



Inspectorate of Prosecution in Scotland

**Thematic Review of the
Investigation and Prosecution of
Sheriff Solemn Cases**

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INTRODUCTION

Serious criminal cases are dealt with under solemn procedure (“solemn cases”). All such cases are heard in the High Court or the Sheriff Court by a judge sitting with a jury of 15 people. This report focuses on cases prosecuted in the sheriff solemn courts.

85% of solemn cases are dealt with in the sheriff court. The complexity of the investigation and prosecution of such cases has evolved to keep pace with the changing nature of crime and societal behaviours including greater use of forensic evidence, CCTV images, evidence from the analysis of mobile phones and other computer devices and the use of social media platforms.

Inevitably the volume and increase in complexity of such cases impacted on the system and, prior to the reforms implemented in 2016, sheriff and jury business was characterised by churn, delays and inconvenience to witnesses, victims and jurors through repeated attendance for cases that did not proceed to trial resulting in the under-utilisation of court time.

As part of a wider agenda to modernise and deliver justice systems and structures fit for the 21st Century, the Scottish Government commissioned Sheriff Principal Bowen to undertake an independent review in April 2009 to examine “the arrangements for sheriff and jury business, including the procedures and practices of the Sheriff Court and the rules of criminal procedure as they apply to solemn business in the Sheriff Court; and to make recommendations for the more efficient and cost-effective operation of sheriff and jury business in promoting the interests of justice and reducing inconvenience and stress to the victims and witnesses involved in cases”.¹

The report made recommendations designed to tackle procedural and systematic inefficiencies and to change the culture contributing to delays. The legislative provisions reforming sheriff and jury procedure were phased in between 29 May and 31 July 2017.

As all sheriff solemn cases have been investigated and prosecuted under the new sheriff and jury regime since August 2017, it is an appropriate juncture to assess the effectiveness and impact, if any, of the reforms and review the current operation of solemn cases in the sheriff court.

Aim

The aim of this inspection was to review and assess the effectiveness of Crown Office and Procurator Fiscal Service (COPFS) investigation and prosecution of sheriff solemn business following the sheriff and jury reforms, having particular regard to:

- The effectiveness of procedures, processes and systems in ensuring cases are progressed expeditiously;
- The impact of the legislative reforms; and
- The individual needs of the victims.

¹ Paragraph 1.2, The Independent Review of Sheriff and Jury Procedure, Sheriff Principal Bowen (2010) – <https://www2.gov.scot/Publications/2010/06/10093251/0>



In doing so we examined:

- The effectiveness and robustness of the systems, processes and procedures governing the prosecution of sheriff solemn cases, including those designed to manage the new time limits;
- The timeliness of the investigation and prosecution of such cases;
- Compliance with statutory obligations and COPFS guidance when engaging with defence solicitors and preparing the written record;
- Reasons for adjournments and delays;
- Whether those investigating and prosecuting sheriff and jury business are sufficiently resourced and trained to provide a high quality service; and
- Whether there is appropriate communication with victims and witnesses throughout the life of the case.

Objectives/Outcomes

We seek to identify:

- Any weaknesses in the procedures, processes and systems aimed at progressing sheriff solemn cases and make recommendations for improvement;
- Any barriers/impediments to delivering a quality product, and make recommendations for improvement; and
- Good practice.

Scope of the Review

The review does not include any assessment of advocacy or the presentation of cases at court.

While the review is concerned with investigation and prosecution of sheriff solemn cases by COPFS, it is impossible to review the prosecution of such crimes in isolation. The role of the police, courts and judiciary all contribute to the effectiveness of the system and the experience encountered by victims and witnesses.

While our recommendations are directed to COPFS, our findings in some areas go beyond the remit of COPFS recognising that system-wide solutions are required to improve the experience of victims and witnesses.



Methodology

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

Interviews with personnel, organisations and parties involved with such offences, including:

- Key personnel involved in the investigation and preparation of sheriff solemn cases in COPFS, including prosecutors, Solemn Legal Managers (SLMs), business managers, case preparers, Victim Information and Advice (VIA) officers and administrative support staff.
- Police Scotland, Scottish Courts and Tribunals Service, (SCTS), members of the Judiciary and Scottish Government Justice Directorate.

A Survey of defence practitioners.

Document review: A review of COPFS departmental protocols, policies and guidance, management information, current statistics and trends and profile of cases.

Observation: Various first diet sheriff solemn courts.

File review: We examined 95 cases that were indicted to a sheriff solemn court within the calendar year of 1 January 2018 to 31 December 2018.

ACKNOWLEDGEMENT

We wish to extend thanks to all who facilitated our visits and shared their experience and knowledge.



KEY TERMS

Accused: Person charged with committing a crime.

Appear on Petition/Committal for Further Examination (CFE): First appearance of an accused at 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 COPFS staff who interview witnesses and prepare cases for court in solemn proceedings.

Citation: Document sent to a witness requiring them to attend at court to give evidence.

Crown Counsel (CC): 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.

First Diet (FD): A court hearing to establish the state of preparation of the prosecutor and defence for trial.

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

Knowledge Bank: COPFS information database containing legal and non-legal guidance.

Law Officers: The Lord Advocate and the Solicitor General for Scotland.

Lord Advocate: The Ministerial Head of COPFS.

National Sexual Crimes Unit (NSCU): A body of senior Crown Counsel specialising in the investigation and prosecution of sexual crimes.

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

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

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.



Scottish Courts and Tribunals Service (SCTS): An independent body that provides administrative support to Scottish courts and tribunals and to the judiciary.

Solemn Procedure: The procedure for the prosecution of serious criminal cases before a judge and jury in the High Court or Sheriff Court.

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

Trial Diet: A court hearing where evidence is led before a judge and jury to determine if a person is guilty of a crime.

Victim Information and Advice (VIA): The dedicated service offered by COPFS to victims, witnesses of certain crimes and bereaved relatives affected by certain types of death.

Victim

In law, the term complainer is used to describe the person against whom it is alleged a crime has been committed. In this report, we have used the term ‘victim’ for the person against whom it is alleged a crime has been committed. It is the terminology used in legislation and is commonly understood. It makes no assumption about the veracity of the allegation(s).

List of abbreviations:

1995 Act: The Criminal Procedure (Scotland) Act 1995

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

2016 Act: Criminal Justice (Scotland) Act 2016



KEY FINDINGS

- ❖ Following implementation of the reforms, key performance indicators demonstrate an increase in earlier resolution of cases and reduced churn. (Page 19)
- ❖ There was a high degree of compliance by prosecutors with their statutory duty to agree evidence. (Page 29)
- ❖ By the first diet 72% of cases had been resolved or were continued to trial. (Page 30)
- ❖ 79% of **all** cases were resolved by or at the first trial diet. (Page 37)
- ❖ The standard of communication, for victims within the VIA remit, fell below what should be expected for 35% of victims. (Page 43)
- ❖ Standard special measures were obtained in 100% of cases for victims/witnesses who were automatically entitled to such measures. (Page 48)
- ❖ There was an inconsistent approach taken to exploring whether special measures were necessary or appropriate for victims/witnesses who were not automatically entitled to standard special measures but have other vulnerabilities. (Page 48)



RECOMMENDATIONS

Recommendation 1

COPFS should ensure that, where there is a legal representative, a letter providing contact details of the first diet prosecutor and/or the SLM and seeking engagement of the defence on key issues is sent when the indictment is served in **all** cases. A record of the extent of communication with the defence before the first diet should be recorded on the COPFS IT system. (Page 28)

Recommendation 2

COPFS should refresh the guidance on witness engagement including an explanation of the content of the reports. (Page 34)

Recommendation 3

COPFS should ensure that all relevant information provided by witnesses (whether they provide availability details or not) is pulled into the first diet report. (Page 34)

Recommendation 4

COPFS should ensure that any information obtained on the availability of witnesses is captured and included in the first diet report. (Page 35)

Recommendation 5

COPFS should seek to incorporate the various elements of good practice into a national model for investigating and prosecuting sheriff solemn cases that can be adapted for local variations. (Page 40)

Recommendation 6

COPFS should extend the victim strategy to all victims of sexual crimes prosecuted in the sheriff solemn courts. (Page 44)

Recommendation 7

COPFS should apply a consistent approach to taking evidence by a commissioner for cases prosecuted in the High Court and sheriff solemn courts for all witnesses under 18. (Page 50)



CHAPTER 1 – SHERIFF AND JURY JOURNEY

1. The following depicts a typical journey for an accused person prosecuted by sheriff solemn procedure.

Report by the Police

2. Cases are reported to the prosecution service by the police or other reporting agencies by way of a Standard Prosecution Report (SPR). The SPR sets out: information on the crime(s); the circumstances of the crime(s); an analysis of the evidence; and information on the background, including vulnerabilities, of the accused and, where appropriate, victims and witnesses.
3. The accused person may be reported in custody or liberated on an undertaking² or for report.³



Initial Decision-Making

4. On receipt of a police report prosecutors in sheriff and jury teams will assess the evidence and, taking account of any relevant prosecution policies and the public interest, determine whether sheriff solemn is the most appropriate forum.



Appearance at Court

5. Solemn proceedings generally commence with the accused person appearing in court “on petition”. The petition is the initiating document which, among other things, sets out 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 to allow further enquiries to be carried out.
6. If remanded, the accused must be brought back to court within eight days, when the most likely outcome is that s/he will be “fully committed” (FC) for trial. Again s/he may either be released on bail at that point or remanded in custody, pending trial.⁴

² Release on condition to appear at court on a certain date.

³ Submission of a Standard Police Report (SPR).

