



HM Inspectorate of Prosecution in Scotland

Follow-up review of the investigation and prosecution of sexual crime

August 2020



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Introduction

In 2017, HM Inspectorate of Prosecution in Scotland published a review of the investigation and prosecution of sexual crime in the High Court by the Crown Office and Procurator Fiscal Service (COPFS).¹ That review resulted in 12 recommendations, all directed towards COPFS and designed to support continuous improvement in the investigation and prosecution of sexual crime. The aim of this follow-up inspection was to assess the progress being made in implementing those recommendations.

In our 2017 review, we noted that while other types of crime in Scotland had fallen since 2007-08, sexual crime recorded by the police had increased each year and was at the highest level since 1971. We also noted that sexual crime constituted 75% of the COPFS High Court workload.

We found there to be a well-defined governance structure within COPFS for the investigation and prosecution of serious sexual crime, with roles and responsibilities being clearly set out. However, we were concerned about the length of time taken to investigate and prosecute sexual crime cases, particularly those subject to pre-petition investigation, and we identified opportunities to reduce the journey time of cases. We were also concerned at the number of victims² that disengaged at various stages throughout the investigation and prosecution process. This suggested that more could be done to provide the necessary information and support to victims. We found there was scope to improve communication with victims, including in relation to its frequency, clarity and tailoring towards individual needs, and we noted that cases involving particularly vulnerable victims, such as children, could be progressed more quickly.

Six of the recommendations in our 2017 review were aimed at supporting COPFS to reduce the journey time of cases, while six sought to support improvements in how COPFS communicates with and supports victims and witnesses via its Victim Information and Advice Service (VIA).

Since the publication of our report in 2017, the volume of sexual crime recorded by the police has continued to rise. The latest data available shows that sexual crime increased 8% between 2017-18 and 2018-19.³ Since 2009-10, the volume of sexual crime has more than doubled and now accounts for 5% of all recorded crime. While it is not possible to determine the age of victims from police recorded data, the fact that some crimes can only be committed against a child tells us that *at least* 39% of sexual crime relates to a victim under the age of 18. In its 2018-19 bulletin on recorded crime, the Scottish Government notes that the reporting of historic sexual crime continues to be a feature. Around 25% of sexual crimes in 2018-19 were recorded at least one year after they occurred.

The significant proportions of sexual crime involving children as victims or that is historic in nature has implications for COPFS in terms of how cases are managed and prosecuted and the resources required to do so effectively. In 2018-19, COPFS secured additional funding from the Scottish Government to enable it to recruit staff so as to match its resources to demand. Demand remains high however. In 2020, COPFS noted that in the last two years, the number of High Court-level sexual offences reported to it has increased by around 50%.⁴

¹ HM Inspectorate of Prosecution in Scotland, [Thematic Review of the Investigation and Prosecution of Sexual Crimes](#) (2017).

² The term 'complainer' is most often used to describe the person against whom it is alleged a crime has been committed. In this report, we have used the term 'victim', as we did in our 2017 report. The term 'victim' is used in legislation and is more commonly understood. It makes no assumption about the veracity of any allegations.

³ Scottish Government, [Recorded crime in Scotland, 2018-19](#) (2019).

⁴ COPFS, [Securing justice: our strategic plan for 2020-2023](#) (2020).



Since our review was published in 2017, various initiatives have been taken forward with a view to better meeting the needs of victims and witnesses in sexual crime cases and improving their experience of the criminal justice system. These include (but are not limited to):

- the Vulnerable Witnesses (Criminal Evidence) Act 2019 was enacted to enable the much greater use of pre-recording the evidence of children and vulnerable witnesses in advance of a criminal trial. Its provisions came into force in January 2020 meaning that its impact was not yet apparent during our follow-up inspection
- Lady Dorrian, the Lord Justice Clerk, has been leading a review of the management of sexual offences and how these can be better conducted through the courts. A report of this work had been expected in Spring 2020 but has been delayed due to Covid-19
- COPFS is working with Police Scotland and Rape Crisis Scotland on a pilot project to test the effectiveness of visually recording the statements of victims in rape cases
- the 2018-19 Programme for Government included commitments to improve the experience of victims of rape and sexual assault in the justice system, including by providing additional funding to allow trials involving rape to start at the earliest opportunity and by providing additional funding to Rape Crisis Centres to help people access the necessary support⁵
- the 2019-20 Programme for Government included commitments to carry out work to better understand the gaps in support for victims and witnesses in the criminal justice system and to make sure that a trauma-informed approach is taken to victims from early engagement with the police to attendance at court and beyond⁶
- the Forensic Medical Services (Victims of Sexual Offences) Scotland Bill has been introduced. It aims to improve the way in which forensic medical examinations are conducted and to establish a national self-referral model for victims of sexual crime who wish to have a forensic medical examination without first reporting to the police.

Our follow-up inspection

We have assessed progress made by COPFS in implementing the 12 recommendations from our 2017 review. We did this by analysing information and data from COPFS, reviewing 50 High Court sexual crime cases, and interviewing senior leaders involved in the investigation and prosecution of sexual crime as well as relevant stakeholders and victim support organisations. Plans for more extensive fieldwork, including interviewing staff involved in the investigation and prosecution of sexual crime and those communicating with victims, were unfortunately curtailed due to the Covid-19 pandemic and the need to suspend face-to-face interviews. We were also conscious of the need to minimise our scrutiny footprint in Spring 2020 while COPFS, like other organisations, rapidly changed how it delivered its service and supported the vast majority of its staff to work from home in response to the pandemic. It is our intention that fieldwork for future inspection activity will take place via telephone and video conferencing as long as public health guidelines require it.

The 50 High Court sexual crime cases that we reviewed were randomly selected from all sexual crime reported to COPFS between 1 September 2018 and 28 February 2019 and which were assessed as being suitable for action in the High Court (see case review cohort on page 6). While our sample size was not statistically significant, the results should nevertheless provide a good indication of how sexual crime cases are being managed. The sample was drawn from this period so as to allow sufficient time for COPFS to have taken action in response to our recommendations, and to allow sufficient time to have passed since the cases were reported to assess their progression. It should be noted, however, that

⁵ Scottish Government, [Delivering for Today, Investing for Tomorrow – The Government's Programme for Scotland 2018-19](#) (2018).

⁶ Scottish Government, [Protecting Scotland's Future – The Government's Programme for Scotland 2019-20](#) (2019).



some improvement actions were only newly implemented at the time the cases in our review were first reported to COPFS, while others were implemented while those cases were progressing through the investigation and prosecution process. The progression of the cases was assessed until March 2020. We revisited the cases in July 2020, shortly before publication of this report, to assess the impact of the Covid-19 pandemic.

Part 1 of this report sets out the progress made in relation to Recommendations 1 to 6 of our 2017 review. These were focused on reducing the journey time of cases. Part 1 also highlights emerging findings from our current review, and notes key points in the investigation and prosecution process where delay still occurs.

Part 2 sets out the progress made in relation to Recommendations 7 to 12, all of which related to communication with and support for victims and witnesses. Part 2 also highlights emerging findings from our current review, including areas where improvement is still needed and others where progress not directly related to our recommendations has been made.

Part 3 sets out the impact of the Covid-19 pandemic on the cases that we reviewed. There has been much commentary on the backlog of cases in the criminal justice system in recent months, and Part 3 aims to provide more detail about the potential impact of the backlog on a small proportion of the delayed cases.

Parts 1 to 3 draw on the results of our case review, but a more detailed report of our case review can be found at Appendix 1.

Overall, we have noted considerable progress in implementing the recommendations of our 2017 review. Eight recommendations have been achieved, three are in progress and one is no longer relevant given changes to working practices. This progress illustrates the commitment at a strategic level within COPFS to ensuring that cases progress more efficiently through the investigation and prosecution process and that victims are better informed and supported. Improvement activity has not only taken place in relation to our recommendations. For example, COPFS has sought to apply effective practice and learning from the investigation and prosecution of High Court sexual crime cases to those being taken forward at Sheriff and Jury level, which we welcome. Another significant development is that COPFS has established a mechanism with Rape Crisis Scotland by which it receives feedback about victims' experience of the investigation and prosecution process.

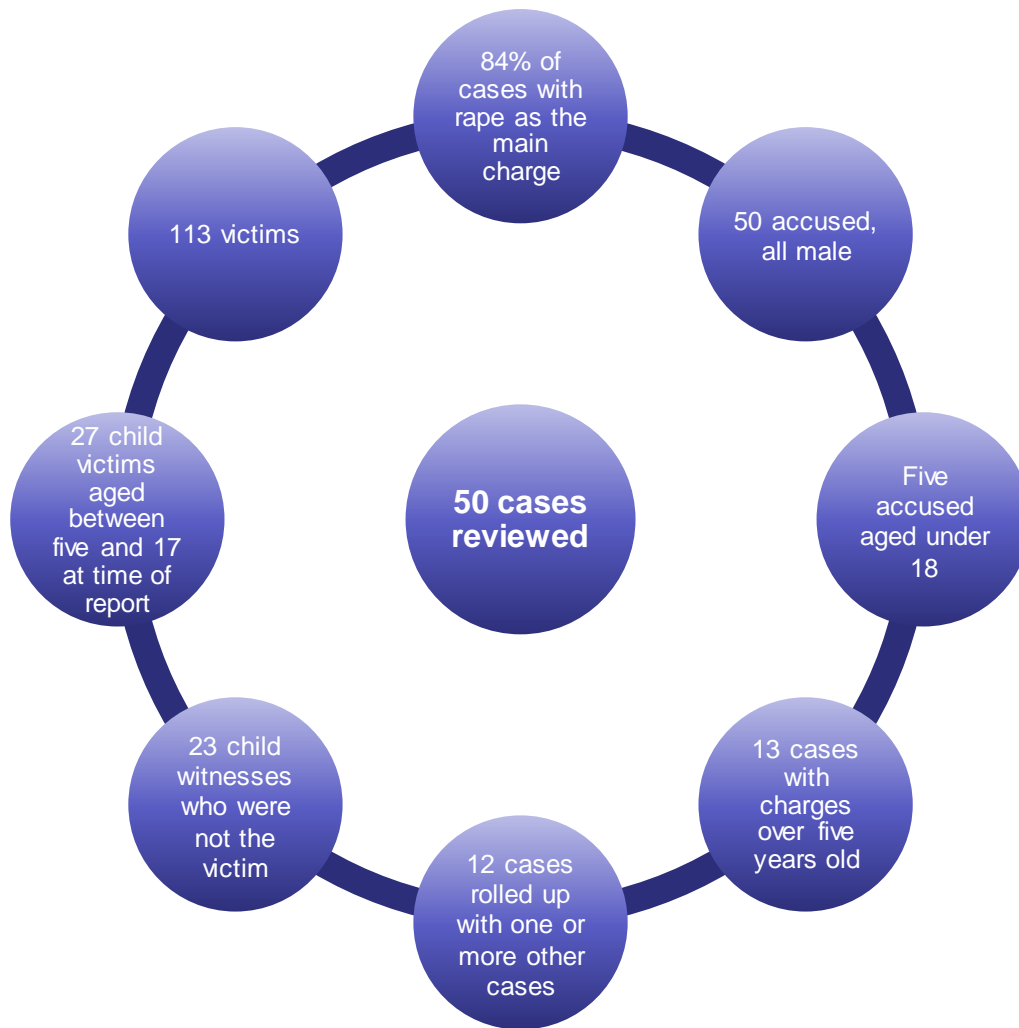
Despite this progress, our findings also show that delays still occur and there is still scope for improving communication with victims. We have made three new recommendations. We anticipate that COPFS will continue to make improvements and that the benefits of actions already taken will be realised over the coming months. Some issues are not entirely within the power of COPFS to address however, and wider action across the criminal justice system is required. It is possible that, however much COPFS improves its practice in relation to serious sexual crime cases, something more transformational is required to substantially rather than incrementally improve the experience of victims and witnesses. It is hoped that the review being undertaken by Lady Dorrian will make recommendations in this regard.

Finally, I would like to thank the personnel of COPFS who facilitated our inspection as well as the stakeholder organisations who shared their views with us. I am particularly grateful for their cooperation at a time when they were dealing with significant challenges brought about by the Covid-19 pandemic.

Laura Paton
HM Chief Inspector of Prosecution in Scotland
August 2020



Case review cohort





Key findings

There has been considerable progress in implementing the recommendations of our 2017 review of the investigation and prosecution of sexual crime in the High Court. Eight recommendations have been achieved, three are in progress and one is no longer relevant given changes to working practices.

This progress illustrates the commitment at a strategic level within COPFS to ensuring cases advance more efficiently through the investigation and prosecution process and that victims are better informed and supported.

Despite this progress, our findings show that delays still occur and there is still scope for improving communication with victims.

Several changes to policy and procedure have been made in response to our recommendations but, in some areas, there is scope for COPFS to ensure that these changes are fully implemented in practice.

Some changes have only been made recently. They should have a positive impact once they are embedded and their benefits are fully realised.

A new approach to monitoring performance against key milestones in the journey of a case has been introduced. With robust governance, this should support efforts to shorten the journey time of cases and to prioritise certain types of case, such as those involving children.

Pre-petition investigation is being used in a more appropriate way than it was at the time of our initial inspection. Nonetheless, the period of investigation can still be protracted.

Delays still occur at various stages in the investigation and prosecution of sexual crime cases. For example, despite efforts to expedite and prioritise cases, it appeared that indicters are still working to statutory time limits.

Not all delays are within the control of COPFS. Increasingly, there appear to be delays in cases reaching trial. It is imperative that the criminal justice system operates efficiently and effectively, and is resourced appropriately, so that the benefits of improvements made in expediting the investigation and prosecution of cases are not lost due to a lack of court time.

In too many cases, the police are failing to provide information about the background of victims and an initial assessment of their vulnerability when reporting cases to COPFS.

There are inconsistencies in the quality of communication with victims. While some receive a good and improving service from a dedicated VIA officer, others experience delays and gaps in communication.

The establishment of a mechanism by which COPFS receives feedback from victims via Rape Crisis Scotland about their experience of the investigation and prosecution process is a welcome development. This indicates that COPFS is increasingly open to listening to victims and taking action in response to their concerns.

The suspension of jury trials in response to the Covid-19 pandemic has resulted in significant delays in cases that are ready for trial. Delays may have a serious impact on victims, witnesses and the accused.



Recommendations

New recommendations

Recommendation 1

COPFS should ensure that the victim strategy is initiated within a reasonable time in all cases, regardless of their procedural history and status.

Recommendation 2

COPFS should work with the police to ensure that processes for communicating with victims and witnesses who are looked after children take account of their individual circumstances and needs.

Recommendation 3

COPFS should work with Police Scotland to ensure that a police victim strategy is submitted in all appropriate cases and in accordance with agreed timescales.

Progress against 2017 recommendations

| | |
|-------------------|--------------------|
| Recommendation 1 | Achieved |
| Recommendation 2 | No longer relevant |
| Recommendation 3 | Achieved |
| Recommendation 4 | In progress |
| Recommendation 5 | Achieved |
| Recommendation 6 | Achieved |
| Recommendation 7 | In progress |
| Recommendation 8 | Achieved |
| Recommendation 9 | Achieved |
| Recommendation 10 | Achieved |
| Recommendation 11 | In progress |
| Recommendation 12 | Achieved |



Part 1 – Reducing the journey time of cases

1. Our 2017 review of the investigation and prosecution of sexual crime made six recommendations aimed at supporting COPFS to reduce the journey time of cases. The progress made by COPFS in implementing those recommendations is described below.

Recommendation 1

What we found

2. At the time of our initial inspection in 2017, all serious sexual crime reported to COPFS was dealt with by specialist teams located in Aberdeen, Dundee, Edinburgh and Glasgow. Their sole function was to investigate sexual crimes that were serious enough to be prosecuted in the High Court. Cases investigated by the sexual crime teams were reported to the National Sexual Crimes Unit (NSCU), a body of senior lawyers known as Crown Counsel, specialising in the investigation and prosecution of sexual crime. When reporting the case to NSCU at the initial decision-making stage, the sexual crime teams made a recommendation on the action to be taken (to prosecute, to instruct further investigation, to take no proceedings, or to use an alternative disposal). NSCU considered their recommendation and provided instruction on how to proceed.
3. In our 2017 case review, we found there to be a high level of agreement between the recommendations made by the sexual crime teams and the instructions provided by NSCU. This provided a high degree of confidence in the initial decision-making of the specialist teams and suggested that little value was being added by the 'double-handling' of the cases.
4. We therefore recommended that the blanket requirement for all sexual crime to be reported to NSCU at the initial decision-making stage be removed. Instead, a system of exception reporting should be established for those cases that are particularly complex or where there is greatest risk.
5. To ensure that the standard of decision making is maintained under a system of exception reporting, we suggested that some safeguards be put in place. For example, we noted that the accreditation of specialist teams in managing sexual crime cases should be retained and monitored.

What we recommended

6. COPFS should develop a policy of exception reporting to NSCU at the initial decision-making stage of the investigative process.

Progress

7. Since our inspection, COPFS has created a national specialist marking team which considers all reports received from the police that involve serious sexual crime and that are likely to be High Court level offences. In response to our recommendation, a policy of exception reporting to NSCU at the initial decision-making stage has also been introduced.⁷ Implemented in March 2018, this policy allows the specialist marking team to make initial decisions on the appropriate prosecutorial action to be taken without routinely seeking the instruction of Crown Counsel in NSCU. Instead, the policy requires Crown Counsel's instructions to be sought only in specific

⁷ COPFS, Operational Instruction 3 of 2018.



circumstances. These include, for example, cases where consideration of complex areas of law is required.

