chief Inspector
Inspectorate of Prosecution in Scotland

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Contents

	Page
Foreword	3
Chapter 1 – About us	5
Vision	
Values	
Equalities	
Our approach	
Thematic reviews	
Follow-up reports	
Collaborative inspections	
International Association of Prosecutors	
Chapter 2 – Our inspections	7
Thematic Review of the Investigation and Prosecution of Sheriff Solemn Cases	
Follow-up Review of Fatal Accident Inquiries	
Current and future work programme	
Chapter 3 – Evidence and Procedure Review	11
Chapter 4 – Digital innovation	13
Annex A	15
Finance	
Staff	
Freedom of Information requests	
Complaints process	



Foreword



I am delighted to have recently taken up the post of Her Majesty's Chief Inspector of Prosecution in Scotland and would like to thank my predecessor, Michelle Macleod, for her valuable contribution and high quality thematic reports. During her six-year tenure, she began the practice of publishing follow-up reports to previous inspections, which have proven a useful tool in charting improvements within the Crown Office and Procurator Fiscal Service (COPFS) and measuring the progress made against the inspectorate's recommendations. This annual report relates to 2018-19, Ms Macleod's final full year in office.

Appointed in November 2019, I intend to continue the inspectorate's practice of producing thorough, evidence-based assessments of the services provided by COPFS, with a view to supporting continuous improvement in their delivery. By providing independent scrutiny, the inspectorate will play a key role in supporting an effective criminal justice system and promoting positive outcomes for the public in Scotland.

I have been appointed as Chief Inspector of Prosecution at a time of change within COPFS and the criminal justice system more broadly. The Evidence and Procedure Review led by Lord Carloway is being taken forward through various pilots which will impact how courts take pre-recorded evidence from some of our most vulnerable witnesses and children, and how summary justice is delivered. The Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 is due to be implemented in 2020 and contains, amongst others, important new provisions regarding how child witnesses will give evidence at solemn level involving a specified offence. This will have an impact on the day to day working of the criminal justice system and how COPFS supports victims and witnesses in the taking of their evidence.

Both COPFS and justice partners are committed to progressing better use of digital technology to improve the delivery of the criminal justice service. This year, COPFS has continued to roll out the case management application which enables prosecutors to present cases by accessing files through an iPad and the development of an advanced Witness Portal prototype.

I am pleased to note the announcement by the Crown Agent that additional funding secured from the Scottish Government to recruit additional staff will allow COPFS to improve the service it provides to the public and meet the challenges of complex case work. I intend to assess the impact of these additional resources next year on the journey time of cases within certain specialist units during my follow-up review of the investigation and prosecution of sexual offences as well as the further follow-up on fatal accident



inquiries. During our initial follow-up report on fatal accident inquiries this year, we noted that it was disappointing that there had been little progress in shortening the timeline for mandatory inquiries and stated that the Inspectorate would return in 2020.

I would like to thank all who shared their experience and knowledge to help inform our work this year, as well as the Inspectorate staff for their continued support and assistance.

Laura Paton
HM Chief Inspector of Prosecution in Scotland
December 2019



Chapter 1 – About us

1. The Inspectorate of Prosecution in Scotland (IPS) was established in 2003 and placed on a statutory footing in 2007 by the Criminal Proceedings etc. (Reform) (Scotland) Act 2007. The Act requires the Inspector 'acting independently of any other person' to secure the inspection of the operation of COPFS and make recommendations that will contribute to the improvement of COPFS and enhance public confidence. It provides that the Lord Advocate may require the Inspector to submit a report on any particular matter connected with the operation of the service.

Vision

2. The Inspectorate's vision is to enhance the effectiveness of and to promote excellence in the prosecution service in Scotland through professional and independent inspection and evaluation.

Values

3. The core values of the Inspectorate are:

I ndependence	to provide impartial and objective scrutiny of the service provided by COPFS
P rofessionalism	to undertake inspections with integrity, rigour, competency and consistency
S ervice	to provide a service that enhances public confidence in the investigation and prosecution of crime and any deaths that need further explanation and any associated fatal accident inquiry proceedings in Scotland

Equalities

4. The Inspectorate is committed to promoting equality and diversity. To this end we consider the impact our inspections and recommendations may have on individuals, groups and communities. We carry out Equality Impact Assessments for each report focusing on the potential impact of our work on those with protected characteristics.