⁴ Criminal Procedure Act 1701 (c.6): see also *Herron V A.B.C. & D.*, 1977 S.L.T. (Sh. Ct.) 24.



7. The next appearance at court by the accused is at the first diet which is discussed below.



Investigation

8. Following the appearance of the accused at court, the case will be allocated to a case preparer by a Solemn Legal Manager (SLM) to prepare the case for court. This is referred to as the precognition process.
9. The SLM will, as part of the allocation process, instruct any additional lines of inquiry deemed necessary including forensic analysis, examination of mobile phones, obtaining additional statements and consider whether any expert reports are required. The case preparer will thereafter undertake full investigation of the case, and, if necessary, instruct further additional lines of inquiry.
10. The case preparer records all key milestones and the progress of the case on an electronic “living” document known as the Pathway. It is accessible through an app that sits on the case preparers’ desktop. It is supported by a Pathway User Group that identifies best practice and enhancements.



Reporting to Crown Office

11. Once the case preparer has completed their investigation, the analysis and recommendations are considered by a SLM who will record whether they agree or disagree with the recommendation. With the exception of cases involving sexual crimes, the case is then reported to the High Court Unit (HCU) at Crown Office. The HCU is a specialised unit that provides a quality assurance role and will make a final decision whether to prosecute and the appropriate forum. Cases of sexual crimes are considered by the National Sexual Offences Unit (NSCU), a body of Crown Counsel specialising in the investigation and prosecution of sexual crimes.
12. In some cases no further proceedings may be instructed due to, for example, insufficient evidence. Other cases may be prosecuted by way of summary procedure – known as a reduction to summary – and others may resolve with an early plea of guilty being tendered in terms of Section 76 of the 1995 Act.





Section 76 Procedure

13. Where the accused intimates that he/she intends to plead guilty to some or all offences on the petition and wishes the case disposed of immediately, the prosecution can serve an indictment, without a list of witnesses or productions, with a notice to appear at court not less than four days from the date of the notice. This accelerated procedure is referred to as a Section 76 plea.
14. There are considerable benefits to using the Section 76 procedure. For victims and witnesses, it avoids their attendance at court and provides earlier resolution. For the accused an early plea will result in a discount of their sentence.⁵ For the prosecution, depending on the stage of proceedings, it may avoid the need to make further investigation and prepare for a trial, including securing the attendance of witnesses. For the courts and the criminal justice system, including legal aid provision, it provides a saving in allocating court time and resources to a trial sitting.



Indicting

15. Following an instruction to prosecute in the sheriff solemn court, the indictment is prepared. The indictment is a document narrating the charges, the witnesses and productions for the case. The prosecution is required to serve the indictment on the accused or his legal representative 29 clear days before the first diet. Additional witnesses, productions or labels can be added at a later stage by means of a written notice, referred to as a Section 67 notice. Such notices may be objected to by the defence and/or refused by a judge.



First Diet

16. The purpose of the first diet is to ascertain, for those cases that cannot be resolved, the state of preparation of the prosecutor and defence for trial and the extent to which they have complied with their duty to agree evidence.⁶ If both parties are prepared, the sheriff will fix a trial diet. The accused can plead guilty at the first diet if they wish.



⁵ Section 196 of the 1995 Act.

⁶ Section 71(1) of the 1995 Act.



Trial

17. Sheriff solemn cases are appointed to a trial diet which can continue (float) for a period of four days. For practical purposes they call within a trial sitting which are usually scheduled to last for one or two weeks during which a number of cases will be heard.
18. All prosecutions in sheriff solemn cases are conducted by local prosecutors. If convicted the sheriff has the power to impose a sentence of up to five years imprisonment and/or an unlimited fine.⁷

⁷ Sections 3(3) and 211(1) of the 1995 Act



CHAPTER 2 – LEADERSHIP AND GOVERNANCE

19. There are six sheriffdoms in Scotland⁸ with 39 Sheriff Courts. In general, solemn cases are heard in the jurisdiction where the offences were committed.
20. The core business of COPFS is provided by three functions – Local Court, Serious Casework and Operational Services. Each function is overseen by a leadership board, chaired by a Deputy Crown Agent.

Local Court

21. The delivery and management of sheriff and jury business falls within the local court function and is achieved through six local court teams aligned with the six sheriffdoms.
22. The Local Court Leadership Board provides strategic and management direction. Its composition includes representatives from all areas of those responsible for the delivery of sheriff and jury cases including members of the Senior Civil Service and business managers. It sits monthly and a “health check” report providing an analysis on all Key Performance Indicators (KPIs), including the number and age profile of cases being investigated and prosecuted at sheriff and jury level, is provided for each meeting.
23. It is supported by a local court improvement committee, chaired by a senior business manager, which project manages a number of work streams aimed at improving and streamlining processes.
24. In addition, there is a sheriff and jury national forum, chaired by a member of the Senior Civil Service, comprised of around 20-30 members of all grades which provides a vehicle for staff to ventilate and resolve practical issues and share good practice.
25. The Local Court Leadership board is accountable to the Executive Board. The Executive Board, chaired by the Crown Agent, provides strategic leadership and is collectively responsible for delivering COPFS’s vision, aims and objectives.
26. The Operational Performance Committee also has a role in overseeing COPFS performance and delivery of any KPIs, including those for sheriff solemn business.

COPFS Performance

27. Ensuring that criminal cases are effectively and independently investigated and prosecuted or have other proportionate action taken in the public interest is a strategic priority for COPFS.⁹
28. There are two key performance targets:

⁸ Glasgow and Strathkelvin; Grampian, Highlands and Islands; Lothian and Borders; North Strathclyde; South Strathclyde and Tayside, Central and Fife.

⁹ COPFS Business Plan 2018/19.



- To serve 100% of solemn indictments within statutory time limits; and
- To take and implement an initial decision in 75% of criminal cases within four weeks of receipt.

Processes and Procedures

29. Local Court also incorporates National Initial Case Processing (NICP) which has responsibility for the initial decisions for the vast majority of cases likely to be prosecuted in the summary courts. In relation to solemn business, NICP acts as a “gatekeeper” and refers cases, which are likely to be prosecuted in the solemn sheriff courts, to the sheriff and jury teams within each sheriffdom for an initial decision and, where appropriate, prosecution.

Sexual Crimes

30. There has been a continuing trend of an increase of sexual crimes prosecuted in the sheriff solemn courts. Each of the local court units has introduced a sheriff and jury sexual offence team comprising of specialist prosecutors to investigate and prepare such cases. Within the teams there is a system of accreditation. All SLMs and case preparers require to demonstrate competency by submitting cases to be assessed against required standards, complete sexual offences and taking evidence by a commissioner e-learning modules and attend a bespoke sheriff and jury training course.¹⁰

Training and Guidance

31. A suite of courses and materials are available for case preparers and prosecutors. All prosecutors conducting trials before a jury should complete two separate advocacy courses and a course for case preparers focusing on the investigation stage of such cases has been introduced. In addition a number of training videos covering various aspects of presenting evidence can be accessed on the desktop and guidance and styles are available on the COPFS Knowledge Bank.

¹⁰ In some offices this work is undertaken by a complex case team which also deals with economic crime cases such as fraud.



CHAPTER 3 – SHERIFF AND JURY REFORMS

32. The majority of the recommendations proposed in the Bowen Report were enacted in the Criminal Justice (Scotland) Act 2016 (the 2016 Act).¹¹ Many mirrored changes made to the High Court system by the Bonomy reforms¹² including indicting to a first diet only¹³ the submission of a written record and increased judicial management over court business.
33. The key changes were:
- Cases are indicted to a first diet only;
 - A duty was placed on the prosecution and defence to communicate within 14 days of the service of the indictment and to prepare and lodge a written record of their state of preparation to the court no later than two court days before the first diet;¹⁴
 - Trial diets are allocated at the first diet only once the court is satisfied that the case is fully prepared;
 - Trials are allocated to a specific date and only continued for a maximum period of four days before being commenced, adjourned or discontinued;
 - SCTS assumed responsibility for scheduling solemn cases;
 - Time limits were altered to bring them in line with High Court procedure.

Time Limits

34. Time limits regulate the maximum time that can elapse between a person appearing on petition and the first diet and the commencement of a trial¹⁵ and apply to every charge for each accused. The end of the time limit is commonly referred to as the “time bar”. Time limits differ if the accused is remanded or on bail. The 2016 Act amended solemn time limits as follows:
- Increased from 15 days to 29 days the period that must elapse between service of the indictment and the first diet
 - Provided that the first diet must call within 11 months of the accused’s first appearance at court for bail cases and within 110 days for custody cases
 - Increased the maximum length of time that a person can be remanded in custody pending a trial on indictment in the sheriff court from 110 days to 140 days.

¹¹ Sections 78 to 83 amended the 1995 Act.

¹² Reforms made to High Court procedure following a review conducted by Lord Bonomy.

¹³ In the High Court it is called a Preliminary Hearing.

¹⁴ The content and style of the written record is set out in Form 9.3A Act of Adjournal (Criminal Procedure Rules 1996) as amended

¹⁵ Time limits pre and post reforms can be extended by the court – Section 65 of the 1995 Act.



The reforms were designed to:

- Reduce waste and inefficiency through improved level of preparation of cases prior to the first diet by the prosecution and defence
- Achieve earlier and more effective communication focussing the issues in dispute and reducing adjourned trials
- Improve the speed of disposal of cases
- Reduce the number of witnesses required to attend court and improve the experience of victims, witnesses and jurors
- Increase judicial management of Sheriff and Jury business; and
- Increase public confidence in the system.