8. COPFS considers that this change in policy is working well in practice and has reduced the double handling of cases and allowed some decisions to be taken more quickly. In our follow-up case review, only five of the 50 (10%) cases we assessed were sent to NSCU at the initial decision-making stage and all appeared to be for appropriate reasons. Previously, all cases would have been sent to NSCU. The change in policy has therefore created a more streamlined process and an opportunity to shorten the journey time of many cases. We therefore consider Recommendation 1 to have been achieved.

Recommendation 1 status: achieved

9. During our follow-up inspection, we were advised by COPFS that it has not received any feedback to suggest the change in policy has had a negative impact on the quality of decision making. Indeed, in our own case review, where cases were reported to NSCU at a later stage in the process, we found that Crown Counsel agreed with the recommendations of specialist prosecutors in a high proportion of cases (see paragraph 206).
10. Nonetheless, in our 2017 inspection, we suggested possible safeguards that COPFS may wish to consider when introducing a policy of exception reporting. One of these was that cases in which the initial decision is to take no proceedings should still be reported to Crown Counsel for their instructions. COPFS chose not to take this approach when developing its policy.⁸ Instead, the requirement that the initial decision maker seek the approval of a Solemn Legal Manager (SLM) to take no action was thought by COPFS to be a sufficient safeguard. This supervisory oversight is welcome and we were advised that further informal discussions may take place with more senior staff if there was any uncertainty as to the appropriate decision. While this seemed a proportionate approach in cases where there is clearly insufficient evidence, we consider that the risk that the incorrect decision has been made could be more fully managed by introducing further mitigation in the form of ad hoc checks or quality assurance.

Recommendation 2

What we found

11. The Investigative Agreement is the 'blueprint' for the investigation of a case. At the time of our inspection, it was intended that it would be prepared by the SLM within seven or 21 days of the appearance of an accused in court, depending on whether the accused was in custody or on bail, and submitted to NSCU. The Agreement consisted of a number of elements, including:
 - the precognition strategy – identifying which witnesses require to be interviewed and the matters to be covered at interview
 - the legal strategy – analysing and identifying any legal or evidential difficulties
 - the victim strategy – identifying any vulnerabilities and special measures that may be required
 - the case presentation strategy – used in complex cases where there is a high volume of evidence
 - the need for expert reports, forensic analysis and sensitive records (such as medical, psychiatric or social work records).

⁸ It is worth contrasting this approach with that taken in rape cases where a decision to take no further action after the accused has already appeared on petition or indictment is still referred to a Law Officer.



12. The purpose of the Agreement was to provide Crown Counsel in NSCU with an opportunity to direct the investigation at an early stage, preventing unnecessary work being done and avoiding requests for additional work at a later date. We found, however, that this purpose was not being fulfilled. The target timescales were too short for legal managers to complete the Investigative Agreement to a meaningful standard as often key information, such as vulnerability reports, had not yet been submitted. In our case review, the Agreements were being submitted by the target dates in only 4% of cases. Even once submitted, the Agreements were not always being reviewed as intended by Crown Counsel and last minute requests for additional work were still being made.
13. We considered the idea of agreeing a strategy for the investigation and preparation of cases at an early stage to be sound, but recommended that the target dates for submission should be revised to allow for the more meaningful involvement of Crown Counsel.

What we recommended

14. COPFS should revise the target dates for the submission of the Investigative Agreement to Crown Counsel to enable a more detailed instruction on the direction of the investigation and of the case by Crown Counsel. The target dates should be monitored and rigorously enforced.

Progress

15. Since our recommendation was made in 2017, COPFS has revised its approach to Investigative Agreements. Taking into account the establishment of specialist teams dealing with sexual crime cases and the expertise that has subsequently developed, COPFS considered that it was no longer necessary for an Investigative Agreement to be reviewed by Crown Counsel in every case. Following consultation with those involved in the drafting and review of Investigative Agreements, it was decided that the document should only be submitted in cases requiring true strategic input from Crown Counsel.
16. This new approach was set out in Operational Instruction 10 of 2018, issued in December 2018. The instruction also lists two types of cases:
 - those in which it is still required that an Investigative Agreement is submitted to NSCU (such as where a docket⁹ will be used to provide sufficiency of evidence)
 - those in which the SLM should consider submitting an Investigative Agreement (such as where instructions may be needed regarding disclosure of sensitive personal records).
17. In our current case review, we found that an Investigative Agreement had been sent to NSCU in only three cases, all of which were in accordance with the Operational Instruction. For example, one case required the input of Crown Counsel regarding the disclosure of sensitive personal records. However, we also found one case where a docket was used to provide evidence of sufficiency and yet an Investigative Agreement had not been submitted to NSCU. This appeared to contravene the Operational Instruction. While it is possible the decision in this case may have been discussed and/or justified, there was no record of it.
18. The new approach of COPFS to the submission of Investigative Agreements to NSCU appears to be proportionate – the input of Crown Counsel should be sought

⁹ Under section 288BA of the Criminal Procedure (Scotland) Act 1995 (the 1995 Act), a docket can be added to an indictment or complaint to give notice of an intention to lead evidence of a crime not libelled.



only in cases where it is necessary. This approach offers an opportunity to further streamline the investigation and prosecution process and thereby reduce the journey time of cases. In light of this change in practice, Recommendation 2 of our 2017 report is no longer relevant in the majority of cases. However, due to inconsistencies we found in our case review in the extent to which Investigative Agreements were being completed as instructed, there is scope for COPFS to do more to ensure policy changes are effectively implemented and that underlying processes support delivery of the policy and are understood and used by staff.

Recommendation 2 status: no longer relevant

Recommendation 3

What we found

19. Once the Investigative Agreement has been agreed, cases are allocated to case preparers to undertake all lines of enquiry identified in the Agreement. Cases are then considered by the SLM who records whether they agree or disagree with the assessment of the case preparer. Cases are then submitted to NSCU along with a draft indictment. Following consideration by Crown Counsel at NSCU and a final decision that a case is to be prosecuted in the High Court, it is passed to a team of indicters who check that all evidential, legal and presentational aspects of the case are fully addressed. This quality assurance role involves checking whether there are any outstanding issues to be followed up.
20. We queried the purpose of the quality assurance process taking place after Crown Counsel had read the completed case and issued a final instruction. We considered that it would be beneficial for quality assurance to take place prior to cases being considered by Crown Counsel. To avoid unnecessary work, however, we suggested that where the SLM recommends that prosecution is no longer appropriate, cases should be submitted directly to Crown Counsel for a final decision, prior to the indicting process.

What we recommended

21. COPFS should consider undertaking the indicting process prior to the case being reported to NSCU for final instruction.

Progress

22. In response to our recommendation, COPFS considered involving indicters at an earlier stage in the progression of cases and consulted widely with staff, including case preparers, SLMs and indicters themselves, on the issue. The pros and cons of early involvement were explored. For example, it was noted that the early involvement of indicters in large and complex cases could add value to the work of the preparation team. On the other hand, an element of double handling would be introduced if indicters were to review cases at an early stage and again at the indicting stage. On balance, following extensive consideration and consultation, it was decided by the High Court Operational Board not to adopt the proposal. However, other suggestions made by the inspectorate are being taken forward. For example, COPFS has indicated its intention to take forward a programme of shadowing or short term secondments to the indicting team for case preparers and SLMs to promote the cross fertilisation of skills, which we welcome.

Recommendation 3 status: achieved



Recommendation 4

What we found

23. Statutory time limits regulate the maximum length of time that can elapse between the first time a person appears in court on petition charged with an offence and the start of their trial on indictment on that charge. At an accused person's first appearance on petition, the most likely outcome is that they will be committed for further examination. If the accused is released on bail, the prosecution must serve an indictment no later than 10 months after the date that the accused was committed for further examination.¹⁰
24. If remanded in custody after being committed for further examination, the accused must be brought back to court within eight days, when the most likely outcome is that they will be fully committed for trial. At this point, they may either be released on bail or remanded in custody, pending trial. If remanded in custody, the prosecution must serve an indictment within 80 days of the accused being fully committed.
25. In our case review in 2017, we noted that in 84% of cases, the indictment was served within seven days or less of the time bar. In more than half of the cases, the indictment was served on the last date of service before the time bar. We found that cases were being allocated to indictors by reference to the time bar – even cases reported to the High Court Unit earlier than their target date were not being indicted until close to the time bar. Consideration was not being given to prioritising cases on any other basis such as whether they involved children or whether they had already involved a prolonged period of investigation. We stated that a more sophisticated system of allocating and prioritising cases for indicting was required.

What we recommended

26. COPFS should introduce a more sophisticated system of allocating cases for indicting to reflect the priority that is to be afforded to certain categories of cases.

Progress

27. In response to our recommendation, COPFS introduced a new performance monitoring framework for post-petition High Court cases that was intended to support efforts to shorten the journey time of cases and to prioritise certain types of case. The framework included key performance indicators (KPIs) for the reporting and indicting of cases. By collecting data about these key milestones, COPFS should be able to monitor how it is delivering on its business objectives, identify any problem areas, and check whether priority cases are being appropriately expedited. We welcome this approach which should allow COPFS to take corrective action where problems or delays are identified, and to make informed decisions about resource allocation.
28. Each High Court case is assigned a priority based on its circumstances and placed into one of four categories (see Table 1), taking into account factors such as whether the accused is in custody, the age of any child witness and the accused, and time the case has already spent in the pre-petition phase, as well as any other priority factors. Generally, the KPIs run from the date of receipt of the police report in bail cases and, in custody cases, from the date of full committal.

¹⁰ More detail on statutory time limits can be found in Appendix 2. Unless otherwise stated, the time limits referred to in this report relate to time limits in solemn proceedings under the 1995 Act, not taking into account the emergency amendments made to time limits in the Coronavirus (Scotland) Act 2020.



Table 1 – Reporting and indicting KPIs

| Category | Report by ¹¹ | Indict by |
|----------|-------------------------|-----------|
| 1 | 60 days | 70 days |
| 2 | 6 months | 7 months |
| 3 | 7 months | 8 months |
| 4 | 8 months | 9 months |

29. The new reporting and indicting KPIs were effective from 1 April 2019, however some were in use as early as October 2018 (in relation to cases involving child witnesses under 12 which fall into Category 1) and 1 January 2019 (in relation to all other cases falling into Category 1). Compliance with the KPIs is monitored by the Operational Performance Committee.
30. Experience of implementing the KPIs has highlighted the need to develop more nuanced business rules for their application. While this is being addressed by COPFS, it has likely resulted in the new approach being slower to embed than may have been initially expected, and in the opportunities offered by monitoring KPI data, such as informing decision making about resources and processes, not being fully exploited at an earlier stage. Additionally, action taken to address problems identified by the KPI data may not result in immediate improvement. For example, while COPFS has allocated much needed additional resource to the indicting team, new staff require training and development before their full impact can be felt. Nonetheless, we consider this new performance framework to be a promising approach which, with effective governance, offers opportunities to reduce the journey time of cases.
31. The cases that we reviewed in our follow-up inspection were reported to COPFS between 1 September 2018 and 28 February 2019. All cases were reported before the new KPI regime was fully implemented on 1 April 2019, although some cases were subject to the KPIs that were brought in early. We acknowledge that the new KPI regime was not fully in place at the time all of the cases in our sample were reported and that compliance was not then being routinely monitored. Nonetheless, we have considered 12 cases in our sample where records show that the case had been allocated to a priority category and the reporting and indicting KPIs had been applied. From these cases, we have identified some issues for COPFS to consider as it continues to develop and apply its approach to KPIs. These, as well as a fuller discussion of the application of both the reporting and indicting KPIs, can be found from paragraph 209 in Appendix 1. Here, we have focused on the indicting KPI only given its relevance to Recommendation 4.
32. Of the 35 petition cases that we reviewed, the accused was on bail in 24 cases. We found evidence in the case records that the new indicting KPIs had been applied by COPFS to seven of the 24 bail cases:
- in one case, the indicting KPI was met
 - in six cases, the indicting KPI was not met.
33. In all cases, even where indicting KPIs were missed, the indictment was served within the statutory time limit.

¹¹ The reporting KPI refers to the date a report is sent to Crown Counsel in NSCU with a recommendation on how to proceed.



34. In three of the six cases where the indicting KPI was not met, the reporting KPI had been met. This means the delay occurred at the indicting stage. In one case, efforts to ensure the reporting KPI were met following earlier delays in the case were somewhat negated by the delay at the indicting stage. As a Category 1 case, it should have been indicted 10 days after being reported, but three months passed before the indictment was served. In the other two cases, the case should have been indicted one month after being reported, but the actual time passed was just under five months and four months respectively.
35. In the three cases where neither the reporting nor indicting KPIs were met, we also found evidence of delays at the indicting stage. In one, despite being prioritised as a Category 1 case due to the involvement of a child witness under the age of 12, the case spent five months at the indicting stage.
36. Of the 35 petition cases we reviewed, the accused was in custody in 11. We found evidence in the case records that the new indicting KPIs had been applied by COPFS to five of these cases. As custody cases, they all fell into Category 1. The indicting KPI of 70 days was not met in any of them. In two cases, the reporting KPI had been met, meaning that as in the bail cases, the delay occurred at the indicting stage. In all cases, the case was indicted in accordance with the statutory time limit of 80 days (two were indicted on the 80th day).
37. Our case review shows that despite the new approach of applying indicting KPIs and prioritising cases, delays still occur at the indicting stage, including for cases prioritised as Category 1. In some cases, it appeared indicters were still working to the statutory time limits, as we noted in our 2017 inspection. This approach is not without risk, as serious consequences follow failures to adhere to statutory time limits.¹² Our findings suggest that further additional resources may be required in the indicting team and/or that a cultural shift may be needed in how that team prioritises its work. We would have explored the reasons for delay at the indicting stage in more depth had our inspection fieldwork not been interrupted by Covid-19.
38. While we welcome the new approach to prioritising cases and reducing journey times outlined above, we have found insufficient evidence in our case review that it is yet having the desired effect and that the benefits it offers are being fully realised. Recommendation 4 is therefore in progress, rather than achieved. As the new approach continues to be used, monitoring data on compliance with the indicting KPI should inform COPFS as to whether further progress is being made in relation to Recommendation 4.

Recommendation 4 status: in progress

Recommendation 5

What we found

39. In our 2017 report, we noted that decisions on whether there is sufficient evidence in sexual crime cases are often finely balanced. In some cases, it may be necessary to carry out further enquiries before deciding to commence proceedings. This period of pre-petition investigation is not subject to any time limits. We were concerned that, in 45% of the cases we examined, pre-petition investigation took more than 10 months to conclude. This contrasts with the situation where an accused has appeared in

¹² These are outlined further in our previous report on the management of time limits. See HM Inspectorate of Prosecution in Scotland, [Thematic report on the management of time limits](#) (2015) and [Thematic report on the management of time limits: follow-up](#) (2017).



court and has been released on bail, and COPFS must indict the accused within 10 months. We noted that, the more protracted the pre-petition investigation, the greater the risk that the quality of evidence would diminish and the greater the likelihood that victims or witnesses may disengage.

What we recommended

40. COPFS should restrict pre-petition investigation to only those inquiries that are essential to reach a decision on whether there is sufficient credible and reliable evidence.

Progress

41. In response to our recommendation, COPFS issued Operational Instruction 3 of 2018 in March 2018. This sought to reduce the number of cases in which pre-petition investigation is used and set timescales for completing the investigation. The Operational Instruction stated that pre-petition investigation should ordinarily only be used in one of two circumstances:
 - (1) to establish by detailed investigation whether sufficient evidence exists
 - (2) to address any grave or substantial concerns regarding the quality of any aspect of the evidence.
42. The Operational Instruction distinguishes cases requiring pre-petition investigation from those requiring routine further enquiries. Cases requiring further enquiries include those in which full statements or other routine information may be requested from the police, or in which forensic or cybercrime reports are awaited. Further enquiries cases continue to be managed by the national specialist marking team rather than being allocated to a case preparer.
43. The Operational Instruction sets out KPIs for managing the length of time cases are subject to both pre-petition investigation and further enquiries. In pre-petition cases, the investigation should conclude:
 - within eight weeks, in cases where some level of precognition is involved
 - within 26 weeks in cases where, on a full assessment of the evidence, a full review of the case is required before a decision can be taken in the public interest.
44. In further enquiries cases, initial decisions about the case should be taken within:
 - four weeks for standard cases (such as requesting full statements from the police)
 - 12 weeks where a forensic report is required
 - 16 weeks where a cybercrime report is required.
45. By clarifying and limiting the cases in which pre-petition investigation should be used, and setting new timescales for the conduct of pre-petition investigation and further enquiries, the Operational Instruction has addressed our recommendation. COPFS considers that this new approach has significantly reduced the number of pre-petition cases. Whereas at 1 March 2018 there were 284 pre-petition cases and 116 further enquiries cases, this had fallen to 54 and 86 respectively in January 2020 (with a further 33 cases undergoing investigation by the Scottish Child Abuse Inquiry team).

Recommendation 5 status: achieved

46. Of the 50 cases reviewed in our follow-up inspection, 17 (34%) required further enquiries and nine (18%) required pre-petition investigation. Five of the pre-petition



investigations were marked as such from the outset, whereas four were marked for pre-petition investigation after they had already had a period of further enquiries.