Our approach

5. We encourage an inclusive and participative process and, acting as an impartial and professional 'critical friend', aim to secure improvement across the system. We also seek to identify examples of good practice.
6. It is important that the work of the Inspectorate is relevant to the issues impacting our communities. In common with other inspectorates, our inspection activity has evolved to develop programmes aligning inspection resource to risks by using sector risk profiles (from inspections) and sector intelligence (such as performance data and stakeholder feedback).



7. There are a number of different types of inspection work undertaken by the Inspectorate. These include:

Thematic reviews

8. Thematic reviews look holistically at services end to end. These can be focused on specific types of case work or business approaches. We will highlight good practice and make recommendations designed to drive improvement and enhance quality.

Follow-up reports

9. The main way in which inspectorates have impact is through their published reports and recommendations. For maximum impact and value from inspection findings, a robust follow-up process is a critical part of an effective inspection regime. Since 2014, the Inspectorate has embarked on a rolling programme of follow-up reports to monitor the progress of COPFS implementation of our recommendations and to evaluate the effectiveness and outcomes of measures implemented. Follow-up reports will continue to form part of our inspection cycle.

Collaborative inspections

10. It is recognised that some issues are best addressed by a multi-agency or partnership approach. IPS has previously conducted joint inspections with Her Majesty's Inspectorate of Constabulary in Scotland (HMICS). The Inspectorate also liaises with Audit Scotland and the other inspection bodies within the criminal justice system to ensure there is no duplication of work and that inspection work is undertaken in a collaborative and complementary way.

International Association of Prosecutors

11. Established in 1995, the International Association of Prosecutors is the first and only worldwide organisation of prosecutors, representing over 300,000 prosecutors from over 176 different countries and territories. The main impetus for its formation was the rapid growth in serious transnational crime and the need to meet the challenges this presents through greater international co-operation. In 2018-19, the Inspectorate continued to engage with the association to share information and good practice.



Chapter 2: Our inspections

12. In 2018-19, we commenced two inspections – our Thematic Review of the Investigation and Prosecution of Sheriff Solemn Cases and our Follow-Up Review of Fatal Accident Inquiries. We also published a Thematic Report on the Victims' Right to Review and a Thematic Report on the Prosecution of Young People, the findings of which were highlighted in our previous annual report.

Thematic Review of the Investigation and Prosecution of Sheriff Solemn Cases

13. Our Thematic Review of the Investigation and Prosecution of Sheriff Solemn Cases was published in July 2019.¹ Sheriff Principal Bowen's Independent Review of Sheriff and Jury Procedure in 2010 made recommendations that were designed to tackle procedural and systematic inefficiencies and to change the culture contributing to delays. The legislation reforming sheriff and jury procedure was phased in between 29 May and 31 July 2017.
14. As sheriff solemn cases have been prosecuted under the new regime since August 2017, it was an appropriate juncture for us to review and assess the effectiveness and impact of the reforms and review the current operation of solemn cases in the sheriff court.
15. We found that following implementation of the reforms, there was an increase in earlier resolution of cases and reduced churn with a high degree of compliance with the prosecutor's statutory duty to agree evidence. Many dedicated and professional staff within COPFS were committed to ensuring the legislative reforms made a difference. Positively, of the 91 cases we reviewed, we found that 79% were resolved by or at the first trial diet.
16. However, we also found that victims who had vulnerabilities but were not automatically entitled to special measures were dealt with inconsistently. For 35% of victims within the remit of the Victim Information and Advice service, the standard of communication fell below what was expected.
17. The report made seven recommendations, all of which were accepted. These were designed to ensure full information on witness availability is given to procurator fiscal deputes, that all sexual offence victims have a clear victim strategy, and that a national model of good practice in investigating and prosecuting sheriff solemn teams is created.
18. The recommendations are set out below.

Recommendation 1

COPFS should ensure that, where there is a legal representative, a letter providing contact details of the first diet prosecutor and/or the SLM and seeking engagement of the defence on key issues is sent when the indictment is served in all cases. A record of the extent of communication with the defence before the first diet should be recorded on the COPFS IT system.

¹ Inspectorate of Prosecution in Scotland, *Thematic Review of the Investigation and Prosecution of Sheriff Solemn Cases* (2019).