IMPLEMENTATION

Practice Note Number 3 of 2015: Sheriff Court Solemn Procedure

35. In anticipation of the proposed legislative changes, some of the recommendations were progressed, through a criminal courts practice note¹⁶ issued in December 2015. It provided guidance on the contribution expected of the prosecution and defence to enable the judiciary to manage sheriff and jury cases. It covered five areas of sheriff and jury business:

- **Management of Solemn Business** – it placed the onus on sheriffs to be actively involved in the management of the solemn business of the court, notably at the first diet stage, with a view to maximising the utilisation of court time.
- **Communication between the Prosecution and the Defence** – it required the prosecution and defence to have meaningful communication prior to the first diet and to fully address the court on the matters set out in the written record, including the steps taken to agree facts which are unlikely to be disputed.
- **Disclosure and Defence** – the prosecution was expected to have complied with disclosure requirements and the defence to timeously lodge a defence statement¹⁷ setting out the nature of the defence and any matters of fact on which the accused takes issue with the prosecution.
- **Conduct of First Diets** – emphasising that the first diet is intended to be the end point of preparation rather than the starting point, it stipulated that a full explanation for any motion for a further first diet by the prosecution or the defence would be required. Following a plea of not guilty the court will ascertain whether the defence and prosecution:
 - have considered the evidence they may require to lead at the trial;
 - have taken steps to ascertain whether any of the witnesses will require special measures, by reason of she/he being a child or a vulnerable person, or require the services of an interpreter;

¹⁶ Practice Notes are documents issued by the Lord Justice General in respect of the "Criminal Courts". They inform practitioners of a practice the court is minded to take or of a practice the court expects them to take.

¹⁷ Section 70A of the 1995 Act



- have disclosed the witnesses they intend to call and ascertained their availability to attend.
 - **Conduct of Trial Diets** – the prosecution and defence must provide a reasonable estimate of how long the trial is likely to last. Having regard to securing the efficient use of court time, the responsibility for determining the running order of trials remained with the prosecution.
36. Thereafter the legislative reforms were implemented incrementally between 29 May and 31 July 2017.
37. Prior to their implementation COPFS established a project team to prepare for the transition. Various strands were considered:

Training – There was a combination of training initiatives for the staff. A task force went out to all local court teams to deliver face-to-face training to SLMs and business managers highlighting the key points of the reforms with a focus on interacting with sheriff clerks. It emphasised the need to put in place a process for first diet preparation and on managing the trial business.

A mandatory e-learning package for all staff involved with investigating and prosecuting sheriff solemn cases was also introduced.

Workload – Through the use of overtime and extra resources, the Local Court teams worked to reduce the number and age profile of such cases. There was, therefore, a healthy age profile prior to the reforms being fully implemented.

Petition Tracker – COPFS developed a Real Time Petition Tracker that holds data for all accused that appeared on petition on or after 1 April 2016. It is updated weekly and pulls information from the COPFS IT system including the target first diet date, relevant time bars and estimated length of trial information enabling statistics to be produced on the number of live indictments and how many trials are fixed. It is accessible by SCTS and is a critical tool to assist with predicting levels of business and planning court calendars.

SCTS Solemn Criminal Reforms Sheriff and Jury Implementation Steering Group

38. In addition to the preparation undertaken by COPFS, under the Chair of Sheriff Principal Pyle, SCTS established an implementation Group. It comprised of members of the judiciary; Sheriff Clerks from various jurisdictions; members of SCTS headquarter units specialising in Management Information, Legislation, IT and Training; and representatives from COPFS.
39. The Group identified key indicators to assess the success of the reforms and monitored these through a bespoke suite of Management Information reports. These included –
- Number of Section 76 pleas as a % of registered indictments
 - Number of accused who pled guilty at first diet as a % of first diets
 - Number of accused where proceedings concluded at the first diet as a % of first diets



- Number of accused that pled/concluded at continued first diets as a % of continued first diets
- Trial attrition rates.¹⁸

Performance

40. In their 2018/19 Business Plan SCTS reported that the reforms have improved the efficiency of case management and reduced levels of case churn.
41. Management Information held by SCTS comparing 2014/15 – the last full year before the practice note – with the current financial year 2018/19 make favourable reading.

	2014/15	2018/19	Percentage point change pre and post reforms
Number of Section 76 pleas as a % of registered indictments	18%	22%	4 percentage point increase
Number of accused who pled guilty at the first diet as a % of first diets	11%	28%	17 percentage point increase
Number of accused who pled guilty at a continued first diet as a % of continued first diets	13 %	16%	3 percentage point increase
Number of accused where proceedings were concluded at the first diet as a % of first diets	14%	32%	18 percentage point increase
Number of accused where proceedings were concluded at a continued first diet as a % of continued first diets	17%	23%	6 percentage point increase
Pre-trial attrition % of indictments registered to trials called	28%	45%	17 percentage point increase
% of trials adjourned due to a lack of court time	7.1%	2%	5.1 percentage point decrease

Key Finding

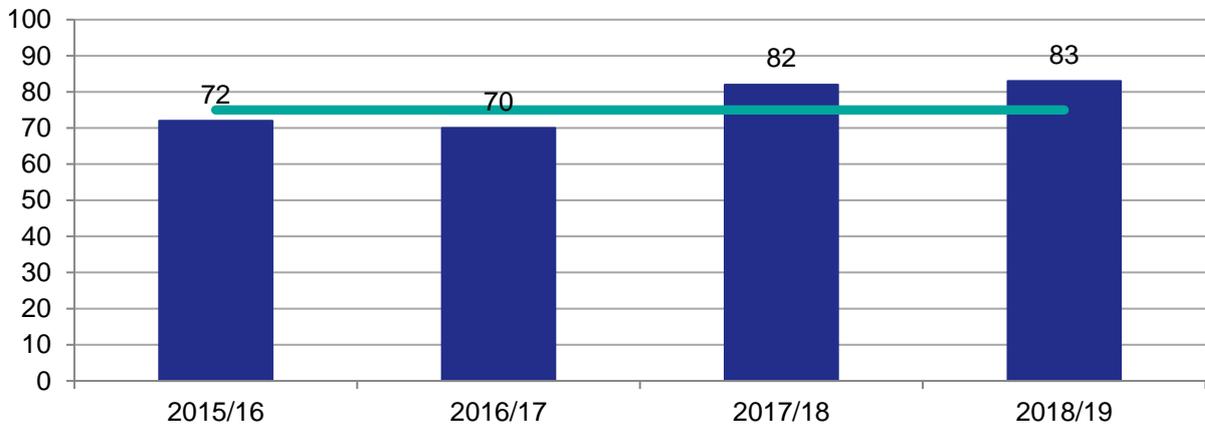
Following implementation of the reforms, key performance indicators demonstrate an increase in earlier resolution of cases and reduced churn.

¹⁸ Process whereby trials fall out of the system – compares the number of trials called to indictments registered.



42. COPFS has a KPI to serve indictments in 75% of **all** sheriff and jury cases within eight months of first appearance on petition. Chart 1 illustrates that, following the reforms, compliance with the target has improved. It was met and exceeded in 2017/18 and 2018/19.

Chart 1





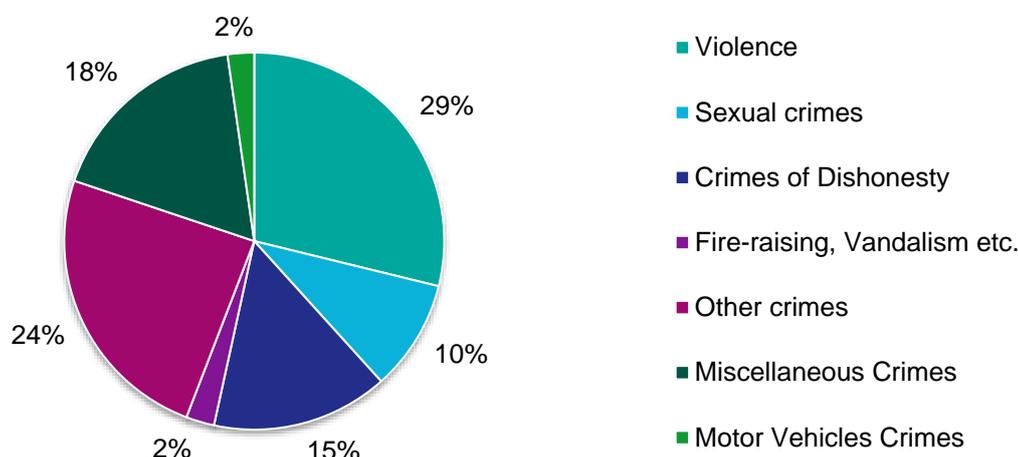
CHAPTER 4 – OVERVIEW OF CASES INDICTED IN 2018

43. There were 5,966 accused persons indicted in the solemn sheriff court in 2018.¹⁹ 21 were subsequently dealt with by summary procedure. There are a number of reasons why cases may be dealt with by summary proceedings. For example, new information may result in there being insufficient evidence for some charges or the charges being less serious.

Nature of Offences

44. Chart 2 provides an overview of the main offence of the 5,945 accused indicted to be prosecuted in the sheriff solemn courts.²⁰

Chart 2 – Nature of Offences



* **Miscellaneous** offences category includes offences of public disorder, assaults, stalking and a wide range of low-level and statutory offences.

* The **Other crimes** group includes drugs offences, possession of offensive weapons and crimes against public justice, including breach of court orders.