47. Of the 17 cases requiring further enquiries:
 - 12 were subject to the four-week KPI
 - three were subject to the 12-week KPI
 - two were subject to the 16-week KPI.
48. In the cases requiring forensic or cybercrime reports, with KPIs of 12 and 16 weeks respectively, the KPIs were met or only slightly missed. The four-week KPI was met in only four of the 12 cases. Where it was not met, this was for a variety of reasons, including delays by COPFS in requesting the information and delays by the police in providing it. Overall, for the 12 cases that had a four-week KPI, the time taken for the further enquiries to take place and for a subsequent decision to be made ranged from three to 23 weeks, with an average of nine weeks.
49. Of the nine cases requiring pre-petition investigation, one had a KPI of 15 weeks rather than eight or 26 weeks. We could find no record of the reason, and the KPI was in any case exceeded by six weeks. In the other eight pre-petition cases:
 - in three cases, the eight-week KPI was applied but was never met. The period of pre-petition investigation was 11, 17 and 36 weeks
 - in five cases, the 26-week KPI was applied and was met in two cases (at eight and 21 weeks). Where the KPI was not met, the period of pre-petition investigation was 37 and 53 weeks. In one case, pre-petition investigation had still not concluded at the time of our review.
50. We welcome the application of KPIs to cases allocated for further enquiries and pre-petition investigation. They should help ensure that cases continue to progress despite there being no applicable statutory time limits. Nonetheless, KPIs are only useful when they are supported by effective governance and action is taken in response to any issues identified. The fact KPIs were missed in eight of 17 further enquiries cases and seven of nine pre-petition investigations suggests that governance could be more robust. We acknowledge, however, that these KPIs had only recently been introduced at the time of our case review and governance should have developed since then.
51. We noted two scenarios in which it was challenging or impossible to meet KPIs. First, where a KPI is set in cases where initial decisions about whether further enquiries or pre-petition investigation are delayed, the KPI may soon be due or already have been exceeded. Second, the timescales for both the further enquiries and pre-petition investigation KPIs run from the date the police report is submitted to COPFS. Thus, in cases where a period of further enquiries is followed by pre-petition investigation (particularly if the further enquiries KPI has been exceeded), it can be difficult or impossible to meet the pre-petition KPI. We comment on this further at paragraph 56.

Recommendation 6

What we found

52. Where there has been a period of pre-petition investigation resulting in a decision to commence proceedings, the statutory time limits apply from when the accused appears in court. We were concerned that the sometimes lengthy period of pre-petition investigation was not being taken into account in the subsequent



management of the case. Where there had been a prolonged pre-petition investigation, we would have expected a shortened period of case preparation.

What we recommended

53. COPFS should take account of any period of pre-petition investigation when allocating reporting dates for cases to be reported to NSCU for a final decision.

Progress

54. As noted above, COPFS introduced new reporting and indicting KPIs to help reduce the journey time of High Court cases. To address Recommendation 6, the timescale for the KPIs runs from the point at which the police submit the report to COPFS in bail cases and from the date of full committal in custody cases. This ensures that the case's entire journey – including whether it has spent time having further enquiries or pre-petition investigation carried out – is factored into the dates by which cases should be reported to Crown Counsel and by which the indictment is served.
55. While we have commented elsewhere in this report that governance of KPIs could be developed further to ensure corrective action is taken both to expedite individual cases where delay has already occurred and to address systemic issues causing delay (such as a lack of resources or process failures), we consider Recommendation 6 to have been achieved.

Recommendation 6 status: achieved

56. An issue for COPFS to consider in its application of KPIs is where the starting point of the KPI is re-set due to delays that have already occurred. For example, we noted in a few cases that where, as a result of previous delay or a case's complex procedural history, a KPI had already been exceeded or was almost due, staff chose to re-set the KPI using the date of, for example, committal for further examination, rather than the date of the police report. This included cases where several months had passed between these two dates. While the desire to set only achievable KPIs is understandable, the effect of this is to mask the true journey time of these cases, as seen from the perspective of victims, witnesses and accused persons. This risks these cases not coming to the attention of senior managers who should be in a position to address the factors that have caused the initial delay. COPFS should consider how it manages these cases so that problems can be identified, cases expedited and realistic reporting and indicting dates set.

Emerging findings

57. Since our review of the investigation and prosecution of sexual crime was published in 2017, COPFS has made progress in implementing improvements that seek to reduce the journey time of cases. Four of our six recommendations which sought to address journey times have been achieved and progress is being made in relation to a fifth, while a sixth recommendation is no longer relevant. There is clearly commitment at a strategic level within COPFS to ensuring that cases progress efficiently through the investigation and prosecution process. That said, the findings of our follow-up case review suggest there is more to be done to expedite cases and to reduce delay. We found that delays still occurred at the following stages, not all of which are within the control of COPFS:
 - when making an initial decision as to what action should be taken, following receipt of a police report. Although the majority of decisions in the cases in our review were taken quickly, we noted unacceptable delays in two cases¹³

¹³ See from paragraph 175.



- when further enquiries take longer than the four weeks allocated to them. In our case review, the time taken for further enquiries with a four-week KPI was an average of nine weeks¹⁴
- when pre-petition investigation takes longer than expected. Of the nine cases in our case review subject to pre-petition investigation, only two investigations were completed within the target timeframe¹⁵
- when target dates for reporting the case to Crown Counsel are missed. Of the 12 cases in our review to which the new reporting KPIs applied, they were met in only six cases¹⁶
- when target dates designed to expedite and prioritise cases for indictment are missed. Of the 11 cases in our review to which the new indicting KPIs applied, they were met in only one case¹⁷
- when preliminary hearings are continued or adjourned¹⁸
- when trial diets are delayed.¹⁹

58. Despite the delays highlighted above, it should be noted that COPFS met the relevant statutory time limits in all cases that we reviewed.

59. We note that COPFS has taken several measures to reduce the journey time of cases in response to our initial inspection report, which we welcome. We acknowledge that some measures had only been newly implemented at the time the cases in our review were first reported to COPFS, while others were implemented while those cases were progressing through the investigation and prosecution process. We anticipate that as those measures bed in, further improvements will be seen. Nonetheless, the delays highlighted above and in our case review suggest areas where COPFS should focus its attention, ensuring that effective monitoring and governance arrangements are in place so that any delays or inefficiencies can be identified and action taken in response.

Initial decision-making

60. In relation to initial decision making, we found that in 31 of 50 cases (62%) the initial decision was taken on the same day as the police report was received. Initial decisions were made in a further seven cases within 10 working days; in five cases between 11 and 25 working days; and in four cases between 25 and 35 working days. In one case, an initial decision had still not been taken at the time our review concluded in March 2020, pending the outcome of another case in which the victim was also involved.²⁰

61. In the remaining two cases, the initial decision was not made for a considerable period. The first was a case in which the police were craving an apprehension warrant for the accused and where the initial decision was made 191 working days (nine months) after the report was received. We could find no justifiable reason for such a delay. The case appeared to have been overlooked for some time as a result of being placed in the wrong electronic 'tray'. When the error was noted, a decision was made to obtain a petition warrant for the accused in order to initiate proceedings. The second case, in which the initial decision was made after 187 working days, was

¹⁴ See from paragraph 184.

¹⁵ See from paragraph 195.

¹⁶ Paragraph 212 for bail cases and 221 for custody cases.

¹⁷ Paragraph 212 for bail cases and 221 for custody cases.

¹⁸ See from paragraph 226.

¹⁹ See from paragraph 226.

²⁰ See paragraph 140 for further information about this case.



reported as a subject sheet²¹ into another case and was not noticed until more than eight months later. A new case was created and a decision taken to seek a petition warrant to initiate proceedings in relation to the further charges reported. The unacceptable delays in these two cases suggest the need for more effective procedural safeguards to ensure that all reports are identified and actioned timeously.

62. With regard to subject sheets submitted by the police, COPFS has indicated that it is aware that the process for monitoring these may not have been sufficiently robust and that improvements are being implemented. COPFS should also engage with Police Scotland to address any inappropriate use of subject sheets by its officers.

Delays at trial

63. We also noted delays in cases reaching trial, even before jury trials were suspended in response to the Covid-19 pandemic. While ensuring that cases are suitably prepared for trial is for COPFS, it is not responsible for securing court time for cases to proceed.
64. In our case review, we found that the statutory time limits for trial had to be extended in all cases. Of the 15 cases that reached trial where the accused was on bail, four trials had concluded. None of the four trials took place within the statutory time limit of 12 months. Instead, the time between the date the accused was committed for further examination and the trial commencing ranged from 59 to 74 weeks. Of the 11 bail cases where the trial had not yet taken place, the time between the accused being committed for further examination and the scheduled trial diet ranged from 60 to 88 weeks (all 11 trials were then postponed due to Covid-19).
65. There were six cases in our review where the accused had been remanded in custody and the trial had taken place. The longest period of time that passed between the accused being fully committed and trial was 53 weeks (33 weeks after the 140-day time limit). We reviewed one case where the accused was remanded in custody and the trial had not yet taken place. The time between the accused being fully committed and the trial being scheduled was 49 weeks (29 weeks after the 140-day time limit). This trial was then postponed due to Covid-19.²²
66. The delay in cases reaching trial is a concern. Delays may happen for a range of reasons – delays and continuations at the preliminary hearing stage are a factor in some, but not all, cases, while the particular circumstances of the parties involved may also play a role.²³ For example, in one case we reviewed, the ill-health of the accused resulted in the trial being delayed. However, the cases we reviewed also suggest that securing court time for a trial is an issue. This shows that in trying to reduce the journey time of cases, it is necessary not only to consider efficiencies within COPFS but also the wider criminal justice system.
67. Data published by the Scottish Courts and Tribunals Service (SCTS) illustrates the increasing demands on court time.²⁴ The number of indictments registered in the

²¹ Where the police wish to submit further information for the attention of the procurator fiscal regarding a case they have already reported, they can submit, via electronic means, a subject sheet directly into the case file held on the COPFS system. It is expected that COPFS personnel with responsibility for the case will note whether any such submissions have been made.

²² In one of these cases, the accused subsequently pled guilty.

²³ For further discussion of delays and continuations at the preliminary hearing stage in cases that we reviewed, see from paragraph 225.

²⁴ Scottish Courts and Tribunals Service, [Quarterly Criminal Courts Statistics – Report 8 – Quarter 4 2019/20 \(Provisional\)](#).



High Court rose 12.4% from 911 in 2018-19 to 1,024 in 2019-20. The increase in the reporting of sexual offences is thought to have contributed to this. At the end of March 2020, 390 High Court trials were scheduled, an increase of 45.5% compared to the same time the previous year. Six per cent of all High Court trials were adjourned due to lack of court time in 2019-20. In 2018-19, 11 trials were adjourned due to lack of court time, rising to 49 in 2019-20. Given that High Court trials were paused in late March 2020 in response to the Covid-19 pandemic, the pre-existing backlog of cases is only going to increase.

68. Any delays in the progress of cases will have a negative impact on the victims and witnesses involved. Delays risk victims and witnesses disengaging from the case, and also risk them losing confidence in the criminal justice system. Delays also put at risk their ability to give their best evidence when the trial finally takes place, and limit their ability to move on from what may well be the most traumatic experience of their lives. Delays also impact the accused, particularly those who have been remanded in custody pending trial. It is therefore imperative that the criminal justice system operates efficiently and effectively, and is resourced appropriately, so that the benefits of improvements made in expediting the investigation and prosecution of cases are not lost due to delays in commencing trials.



Part 2 – Improving communication with victims

69. In our 2017 report, we noted that the nature of sexual crimes, most often committed in the absence of independent witnesses, presents particular evidential challenges. The evidence of the victim is generally critical to the prosecution. While recognition of the need to improve the experience of victims and witnesses in the criminal justice system had resulted in various reforms, evidence persisted that many victims of sexual crime in particular did not feel their needs were at the heart of the criminal justice system. We made six recommendations regarding victims and witnesses.
70. Central to how COPFS communicates with victims is the victim strategy which is carried out for each victim in High Court sexual crime cases. The victim strategy equips those preparing and prosecuting sexual crime cases with essential information about the victim which informs how and when they are contacted about their case, and about what support might be needed to assist the victim during the criminal justice process. The strategy should facilitate the tailoring of information and support to a victim's individual needs.
71. The victim strategy approach was in place at the time of our inspection in 2017, although the underpinning processes were revised in 2018 in response to our recommendations. The strategy has since been revised further (see paragraph 75).
72. In line with the victim strategy, a VIA officer makes initial contact via telephone with each victim and records the information gathered on a victim strategy communication template. The information recorded on this template includes:
- the personal details of the victim
 - the date of the initial communication
 - the name of the allocated VIA officer
 - information about the victim's understanding of the process and likely timescales
 - the victim's expectations and how these will be managed by VIA
 - an initial assessment of the vulnerability of the victim, including any recommended special measures
 - details of any organisation to which the victim has been referred for support
 - the victim's preferred method of communication and frequency of contact
 - whether the victim would like an early meeting to discuss their case.
73. The timescales for completion of the initial contact vary according to the circumstances of the case.²⁵ The victim strategy guidance in place at the time of our case review indicated that if an initial decision to take no action is made within four weeks of the police report being received, VIA is not required to complete a victim strategy. Instead responsibility for notifying the victim of the decision rests with the police officer who has previously been in contact with the victim.
74. Making contact with the victim to complete the initial contact is a process which runs in parallel to the court updates provided by VIA. Thus, in cases where the accused has already appeared in court, all victims should have received an update from VIA on the same day with the outcome of the appearance and details of whether there are any bail conditions. If, for any reason, VIA is unable to contact the victim they should ask the police to make personal contact.

²⁵ See paragraph 92 for further detail on timescales for initial contact.



75. Shortly before publication of this inspection report, the victim strategy was revised in July 2020.²⁶ We welcome publication of this updated strategy on contact between COPFS and victims of High Court sexual offences, which usefully sets out its purpose and more clearly states what staff are required to do.

Victims in our case review

76. Victims of sexual offences are deemed to be vulnerable under section 271 of the Criminal Procedure (Scotland) Act 1995. Victims will also have other vulnerabilities or specific needs, in addition to being deemed vulnerable. These vulnerabilities and needs should be identified by COPFS so that the most appropriate measures can be taken to ensure they are supported throughout the criminal justice process. In our case review, there were 15 cases in which the victim was deemed vulnerable due to being the victim of sexual offending, but had no additional vulnerabilities. In relation to the remaining 35 cases:
- in 16 cases, eight of which included at least one child victim, the victim or victims had multiple vulnerabilities. For example, in one case, the victim was a child and had learning difficulties
 - in nine cases, the victim(s) were vulnerable because they were children
 - in eight cases, the victim(s) had mental health issues
 - in one case, the victim had addiction issues
 - in one case, the victim was pregnant.
77. Child victims and witnesses under the age of 18 are particularly vulnerable and, as such, it is essential that they are appropriately supported throughout the criminal justice process. From the 50 cases we reviewed, 17 (32%) had child victims. Of the 17 cases:
- nine had one child victim
 - six had two child victims
 - two had three child victims.
78. In addition, of the 17 cases, five had at least one child victim who was aged 12 or under.
79. Of the 50 cases we reviewed, 14 (28%) had child witnesses who were not the victim. Of the 14 cases:
- eight had one child witness
 - five had two child witnesses
 - one had five child witnesses.

Recommendations relating to victims

80. In our 2017 thematic review of the investigation and prosecution of sexual crimes, half of our recommendations were aimed at supporting improvement in victims' experience of the criminal justice process. The progress made by COPFS in implementing those recommendations is set out below.

Recommendation 7

What we found

81. At the time of our inspection, COPFS had made several commitments to victims and prosecution witnesses, including contacting them timeously and providing information when needed, and updating victims on the progress of their case. Contact is made by

²⁶ Operational Instruction 15 of 2020.



the VIA service. The VIA service is only offered to victims in certain types of cases, or victims and witnesses who are vulnerable. This includes all victims of sexual crime.

82. In 2017, we assessed whether commitments made by COPFS to victims had been delivered in a review of 50 indicted cases. We found that while VIA had updated victims about significant developments in their case in 93% of the cases we examined, there were significant gaps between contacts from VIA. In a separate sample of 30 cases involving 61 victims where the accused had appeared at court in May 2017 on one or more sexual crime charges, we found that 21% of victims were not contacted by VIA within target timescales and 13% of victims had still not received any contact five months later.
83. We also heard directly from victims and witnesses and the agencies that support them in a series of interviews and focus groups. Lack of communication from COPFS was their main complaint with participants describing long periods of time with no contact. They also described VIA as reactive rather than proactive. Our key finding was that the frequency of contact provided by VIA was not meeting the needs of victims.

What we recommended

84. COPFS should ensure that VIA proactively offer to contact the victim every eight weeks, as a minimum, unless more frequent contact is required or requested or a victim expressly opts out.

Progress

85. In response to our recommendation, COPFS introduced a new policy from 1 October 2018 under which VIA offers victims in High Court sexual crime cases the opportunity to be contacted about their case every eight weeks. Victims are also offered the opportunity to be contacted only when there is an update about their case or to opt out of any further contact with VIA. A further revision to the policy in July 2020 makes clear that victims can also request contact more often than every eight weeks.²⁷ The victim should be asked their preference about frequency of contact at the initial contact stage referred to at paragraph 72 and the victim's wishes should be recorded.
86. Of the 50 cases that we reviewed during our follow-up inspection, nine were reported to COPFS in September 2018, prior to the new policy being implemented. Of the remaining 41 cases, we found evidence in 28 (68%) that frequency of contact had been discussed with the victims and that the victims had been offered contact every eight weeks. In addition, in four of the nine cases reported in September 2018, the new policy had been applied retrospectively and there was a record of the victim's preference regarding frequency of contact.
87. In nine (22%) of the 41 cases, we found no record of frequency of contact having been discussed with the victim and no record of the victim's preference. While some of these cases were reported shortly after the new policy had been introduced and the failure to discuss and record the victim's preferences may have been as a result of the policy being slow to bed in, other cases were reported some months later, when the policy should have been well established. In some of the cases where we found no evidence of the victims receiving a proactive offer of eight weekly contact, there were general issues in relation to communication with the victim, some of which led to circumstances where there was no communication with very vulnerable victims, either at all or for lengthy periods of time.