Recommendation 2

COPFS should refresh the guidance on witness engagement including an explanation of the content of the reports.

Recommendation 3

COPFS should ensure that all relevant information provided by witnesses (whether they provide availability details or not) is pulled into the first diet report.

Recommendation 4

COPFS should ensure that any information obtained on the availability of witnesses is captured and included in the first diet report.

Recommendation 5

COPFS should seek to incorporate the various elements of good practice into a national model for investigating and prosecuting sheriff solemn cases that can be adapted for local variations.

Recommendation 6

COPFS should extend the victim strategy to all victims of sexual crimes prosecuted in the sheriff solemn courts.

Recommendation 7

COPFS should apply a consistent approach to taking evidence by a commissioner for cases prosecuted in the High Court and sheriff solemn courts for all witnesses under 18.

Follow-up Review of Fatal Accident Inquiries

19. The Thematic Review of Fatal Accident Inquiries (FAIs) was published in August 2016.² Looking at the journey time of cases, we reported that delays between the date of death and the start of an FAI adversely impacted on:
 - the momentum of investigations and the operational capacity of investigating agencies
 - the well-being of potential witnesses for whom the prospect of the inquiry ‘hanging over them’ is a source of anxiety and concern
 - the confidence of the nearest relatives and the public
 - the quality of the evidence and, in some cases, the purpose of the FAI.
20. Of particular concern was the finding that mandatory FAIs³ took on average 14 months from the date of death to the start of the FAI.

² Inspectorate of Prosecution in Scotland, *Thematic Review of Fatal Accident Inquiries* (2016).

³ There is a requirement to hold an FAI where a death occurs as a result of a work-related accident or the deceased was in legal custody at the time of their death.



21. In the course of the thematic review, we made 12 recommendations. We monitored progress against these recommendations in our follow-up review, published in August 2019. We found that five⁴ of our recommendations had been achieved, four were in progress, two⁵ had been superseded by the Fatal Accident Inquiry Rules⁶ and one was not achieved. Given that almost three years had passed since the initial thematic review was published, the lack of progress in several areas is concerning. The following four⁷ recommendations are still in progress:
- SFIU National⁸ should introduce a streamlined reporting/notification process for FAIs
 - SFIU National should review, update and centralise all guidance and policies on the investigation of deaths
 - Where criminal proceedings are instructed and the circumstances of a death require a mandatory FAI:
 - COPFS should issue guidance requiring an instruction by Crown Counsel on whether a mandatory FAI is likely following the criminal proceedings
 - COPFS should ensure there is a debrief between the team dealing with the criminal case and SFIU, at the conclusion of the criminal proceedings
 - COPFS should ensure that all operational case related emails are recorded and imported into the case directory.
22. The following recommendation was not achieved:
- SFIU should agree a Memorandum of Understanding (MoU) with all investigative agencies that have responsibility to investigate the circumstances of certain types of deaths.⁹
23. Of particular note, we found that there has been little progress in shortening the time line for mandatory FAIs. While the number of outstanding FAIs over 12 months is decreasing, we found that there are still 20 which are over three years old. We are aware that efforts are ongoing to accelerate back filling vacancies and to increase SFIU resources.
24. On the basis of our findings from our follow-up report, we made three new recommendations as follows:

⁴ Recommendations 2, 4, 7, 9 and 10 were achieved.

⁵ Recommendations 8 and 11 have been superseded.

⁶ Act of Sederunt (Fatal Accident Inquiry Rules) 2017.

⁷ Recommendations 1, 3, 5 and 6.

⁸ The Scottish Fatalities Investigation Unit (SFIU) is responsible for investigating all reported non-suspicious deaths. Within SFIU, there are three geographical teams (North, East and West) whose work is overseen by the SFIU National team.

⁹ Recommendation 12.



- To provide a clear audit trail in each case, the work stream to record all information in the case directory should be prioritised and documents should be recorded and named in a structured manner
- In order to assess compliance with the Family Liaison Charter a record of the wishes of the family should be recorded on the charter template
- SFIU should prioritise the FAI of any death of a young person in legal custody.

25. Given, in particular, the number of recommendations that remain in progress, continuing delays in dealing with mandatory FAIs and the three new recommendations, we will re-visit the investigation of FAIs in a further follow-up review next year.