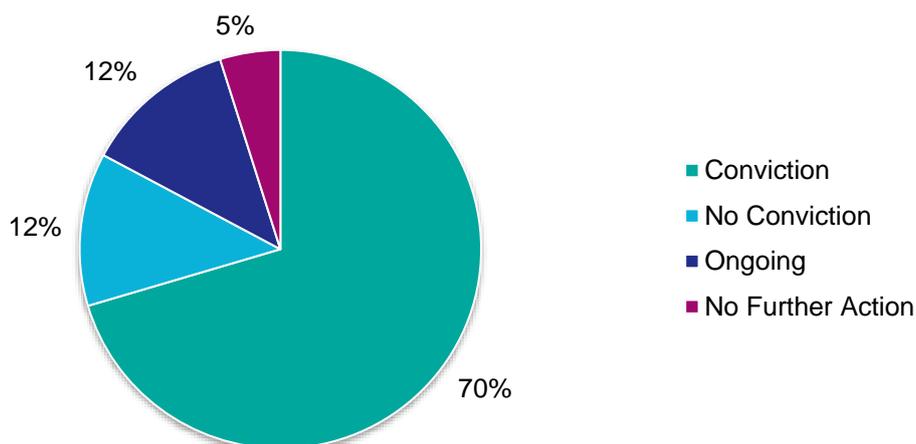
Chart 3 provides a breakdown of the outcome of the cases. There was a finding or plea of guilty in 70%, a finding of not guilty/not proven or a not guilty plea accepted in 12%, 5% were discontinued and 12% are ongoing.

¹⁹ Source – COPFS Management Information Unit.

²⁰ Based on the Scottish Government classification and excludes charges not separately actioned, or taken forward as summary or direct measures.



Chart 3 – Outcomes

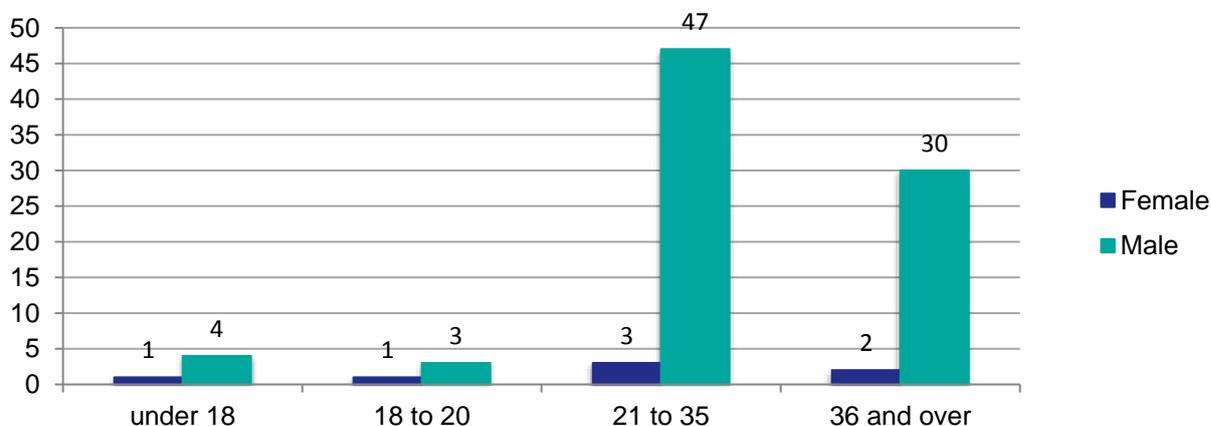


- 45. Of those convicted 60% received a sentence of imprisonment and 140 (3.5%) were detained in a Young Offenders Institute.
- 46. On examining cases where no further action had been taken, 46% were due to there now being insufficient evidence. There were a variety of reasons for the other cases being discontinued including the attitude of the victim, further action being disproportionate and the accused had died.

Cohort Review

- 47. We examined 95 cases where the accused was indicted to be prosecuted in the sheriff solemn court in 2018.²¹ We examined the action taken by the prosecutor and the nature of the offences and outcomes. There were four cases which had outstanding warrants for the arrest of the accused due to their non-appearance at court. These were excluded from the review resulting in an analysis of **91 cases**.
- 48. 84 of the accused persons were male and seven female. Chart 4 illustrates a breakdown by age and gender. 10% (9) were under the age of 21.

Chart 4 – Gender and Age

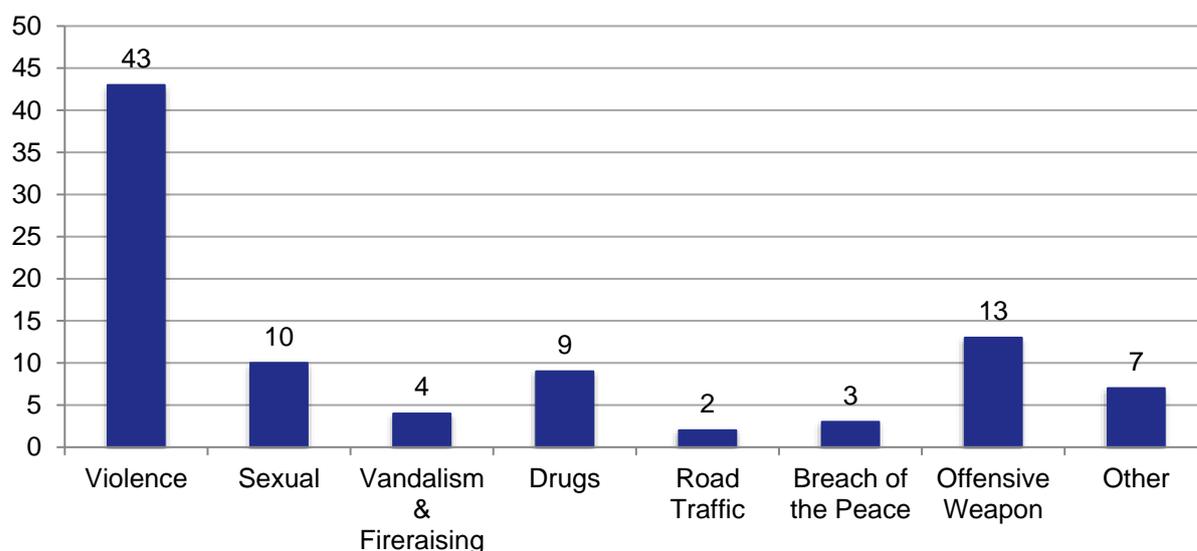


²¹ Source: COPFS Management Information Unit: Jan-Dec 2018.



49. After appearing on petition, 55% (50) were released on bail and 44% (40) were remanded in custody. One, who was serving a sentence of imprisonment, was ordained to attend.
50. Chart 5 provides a breakdown of the offences for which they were indicted. The main offences were offences of violence 47% (43); being in possession of an offensive weapon 14% (13); sexual crimes 11% (10) and drug offences 10% (9).

Chart 5 – Type of Offence



When resolved

Of the 91 cases:

- 20% (18) by a Section 76 plea
- 30% (27) at the first diet;²²
- 43% (39) were resolved at the trial diet; and
- 8% (7) are ongoing.²³

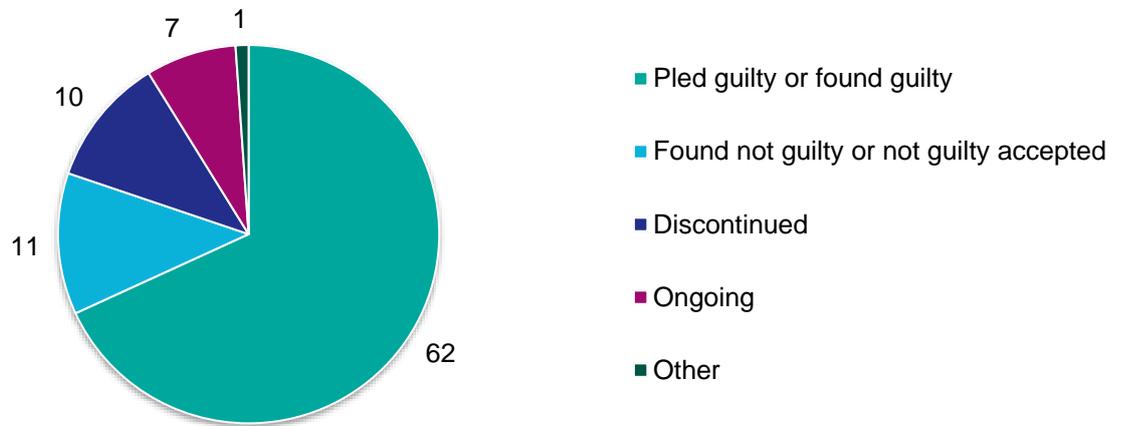
²² One person died prior to the first diet.

²³ As at 15 April 2019 – adds to more than 100 due to rounding up.



Outcomes

Chart 6 provides a breakdown of the outcomes:



- 68% (62) pled or were found guilty;
- 12% (11) were found not guilty/not proven or a not guilty plea was accepted;
- 11% (10) were discontinued;
- 8% (7) were ongoing; and
- One accused died.

51. Of those who were found or pled guilty (62 cases), 69% (43) were sentenced to a period of imprisonment; 23% (14) were given a community payback order and 5% (3) received other disposals including fines, compensation orders and orders of disqualification. In two cases, the accused are still to be sentenced.



CHAPTER 5 – ANALYSIS OF REFORMS

52. We examined the key measures implemented by the reforms to ascertain if COPFS was complying with their statutory duties and whether the objectives of the reforms were being achieved.