²⁷ Operational Instruction 15 of 2020.



88. In four (10%) of the 41 cases, there was no need for a discussion with the victim about frequency of contact. In three cases, this was because a decision to take no action was made within approximately four weeks from receipt of the police report and the responsibility for conveying the outcome to the victim fell to the police rather than VIA. In the fourth case, a decision was made to refer the case to the Children's Reporter within four weeks and, again, the police were responsible for notifying the victim.
89. In four cases where the victim had requested eight weekly contact, we found evidence of a failure to comply with the victims wishes:
- in one case, there was a period of no contact for 12 weeks
 - in one case, there was a period of no contact for 13 weeks
 - in one case, there were two periods of no contact – one of 13 weeks and one of 23 weeks
 - in one case, the initial victim strategy was completed timeously and, after the first eight weeks, the victim did receive communication from VIA. However, there was no further attempt at communication until 23 weeks later. At this stage, VIA was unable to contact the victim by telephone and police were asked to obtain the victim's up-to-date contact information. This information was promptly provided by the police, but not acted upon for eight weeks when the case preparer asked VIA to make contact with the victim again.
90. We discussed the frequency of contact between VIA and victims with various organisations providing support to victims. Their views were mixed. While some felt there had been an improvement since our thematic report in 2017, others felt awareness of the possibility of eight weekly contact was low. Some also said that where an attempt at eight weekly contact was made by VIA but the victim not available, they felt the onus shifted to the victim to return the call rather than VIA trying to make contact again.
91. Victims can choose to opt out of eight weekly contact and instead request that VIA make contact only when there is an update about their case. In our case review, we noted that significant periods of time can pass between updates on cases and we were not confident that victims were aware of this possibility when opting out of more frequent contact. For example, in two cases that we reviewed, there were periods of five and eight months where there was no evidence of VIA contact with the victim where the victims had opted to be contacted only when there was an update about the case. Had victims known that several months might pass before they heard from VIA, we wondered whether they might have opted for more frequent contact instead. When presenting options to victims, VIA officers should ensure that victims are aware of the potential timescales so that victims can make an informed choice.
92. While we welcome this new approach to offering eight weekly contact to victims, we noted that the offer is not always made timeously. The offer should be made when the victim strategy is commenced and initial contact is made with victims. The timescales for commencing the victim strategy are:
- in cases marked for petition:
 - where the accused is in custody, within seven days of them being fully committed
 - where the accused is on bail, within 21 days of them being committed for further examination



- in other cases, such as those where further enquiries or pre-petition investigation is required, timescales are dependent on progress of those enquiries or investigation.
93. There appears to have been some dubiety in the guidance about when the victim strategy should be commenced in cases where an initial decision about the case is delayed (Chart 5 at paragraph 179 shows the timescales for initial decision making in the cases we reviewed). This dubiety may have explained some, but not all, of the delays we noted in commencing the victim strategy.
94. In a significant proportion of the cases that we reviewed, there were delays in initial contact being made with the victim and VIA establishing the victim's wishes regarding frequency of contact. The following examples illustrate this point, but are not an exhaustive list of where we noted delays:
- in two cases, the initial decision was taken on the same date that the case was reported by police in circumstances where the initial contact should have been completed within 21 days. In the first case, the initial victim strategy was not completed until over 15 weeks from the date of the police report. In the second case, VIA had not made any attempt to carry out the initial contact until a support agency requested an update for the victim, approximately five months after the police report
 - in one case, there was a delay of nine months in the initial decision being made and no VIA contact with the victim until 10 months after the case was reported
 - in one case, the initial decision was taken approximately four weeks after the police report was submitted. The initial decision was that the case required a four-week period of further enquiries, which was then extended. The initial contact with the victim was not completed until 13 weeks after the police reported the case
 - in another case where the initial decision was that a four-week period of further enquiries was needed and enquiries were not completed on time, VIA did not get involved in the case until the accused had appeared in court and was committed for further examination. Despite the two victims being children, initial contact was not carried out until 16 weeks after submission of the police report
 - in a case with five victims, different victims were reported in relation to the same accused at different times and the cases were consolidated. The initial contact was not completed for over three months following receipt of the police report for one of the victims.
95. From these cases, it can be seen that delays in initiating communication occurred when initial decisions about the case were delayed. However, delays in contacting the victim also occurred where there were clear target dates for doing so. In many (although not all) of these cases involving an initial delay, once contact was established with the victim and the victim strategy carried out, communication was thereafter satisfactory.
96. Any delays in communication with victims are disappointing, but particularly so at the outset of a case. Effective communication from the start of a case is essential to building the confidence and trust of victims and to securing their engagement in the process. COPFS should ensure that appropriate processes and sufficient resources are in place to ensure that the victim strategy is initiated timeously. There should be a set period of time following the police report at which initial contact will be made with all victims, regardless of the procedural history and status of their cases. COPFS should give some consideration, in consultation with victim support organisations, to what length of time is reasonable.



New recommendation 1

COPFS should ensure that the victim strategy is initiated within a reasonable time in all cases, regardless of their procedural history and status.

97. In summary, a new policy regarding frequency of contact between VIA and victims was implemented in October 2018 in response to Recommendation 7, which we welcome. We also welcome the clarification added in July 2020 that a victim can opt for contact more often than every eight weeks, if they choose. Our case review has shown that this policy change has resulted in a better standard of communication with many victims, including contact which is more frequent and which is in line with the victim's own preference. However, in too many cases, we noted either a failure to carry out the victim strategy and to establish the victim's wishes regarding contact, or gaps in contact. These gaps were often at the start of the case, when there was a delay in initiating contact, or we noted gaps after contact had begun which meant the frequency of contact was below what was requested by the victim. For this reason, Recommendation 7 has not yet been fully achieved. COPFS has indicated that it is monitoring compliance with the victim strategy, which will allow it to assess when implementation is being consistently achieved.

Recommendation 7 status: in progress

Recommendation 8

What we found

98. In our interviews and focus groups with victims and witnesses and the agencies that support them, we heard that having a dedicated VIA officer to provide continuity in communication was highly valued. We found that there was geographic variation within VIA as to whether staff were dedicated to individual cases.

What we recommended

99. COPFS should ensure that there is a dedicated VIA officer allocated to each case and provide victims with information on who to contact in their absence.

Progress

100. In response to our recommendation, COPFS sought to phase in the practice of allocating a dedicated VIA officer to each High Court sexual crime case from 1 October 2018. In our case review, we checked to see which of the 50 cases had a dedicated VIA officer, and whether it was that person who consistently made contact with the victim. We did not, however, expect that contact would be made by the dedicated VIA officer on every occasion as sometimes a time-sensitive update will need to be given to the victim when, for example, their dedicated officer is on leave.

101. In four of the 50 cases that we reviewed, there was no need for a dedicated VIA officer to be allocated to the case. This was because an early decision on whether and how to proceed was communicated to the victim by the police. Of the remaining 46 cases:

- in 37 (80%) cases, there was a dedicated VIA officer who consistently made contact with the victim
- in five (11%) cases, there was a dedicated VIA officer but contact was not consistently made by that person



- in two (4%) cases, there was a dedicated VIA officer, however the dedicated officer appeared to change over the course of proceedings and contact was not consistently made by that person
- in two (4%) cases, there did not appear to be a dedicated VIA officer. No contact was made with the victim at all and instead the police were asked to notify the victim of the decision to take no action, 11 weeks after the cases had been reported.

102. We were pleased to note that in some cases where the dedicated VIA officer was going to be on leave or otherwise absent, this was communicated to the victim and an alternative point of contact was provided.

103. While there remains scope for further improvement, the findings from our case review show that significant progress has been made in securing more consistent communication with victims. Our findings are supported by feedback from victim support organisations who noted that consistency in who is making contact from VIA has generally improved. We therefore consider Recommendation 8 to have been achieved.

Recommendation 8 status: achieved

Recommendation 9

What we found

104. We found that it was common for victims not to understand that VIA is part of COPFS. This resulted in some saying they had not received any communication from COPFS when they had, in fact, been in contact with VIA.

What we recommended

105. COPFS should consider rebranding VIA to include a reference to 'prosecution' in their title.

Progress

106. Further discussion on Recommendation 9 took place between the inspectorate and COPFS following the publication of our report in 2017. It was recognised that rebranding VIA would have implications beyond sexual crime and consideration was given to achieving the desired outcome by other means. COPFS established a working group comprised of representatives from various units within the service to consider the issue further. It was concluded that the desired outcome, that victims understand that VIA is part of COPFS, could be achieved if VIA staff changed how they introduced themselves to victims and how they described their role, making it clear they were making contact on behalf of COPFS. Guidance was issued to VIA staff and training packages were updated to reflect this new approach. In discussions with some victim organisations, we heard that victims tended to talk about their contact with 'the Crown' or 'the Procurator Fiscal' rather than VIA, suggesting increasing awareness that VIA is part of COPFS.

Recommendation 9 status: achieved

Recommendation 10

What we found

107. Another of the commitments that COPFS had made to victims and prosecution witnesses was to communicate with them clearly and effectively. However, we found that clear communication was hampered by an unrealistic expectation on the part of



COPFS regarding victim and witnesses' understanding of the prosecution process and how the criminal justice system operates. We heard that VIA often used legal jargon and terminology which is not widely understood by the general public. We also heard that some communication was overly complex and noted that there was sometimes a failure to tailor communication to the needs of individuals, including those with learning difficulties. We were also concerned that some communication was insufficiently empathetic.

What we recommended

108. COPFS should review all correspondence sent out by VIA.

Progress

109. Following our inspection, COPFS reviewed, equality impact assessed and revised the template letters it uses in correspondence with victims in High Court cases. This review began in 2018 and the views of support organisations were sought which we welcome. The majority of the revised template letters were made available to staff for use in March 2019. Efforts were made to improve the clarity of the letters and COPFS has indicated that the templates will be kept under review and amended to reflect changes in policy and practice.

110. We consider Recommendation 10 to have been achieved. We regard improving communication with victims to be a continuous endeavour for COPFS and an area that we will continue to assess in all our inspection activity. We encourage those working with victims to provide feedback to COPFS regarding the quality and effectiveness of its correspondence and for COPFS to take any necessary action in response.

Recommendation 10 status: achieved

Recommendation 11

What we found

111. A key commitment made by COPFS to victims and prosecution witnesses was that it would identify vulnerabilities and obtain appropriate special measures. This is key to helping victims and witnesses give their best evidence and is particularly important in cases involving sexual crime where the evidence of the victim is almost always essential to the prosecution.

112. The Victims and Witnesses (Scotland) Act 2014 was in force at the time of our inspection. Our report was published in 2017 and the later Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 had not yet been enacted. The 2014 Act redefined the categories of person that were to be regarded as vulnerable witnesses – referred to as 'deemed vulnerable' – to include all victims of sexual offences, as well as other categories such as children under the age of 18, amongst others. A deemed vulnerable witness was automatically entitled to the use of standard special measures while giving evidence, while other special measures may have been allowed if the court was satisfied they were justified.²⁸

113. Identifying appropriate special measures for victims of sexual crime is a key responsibility of VIA. We noted that the use of special measures was discussed by

²⁸ At the time of our review, standard special measures were use of a live television link, a screen to avoid seeing the accused and a supporter. Other special measures included giving evidence via a commissioner or by means of a prior statement. The Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 came into force in January 2020, but this was too late in the progression of the cases in our follow-up case review to assess its impact.



VIA as part of its initial call to victims and then followed up in its introductory letter. The letter provides a link to information about special measures and advises that if VIA does not hear from the victim, it will apply for the use of screens and a supporter from the Witness Service. We also noted that special measures were discussed again during the victim's interview with the case preparer.

114. Based on feedback from victims and witnesses and the agencies that support them, as well as evidence from our own case review, we found that asking the victim to engage proactively on special measures at the beginning of the case being investigated by COPFS was premature. We heard that, at this stage, victims were often overwhelmed with information, did not fully understand the special measures or the process generally, and often changed their minds at a later date as to the measures to be used. Victims also preferred a face-to-face discussion about special measures. It would therefore make sense to focus on special measures during the victim's interview with the case preparer, rather than at the very start of their case. This would allow victims to make a more informed choice as the trial approached, and would reduce the risk of changes being made.

What we recommended

115. COPFS should discuss and agree special measures at the interview with the case preparer in the context of preparing the victim or witness for court.

Progress

116. In response to our recommendation, COPFS sought to phase in the practice of discussing and agreeing special measures with victims in High Court sexual crime cases at their interview with the case preparer from 1 October 2018. While a VIA officer will have a general discussion of special measures with the victim at the time the victim strategy is carried out, this will generally be focused on raising the victim's awareness that such support measures exist. The victim is not expected to choose which special measures they would like at this stage, although they may indicate a preference if they wish. When the victim later meets face-to-face with the case preparer, they should have a general understanding of special measures and, following discussion with the case preparer, be better placed to make a decision about the measures best suited to them.

117. We heard from victim support organisations that this approach of discussing special measures at a later stage is beneficial as victims may be more likely to have begun receiving support if it has been sought and are thus more likely to have discussed their options with their support worker prior to making a decision.

118. Consideration of the most appropriate special measures will be required in cases where court proceedings have commenced and the victim's evidence is required. There may also be some circumstances where a discussion with victims and witnesses about measures that are available to support them should take place where court proceedings have not yet commenced, such as where the witness is reluctant to engage in the criminal justice process. Awareness of support measures available to them at that stage may facilitate their engagement.²⁹

119. In our case review, petition proceedings were commenced in 35 of the 50 cases. In 20 of the 35 cases, the case preparer had recorded that a discussion of special measures had taken place at a face-to-face meeting with the victim. In a further three

²⁹ COPFS has a policy which recognises the reasons why victims may be reluctant and which provides that, before a case is discontinued, there should be a discussion with the victim about the reasons for their reluctance and support measures available to them.



cases, there were appropriate reasons why a face-to-face meeting did not take place and instead a discussion about special measures took place in a telephone call between VIA and the victims or their parents (this included cases where the victim declined to meet the case preparer and where the victims did not reside in Scotland).

120. In the remaining 12 cases, there was either:

- no note of any meeting between the victim and the case preparer (10 cases)
- no mention of special measures in the record of the meeting (one case)
- a note that the special measures had already been discussed with VIA (one case).

121. This suggests that face-to-face meetings with case preparers are not routinely taking place as they should be, or that case preparers are not recording the outcome of their discussions.

122. We consider that a face-to-face meeting at which special measures are discussed is beneficial for the majority of victims. We also recognise that such a meeting may not be appropriate for some victims, such as those who do not desire it. While the required policy change has been made in response to our recommendation, we do not consider that the results of our case review show that sufficient change has yet been implemented in practice. We recognise that as the policy change becomes more established, compliance should improve however this should be monitored by COPFS. We noted that several of the cases in our review that were non-compliant involved child victims. It is possible that there may be a view among some staff that face-to-face meetings with child victims may not be helpful, however such meetings should take place with their parents or guardians, either with or without the child present depending on what is in their best interests. In circumstances where face-to-face meetings do not take place, a record should be kept of the reason why.

Recommendation 11 status: in progress

Recommendation 12

What we found

123. We heard from victims and witnesses and the agencies that support them about challenges they faced giving their best evidence in court. Many said they were concerned about the possibility of seeing the accused and his or her entourage at court. Others said they did not feel fully prepared for the hostile and intrusive nature of questioning at trial, describing the experience as degrading. We also heard about the lengthy time taken for cases to get to trial, the use of floating trial diets, and trials being repeatedly adjourned or transferred to other courts at short notice – these factors often affected the victim or witness's confidence and ability to give their best evidence.

124. Victims also told us about what helped them during court proceedings. This included meeting the trial prosecutor prior to the trial and afterwards so they could explain the outcome, and having access to an advocate or supporter.

125. We stated that the time, effort and resource invested in investigating and preparing cases for court, arranging special measures and engaging with victims and witnesses is wasted if they are unable to give their best evidence or if they disengage at the last moment. We noted the importance of all agencies working together to address victims' concerns and minimise the impact of giving evidence and the need for



COPFS to do what it can to help victims and witnesses to have the confidence to take part in court proceedings.

126. We said that there are a suite of practical measures which, if implemented, can diminish the fear and trepidation of the unknown and assist victims and witnesses to give their best evidence. These include:

- a court familiarisation visit
- having access to their statement
- meeting with the trial prosecutor, preferably before the day of the trial
- a plan to avoid seeing the accused at court, including agreed entrance and departure arrangements
- provision of a dedicated supporter – whether advocacy worker or Witness Service
- provision of chosen special measures
- agreement on how the verdict will be communicated.

What we recommended

127. COPFS should ensure that a court management strategy is agreed with every victim and relevant agencies following service of the indictment as part of the Victim Strategy.

Progress

128. Following publication of our report in 2017, the inspectorate and COPFS met to discuss implementation of Recommendation 12. The inspectorate stated that victims in High Court sexual offences should have a clear understanding of the specific support measures to which they are entitled. Support measures should be set out in a single written communication shortly after the indictment is served, which should be followed up with more detailed discussion by telephone. COPFS should keep a record of the measures agreed for each victim and there should be a clear audit trail demonstrating when measures were offered and what arrangements were agreed.

129. In response to our recommendation, COPFS published Operational Instruction 15 of 2020 in July 2020 which set out a new court management strategy. It states that, when a High Court indictment is served, a template letter will be sent to the victim clearly setting out the support measures to which they are entitled. These include:

- before the trial, they can visit the court building where they will give evidence
- before the trial, they can read the witness statement that they gave to the police³⁰
- before they give evidence they can, where possible, meet the prosecutor who will conduct the trial
- VIA can apply to the court for special measures to assist them when giving evidence³¹
- if possible, VIA can make arrangements so that they can go in and out of the court building using a different entrance from other members of the public
- after they have given evidence, VIA will contact them to tell them the result of the trial.