Current and future work programme

26. In addition to the follow-up reviews listed below, our future inspection programme plan will be finalised in consultation with the Lord Advocate and relevant stakeholders:

- A follow-up report on the thematic review of the Investigation and Prosecution of Sexual Crimes
- A further follow-up report on Fatal Accident Inquiries
- A follow-up report on the thematic review of Victims' Right of Review.

27. Our inspection programme is kept under review and altered as necessary to respond to any new challenges or developments which provide identifiable risks for COPFS and the wider criminal justice system.

28. When delivering our inspection programme, we will continue to fulfil our duty of user focus, as set out in the Public Services Reform (Scotland) Act 2010.



Chapter 3: Evidence and Procedure Review

29. The Evidence and Procedure Review chaired by Lord Carlway was established to explore and identify ways to modernise the criminal justice system for the 21st century. This resulted in reports published in 2015¹⁰ and 2016¹¹ which addressed inefficiencies such as 'churn'¹² and looked at ways to reduce stress and inconvenience to victims and witnesses. The reports examined the use of modern technologies that would assist in the taking of pre-recorded evidence and the use of digital innovations to transform the summary criminal justice system. They called for consideration of not fixing trial diets in summary procedure until the court is satisfied that the case is ready to go for trial and it concluded that successful introduction would require the willingness of judges and sheriffs to have proactive control of case management in court.
30. Various Cross Justice Working Groups developed the aims of the reports within the different areas of the justice system, including in relation to:
- summary courts
 - recording evidence in chief
 - further evidence and cross examination.
31. In particular, within the summary court work stream, two papers¹³ were produced which has led to the development of a new model for summary criminal case management.
32. Three Sheriff Courts, at Dundee, Hamilton and Paisley, will pilot this new approach of increased judicial case management and early engagement between the Crown and defence in summary cases. The pilots are judicially led by the Sheriff Principals for each Sheriffdom and are supported by justice partners, including COPFS. These pilots will commence in January 2020 for 18 months and are underpinned by a Practice Note¹⁴ to provide guidance to all practitioners outlining the practices that will require to be adopted by Crown and defence at pleading and intermediate diets.
33. Through increased judicial control, active case management, the use of continued without plea and written records prior to intermediate diets, the aims of the pilots are to:
- resolve cases at the earliest opportunity without the need of a trial being fixed
 - reduce the need for full disclosure where cases can be resolved
 - reduce the number of cases called for trial
 - reduce the number of witnesses unnecessarily called
 - preserve trial for cases that cannot be resolved by other means.

¹⁰ SCTS, *Evidence and Procedure Review Report* (March 2015).

¹¹ SCTS, *Evidence and Procedure Review – Next Steps* (February 2016).

¹² Procedural systematic inefficiencies where cases do not proceed timeously and have repeated callings within court.

¹³ SCTS, *Proposition Paper: A New Model For Summary Criminal Court Procedure* (February 2017); SCTS, *Follow-up report to the Proposition Paper – A New Model for Summary Criminal Court Procedure* (September 2017).

¹⁴ *Criminal Courts Practice Note No 2 of 2019: Case management in Summary Criminal Cases Project.*



34. The pilots will be subject to monitoring and evaluation by a multi justice partner working group and the results will inform a wider rollout.
35. As part of the recommended approach from the Evidence and Procedure Review regarding the taking of evidence of children and vulnerable witnesses, two of the Cross Justice Working Groups looked at:
 - improving and creating a consistent approach to visually recording 'Joint Investigative Interviews' of certain child witnesses so that those interviews can be used more often as evidence in chief, extending the visual recording of interviews and/or statements to other child and vulnerable witnesses¹⁵
 - improving taking evidence by Commissioner and a new High Court practice note was developed.¹⁶
36. Following on from the Recommendations and the Working Groups is a pilot project which commenced on 1 November 2019 to test the visual recording of witness statements of adult complainers in cases involving rape and attempted rape. This pilot will run for two years and involved COPFS together with the Police Service of Scotland, Rape Crisis Scotland and the Scottish Government.
37. Following the work on the Evidence and Procedure Review, the Scottish Government introduced the Vulnerable Witness (Criminal Evidence) (Scotland) Act 2019 which creates a legal presumption in favour of the pre-recording of evidence from child witnesses in solemn cases by prior statement and/or by Commissioner. The Act will also simplify the procedure for submitting Vulnerable Witness Notices to the court for child and deemed vulnerable witnesses seeking only standard measures.
38. The Inspectorate will watch with interest how these developments unfold with a view to, in the future, assessing the impact within COPFS on efficiency of sheriff summary work and the services provided to victims and witnesses.