Case Preparation

53. Key to effective and efficient use of the sheriff solemn courts is preparation. The additional time between the service of the indictment and the first diet and the obligation to provide a detailed account of the state of preparation in the written record was intended to result in more focus on front loading resulting in better prepared cases by the first diet.
54. Of the 91 cases further lines of enquires were instructed by the case preparer or SLM in 44 cases and supplementary statements from the victim or witness (es) were requested in 26. There were a variety of reasons why additional enquiries/supplementary statements were necessary, some were very case specific, but there were some recurring themes.
- By far the most common reason (16 cases) was to obtain information on the nature/extent of injuries sustained from medical personnel/medical records or the victim.
 - 10 required additional information on 999 calls.
 - In five it was to establish whether there were any additional victims; four involved sexual crimes and one was an offence of domestic abuse.
 - In five it was to clarify/obtain, at least in part, further information requested by the accused's representative.
55. Of the 26 cases where supplementary statements were requested, 11 involved sexual crimes or offences of domestic abuse; seven were obtained from victims.
56. One indicator of how well the cases are prepared is the number of Section 67 notices required to add productions, labels or witnesses.

Section 67 Notices

What we found

57. Of the 91 cases, there was one or more Section 67 notice in 34 (37%) cases. In 16 of the 34 cases, almost half, the proceedings were subject to custody time scales. In 13 there was a direct correlation between the additional enquiries and the evidence added by section 67.
58. Of evidence added by a Section 67 notice there were some recurring themes:
- Transcripts of interviews of the accused or of joint investigative interviews of child witnesses (five cases)



- Transcripts of 999 call evidence (four cases)
- VIPER reports (five cases)
- Forensic/Fingerprint reports (five cases)

59. While Section 67 notices should not be used to add essential evidence that should be routinely obtained at the outset, in certain circumstances, it cannot be avoided due to the late submission of reports from other organisations or late requests from the defence. In one case photos and medical information was added at the request of the co-accused and in another the evidence, following the arrest of a co-accused, required amended forensic and fingerprint reports.
60. Overall productions or witnesses were added by a Section 67 notice in just over a third of the cases with in the majority of cases only one notice being required.

What we heard

61. As no statistics are retained on the number of Section 67 notices lodged, we were unable to compare our findings with an average number of notices used prior to the reforms but most prosecutors reported that the number of Section 67 notices have decreased.

Communication between the Prosecution and Defence

62. A key component of the reforms was to improve communication between the prosecution and defence prior to the first diet with a focus on agreeing non-contentious evidence and resolving cases at the earliest possible stage. The reforms placed an obligation on the prosecutor and the accused's legal representative to communicate with each other within 14 days of service of an indictment and submit a written record with the court no later than two court days before the first diet.²⁴
63. To encourage early engagement COPFS produced two letters – one to be issued when the case is allocated to a case preparer and the second when the indictment is served.
- The first letter provides contact details of the case preparer and the SLM and invites the accused's legal representative to make contact if there is any prospect of a Section 76 plea or any other matters that may assist in reaching an early resolution.
 - The second letter provides contact details of the first diet depute (where known) and the SLM and invites the accused's legal representative to make contact if there is any possibility of a plea; any reason why the case cannot be continued to trial; any outstanding disclosure issues or preliminary issues; and any evidence that can be agreed.
64. We examined whether the second letter was being issued and the extent/nature of the communication that had taken place within 14 days of service of the indictment.

²⁴ Sections 71C(2) and (3) of the 1995 Act and 9.3A of Act of Adjournal (Criminal Procedure Rules) 1996 as amended.



What we found

65. For the 18 cases where a Section 76 plea was accepted there was no need to issue the second letter.
66. Of the remaining **73** cases:
- In **54** (74%) a letter was sent when the indictment was served.
 - In **13** there was no record of the letter being issued. The indictment was sent with a brief covering letter. From analysis of the written records, we ascertained:
 - In six there had been some communication with the accused's representative that occurred after the 14 day period.
 - In three some other form of communication took place within the 14 day period.
 - In three the prosecutor had left messages for the accused's representative to make contact. If there was any subsequent communication, it took place after the 14 day period.
 - In one there had been contact by phone on various occasions but the dates were not recorded.
 - In **four**, due to the indictment documentation not being retained on the COPFS IT system, it could not be ascertained whether any correspondence had issued. From analysis of the written records, we ascertained:
 - In two there had been contact but it could not be determined whether it took place within the 14 day period.
 - In one there had been email contact regarding possible resolution and agreement of evidence after the 14 day period.
 - In one a telephone message had been left for the accused's representative. If there was any subsequent communication, it took place after the 14 day period.
 - In **one** early correspondence from the accused's representative, indicating that the case may resolve in a plea, resulted in an email exchange between the SLM and the solicitor. The accused pled guilty to an amended charge at the first diet.
 - In **one**, a letter was sent after the indictment was served and a meeting took place both beyond the 14 days. The case resolved by a partial plea of guilty at the first diet.

Communication

67. Of the **73** cases:
68. We found that communication, beyond sending letters with the indictment, took place in **54** (74%) cases:
- In **35**, we found there was fruitful discussion on various aspects of the cases including potential resolution by a plea, agreement of evidence; disclosure;



obtaining social work records and Evidence on Commission (EOC). The majority of which (74%) involved discussions regarding resolution by plea and/or agreement of evidence.

- In **19**, it was not possible to ascertain the content of the discussion from records or the written record.

69. For the remaining 19 cases, it was unclear whether there had been any discussion between the prosecutor and the defence although in nine cases the prosecutor had left a message for the accused's representative to make contact.

What we heard

70. There are a variety of approaches taken to engaging with the defence; some areas operate designated surgeries where a prosecutor is available at specific times to discuss cases; in others prosecutors pro-actively attend the local defence common room to facilitate discussion.

71. Prosecutors advised that early notification of contact details of the case preparer and first diet depute and a more pro-active approach taken by sheriffs to query the extent of communication at the first diet has encouraged earlier engagement. 64% of defence solicitors that responded to our online survey²⁵ reported there was better communication between the prosecution and defence.

72. Overall, there was a high degree of compliance – 74% – of the prosecution providing contact details and communicating on key issues when the case was indicted and/or before the first diet but given the statutory duty on the prosecution and defence to communicate within 14 days of serving the indictment there is room for improvement. While the issuing of letters with the indictment is unlikely, without other communication, to fulfil the intention of the statutory duty, they do open up channels of communication and should be issued in all cases where a legal representative is instructed.

Recommendation 1

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

Agreement of Evidence

73. The reforms placed emphasis on the defence and prosecution to agree as much evidence as possible.

74. There are two mechanisms for agreeing evidence:

²⁵ We issued an online survey to 42 defence firms (48 solicitors) to obtain their views on whether the reforms had changed and/or improved Sheriff and Jury business. See Annex A for the results/comments.



- A Joint Minute of Agreement (JMA)²⁶ – setting out any evidence not in dispute or agreed.
- A Statement of Uncontroversial Evidence (SUE)²⁷ – setting out any facts that one of the parties assess are unlikely to be disputed by the other party.

What we found

75. In the 18 cases where the accused pled guilty by the Section 76 procedure the issue of agreement of evidence did not arise.
76. Of the remaining 73 cases:
- In 34 a JMA was sent to the defence **or** a SUE was served prior to the first diet.
 - In 31 there was no JMA or a SUE served prior to the first diet.
 - In eight a SUE was served **and** a JMA was sent to the defence.
77. Of the 31 where there was no record of a SUE or a JMA:
- In 23 the prosecutor had identified evidence that could be agreed in the written record or there had been discussion with the defence.
 - In five the cases were resolved at the first diet.
 - In two the prosecutor assessed that there was no evidence capable of agreement.
 - In one the accused died prior to the first diet.

What we heard

78. While in some areas draft JMAs are prepared and sent to the defence prior to the first diet, the most common approach is for the prosecution to serve a SUE with the indictment which is subsequently used to inform the content of a joint minute, if the case is not resolved. Prosecutors reported that greater scrutiny by sheriffs on why evidence could not be agreed was instrumental in securing agreement of evidence.

Key Finding

There was a high degree of compliance by prosecutors with their statutory duty to agree evidence.

²⁶ Section 256(2) of the 1995 Act.

²⁷ Section 258 of the 1995 Act.



First Diets

“The First Diet should not sound the starting gun for preparation, rather it should sound the bell for entering the final lap.”²⁸

79. The purpose²⁹ of the first diet is to establish the state of preparation of the prosecutor and defence for trial and the extent to which they have complied with their duty to agree evidence.³⁰

What we found

Section 76 Pleas

80. 18 cases pled guilty by the Section 76 procedure prior to the first diet.

First Diets

81. Of the **73** cases that had a first diet:

- 19 pled guilty
- 28 had a trial fixed
- 23 had an adjourned first diet fixed
- In two a warrant was issued for the arrest of the accused
- One case was discontinued

Key Finding

By the first diet 72% of cases had been resolved or were continued to trial.

82. Given that continued first diets are intended to be the exception we examined why an adjourned first diet was fixed in **23** cases:

83. **Six** were adjourned at the request of the prosecutor:

- One was to make enquiries regarding the whereabouts of a co-accused
- Following the arrest of a co-accused, one was to re-indict the case to prosecute both accused at the same time
- Two were for productions to be added by a Section 67 notice
- One was for a Video Identification Parade (VIPER)³¹ to be conducted

²⁸ Paragraph 5.21, Page 52 The Independent Review of Sheriff and Jury procedure by Sheriff Principal Bowen, June 2010.

²⁹ Section 71 (1A)-(3) of the 1995 Act outlines the additional tasks the court can undertake at a first diet.

³⁰ Section 71 (1)(b) of the 1995 Act.