130. The Operational Instruction states that each of these measures should be discussed in detail with the victim at the appropriate stage of the case. Under the policy, VIA officers are required to keep the court management strategy section of the victim

³⁰ This does not automatically apply to child witnesses and is not, therefore, included in letters sent to children.

³¹ It should be noted that, by the time the court management strategy is sent, special measures should already have been discussed with the victim.



strategy template up to date with a record of discussions and actions regarding each measure, thus ensuring an audit trail is in place. The policy also requires the VIA officer to liaise with any relevant agencies who are supporting the victim.

131. We welcome the introduction of the court management strategy. Given the date of its introduction, we were not able to test its application in our case review however we are content that, if implemented as instructed, Recommendation 12 will be achieved. We will consider implementation of the court management strategy in any relevant future inspections and encourage COPFS to monitor its use and to seek feedback from victims and the organisations that work with them on whether the strategy contributes to improvements in victims' experience of the criminal justice process.

Recommendation 12 status: achieved

Emerging issues

132. During our follow-up inspection, as well as gathering evidence to help us assess whether our recommendations had been implemented, we noted additional issues relating to how COPFS communicates with victims and victims' experiences of the criminal justice process generally. Some of these issues arose during our case review, while others arose from discussions with stakeholders.

Case review

133. In our review of 50 cases, we assessed whether the level of communication with victims by COPFS was satisfactory. In making this assessment, we considered the extent to which the victim strategy had been complied with, the frequency of communication with victims, and any evidence which provided an indication about the quality of the communication. We did not observe communication with victims in real-time but instead relied on what was recorded about communication in case files. VIA staff are required to maintain a record of all contact with victims and so case file analysis should provide a good indication of the level of communication between COPFS and victims. Although compliance with the victim strategy timescales outlined at paragraphs 89 and 94 was a factor that we took into account when assessing communication, failure to strictly adhere to these timescales did not mean that a case was automatically assessed as unsatisfactory as the frequency and quality of communication throughout the life of the case was considered.

134. Overall, we assessed that communication was satisfactory in 25 (50%)³² cases and unsatisfactory in 25 (50%) cases. In cases which were satisfactory, the victim strategy was carried out timeously and effectively, with a dedicated VIA officer communicating with victims in accordance with their preferences. We noted some instances where communication was particularly effective. For example, in one case with multiple charges, a decision was taken early on not to proceed with the most serious charge but investigation of other charges continued. Rather than waiting until a final decision was made regarding all charges, the victim was kept informed throughout and offered the opportunity to discuss the decision regarding the most serious charge with a prosecutor. Other examples of effective communication and support include cases where:

- the victim strategy was commenced earlier than required due to concerns about the vulnerability of the victim
- correspondence was carefully tailored to each victim in a complex case with multiple complainers

³² In the four cases where an early decision about the case was made within four weeks and the decision was intimated to the victim by the police rather than COPFS in accordance with policy, we judged these cases to be satisfactory.



- thought was given to the timing of correspondence so as not to cause the victim unnecessary additional stress while she was taking exams
- VIA staff explored with the victim what assistance might be needed to support their continued engagement in the criminal justice process
- victims were referred to third sector organisations that could provide additional support and, in one case, a referral was followed up by VIA when the organisation had not initially responded to the victim.

135. Where we assessed communication as being unsatisfactory, this was mostly due to there being either no or delayed communication. In one case, incorrect information was given to a child victim's family about the use of pre-recorded interviews and staff failed to explain that even if the child's interview was admitted as their evidence in chief, the child may still have to be cross examined by the defence.

136. Where communication was unsatisfactory, it was not necessarily so throughout the life of the case but we felt any inadequacies were sufficient to merit an overall assessment of unsatisfactory. In addition to delays in initial contact being made and gaps in communication highlighted at paragraphs 89 and 94, there were recurring themes in our assessments which COPFS may wish to consider further in improving its approach to victim communication. These included:

- process failures which result in delayed contact with victims
- delays in communication where the case does not follow the standard process due to some form of procedural complication
- opportunities to improve communication with victims who are looked after children.³³

Process failures resulting in delays

137. A recurring theme we noted in cases we assessed as being unsatisfactory was a failure in process which resulted either in delays in communication with the victim, or the victim strategy initial contact not being carried out at all. In two cases, the process failure related to system reminders to carry out the victim strategy not being set or being missed. In six cases, the template used to record the outcome of the victim strategy initial contact was not completed. Failure to record this information may result in COPFS not ascertaining or complying with the victim's preferences regarding contact, and may hinder the gathering of necessary information regarding any vulnerabilities and the need for special measures.

138. In two cases, process failures relating to the case generally had an impact on communication with the victim. The cases are discussed at paragraph 61. In one case, the process failure resulted in no communication for nine months until the victim contacted COPFS for an update, and in the other, there was no communication with the victim for over eight months.

Communication in cases with complex procedural histories

139. We noted that communication could be improved in some cases which had a particularly complex or non-standard procedural history.

140. For example, in one case, the victim was involved in several cases against multiple accused, the circumstances of which were connected. Only one of these cases was in the sample of cases we reviewed. Given the complexity of the cases, COPFS focused on the case which was the strongest evidentially. This resulted in the case in our sample not being taken forward pending the outcome of another case and no

³³ More than one of these themes was an issue in some cases.



victim strategy being completed in respect of its particular circumstances. While VIA was in regular contact with the victim about the progress of one of the other cases in which she was a victim, it was not clear to us that she was also being updated on the case in our sample or that the VIA officer providing updates about individual cases had strategic oversight of all the connected cases. While a victim strategy should have been commenced in relation to the victim regarding each individual case, an overarching strategy covering all cases in which the victim was involved may have been beneficial from the victim's perspective.

141. In another case, reports against the same accused involving five victims were received at different times and were ultimately consolidated. Communication with three of the five victims was satisfactory. A victim strategy was significantly delayed for the fourth victim and, for the fifth victim, the victim strategy template was not completed and so all necessary information about the victim and their wishes was not gathered.
142. Procedurally complex cases, such as those where multiple victims are reported in respect of the same accused at different times, appear more likely to result in errors regarding victim communication. These cases should be closely monitored and scrutinised to ensure that each victim receives an appropriate level of service.

Communication with looked after children

143. In two cases involving child victims who were looked after away from home, we noted scope for improvement in communication. Both cases involved communication issues already highlighted elsewhere, such as delays in carrying out the victim strategy. Both cases also featured difficulties in COPFS making contact with the victims. In one, this was because the child had moved care placements while a decision about the case was being made. In neither case did it appear that the children's social workers were contacted to assist in tracing the children. This should have assisted in contact with these child victims being established more promptly, by ensuring that COPFS was aware of the children's current residence and the most appropriate adults to whom correspondence should be sent.
144. In neither case did it appear as though the police had provided details of the local authority by which the child was looked after, or details of the child's social worker. Not only would this information have made tracing the children easier, but where a local authority has parental rights and responsibilities for the child, it should be kept informed of the status of the child's case so that it can discharge its duties effectively. For example, the local authority may have wished to assist the child in exercising their right to review of a decision to take no action against the accused. Moreover, ensuring the child's social worker was made aware of the information being communicated to the child by COPFS would have created an opportunity for the social worker to ensure that the child received the information in a manner most appropriate to their needs, and that appropriate support was in place. The two cases we reviewed involving looked after children suggested to us that COPFS, working with the police, should consider whether their victim communication policies and processes fully take account of the circumstances of looked after children, many of whom will be the most vulnerable in our communities.

New recommendation 2

COPFS should work with the police to ensure that processes for communicating with victims and witnesses who are looked after children take account of their individual circumstances and needs.



Police victim strategy

145. To support COPFS to carry out its own victim strategy, the police are required to submit a police victim strategy for each victim within seven days of reporting any High Court sexual crime case. Submission of the police victim strategy should be monitored by COPFS and reminders sent to the reporting officer if necessary. At a strategic level, there is an opportunity for COPFS to provide feedback to Police Scotland on compliance at their joint Sexual Crime Board.
146. The purpose of the police victim strategy is to highlight to COPFS information about the victim's background and any vulnerabilities, their attitude towards criminal proceedings and their understanding of the criminal justice process, and their expectations regarding the case. This information can be used to inform decision making by COPFS and its own victim strategy. It is therefore disappointing that in our case review, a police victim strategy had been submitted in only 18 (36%) cases and no strategy was submitted in 32 (64%) cases. Many of the cases in which no strategy was submitted included charges of rape, and it should have been clear to the reporting officer that the case would be dealt with at High Court level and would therefore require submission of a police victim strategy.

New recommendation 3

COPFS should work with Police Scotland to ensure that a police victim strategy is submitted in all appropriate cases and in accordance with agreed timescales.

Feedback from victim support organisations

147. During our follow-up inspection, we sought feedback from organisations providing support to victims. While some of their feedback was mixed, they generally noted improvements in communication between COPFS and victims since 2017. They also commented on a commitment to engaging with their organisation and improving the experience of victims in the criminal justice system at a strategic level within COPFS. At an operational level, the relationship between victim support workers and VIA staff had improved and the sharing of contact information for individual staff had made it easier for support workers to contact the appropriate person about a case.
148. In addition to issues already highlighted above, the areas which victim support organisations identified for improvement were often ones previously noted in our 2017 inspection report and included:
- challenges in accessing previous statements before giving evidence in court, with some victims still not being made aware that this is possible
 - no opportunity to meet the prosecutor in their case before trial in too many cases, often resulting in the victim not understanding key decisions or legal strategies
 - ineffective arrangements for how victims are informed of the verdict in their case
 - VIA not asking a victim whether they have an advocacy worker and the victim then experiencing difficulties in having a Witness Service supporter replaced by their advocacy worker with whom they already have a relationship
 - a lack of support for victims about whom section 275 applications had been made³⁴

³⁴ To introduce sexual history or character evidence, a written application from the defence or prosecution (a section 275 application) must be submitted to the court. Section 274 of the 1995 Act sets out what must be specified in an application and section 275 sets out the exceptions to the prohibition on leading such evidence. For further discussion of this issue, see Eamon P H Keane & Tony Convery, [Proposal for independent legal](#)



- geographic inconsistencies in the service provided to victims by VIA with victim support workers in some parts of Scotland being far more positive about the service than others.

149. Some of these issues should be addressed by effective implementation of the court management strategy introduced in July 2020 and described at paragraphs 128 to 130.

150. A significant development since our inspection in 2017 has been the introduction of a Memorandum of Understanding between COPFS and Rape Crisis Scotland which governs the provision of feedback from victims of sexual crime to COPFS about their experience of the criminal justice process. The purpose of the feedback is to support COPFS in making improvements to the service provided to victims of sexual crime. Feedback can be provided anonymously, and in respect of all victims of sexual crime, regardless of the outcome of their case once it is reported to COPFS. Feedback is submitted monthly by Rape Crisis Scotland and has resulted in practice changes.³⁵

151. The evidence outlined above shows that while several improvements have been made in how COPFS communicates with victims of serious sexual crime and, indeed, we have assessed that four of our previous recommendations regarding victims have been achieved and two are in progress, there remains scope for further improvement. This is needed not only in how COPFS communicates with victims, but across the broader criminal justice system so as to improve victims' overall experience.

[representation for complainers where an application is made to lead evidence of their sexual history or character \(2020\)](#).

³⁵ This MoU and a resulting change in practice are further discussed in COPFS et al, [Standards of service for victims and witnesses – Annual report on performance 2019-20](#) (2020), page 20.



Part 3 – The impact of Covid-19

152. On 17 March 2020, in response to the Covid-19 pandemic, the SCTS suspended jury trials.³⁶ In a discussion paper on Covid-19 and jury trials published in April 2020, the Scottish Government noted that Scotland's justice system relies heavily on physical attendance at court and on physical evidence and that, until it is safe to convene a jury, there would be no solemn trials in Scotland.³⁷ The government said the existing backlog of 390 High Court trials would very quickly increase and estimated that for each five-month period in which solemn trials could not take place, there would be an additional backlog of 250 High Court trials. The government noted emergency measures it had taken in the Coronavirus (Scotland) Act 2020 to extend time limits for criminal proceedings and outlined various options to help manage the impact that Covid-19 was having on court business. Concerns about the impact of the delay on victims, witnesses and accused persons were widespread. A working group was established by the Lord Justice General in May 2020 to consider the practicalities of recommencing trials by jury as and when public health guidelines would allow. This group, chaired by the Lord Justice Clerk, later announced that two physically distanced jury trials would take place in July 2020.³⁸

153. In July 2020, shortly before publication of this report, we revisited the cases in our sample which were still ongoing to identify how they had been affected by the Covid-19 pandemic. Of our 50 cases, 22 were still ongoing. When we concluded our initial analysis of the cases in March 2020:

- in one case, an initial decision was still awaited on what action was to be taken³⁹
- in two cases the trial had taken place and the accused had been convicted but sentencing had not occurred
- three cases had not yet been indicted
- 16 cases had been indicted and were awaiting trial.

154. By July 2020, an initial decision was still outstanding in the first case. In one of the cases where the accused had been convicted, the sentencing diet was initially delayed but went ahead in May 2020. This shows that some criminal proceedings were able to continue during the lockdown period. However, in the second case, the sentencing diet had so far been adjourned twice.

155. COPFS continued to investigate and prepare the three cases that had not yet been indicted. One of these cases was concluded during lockdown with no further action being taken.

Post-indictment cases

156. The 16 post-indictment cases in our review that were still ongoing at March 2020 involved 51 victims, of whom 14 were children under the age of 18. Three of the cases involved child witnesses while one involved a vulnerable older witness. All of the victims were deemed vulnerable because of the nature of the offences, while the child victims and witnesses would also have been deemed vulnerable due to their age. In more than half of the cases, there were victims with additional vulnerabilities such as autism or mental or physical health issues.

³⁶ SCTS, [Coronavirus update – jury trials](#), 17 March 2020.

³⁷ Scottish Government, [Covid-19 and solemn criminal trials](#), April 2020.

³⁸ Lord Justice Clerk, [First steps in restarting jury trials](#), 25 May 2020.

³⁹ This case is discussed further at paragraph 140.



157. In two cases, the accused was a child at the time the case was indicted. In three cases, the accused had significant vulnerabilities. When we revisited the cases in our review in July 2020, in two cases, the accused was remanded in custody and would be so for 229 and 190 days respectively until their case was next due to call, unless either successfully applied for bail. In one case, there was a note on the record that the accused had been suspended from work pending the outcome of the case because of the nature of the charges. This was likely to also be the case for another accused, given the nature of his work and the charge.

158. In 15 of the 16 post-indictment cases, the main charge was rape – this included rape under section 1 of the Sexual Offences (Scotland) Act 2009 (11 cases), rape of a young child under section 18 of the 2009 Act (two cases) and the common law crime of rape (two cases). In one case, the main charge was the common law crime of lewd and libidinous practices.

159. Some of the 16 cases had already been subject to delay prior to Covid-19, and this delay has been exacerbated by the pandemic and the suspension of jury trials. Delay may have a serious impact on the parties involved in the case, as noted in the Scottish Government's discussion paper:

- For victims of the most serious crimes, and their families, there is the distress and uncertainty of waiting for an extended period for their case to be resolved. This may be particularly acute for children, for whom the length of delay can represent a significant proportion of their life so far.
- For vulnerable witnesses, there is the ongoing trauma involved when there is a delay in giving evidence. Delay may have an adverse impact on the willingness of victims of crime to continue to engage with the criminal justice process, an issue already of much concern in the context of sexual crime cases.
- For people accused of serious crimes, there is the uncertainty of awaiting justice. Accused persons on bail have a criminal charge hanging over them, and may be subject to conditions of bail for an extended period of time. Due to the nature of the charges in sexual crime cases, their livelihood may be at risk or lost.
- For those people accused of crime who are remanded in prison, the negative implications are especially acute. Without the ability for cases to progress to trial, an accused person could be remanded for an extended period with no certainty about when their case will come to trial. Imprisonment during the Covid-19 pandemic is likely to be even more acutely felt, given the lack of face-to-face contact with family and the restricted prison regime.

160. In the 16 ongoing cases, most have experienced adjourned preliminary hearings or trials as a result of the Covid-19 pandemic and the suspension of jury trials. In only one of the cases could we identify that there had been no Covid-related delay so far. This was because the preliminary hearing had taken place in February 2020 and the trial scheduled for August 2020 – at the time we revisited the cases, the need to adjourn the trial had not yet arisen although that appears a likely outcome.

161. Essential to the wellbeing of victims and their continued engagement in criminal proceedings is effective communication from COPFS about the status of their case, as well as support from various public sector and voluntary agencies. However, we could not find a record in all cases of victims and witnesses having been updated about the impact of the Covid-19 pandemic on their case. One victim who had been contacted said that she wanted the case 'over and done'. Another said she was 'upset and disappointed' by the delay. Regardless of the preference around frequency of contact expressed by the victim when the victim strategy was carried out, all victims are likely to be concerned about the impact of Covid-19 on their case,



particularly in light of the extensive media coverage given to the suspension of jury trials. We recognise that during the early lockdown period, VIA staff will have faced significant challenges in delivering their service as they switched to working from home and developed new working practices. It is our view that contact should be made with all victims in post-indictment sexual crime cases to provide them with an update about the status of their case and the impact of Covid-19 on the justice system, even if the exact impact of Covid-19 delays on their individual case is not yet known. Since we revisited the post-indictment cases, COPFS has advised that all victims will be updated in line with the preference each expressed when their victim strategy was carried out, and a letter will also be sent to all victims regarding the impact of Covid-19.