¹⁵ SCTS, *Joint Investigative Interviews Work Stream Project Report* (2017).

¹⁶ Some published works from that working group are SCTS, *Report of the Pre-recorded Further Evidence Work Stream* (September 2017); *High Court Practice Note 1 of 2017* (March 2017); *High Court Practice Note 1 of 2019* (April 2019).



Chapter 4: Digital innovation

39. The Evidence and Procedure Review promoted the wider use of digital technology across the justice system. COPFS is involved in delivering these projects with justice partners and implementing the Scottish Government's Digital Strategy for Justice. COPFS has also continued to develop its own internal digital strategy, published in January 2017,¹⁷ setting out its vision on using digital technology to improve user services and how the organisation works. We have highlighted a few initiatives below.

iPads in court

40. In our 2017-18 Annual Report, we noted that the use of iPads in court allowed prosecutors to electronically access case files through the use of a digital application 'Case Management in Court' (CMiC). This application and the use of the iPad had been rolled out to 13 offices and the remaining offices would come on board by the end of 2019. This has now happened and approximately 250 legal staff have been provided with an iPad and training to allow them to digitally present cases in court. Over 400 support staff have been trained in relation to the web-based application to electronically prepare courts for legal staff.
41. All COPFS offices are now using CMiC in Justice of the Peace Courts and by the end of 2019, it is anticipated that CMiC will be used in all summary cases across Scotland. COPFS anticipates that 2019-20 will be the first full year where iPads will be used in all summary business throughout Scotland.
42. The benefits of the project outlined in our last Annual Report are now being realised. These include improving security due to the reduced need to transport hard copy papers to court; reducing the impact on the environment given that fewer papers are being printed in hard copy; and improving efficiency and customer service, by allowing prosecutors to update the COPFS system with what happens in court in quick-time and enabling COPFS staff to provide victims and witnesses with speedier updates.
43. The next stage is for the CMiC application to be developed for use in solemn business and the goal is that the application and the iPads will be in use in all sheriff and jury business by 2020-21. It is then intended to look at whether the application can be used in High Court business.
44. Now that the CMiC application is fully rolled out across all offices in summary business, the Inspectorate will be able to assess its impact on the business in future thematic reports.

Witness Portal

45. In our last Annual Report, we advised that COPFS has received funding from the Scottish Government to produce a witness website or portal and a prototype was being produced by the end of March 2019.

¹⁷ COPFS, *Digital Strategy* (2017).



46. We are pleased to report that this has now taken place and the prototype has been demonstrated to COPFS stakeholders within the Scottish Government and other justice partners. The prototype incorporates Chatbots and Live Chat Service as outlined in the Digital Strategy. The purpose is to enhance the communication between users and the public. It will now be deployed for evaluation between January and March 2020 and implemented later in 2020.

Future Ways of Working Project

47. This project was launched this year by COPFS to provide staff with the tools, systems and processes they need to work flexibly while continuing to deliver high standards of service to the public. This will involve providing staff with a laptop and software to support mobile workforce aims.
48. The Inspectorate will be interested in how this project develops and supports COPFS staff in their work/life balance, while ensuring that a high standard of prosecutorial service is maintained.



Annex A

Finance

49. The Inspectorate's budget for 2018-19 was £350,000. The expenditure was as follows:

Staff costs*	304,621
Subsistence and motor mileage	34
Printing and binding	2,073
Travel and accommodation	3,625
Hospitality	135
Conference fees	1,391
Other running costs	<u>7,742</u>
Total	<u>£319,621</u>

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

Staff

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

Freedom of Information requests (FOI)

51. We publish FOI information and all our reports on our website. During 2018-19, we received four Freedom of Information requests and responded within the required timescale.

Complaints process

52. Our Complaints Handling Procedure is published on our website and seeks to resolve any dissatisfaction as quickly as possible and where necessary to conduct thorough, impartial and fair investigations of complaints. Our Complaints Handling Procedure does not extend to individual complaints about operational decisions relating to specific cases. These should be addressed to the Crown Office and Procurator Fiscal Service (www.copfs.gov.uk).



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