³¹ Video Identification Parade Electronic Recording System replaces "live" identification parades. It involves the suspect's photographic image being recorded then included among a number of other stand-in images and then being shown to witnesses on a television type screen.



- One was for the accused to attend court following a warrant being issued after he failed to appear at the first diet.

84. **Nine** were adjourned at the request of the defence:

- Three related to consulting on or obtaining expert reports
- In four, the defence required more time to seek instructions and/or prepare and in one to also obtain disclosure
- One was due to the accused not being brought to court from prison
- In one there was no record of why it was adjourned.

85. **Seven** were on joint motion:

- In two the reasons were not recorded
- In one the prosecutor was awaiting witness availability information, the defence required to obtain instructions and a co-accused had instructed investigation of a possible defence witness
- One was for possible resolution
- One was for the defence to obtain legal aid and for the prosecution to trace the complainer
- In one the defence requested an evidential hearing to be fixed
- In one the defence requested further lines of investigation to be explored by the prosecutor.

86. **One** was adjourned by the sheriff for the prosecutor to disclose a forensic report and for the defence to consider agreeing evidence.

87. Of the 73 cases:³²

- 45 had one first diet
- 14 had two
- 14 had between three and seven.

88. There were a variety of reasons for multiple adjournments.

89. The most common were:

- Difficulties involving a co-accused where the prosecutor was seeking to prosecute all accused at the same time
- Absence of an accused or co-accused
- Evidential issues such as seeking to admit the statement of a witness who was overseas and to debate an application to introduce sexual history or character evidence
- To enable the accused to be psychologically or psychiatrically examined

³² Excludes four warrant cases and 18 Section 76 pleas



- To consider an application for evidence on commission
- A change in legal representation.

90. In the main, the reasons for multiple adjournments first diets were not due to cases being ill-prepared but to progress legitimate further inquiries arising from discussion with the defence and often due to the absence of accused and/or co-accused.

What we heard

91. There was agreement from administrative staff, case preparers and prosecutors that the discipline of having to produce a written record detailing the state of preparation of cases has resulted in more front loading and better prepared cases by the first diet. 36% of defence solicitors identified having more time to prepare between the service of indictment and the first diet as a positive impact of the reforms.
92. Prosecutors have varying amounts of preparation time prior to the first diet ranging between 2/3 days to two weeks although in the latter model prosecutors deal with other associated work including warrant requests, correspondence and taking decisions on new cases. Most prosecutors advocated 7 days prior to the first diet as the optimum period for preparation. Court loadings also varied from between 6/7 to 15 cases.
93. Some offices operate a model of dedicated first diet deputies dealing exclusively with preparing and conducting first diets and in some smaller offices the prosecutor preparing the first diet court also deals with the subsequent trials. The combination of volume of cases, the logistics of court programming, leave and part-time working precludes replicating these models in some jurisdictions.
94. There is excellent communication between the sheriff clerks and first diet prosecutors with regular meetings to discuss court loadings/scheduling, prioritisation of trials, witness availability and potential problems with cases. The sharing of management information is key to the effective management of the first diet and trial courts. 55% of defence solicitors reported they had seen better scheduling of trials since the reforms.
95. Prosecutors reported a greater degree of consistency of approach where there were dedicated solemn sheriffs dealing with the first diets.

Witness Engagement

96. One benefit of the reforms is that witnesses only have to attend court after the sheriff allocates a trial diet. The onus is on the prosecution to advise the court on the availability of witnesses for the trial at the first diet. Prior to the reforms, COPFS established a Project Board to consider the most effective manner of obtaining information on witness availability, resulting in COPFS, together with Police Scotland, implementing the witness engagement scheme.



Witness Engagement Scheme

97. To engage non-police witnesses, the following process was implemented by the prosecution.
- The system automatically sends out letters (five months after the accused has appeared in court in bail cases and 10 days post FC in custody cases) to all non-police witnesses to provide dates when they are unavailable to attend court within a specified time frame
 - If they fail to reply within seven days, where there is a mobile contact number, a text reminder is sent
 - For those witnesses identified as “essential” and who have not replied within 14 days, their details are passed to the Witness Engagement Team (WET) at COPFS, who contact them by telephone and/or email is attempted
 - If essential witnesses cannot be contacted within 21 days, the WET issue a trace request to the police asking them to make contact with the witness (es) and ascertain their availability
 - On receipt of a trace request the police should make inquiries as to their availability. If unable to make contact, the police are required to make two phone calls and a visit to each witness before submitting the report.

What we found

98. Of the 91 cases:³³
- In 51 trace letters were sent to the police for at least one or more witnesses
 - In 33 no trace letters were required
 - In seven only police witnesses were required.
99. Of the 51 cases trace letters were issued for 116 witnesses:
- In 33 (65%) the police provided availability information or details of their efforts to contact the witness (es)
 - In 15 (28%) there was no record of any report from the police
 - In three (6%) the police provided a report for some of the witnesses.
100. Our findings mirror the national performance by the police in 2018/19 where they successfully contacted and ascertained the availability of 66% of witnesses.³⁴ It is acknowledged that some witnesses/victims are a hard to reach group but given the necessity of witnesses attending and the reduced number of witnesses that are now required to attend at court, it is a significant short fall from the 100% target that is required.

³³ Excludes four warrant cases.

³⁴ Source: COPFS statistics.



What we heard

101. There was unanimous agreement that the main reason cases are adjourned is due to witness difficulties – either not having sufficient information regarding their availability to attend court resulting in adjourned first diets or they are reluctant or hostile and do not attend at trial diets resulting in adjourned trials. Prosecutors advised that they spent a considerable amount of time tracing and chasing up witnesses.
102. The role of police liaison officers, who are co-located in some Procurator Fiscal Offices, was highlighted by many prosecutors as providing an invaluable service in tracing, contacting and securing the engagement of witnesses and went some way to bridge the gap where there was no availability information provided by the police in response to trace letters.
103. The provision of police liaison officers in the larger offices in each of the Sheriffdoms may go some way to improve police performance in this area.

First Diet Witness Reports

104. Advising the court on the availability of witnesses is critical to any decision to fix a trial diet. It is, therefore, important that prosecutors have full information regarding witness availability and any witness issues. All information on the availability of a witness is recorded in the COPFS IT system. The WET will also capture any relevant information in a note field on the system. All information on witness availability is pulled into a first diet witness report (First Diet Report) for the sheriff and jury teams. The report also provides contact history/attempts for those witnesses who have not engaged with the process.

What we heard

105. We were told that prosecutors were generally unaware of the role and work of the WET and that the information provided in first diet report was confusing and unclear.

Recommendation 2

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

106. As currently constituted, if the witness indicates that they are available throughout the dates specified in the letter, the report records their availability but does not capture any information recorded in the note field. For example, in one case the witness, who had confirmed his availability to attend on all dates, advised that he required a Polish interpreter. While this information was recorded by the WET in the note field, it was not pulled into the report and the first diet prosecutor was not aware of the need to obtain an interpreter.

Recommendation 3

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



107. Further, in accordance with the guidance, the WET only record information if the police have completed **all** required inquiries for **all** witnesses in each case. Otherwise the entire response is returned to the police for action and no information for any witness is included in the first diet report. The intention is to avoid police engagement statistics being inflated by including cases where there has not been full compliance and to emphasise the importance of contacting all witnesses. While appreciating the necessity for accurate data and the need to obtain information for all witnesses, there requires to be a mechanism to enable information gathered for any witness to be made available to the first diet prosecutor. The failure to record information obtained for some witnesses is a significant omission in the first diet report.

Recommendation 4

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

Securing the Attendance of Witnesses

108. Given the importance of securing the attendance of witnesses, if the witness, having been requested to attend at court, deliberately and obstructively fails to appear or the court is satisfied that the witness is not likely to attend, the prosecution or the defence can apply for a warrant.³⁵ On arrest the court can, after hearing the parties, remand or release the witness with bail conditions.

109. Where it is anticipated that a witness is unlikely to co-operate and attend court, the prosecutor can also issue a citation requiring the witness to attend at the first diet. If the witness attends the importance of attending at the trial can be emphasised. If they fail to attend the prosecutor can seek a warrant.

What we found

110. We examined the cases to ascertain whether a citation was sent to any witnesses to attend a first diet or a warrant was obtained to secure their attendance.

Attendance at the First Diet³⁶

111. There was only one case where witnesses were required to attend the first diet. It involved an offence of assault to severe injury and danger to life. Three witnesses were sent a citation to attend at the first diet – the victim and two essential witnesses following information from the police that the victim was fearful of reprisals and the essential witnesses were hostile. On receipt of the citation the victim contacted VIA and advised that he would attend the trial. His attendance at the first diet was then excused. The other two witnesses attended at the first diet and the case proceeded to trial.

³⁵ Section 90A of the 1995 Act.

³⁶ This analysis leaves out of account the four warrant cases and the 18 cases that resolved by Section 76 plea where this would not be relevant/necessary.



Witness Warrants³⁷

112. Witness warrants were obtained in two cases.

- The first involved a charge of assault and robbery. At the trial an essential witness for the prosecution, who was also required for the defence, did not attend and a warrant was granted for their arrest. The witness had a number of outstanding warrants and was actively evading the police. The proceedings were eventually discontinued.
- The second case involved charges of domestic abuse. Warrants were granted for two witnesses at the first trial diet. The witnesses were arrested and appeared at court and were held in contempt of court throughout the proceedings. The accused was found guilty and sentenced to 21 months imprisonment.

113. We identified a number of cases where the police had advised that the witnesses were hostile and non-co-operative but no citation had been issued to attend the first diet.