162. Table 2 shows the time that had passed between key milestones in the journey of each case through the criminal justice process and the next scheduled calling of the case. It should be borne in mind that the next scheduled calling may not result in the timely resumption of the case and, given the larger backlog of which our 16 cases are only a small proportion, they may be continued again. At the time we revisited the cases, the next scheduled calling dates all fell within July, August and September 2020. The days passed cited in the table are therefore likely to be a *minimum* journey time.

Table 2 – Days from key milestones until next scheduled calling of case

| Case number | Police report | Committed for further examination | Full committal ⁴⁰ | Indictment |
|-------------|---------------|-----------------------------------|------------------------------|------------|
| 7 | 636 | 636 | | 333 |
| 8 | 728 | 728 | | 472 |
| 10 | 578 | 578 | 571 ⁴¹ | 326 |
| 11 | 595 | 511 | | 208 |
| 14 | 707 | 666 | | 365 |
| 15 | 603 | 603 | | 129 |
| 17 | 647 | 647 | | 344 |
| 19 | 594 | 594 | | 294 |
| 22 | 651 | 651 | 190 ⁴² | 482 |
| 24 | 714 | 531 | | 244 |
| 31 | 714 | 669 | | 370 |
| 37 | 586 | 569 | | 267 |
| 40 | 619 | 518 | | 300 |
| 42 | 652 | 652 | | 350 |
| 46 | 696 | 428 | | 170 |
| 50 | 596 | 450 | | 280 |

163. In one case, the accused, victims and a witness are children. The case is not due to be called for an adjourned preliminary hearing until almost two years after the police

⁴⁰ The days passed since full committal are only shown in respect of the two cases in which the accused was remanded into custody and remained in custody at the time we revisited the cases in July 2020.

⁴¹ The accused was bailed at full committal but subsequently failed to appear at a preliminary hearing. He was later arrested under warrant and remanded in custody.

⁴² The accused was remanded in custody at full committal. However the accused's period of remand in this case was interrupted by the accused being sentenced to a period of imprisonment in another case. The period for which the accused has been remanded has therefore been calculated from the earliest release date of their period of imprisonment, and reflects his resumed remand status in this case.



reported the incident to COPFS. There is a risk that further delay will occur before the trial takes place. This case had already experienced delays prior to being indicted, which have now been exacerbated by Covid-19. Meanwhile, the children involved are at risk of being re-traumatised by delays in the criminal justice process and the quality of their evidence may diminish over time. We welcome efforts being made by COPFS to review cases with victims and witnesses who would benefit from giving their evidence via Evidence by Commissioner hearings. These hearings were able to recommence in June 2020. This will help to lessen the impact of delays on victims and witnesses.

164. This illustrates the significant impact of Covid-19 on the criminal justice system and particularly the victims, witnesses and accused involved in ongoing cases. The inspectorate welcomes efforts to resume jury trials and to prioritise cases involving those remanded in custody; vulnerable victims and witnesses – particularly children and those at risk from disengaging in the process; young accused; and those cases that have already experienced delay prior to Covid-19. Given the widespread vulnerabilities of those involved in serious sexual crime cases, such prioritisation is a significant challenge.



Appendix 1 – Case review

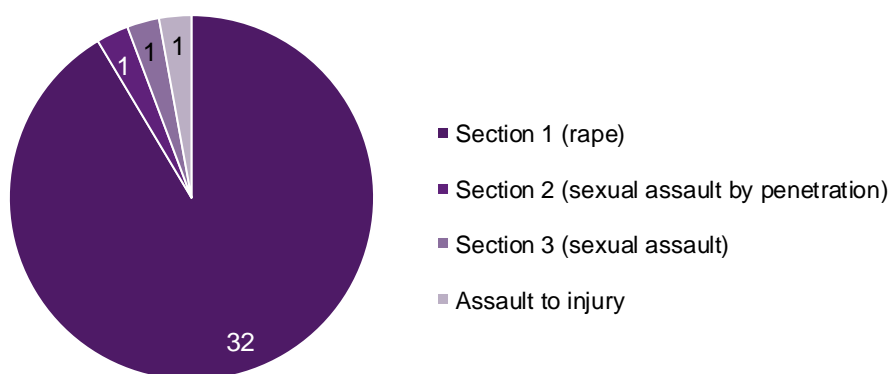
165. To support our assessment of the extent to which the recommendations made in our 2017 review have been implemented, we examined 50 High Court sexual crime cases. The sample of cases was randomly selected from all sexual crime reported to COPFS between 1 September 2018 and 28 February 2019 and which were assessed as being suitable for action in the High Court.⁴³ While our sample size was not statistically significant, the results from the 50 cases should nevertheless provide a good indication of how sexual crime cases are being managed and progressed. Our sample represents 13% of all High Court sexual crime reported to COPFS during the six-month period. The management and progression of the cases was assessed until 20 March 2020. We revisited the live cases in July 2020 to assess the impact of the Covid-19 pandemic.

Overview

166. Of the 50 cases, 22 (44%) were still ongoing at 20 March 2020. Twenty-eight (56%) cases were closed.

167. In each of the 50 cases, we noted the main charge at the time the case was reported by the police. We deemed the main charge to be the one that would result in the most severe penalty. Rape was the main charge in 42 (84%) cases. This included offences under sections 1 (rape) and 18 (rape of a young child under the age of 13) of the Sexual Offences (Scotland) Act 2009 and, in relation to crimes committed prior to 1 December 2010⁴⁴, the common law crimes of rape and sodomy (see Charts 1 and 2). As the investigation continues and further evidence is gathered, the main charge in a case may change and some charges may be removed and others added. For example, one case was reported with the main charge being assault to injury however it was anticipated that following further investigation, a charge of rape may be added.

Chart 1 – Main charge in police report to COPFS – adult victims⁴⁵



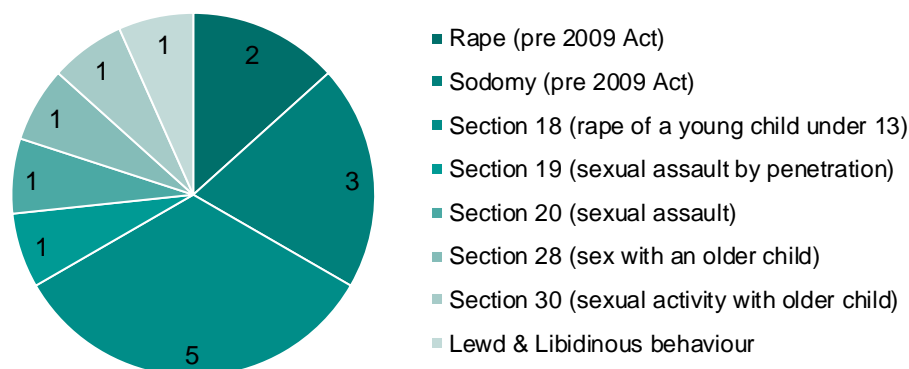
⁴³ The sample was drawn from this period so as to allow sufficient time for COPFS to have taken action in response to our recommendations made in 2017, and to allow sufficient time to have passed since the cases were reported to assess their progression.

⁴⁴ The Sexual Offences (Scotland) Act 2009 came into force on 1 December 2010.

⁴⁵ Several of the cases in our sample had multiple victims. Charts 1 and 2 relate to the main charge in the police report, which may relate to only one of the victims. The statutory offences cited relate to the 2009 Act.



Chart 2 – Main charge in police report to COPFS – child victims⁴⁶

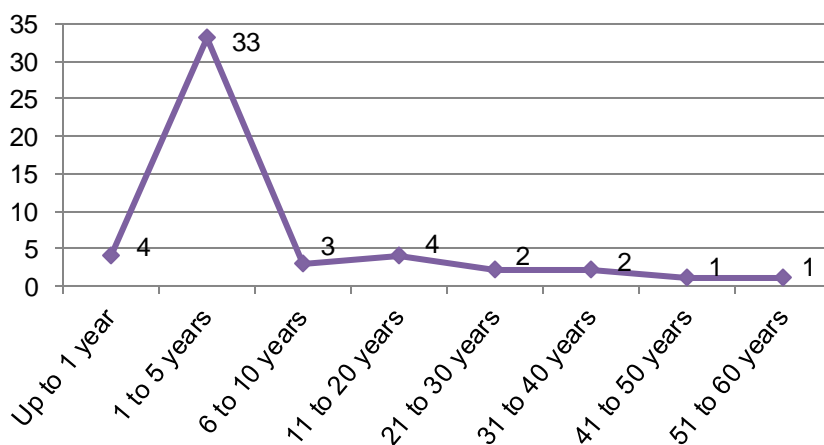


168. Each case involved one accused person, and all the accused were male. Their ages ranged from 13 to 79, with five being under the age of 18 at the time the cases were reported to COPFS.

169. Half of the cases had multiple victims. There were 113 victims across the 50 cases, of whom 28 were children aged between five and 17 at the time the case was reported. Many more victims were children at the time of the crime.

170. Only four (8%) cases related to crimes that had taken place within the year preceding the police report, and a further 33 (66%) related to crimes that had taken place in the previous five years. Thirteen (26%) cases related to crimes that had taken place more than five years previously. The oldest reported crime in our sample of cases occurred in the 1960s (see Chart 3).

Chart 3 – Age of offence



171. Twelve of the 50 cases (24%) were consolidated (often referred to as ‘rolling up’) with one or more other cases.⁴⁷ This can add to the complexity of the cases.

172. Thirty (60%) cases were reported with the accused in police custody. Twelve (24%) were reported by means of an undertaking where the offender had been given a date

⁴⁶ The statutory offences cited relate to the 2009 Act.

⁴⁷ That is, the case was merged with another case against the same accused.

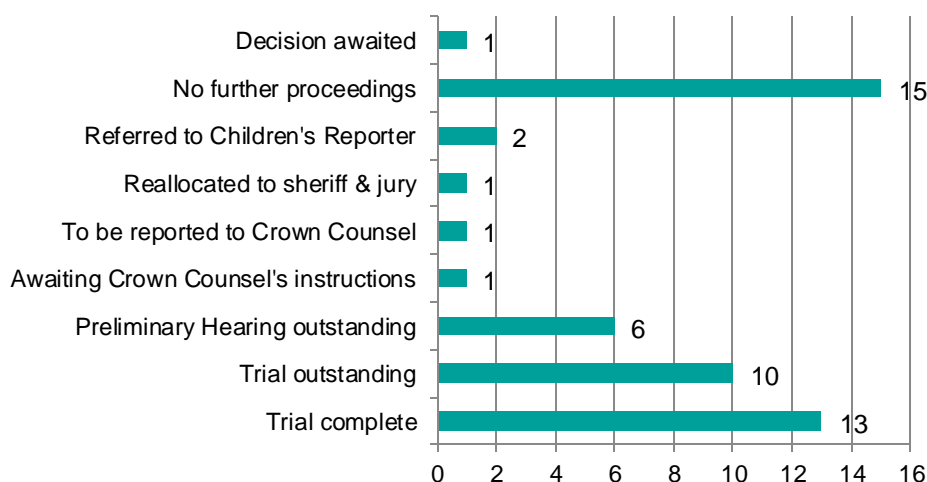


by Police Scotland to attend court, four (8%) were received as reported cases⁴⁸ and the final four (8%) were reported by police seeking a warrant to apprehend the accused.

173. Of the 12 cases reported as undertakings, only three went ahead on the date set with the accused appearing on petition and being committed for further examination. In the other nine cases, the date to attend court was either postponed, cancelled or postponed then cancelled, mainly for further enquiries to be carried out. These nine cases resulted in a variety of outcomes including no action, the accused being placed on petition or, in one instance, the case being referred to the Children's Reporter.

174. Chart 4 shows the outcome of all the cases in our review as at 20 March 2020. Of the 15 cases in which no further proceedings were recommended, this decision was taken after further enquiries had been carried out in six cases; after pre-petition investigation in five cases; after the accused had appeared on petition but before the indictment was served in two cases; and after the indictment was served in two cases. Of the 13 trials that have been completed, the sentencing hearing was outstanding in two. In one case an initial decision on how to proceed had not yet been made (see paragraph 178 for further information about this case).

Chart 4 – Outcome of cases as at 20 March 2020



Initial decision-making

175. On receipt of a police report alleging sexual crime, prosecutors make an initial assessment as to what action should be taken. Five (10%) of the 50 cases were appropriately reported to Crown Counsel to seek instruction before the initial assessment was made.

176. In 2017, we reported that one of four assessments could be made:

- to prosecute, usually on petition
- to instruct further investigation prior to deciding whether to prosecute – known as pre-petition investigation
- to take no proceedings
- to use an alternative disposal, such as referral to the Children's Reporter.

⁴⁸ A reported case is where the accused person is not in custody, does not have a date to attend court and the police have not specified that they are actively seeking an apprehension warrant



177. In our 2020 case review, we noted an additional assessment outcome was often being used, that of 'further enquiries'.⁴⁹ In these cases, the results of further enquiries are needed before a decision can be taken. Further enquiries usually take the form of requesting full statements from the police, or requiring a forensic or cybercrime report. Cases assessed as requiring further enquiries differ from those that require pre-petition investigation in that further enquiries relate to further routine investigation. Pre-petition investigation is used to establish by detailed investigation whether sufficient evidence exists, and to address any grave or substantial concerns regarding the quality of evidence.

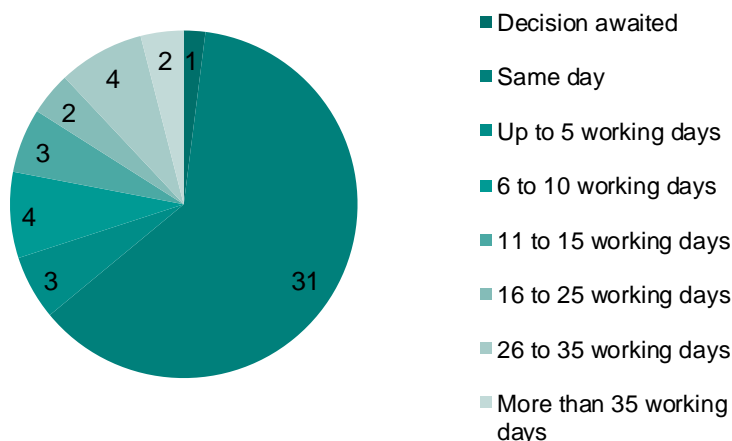
178. Table 3 shows that 27 (54%) of the cases we reviewed were initially marked for petition proceedings; 17 (34%) required further enquiries; and five (10%) required pre-petition investigation either for eight weeks or 26 weeks to carry out some precognition or perform a full assessment of the evidence. In the one case where the initial decision had not yet been taken, the victim was involved in several cases against multiple accused, the circumstances of which were connected. The other cases did not fall within our sample for review. Given the complexity of the cases, COPFS focused on the case that was strongest evidentially which resulted in the case in our sample not being taken forward pending the outcome of this case. This case concluded around the time our review ended, and a decision on the case in our sample was expected shortly.

Table 3 – Outcome of initial decision-making

| Marking forum | Number |
|----------------------------|--------|
| Petition | 27 |
| Further enquiries | 17 |
| Pre-petition investigation | 5 |
| Decision awaited | 1 |

179. Chart 5 shows the time taken for initial decisions to be made. In 31 cases (62%), initial decisions were taken on the same day the police report was received, 30 of which were custody reports and one of which was an undertaking. The remaining cases were either warrant requests, undertakings or reported cases.

Chart 5 – Timeframe for initial decision-making



⁴⁹ While 'further enquiries' may also have been used by COPFS in 2017, it was not an outcome that featured in our 2017 case review.



180. In two cases, the initial decision was not made for a considerable period. In both cases, procedural errors resulted in these cases being overlooked and resulted in the initial decisions not being taken until after nine months had passed in one, and more than eight months in the other. These cases are further discussed at paragraph 61.

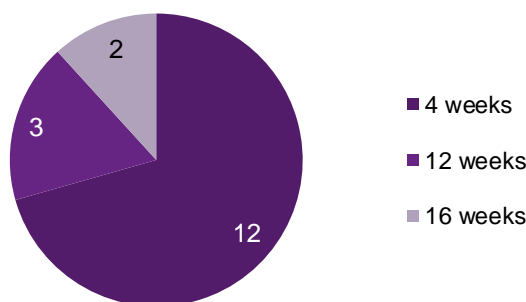
Further enquiries

181. Where the initial decision is that further enquiries are required, the prosecutor allocates the case one of three KPIs. The KPIs were introduced in March 2018 as a means of managing routine further investigation. The KPIs for further enquiries are:

- four weeks for standard cases (such as requiring full statements or other straightforward clarifying information from the police)
- 12 weeks where a forensic report is required
- 16 weeks where a cybercrime report is required.

182. Chart 6 shows the KPIs applied to the 17 cases in our sample where further enquiries were needed.

Chart 6 – KPIs in further enquiries cases



183. In the two cases requiring cybercrime reports, the 16-week KPI was met, and there were only slight delays in the three cases subject to the 12-week KPI for forensic reports.

184. Twelve of the 17 further enquiries cases were subject to the four-week KPI and required full statements to be submitted by the police so as to allow the prosecutor to make a more informed assessment of the most appropriate course of action to take in the case. The four-week KPI was met in only four of the 12 cases. Where the KPI was not met, this was for a variety of reasons, including delays by COPFS in requesting the information, and delays by the police in providing it. In one case in which the four-week KPI was not met, the initial decision was not made for 23 weeks. However, this was due to the complexity of the circumstances, with difficulties experienced in tracing files from 2005 and the need to investigate a potential additional complainer.

185. Overall, for the 12 cases that had a four-week KPI, the time taken for the further enquiries to take place and for a subsequent decision to be taken ranged from three to 23 weeks,⁵⁰ with an average of nine weeks.

186. The KPIs for further enquiries run from the date COPFS receives the police report. However, as seen at Chart 5 above, it may be some time before the initial decision to

⁵⁰ References in weeks have been rounded to the nearest week.



instruct further enquiries is made. This was the case, for example, in one of our cases with a four-week KPI, where the four weeks had already expired before the decision to instruct further enquiries had even been made.

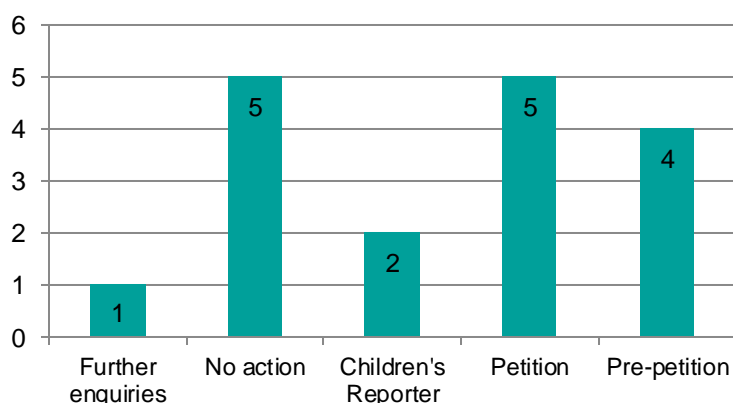
187. Operational Instruction 3 of 2018 states that Crown Counsel’s instructions should only be sought at the investigation and initial decision making stage under certain circumstances:

- where the issue of sufficiency of evidence is borderline but not clear
- there appears to be sufficiency of evidence but the quality of evidence requires reflection on whether prosecution is in the public interest (including cases where there appears to be a sufficiency but the complainer would prefer the case not to proceed)
- the case is highly sensitive and/or consideration of complex areas of law is required
- the case marking instructions or other policy guidance for the charge indicate that it must be reported for Crown Counsel’s instructions.

188. Four of the 17 further enquiries cases in our review were reported for Crown Counsel’s instructions. All were in accordance with the Operational Instruction and resulted in instructions that two of the cases proceed by pre-petition investigation, and in two cases, that the accused should be placed on petition.

189. The outcome for all 17 cases where further enquiries were made is shown in Chart 7.

Chart 7 – Outcome of cases where further enquiries were instructed



190. In one case, an additional period of further enquiries was instructed. Initially, only full statements were requested with a four-week KPI, but a decision was later taken to request a forensic report with a 12-week KPI. On receipt of a negative forensic result, a decision was made to take no action.

191. In five cases, no action was taken after the initial requests for information. This was a result of there being insufficient evidence after receiving responses to the enquiries.

Pre-petition investigation

192. Operational Instruction 3 of 2018 states that pre-petition investigation can be used to establish by detailed investigation whether sufficient evidence exists, or to address any grave or substantial concerns regarding the quality of evidence. Further investigation that is routine, should be dealt with by the ‘further enquiries’ process described above, and the Operational Instruction notes that cases where pre-petition investigation is appropriate should be rare.



193. Nine cases in our review were progressed by pre-petition investigation – five following the initial decision and four where further enquiries had already been carried out. While 18% of cases being progressed by pre-petition investigation cannot be described as ‘rare’, the reasons given in each appeared in accordance with the Operational Instruction.
194. In March 2018, COPFS set refreshed KPIs for pre-petition investigation in Operational Instruction 3 of 2018. The KPIs are that the pre-petition investigation period should be:
- eight weeks where some level of precognition is involved
 - 26 weeks where, on a full assessment of the evidence, a full review of the case is required before a decision can be taken in the public interest. In such cases, it is expected that a full review of all the evidence will be carried out and a recommendation sought from Crown Counsel as to whether the case should be indicted.
195. In one of the nine pre-petition cases in our review, a 15-week KPI was set rather than a KPI of eight or 26 weeks. We could find no electronic record of the reason why a different KPI had been set. It was not met, with the pre-petition investigation period exceeding the KPI by six weeks.
196. In the other eight pre-petition cases:
- in three cases, the eight-week KPI was applied but was never met
 - in five cases, the 26-week KPI was applied and was met in two cases (at eight and 21 weeks).
197. In the three cases with an eight-week KPI, the period of pre-petition investigation was 11, 17 and 36 weeks. All three cases had already had a period of further enquiries, prior to pre-petition investigation.
198. In the three cases with a 26-week KPI which was not met, the pre-petition investigation period was concluded after 37 and 53 weeks in two cases. In both, the case was reallocated to a different case preparer during the period of investigation and this may have played a role in the delay (or alternatively, the case was reallocated because of the delay). Neither of these cases were subject to further enquiries prior to the pre-petition investigation. In the third case where the 26-week KPI was not met, the pre-petition investigation had still not concluded at the time of our review.
199. In this case, there had already been a 12-week period of further enquiries and, once allocated for pre-petition investigation, almost 11 weeks passed before an initial instruction was sent to the police. The police responded one week later. Almost 11 weeks passed again before a further instruction was sent to the police. During this time, the original 26-week KPI expired and the case was reallocated to a different case preparer. Upon reallocation, the case was given a further eight-week KPI. After further instructions to and responses from the police, the case was reported to Crown Counsel in its 48th week with a recommendation that no proceedings take place due to evidential difficulties and the disengagement of the victim. Four weeks later, Crown Counsel issued further instructions and a further three weeks later, the case was re-reported to Crown Counsel with the same recommendation. The delays and periods of inactivity in this case are unacceptable. Failure to adhere to the KPIs should have resulted in this case coming to the attention of senior managers and action should have been taken as a result to ensure its progress was expedited.

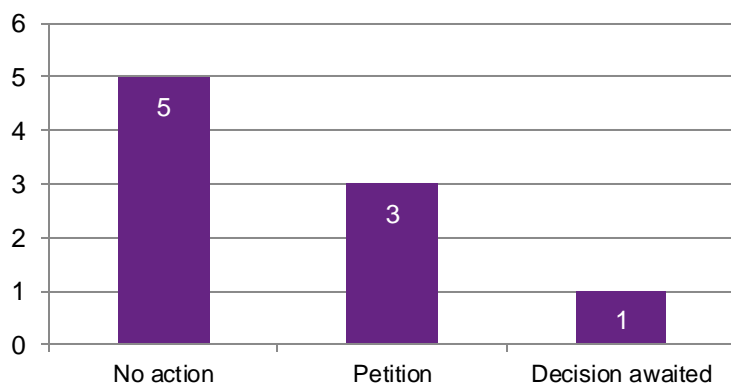


200. Overall, the pre-petition investigation period of the eight cases in our review where the investigation period had concluded ranged from eight to 53 weeks since the case was reported to COPFS. In the ninth case with a period of pre-petition investigation, the investigation had not yet concluded (with 57 weeks having passed at the point our case review ended).

201. Our findings show that there is still a relatively long time in some cases in the investigation stage before a final decision is taken on how to proceed. While this may often be necessary due to the complexity of serious sexual crime cases and the gathering of evidence, the cases outlined above highlight scope to reduce journey times further, supported by improved governance.

202. The outcome of the cases in our review which had a period of pre-petition investigation are shown in Chart 8. As noted at paragraph 200, the outcome of one case is still to be determined although a recommendation of no proceedings has been made.

Chart 8 – Outcome in cases with period of pre-petition investigation



203. In four of the five cases where no action was taken, evidential issues, particularly insufficiency of evidence, was a factor. In two of these cases, the victim was also reluctant to proceed. In the fifth case, action was not thought to be in the public interest.

Petition

204. Thirty-five (70%) of the cases we reviewed were placed on petition, thereby initiating solemn proceedings. Twenty-seven were placed on petition at the initial decision-making stage, five after further enquiries, two after pre-petition investigation, and one was subject to both further enquiries and pre-petition investigation before being placed on petition. Nineteen of the 35 post-petition cases were still live at 20 March 2020 and 16 were closed.

205. Of the 35 cases in our review placed on petition, the main charge was rape in 27 cases. This included offences contrary to sections 1 and 18 of the 2009 Act and common law offences that were committed prior to the Act, the circumstances of which would now be equivalent to rape.

Indicting decision

206. Of the 35 cases that were placed on petition, 34 were reported to Crown Counsel with a recommendation on how to proceed. One case had still to be reported at the time of our review following a delay of approximately nine months in making an initial



decision.⁵¹ In the 34 cases reported to Crown Counsel, we found that Crown Counsel agreed with a high proportion of the recommendations made:

- in 30 cases, Crown Counsel agreed with the recommendation to commence proceedings in the High Court
- in one case, Crown Counsel agreed that there should be no further proceedings
- in one case, Crown Counsel instructed prosecution at Sheriff and Jury level rather than in the High Court as recommended
- in one case, Crown Counsel disagreed with the recommendation to commence proceedings and instructed no proceedings
- in one case, we were not able to find an electronic record of the recommendation made by the case preparer and SLM so could not assess whether Crown Counsel agreed with it. However, the decision of Crown Counsel in this case was to indict.

207. In the two cases where Crown Counsel decided no further proceedings should be taken, there was insufficient evidence in one and, in the other, there were evidential difficulties and the victim had disengaged from the process.

208. The case where prosecution at Sheriff and Jury level was instructed involved a very young child victim. Work that was identified at an early stage was not done until 10 months after the police report had first been looked at. This delay, particularly in a case involving a very young child victim, is not acceptable.

Reporting and indicting KPIs

209. In response to our review of sexual crime published in 2017, COPFS introduced new KPIs for the reporting and indicting of post-petition High Court cases. These KPIs were designed to support efforts to shorten the journey time of cases. Each case is assigned a priority based on its circumstances and placed into one of four categories (see Table 4), taking into account factors such as whether the accused is in custody, the age of any child witnesses and the accused, and the time the case has already spent in the pre-petition phase, as well as any other priority factors.

Table 4 – Reporting and indicting KPIs

| Category | Report by ⁵² | Indict by |
|----------|-------------------------|-----------|
| 1 | 60 days | 70 days |
| 2 | 6 months | 7 months |
| 3 | 7 months | 8 months |
| 4 | 8 months | 9 months |

210. The new reporting and indicting KPIs were effective from 1 April 2019, however some were in use as early as October 2018 (in relation to cases involving child witnesses aged 12 years and under which fall into Category 1) and 1 January 2019 (in relation to all other cases falling into Category 1, such as those where the accused is remanded in custody). In bail cases, the KPIs are intended to run from the date of receipt of the police report while in custody cases, the KPIs run from the date where the accused person is fully committed.

211. The cases that we reviewed were reported to COPFS between 1 September 2018 and 28 February 2019. All cases were reported before the new KPI regime was fully

⁵¹ This case is discussed further at paragraph 61.

⁵² The reporting KPI refers to the date a report is sent to Crown Counsel in NSCU with a recommendation on how to proceed. The report is prepared by a case preparer and reviewed by the SLM.



implemented on 1 April 2019, although some cases were subject to the KPIs that were brought in early. We acknowledge that the new KPI regime was not fully in place at the time all of the cases in our sample were reported and that compliance was not then being routinely monitored. Nonetheless, we have considered 12 cases in our sample where records show that the case had been allocated to a priority category and the reporting and indicting KPIs had been applied. From these cases, we have identified some issues for COPFS to consider as it continues to develop and apply its approach to KPIs. The indicting KPIs are discussed above from paragraph 32.

Bail cases

212. Of the 35 petition cases, the accused was on bail in 24 cases. Eight of the bail cases had involved a period of further investigation – five with further enquiries, two with pre-petition investigation and one with both. We found evidence in the case records that both the new reporting and indicting KPIs had been applied by COPFS to seven of the 24 bail cases:

- in one case, both reporting and indicting KPIs were met
- in three cases, neither the reporting nor the indicting KPI had been met
- in three cases, the reporting KPI was met but not the indicting KPI.

213. In a further case, the reporting KPI was met but the indicting KPI was not relevant. This was because Crown Counsel instructed that the accused should be indicted into the Sheriff Court⁵³ and therefore it was not further considered in our review, given our focus on High Court sexual crime cases.

214. There was evidence in some, but not all, cases that delays at the initial decision-making or pre-petition stage were being taken into account when allocating cases to a priority category. This means that, if the KPIs are used effectively, there is scope for cases that have experienced previous delays to be expedited post-petition, which we welcome. However, in two cases which had been re-prioritised to take account of previous delays, the opportunity to make up for those delays had subsequently been missed and the new KPI had been exceeded by a significant margin.

215. There appeared to be some inconsistency in the dates used to commence the KPI timescale. While guidance states that this should be the date of the police report for bail cases (except in specified circumstances), in two of the seven bail cases to which a reporting and indicting KPI had been applied in our review, the KPI instead ran from the date of the accused's first appearance at court. In one of these cases, there was an almost nine-month gap between the police report and first appearance. Inconsistency in the application of the KPIs to cases limits their utility and the ability of senior managers to identify at what stage problems are occurring and take action to address them.

216. In some bail cases where the further enquiries or pre-petition investigation has been protracted, it is impossible or near impossible for the reporting and indicting KPIs to be met.

217. In most bail cases, a considerable period of time passed between the case being reported to Crown Counsel and their instructions being made, and the indictment being served:

- in two bail cases prioritised as Category 1 due to the involvement of child victims under the age of 12, the indictments were served three and six months after the

⁵³ Where an accused person is indicted into the Sheriff Court, if he/she pleads not guilty and their case proceeds to trial, they will be tried before a jury.



case was reported to Crown Counsel. The target was 10 days. This was despite Crown Counsel's instructions to indict the accused being received promptly. In one of these cases, considerable efforts to meet the reporting KPI were somewhat negated by the delays at the indicting stage.

- in several bail cases falling outwith Category 1 where the aim was to serve the indictment within one month of reporting to Crown Counsel, the indictment was served between three months and almost five months later, despite instructions from Crown Counsel to indict the accused being issued promptly.

218. While the indicting KPIs were missed in these cases, in all of them the indictment was served within the statutory time limit (which, in bail cases, is taken from the date of the accused's first appearance on petition when they are committed for further examination, rather than the date of the police report).

Case studies – reporting and indicting KPIs

In our review, both the new reporting and indicting KPIs were met in only one of the nine bail cases to which they were applied. This case fell within Category 4 and was reported to Crown Counsel over two weeks prior to the target date. The indictment was served three days prior to the target date.

One of the bail cases in which neither the reporting nor the indicting KPI was met was prioritised as Category 1 due to the involvement of child witnesses under the age of 12. The case was reported to Crown Counsel on day 106 (target 60 days) and the indictment was served on day 259 (target 70 days).

219. Of the 16 bail cases where the new reporting and indicting KPIs had not been applied, COPFS staff had applied target reporting dates from the date the accused was committed for further examination. The reporting date set was met in seven of the 16 cases. The reporting date set was not met in nine cases, with the additional time taken to report ranging from one to 15 weeks. In all 16 cases, the indictment was served within the statutory time limit of 10 months. In one of the cases which did not meet the target report date, the indictment was nonetheless served seven weeks prior to the statutory time limit. This case involved a child accused with child victims and witnesses, suggesting that efforts were made to prioritise some cases involving children even before the new reporting and indicting KPIs were introduced.

Custody cases

220. There were 11 post-petition cases where the accused was remanded in custody. None had a period of further enquiries or pre-petition investigation before being placed on petition. The new reporting and indicting KPIs were relevant to five of the 11 cases. This was because four of the cases were reported after 1 January 2019, and the fifth case was reported in October 2018 but related to a child victim under the age of 12. All five cases were assessed as being Category 1, meaning that they should be reported to Crown Counsel within 60 days of the accused having been fully committed, and the indictment served within 70 days of that date.

221. The reporting KPI was not met in three of the five cases and the indicting KPI was not met in any cases. However, the indictment was served in all cases within 80 days of the accused being fully committed, thus meeting the statutory time limit. In the two cases where the reporting timescale of 60 days was met, the indictment was served on the last possible day in one case, and two days before this in the second case.



222. Of the six post-petition custody cases where the KPIs did not apply, only one case was reported to Crown Counsel before the target date. However, the indictment was served within the statutory time limit in all cases.

223. In summary, all cases are being indicted in accordance with statutory time limits, and we welcome efforts to use the new performance framework to shorten the journey time of cases by identifying the stages at which delays are occurring so that corrective action may be taken. This affords opportunities to minimise delays and improve the experience of victims, witnesses and the accused. The framework was not fully operational at the time the cases in our sample were first reported to COPFS, and we have highlighted some issues above which will require to be resolved to maximise the benefit to be gained from it. We acknowledge that the framework's implementation and development since April 2019 may have resulted in more positive outcomes for cases reported after that date. The framework should be kept under review and refined as necessary, to ensure it serves its purpose and takes account of the complex circumstances of individual cases. Most importantly, corrective action must be taken to address issues highlighted by missed KPIs. This could include, for example, redistribution of resources to address delays at key points in the investigation and prosecution process. For further discussion of the KPIs, see from paragraph 32.