- In a case of assault to severe injury, where there were counter allegations that were being prosecuted separately and the witnesses were known to be hostile there was no citation sent requiring them to attend at the first diet.
- In a case of domestic assault to severe injury and permanent disfigurement the victim was not cited to the first diet despite failing to attend a VIPER parade.

114. Although both cases ultimately resolved by pleas of guilty, citing the witnesses to the first diet would have provided the prosecutor with an indication of whether the witnesses were likely to attend at the trial.

What we heard

115. We heard mixed accounts of the use of the provisions to require witnesses to attend at the first diet and/or seeking warrants for witnesses. In Glasgow, there is a dedicated prosecution sitting manager located at the court with an administrative member of staff and a police liaison officer. The police liaison officer assists in tracing witnesses and the sitting manager is extremely pro-active on seeking warrants if there is information that the witness is hostile or is unlikely to attend. A less pro-active approach was taken in other jurisdictions.

116. Given the consensus by all those involved in dealing with sheriff solemn cases that the main reason for cases being adjourned or discontinued is due to witness difficulties, borne out by our findings at paragraph 124 below, there is clearly potential to make more use of this provision to pre-empt difficulties at the trial and to place prosecutors in a strong position to seek warrants.

³⁷ This analysis leaves out of account the four warrant cases which have been separately analysed and the 18 cases which resolved by Section 76 pleas.



Trial Diets

What we found

117. Of the **91** cases:

118. **44** cases did not have a trial diet. 18 were resolved by a Section 76 plea, 23 pled guilty at a first or an adjournment first diet and three were discontinued before a trial was fixed. There are a further **two** cases which have never had a trial diet fixed.

119. There were **45** cases where at least one trial diet had been fixed. Six of these are still ongoing.

120. Of the 45 cases:

- 31 had one trial diet;
- 10 had two trial diets;
- Four had three trial diets.

121. Of the 31 cases with one trial diet:

- Ten were found not guilty or not proven;
- Nine pled guilty on the day of the trial;
- Five were found guilty;
- Two were discontinued – one due to insufficient evidence and the other following the non-appearance of the victim;
- Two cases are ongoing;
- One was deserted by the court on defence motion following receipt of new information;
- In one the accused failed to attend and a warrant was granted; and
- One had a not guilty plea accepted.

Key Finding

79% of **all** cases were resolved by or at the first trial diet.

Two Trial Diets

122. Of the 10 cases with two trial diets, an adjourned trial diet was fixed in nine at the first trial diet and a warrant was granted due the absence of the accused in the remaining case. Of the nine that were adjourned six were primarily due to the absence of an essential witness (es) and one was due to the absence of the co-accused in a case where the prosecutor wished to prosecute both accused together. One was adjourned by the sheriff due to a lack of court time and the reason was unclear for the remaining case being adjourned.



123. Eight of the nine adjourned cases concluded at the second trial diet. In four the prosecutor accepted a plea of not guilty or discontinued the case due to witness issues. Two pled guilty, one was found guilty and one was found not proven.

124. The remaining case was adjourned to a new first diet and remains ongoing.

Three Trial Diets

125. Of the four cases with three trial diets, at the first trial diet, there was a mixture of reasons for the adjournments including a lack of court time, a change of legal representative, for disclosure of CCTV evidence and witness issues.

126. In three there were pleas or findings of guilty and one is ongoing.

127. Of the 45 cases where a trial diet was fixed:

- 14 pled guilty on the day of the trial;
- 13 proceeded to trial (seven were found guilty and six were found not proven/not guilty);
- Six cases are ongoing;
- Five were deserted by the prosecutor following evidence from the complainer or witness (es);
- Three were discontinued due to witness difficulties;
- In three cases, pleas of not guilty were accepted – in one a plea of guilty was accepted from the co-accused, the prosecution could not trace the victim in another and in the remaining case a plea to a lesser charge was accepted following the victim indicating that she would not give evidence
- One was deserted following the non-appearance of prosecution witnesses and the refusal of the sheriff to grant a further adjournment.

What we heard

128. Reduced court loadings mean that there is a real likelihood of the trial commencing rather than being adjourned which focuses the mind of accused. Trial deputies reported that following the reforms jury sittings are much more manageable and less stressful. The churn that characterised the system prior to the reforms meant that a case prepared by a particular depute for trial may well not be heard in that sitting or may not commence on a day that falls in the prosecutor's working pattern whereas the greater certainty that trials will proceed provides more opportunity for continuity and for part-time prosecutors to conduct sheriff and jury trials.

Glasgow Model

129. One area where the reforms have had a significant impact is Glasgow. Glasgow Sheriff Court has the highest volume of cases in Scotland with five jury trial courts available daily. The sheriff clerks and prosecutors agreed 15 was the optimum number of trials each week resulting in three trials for each court. The cases are prioritised and moved into available slots as trials conclude. With a team of seven prosecutors, the workload of the trial prosecutors is significantly reduced and the



programme enables more straight forward cases to be allocated to less experienced prosecutors. The availability of courts and slots means that the accused cannot rely on the case being adjourned and “put off the day of reckoning”.

Extensions to Time Bar

130. Scotland has one of the tightest time limit regimes among comparable jurisdictions. Of the 91 cases, there was an extension to the statutory time limit in only 15 cases. In only four of the 15 cases was the accused remanded. The relatively small number of cases where extensions were required indicates robustness in the systems, processes and procedures in managing the new time limits.
131. On examining the time lines for the cases³⁸ we found on average they were indicted and served 48 days prior to the last service date necessary to ensure that the cases are progressed within the time bar. This provides a significant cushion for the prosecution and indicates that the cases are being progressed more expeditiously.

What works?

132. Feedback from all involved in the investigation and prosecution of cases in the sheriff solemn courts regarding the impact of the reforms was positive. Many attributed this to a cultural change largely driven by more pro-active judicial management and greater certainty in the system.
133. While the reforms have reduced churn and improved the efficiency of sheriff and jury business we observed significant variations on the approach/model adopted to preparing and prosecuting such cases across the various jurisdictions.
134. We identified various practices and approaches that contributed to providing an effective model to deal with sheriff and jury business. These included –
- Having a dedicated cadre of sheriffs dealing solely with sheriff solemn cases
 - Providing a minimum of seven days preparation time prior to the first diet
 - Earlier notification of contact details of the case preparer and prosecutor dealing with the case has generated earlier meaningful engagement with the defence supplemented by proactive arrangements whether hotlines or surgeries
 - A proactive approach to citing witnesses to first diets and seeking witness warrants where there is credible information that the witness is unlikely to attend the trial
 - Manageable and agreed court loadings
 - Having a dedicated police liaison officer within the sheriffdom
 - Preparation of written narratives for cases where it is known there is likely to be a plea
 - Regular “lessons learnt” meetings with sheriff clerks.
135. Having a minimum of a week for preparation prior to the first diet is the lynchpin to enabling many other good practices to be undertaken.

³⁸ Excludes the four cases with outstanding warrants.



136. While accepting that one size does not fit all due to geographical variations, volume of cases and different court programmes, we found models incorporating most or all of these practices worked well and there was positive feedback from staff within those teams. To maintain the momentum that has been achieved following the reforms, COPFS should seek to incorporate elements of good practice into a national model.

Recommendation 5

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



CHAPTER 6 – COMMUNICATION WITH VICTIMS

Victim Information and Advice

137. The Victim Information and Advice (VIA) Service is the dedicated service offered by COPFS to victims, witnesses of certain crimes and bereaved relatives affected by certain types of deaths. The ethos of VIA is to increase victims, witnesses and bereaved relatives understanding of, and satisfaction with their experience of the criminal justice process.

VIA's Remit

138. The current categories of cases that are referred to VIA are set out at **Annex B**.

139. It includes victims in all serious cases, where the nature of the offence merits solemn proceedings unless the case is only to proceed on indictment because of the criminal record of the accused, as opposed to any feature of the victim. All witnesses with vulnerabilities are included.

First Appearance

140. Being advised of what happens in court following the arrest of an accused person is of paramount importance to the victim. If granted bail, receiving immediate notice of any conditions attached to the bail order designed to provide protection for the victim is critical.

141. VIA has a crucial role in passing on information to victims on the outcome of the accused's first appearance at court.

- VIA has a commitment to contact all victims, referred to them, to advise of any bail conditions on the day they are imposed in at least 90% of cases. If, for any reason, VIA is unable to contact the victim they should ask the police to make personal contact.³⁹ This should be followed up within three working days with a letter confirming the information
- For those granted standard bail or remanded, VIA should advise the victim, if possible, on the day or by letter or email not later than the next working day
- In all domestic abuse cases victims should be advised of all decisions made by the court, including where an accused has been released, remanded or sentenced on the same day. If, for any reason, VIA is unable to contact the victim they should ask the police to make personal contact.⁴⁰

³⁹ Working together for Victims and Witnesses – Joint Protocol between COPFS, Scottish Courts and Tribunals Service (SCTS), Police Scotland and Victim Support Scotland (VSS).

⁴⁰ Joint Protocol between Police Scotland and COPFS: In Partnership Challenging Domestic Abuse.



What we found

142. We examined the **91** cases to assess the quality and timeliness of communication with victims and witnesses. 23 did not fall within the VIA remit.⁴¹

143. Of the remaining **68** we found:

- VIA made contact with the victim, in accordance with the guidance, following the accused appearing in court and sent a letter advising what happened, including notification of any bail conditions, in **48** (71%) cases
- In **19** (29%) there was no record that the victims had been advised of the outcome of the accused's initial appearance including any bail conditions or of any change in the accused's status within target timescales
- In **one** the victim was advised erroneously that the accused had been remanded in custody when he was released on bail with special conditions.