Section 67 notices⁵⁴

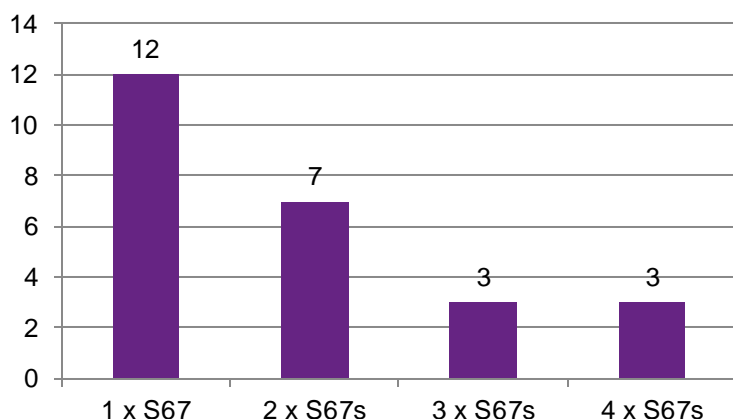
224. In our 2017 review of sexual crime, 88% of the cases we reviewed had additional productions, labels or witnesses added after the indictment had been served. These are added by means of a written notice, known as a section 67 notice, which may be objected to by the defence and/or refused by a judge. We noted that while requests for further work at this stage are unlikely to ever be eliminated due to factors outwith the control of COPFS, there is scope for this work to be reduced. We also noted the risk that courts may not allow section 67 notices which would endanger the ability of COPFS to effectively prosecute the case.

225. In our current case review, we noted section 67 notices were made in 25 (71%) of the 35 cases that progressed to petition proceedings. Thirteen cases required more than one section 67 notice (see Chart 9). A large volume of work is therefore still necessary after the indictment stage. This may also provide an insight into the complexity of serious sexual crime cases where the results of forensic or cybercrime analysis or expert reports may be received during the latter stages of the investigation and prosecution process.

⁵⁴ Under section 67 of the 1995 Act, a written notice can be lodged by either the prosecutor or the accused adding further witnesses, productions or labels to an indictment.



Chart 9 – Cases requiring section 67 notices



Preliminary hearings⁵⁵ and trial

226. Statutory time limits regulate the maximum length of time that can elapse between the first time a person appears in court on petition charged with an offence and the start of their trial on indictment on that charge.⁵⁶ Different time limits apply depending on whether an accused person is remanded in custody or on bail:

- if the accused is committed for further examination and released on bail, the prosecution must serve an indictment no later than 10 months from that date, the preliminary hearing must take place within 11 months and trial must be commenced within 12 months⁵⁷
- if the accused person is fully committed and remanded in custody, the prosecution must serve an indictment within 80 days, the preliminary hearing must take place within 110 days and trial must be commenced within 140 days.⁵⁸

227. Extensions to time limits can be granted if there is sufficient cause to justify an extension. In any proceedings where a diet has been fixed on indictment, the court may, if it considers it appropriate to do so, adjourn the diet under section 75A of the 1995 Act.⁵⁹ An application for continuation or adjournment to another date may take place in court at the request of the prosecution or defence, or jointly by both parties. Where both the prosecution and defence are in agreement that a new date (referred to as a diet) should be fixed, the court may discharge the previous diet and fix a new diet without a hearing taking place in court.⁶⁰

Bail cases

228. Of the 21 bail cases where petition proceedings had been commenced, one was still to be reported to Crown Counsel at the time we completed our review. Of the remaining 20 bail cases, there was a preliminary hearing held within the 11-month statutory time limit in 14 cases, 10 of which resulted in a trial diet being fixed and four of which resulted in the preliminary hearing being continued to another date.⁶¹ In the remaining six bail cases, applications under section 75A of the 1995 Act to discharge

⁵⁵ A pre-trial diet to enable to court to be advised whether the prosecution and defence are ready to proceed to trial and also to deal with ancillary procedural matters. See Appendix 2.

⁵⁶ Time limits are regulated by section 65 of the 1995 Act. The time limits noted here are those that normally apply. Emergency provisions relating to time limits were enacted in response to the Covid-19 pandemic – see Appendix 2 for further information.

⁵⁷ Sections 65(1)(a) and (b) and Section 66(6)(1)(b), 1995 Act.

⁵⁸ Section 65(4)(a) and (aa), 1995 Act.

⁵⁹ Section 75A(1) and (2) of the 1995 Act.

⁶⁰ Sections 75A(5)(a) and (b) and 75A(7) of the 1995 Act

⁶¹ In one of these cases, the accused failed to appear at a preliminary hearing and a warrant was obtained for his arrest. The case was re-indicted with an additional charge and went on to have a combination of section 75A applications where the diet was discharged without a hearing and continued preliminary hearings in court.



the initial preliminary hearing that had been fixed were granted by the court and further dates were fixed for the preliminary hearings to take place and relevant statutory time limits extended accordingly.⁶²

229. In total, one or more applications under section 75A were made to delay or continue the preliminary hearing to another date in seven of the 20 bail cases. These applications were made for a variety of reasons, and at the instance of both the prosecution and the defence, or both. For example, in one case, the preliminary hearing was continued to allow the prosecution to interview the victim in relation to a section 275 application by the defence.⁶³ In another case, the accused failed to attend a preliminary hearing and a warrant was obtained for his arrest. The case was re-indicted with a new preliminary hearing date. Further preliminary hearings in the case were continued or delayed for a number of reasons, including matters associated with vulnerable witness applications and transcripts.

230. In all 20 bail cases, the statutory trial time limit of 12 months for a trial to be commenced had to be extended, even prior to the Covid-19 pandemic.⁶⁴ In four of the 20 cases, the trial date was still to be fixed as at March 2020 and in one case a decision was taken to proceed no further as the elderly accused was already serving a 21-year sentence. Of the 15 cases where trial dates had been set, we found the time between the first preliminary hearing and the trial ranged from 12 to 41 weeks. In six of these 15 cases, delays to or continuations of the preliminary hearing resulted in a delay to the trial being fixed. However, even in the nine cases where there was no delay or continuation of the preliminary hearing, we found that the time between the preliminary hearing and the trial ranged from 12 to 25 weeks.

231. Of the 15 cases where trials had been set, four had been concluded while 11 were still live. Of the four concluded cases, the time taken for the cases to reach trial from both the date that they were reported to COPFS and the date the accused was committed for further examination are shown at Table 5. This illustrates the point that none of the trials took place within the statutory time limit of 12 months, and one trial took almost 17 months to commence.

Table 5 – Time passed before trial in concluded bail cases⁶⁵

| Case number | Police report to trial (weeks) | CFE to trial (weeks) |
|-------------|--------------------------------|----------------------|
| 6 | 69 | 69 |
| 21 | 74 | 74 |
| 28 | 59 | 59 |
| 33 | 67 | 61 |

232. Of the 15 cases where trials had been set, the trial had not yet taken place in 11. The time taken for these cases to be scheduled for trial are shown at Table 6. However, in all these cases, the trial was postponed due to the Covid-19 pandemic. Further analysis of the impact of the Covid-19 pandemic can be found in Part 3 of this report. The table shows that none of the trials would have taken place within the usual statutory time limit of 12 months. The shortest delay would have occurred eight

⁶² In some of these cases, there was more than one application under section 75A of the 1995 Act.

⁶³ See note 34 for further information about section 275 applications.

⁶⁴ Generally High Court trials for sexual crimes are being allocated to a dedicated floating trial. A dedicated floating trial is scheduled for a particular High Court and can start within one of a number of days within the same week.

⁶⁵ Rounded to nearest week.



weeks after the statutory time limit if the trial had gone ahead as scheduled, while in the case with the longest delay, the trial would have taken place 36 weeks (eight months) after the usual statutory time limit.

Table 6 – Time passed before scheduled trial in live bail cases (pre-pandemic)

| Case number | Police report to trial (weeks) | CFE to trial (weeks) |
|-------------|--------------------------------|----------------------|
| 7 | 68 | 68 |
| 8 | 60 | 60 |
| 10 | 80 | 80 |
| 11 | 85 | 73 |
| 14 | 74 | 69 |
| 17 | 70 | 70 |
| 19 | 68 | 68 |
| 31 | 94 | 88 |
| 40 | 75 | 61 |
| 42 | 70 | 70 |
| 50 | 75 | 62 |

Custody cases

233. Of the 11 cases where the accused had been remanded in custody, the preliminary hearing took place within the initial statutory time limit of 110 days from the accused being fully committed in six cases. In five cases, one or more applications under section 75A of the 1995 Act were made to delay or continue the preliminary hearing to a later date. In one of these cases, four section 75A applications were made and granted without a hearing taking place, resulting in the first preliminary hearing in court taking place five months after the first that had originally been fixed. In these five cases, the section 75A applications were made for a variety of reasons and at the instance of both the prosecution and defence, or both. For example, in one case, a new diet was sought because the accused had instructed a new solicitor. In another case in which there had been a section 75A application to delay the initial preliminary hearing, when the case was called for preliminary hearing, there was a further continuation to a later diet. In this case, there were 21 complainers and substantial documentary productions and telephony evidence, illustrating the complexity of some serious sexual crime cases.

234. In two of the 11 cases where the accused was remanded in custody, the accused pled guilty at the first preliminary hearing so there was no need to fix a trial. In one case, the accused was released on bail, thereby altering the statutory time limits. In the other eight cases, the statutory time limit of 140 days for the trial to be commenced was extended, sometimes following continued preliminary hearings. However, the time limit for the trial diet to commence was also extended in cases where there had been no delays at the preliminary hearing stage. In one of these eight cases, the statutory time limit of 110 days for the preliminary hearing to be held had been extended twice and the accused pled guilty at the second preliminary hearing.

235. In the remaining seven custody cases where the accused had not already pled guilty or been released on bail, we found that the time between the *first* preliminary hearing and the trial ranged from 13 to 40 weeks.



Table 7 –Time between first preliminary hearing and trial in custody cases

| Case number | First PH to trial (weeks) |
|-------------|---------------------------|
| 5 | 23 |
| 16 | 19 |
| 22 | 34 |
| 29 | 13 |
| 34 | 14 |
| 35 | 40 |
| 41 | 37 |

236. While the trial should commence within 30 days of the preliminary hearing, the time between the *final* preliminary hearing and the trial was more than this in all seven cases:

- in two cases, the trial was set three months after the first and only preliminary hearing
- in one case, the trial was set four months after the first and only preliminary hearing
- in two cases, the trial was set two months after the final preliminary hearing
- in one case, the trial was set three months after the final preliminary hearing
- in one case, the trial was set five months after the final preliminary hearing.

237. Of the seven custody cases that proceeded to trial, four are concluded and in two the accused has been found guilty but sentencing is outstanding. The time taken for a trial to be commenced in the four cases from both the date that they were reported to COPFS and the date the accused was fully committed are shown at Table 8. None of the trials took place within the statutory time limit of 140 days (20 weeks) from full committal. The longest period of time that passed between full committal and trial was 53 weeks.

Table 8 – Time passed before trial in concluded custody cases

| Case number | Police report to trial (weeks) | FC to trial (weeks) |
|-------------|--------------------------------|---------------------|
| 5 | 40 | 38 |
| 16 | 35 | 34 |
| 29 | 30 | 29 |
| 34 | 31 | 29 |
| 35 | 70 | 53 |
| 41 | 54 | 53 |

238. Of the seven custody cases where trials had been set, the trial had not yet taken place in one case. It was scheduled for 49 weeks after the date the accused was full committed. The trial was ultimately postponed due to the Covid-19 pandemic.

239. The delay in cases reaching trial is a concern and is discussed further at paragraph 63.



Appendix 2 – Criminal procedure

Criminal procedure

240. 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.

Solemn procedure

241. 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. 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. If remanded, the accused must be brought back to court within eight days,⁶⁶ when the most likely outcome is that accused will be fully committed (FC) for trial. Again the accused may either be released on bail at that point or remanded in custody, pending trial.⁶⁷

High Court

242. Time limits apply to all solemn cases prosecuted in Scotland. 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. Failure to comply with time limits has serious consequences. Time limits for cases prosecuted in the High Court are different for accused persons on bail and those who are remanded, as follows:

Custody

243. If an accused person is remanded in custody, the prosecution must serve an indictment – the document narrating the charges, witnesses and productions for the case – on the accused or their legal representative within 80 days of FC.⁶⁸ The indictment provides the accused with notice of a preliminary hearing (PH). The purpose of the PH⁶⁹ is to determine the state of preparation of the defence and the prosecution and ensure outstanding issues are resolved before trial. The PH must be held within 110 days of FC⁷⁰ and not less than 29 clear days after service of the indictment.⁷¹ The trial is fixed by the court at the PH⁷² and must commence within 140 days of FC.⁷³ Failure to adhere to any of these custody time limits results in the accused being granted bail and released from custody.⁷⁴

⁶⁶ Criminal Procedure Act 1701 (c.6); see also *Herron v A.B.C. & D.*, 1977 SLT (Sh Ct) 24; also see *Dunbar, Petitioner* 1986 SCCR 602 – no more than eight days may elapse between committal for further examination and full committal but neither of the days on which one of the committals takes place counts towards that total.

⁶⁷ Criminal Procedure Act 1701 (c.6); see also *Herron v A.B.C. & D.*, 1977 SLT (Sh Ct) 24.

⁶⁸ Section 65(4)(a) of the 1995 Act.

⁶⁹ Section 72 of the 1995 Act.

⁷⁰ Section 65(4)(aa)(i) of the 1995 Act.

⁷¹ Section 66(6)(b) of the 1995 Act.

⁷² Section 72A(1) of the 1995 Act.

⁷³ Section 65(4)(aa)(ii) of the 1995 Act.

⁷⁴ Section 65(4)(a) and (aa) of the 1995 Act.



Bail

244. If an accused person is CFE'd on bail, the prosecution must serve an indictment on the accused or their legal representative no later than 10 months after the date of the accused's first appearance at court⁷⁵ and not less than 29 days prior to the PH.⁷⁶ The PH must be held within 11 months of CFE⁷⁷ and the trial must commence within 12 months.⁷⁸ 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.⁷⁹

Temporary amendments to time limits – Coronavirus (Scotland) Act 2020

245. In response to the Covid-19 pandemic, the Coronavirus (Scotland) Act 2020 made a number of changes to law and procedure. Its provisions are in place for a defined period, but may be extended. Paragraph 10 in Part 4 of Schedule 4 of the 2020 Act temporarily amends various time limits in the 1995 Act. All solemn time bars, for cases where the accused is either remanded in custody or on bail, are suspended for six months for all ongoing and future cases. No account should be taken of the six-month suspension period when calculating time bars.

⁷⁵ Section 65(1) and s66(6)(b) of the 1995 Act.

⁷⁶ Section 66(6)(b) of the 1995 Act.

⁷⁷ Section 65(1)(a) unless the hearing has been dispensed with under section 72B of the 1995 Act.

⁷⁸ Section 65(1)(b) of the 1995 Act.

⁷⁹ Section 65(1A)(a) and (b) of the 1995 Act.



Appendix 3 – 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.

Bail: The release from custody of an accused person until the trial or next court hearing.

Bail conditions: Conditions imposed by the Court on the accused usually designed to protect victims and the public.

Case preparer: Members of staff who interview witnesses and prepare cases for court in solemn proceedings.

Charge: The crime that the accused person is suspected of having committed.

Committal for Further Examination (CFE)/Appear on Petition: First appearance of an accused at court in solemn matters.

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. It is also responsible for the investigation of sudden, unexplained or suspicious deaths and the investigation of allegations of criminal conduct against police officers.

Evidence by Commissioner Hearing: Where a lawyer, judge, sheriff or other suitable person hears evidence at a different time or place to the actual court case. The evidence can then be used during the court case.

Full Committal (FC): The second appearance in court for an accused who was remanded in custody at a committal for further examination. It takes place in private. The accused will be granted bail or remanded in custody until the trial or until liberated in due course of law.

Indictment: Court document that sets out the charges the accused faces at trial in solemn proceedings.

Law Officers: The Lord Advocate and the Solicitor General. The Lord Advocate is the Ministerial Head of COPFS. He is the senior of the two Law Officers, the other being the Solicitor General. The Solicitor General is the Lord Advocate's deputy. She is also a Minister of the Scottish Government.

Petition: Formal document served on accused in solemn proceedings. It gives notice of charges being considered by the Procurator Fiscal.

Place on petition: Decision by prosecutor to commence solemn criminal proceedings.

Precognition: An interview of a witness by COPFS or a defence lawyer to help them find out more about a crime and prepare for a court case.



Preliminary hearing (PH): Procedural hearing in all High Court cases. The purpose is to adjudicate on the state of preparation of the defence and the prosecution and to resolve all outstanding issues prior to the trial commencing.

Procurators Fiscal (PFs): Legally qualified 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.

Production: An item shown in court as evidence.

Solemn procedure: The procedure for the most serious crimes, with the most serious including murder, rape, or other serious sexual offences being dealt with in the High Court before a judge and jury.

Special measures: Different ways to help vulnerable witnesses, including all children, such as giving evidence from behind a screen in the courtroom or by a television link, or having a support person in court.

Trial: The legal action in a criminal court case.

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

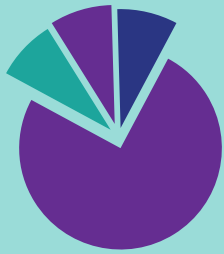
Victim Information and Advice: The COPFS service that offers assistance to some victims and witnesses

List of abbreviations:

1995 Act: The Criminal Procedure (Scotland) Act 1995

2009 Act: The Sexual Offences (Scotland) Act 2009

2020 Act: The Coronavirus (Scotland) Act 2020



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About HM Inspectorate of Prosecution in Scotland

HM Inspectorate of Prosecution in Scotland (IPS) is led by HM Chief Inspector of Prosecution who is appointed by the Lord Advocate to inspect the operation of the Crown Office and Procurator Fiscal Service (COPFS). The functions of HM Chief Inspector are set out in the Criminal Proceedings etc. (Reform) (Scotland) Act 2007. The 2007 Act makes clear that in the exercise of any of the functions conferred by the Act, HM Chief Inspector is independent of any other person. 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.

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