144. For many victims, who have taken the decision to report a person to the police, this is a time of extreme anxiety and the failure to advise those victims of the outcome within the specified time scales is disappointing and fell below the standard of what was expected.

Standard of Communication

145. Of the 68 cases:

146. Other than the omission to provide information following the accused's appearance at court,⁴² communication in 12 of the 20 cases above was otherwise satisfactory.

147. There were, however, additional issues in eight cases including failing to provide updates on progress at key stages of the case or not providing them timeously; special measures that had not been obtained or the possibility had not been explored and/or the content of letters were either confusing or omitted key information.

148. In a further **four** cases we assessed that the communication did not take account of the individual needs of the victim/witness and/or fell below the expected standard:

- One involved a serious assault and robbery where four accused were initially remanded in custody. The victim phoned the day before the full committal hearing anxious to ascertain whether any of the accused would be released on bail. At that time he advised that he was suffering from Post-Traumatic Stress Disorder (PTSD) and agoraphobic issues. VIA advised him to contact his GP but did not explore whether any other support or special measures could be put in place. Further, when one of the accused was released on bail the victim was only informed through a standard letter
- In one involving multiple charges of domestic abuse, while special measures were obtained for the victim, she was clearly anxious, repeatedly phoning for updates. A more pro-active approach with more regular contact may have

⁴¹ See Annex B.

⁴² There was no record of any contact.



provided the victim with more reassurance. She also advised that her daughter, who was a witness, was terrified about giving evidence and the police report had highlighted that her daughter had a number of vulnerabilities. Despite having this information, VIA did not engage with the daughter or explore whether she would benefit from some additional support including special measures

- A case involving an offence of assault to severe injury, permanent disfigurement and impairment raised equality issues. The victim was a foreign national and although it was recorded on the VIA minute sheet that an interpreter would be required, letters sent to the victim were not translated
- In another involving an assault to severe injury no updates were provided at key stages of the case.

149. In **37** cases, communication was assessed as satisfactory with victims receiving timely information on outcomes at court, regular updates on all key stages of the proceedings and discussion on special measures where appropriate.

150. In **seven** cases, the communication was excellent. Efforts had been made to discuss the case with victim(s), or for those involving children with parents/foster parents to ensure they were kept informed and to secure the right support. In two cases involving domestic abuse VIA had referred the victims to ASSIST,⁴³ one of which resulted in a bespoke tailored approach being taken to the manner of communication by ASSIST taking account of the victim's vulnerabilities.

Case Studies

In one case VIA took the time to route all communication through ASSIST for an extremely vulnerable victim of historic domestic abuse who had learning difficulties. This increased the understanding of the victim and enabled a suite of appropriate support measures to be obtained.

In a case involving two child victims of sexual crimes with different vulnerabilities, a detailed discussion took place with the parent/foster parent on their respective support needs and the special measures required. The family expressed their gratitude to the VIA Officer.

Key Finding

The standard of communication, for victims within the VIA remit, fell below what should be expected for 35% of victims.

⁴³ Advocacy, Support, Safety, Information and Services Together.



Victim Strategy

151. For all victims of sexual crimes prosecuted in the High Court, COPFS has implemented a victim strategy which is dependent on receiving vulnerability reports from the police.
152. In addition to commitments to advise all victims of the outcome of the accused's first appearance and bail conditions there is a commitment that VIA will make contact by telephone within 7/21 days for custody/bail cases where the accused has appeared in court. The call should include:
- introducing VIA and the case preparer to the victim and explaining the process and likely timescales;
 - ascertaining the victim's preferred method of communication and whether they would wish an early face to face meeting with the case preparer;
 - an assessment of vulnerabilities and special measures;
 - discussing the victim's attitude to proceedings and to obtaining sensitive, personal records;
 - signposting the victim to support organisations, if appropriate;
 - updating the victim following any 'significant event', such as when an indictment has been served on the accused; and
 - contacting the victim in accordance with the level and type of communication that has been agreed.
153. Currently this strategy does not extend to victims in sheriff solemn cases resulting in a different approach being taken to the service provided to victims of serious sexual crimes that is dependent on the forum of the prosecution. In many cases, the decision to prosecute in the High Court rather than the Sheriff Court is often marginal and can be due to an accused's record of previous offending rather than the seriousness of the offence.

What we heard

154. VIA officers expressed a desire to provide a consistent level of service to all victims of serious sexual crimes regardless of the forum. Senior members of COPFS shared this view. An approach similar to that taken in the High Court is currently being employed in Kirkcaldy and a pilot scheme is underway in Glasgow where victims of sexual crimes prosecuted in the sheriff solemn courts will be supported in the same way as those in the High Court. We welcome both developments and urge COPFS to extend the victim strategy to all victims of sexual crimes prosecuted in the solemn courts.

Recommendation 6

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



Identifying Vulnerabilities and obtaining Appropriate Special Measures

155. Empowering victims to give their best evidence undoubtedly impacts on the overall quality of the case presented by the prosecution.

Victims and Witnesses (Scotland) Act 2014

156. The 2014 Act represents a major landmark for victims and witnesses' rights.

157. The Act re-defines the categories of person that are to be regarded as vulnerable witnesses to include:⁴⁴

- Children under the age of 18 at the date of the commencement of the proceedings (previously 16);
- Victims of alleged sexual offences, human trafficking, an offence the commission of which involves domestic abuse or stalking who are giving evidence in proceedings which relate to that particular offence;
- Adult witnesses whose quality of evidence is at significant risk of being diminished either as a result of a mental disorder, or due to fear or distress in connection with giving evidence; and
- Witnesses who are considered by the court to be at significant risk of harm by reason of them giving evidence.

Special Measures

158. Victims and witnesses that fall within the first two categories above are **automatically** entitled to the use of standard special measures when giving evidence. These are:

- use of a live television link;
- a screen to avoid seeing the accused; and
- a supporter.

159. Other special measures may be allowed if the court is satisfied that they are justified. These are:

- giving evidence via a commissioner;⁴⁵ and
- giving evidence by means of a prior statement.
- excluding the public while giving evidence.

160. Identifying appropriate measures for victims is a key VIA responsibility. Where non-standard special measures are being sought for those entitled to automatic measures the prosecutor must include information, including a summary of the views of the witness or, where the witness is a child, from the parent of the child (except where the parent is the accused), in a written application/notice to the court.

⁴⁴ Section 271(a) – (c) of the 1995 Act.

⁴⁵ The court is empowered to appoint a commissioner to take the evidence of a vulnerable witness in advance of the trial.



161. Similarly, for those not automatically entitled to special measures any applications/notices made by the prosecutor require to provide detailed information on why they are necessary.

Vulnerabilities of Victims

What we found

162. Of the 91 cases, there were 26 involving a total of 44 witnesses who had some or multiple vulnerabilities.⁴⁶

163. Those automatically entitled to special measures were as follows:

Children

There were 12 cases involving **23** child victims or witnesses. Four involved sexual offences, one of which also involved stalking.

One case involving two child witnesses was resolved by a Section 76 plea.

For the remaining **21** victims or witnesses the following special measures were obtained:

- 12 – supporter only
- Five – TV link and a supporter, two of which prior statements to be used in evidence
- Three – screens and supporter
- One – Evidence on Commission, supporter and use of prior statement

Sexual Offences

There were three cases involving victims deemed vulnerable because the offences were of a sexual nature.

Screens and a supporter were obtained for the victims in all three cases.

Domestic Abuse and Stalking Offences

There were ten cases involving **13** victims who were deemed vulnerable because the offences involved domestic abuse or stalking. The following special measures were obtained:

- 10 – screens and supporter
- Two – TV link and supporter
- One – screens

Other Vulnerabilities

Of the above cases there were seven involving **eight** witnesses who also had other vulnerabilities:

- Five had mental health problems;
- One had foetal alcohol syndrome and learning difficulties;

⁴⁶ The number of cases does not add up to 27 due to some cases falling under more than one category of vulnerability.



- One had a speech impairment and memory problems;
- One had global development delay.

164. We found good examples of VIA tailoring special measures to the individual needs of the victim/witness.

In one case involving a particularly vulnerable victim of domestic abuse offences initial plans to apply for screens and supporter were revised given the anxieties expressed by the victim and replaced with a TV link at a remote site with a supporter.

In another case a vulnerable witness notice (VWN) for screens and supporter was amended following representations from Scottish Women's Aid regarding the vulnerabilities of the victim and a TV link and supporter were obtained.

In three cases involving four witnesses, vulnerable witness notices for special measures were submitted on the basis that there was a significant risk that the quality of evidence would be diminished by reason of fear or distress in connection with witness (es) giving evidence at the trial. In all three cases the individual requirements of each witness was considered and appropriate measures were sought.

165. In some cases, for evidential reasons, the victim or witness requires to identify the accused in court and it is, therefore, not possible to seek special measures. This was unfortunately the case for one witness where information was provided that they were vulnerable.

166. We found, however, other cases where witnesses may have benefitted from special measures but they were not explored.

In a case involving an offence of assault to severe injury and danger to life the police report highlighted that: the co-accused were well known within the local community for violence; there had been attempts made to intimidate the victim's family; and the victim was terrified of future reprisals. Despite this no effort was made to identify whether any special measures could assist or whether any other support would help them give evidence.

In one involving racially aggravated offences, assault and possession of a knife, two victims attended the Procurator Fiscal's office and advised a member of VIA staff that they did not want to come to court as they were fearful that they would be recognised by the accused. No effort was made to explore the possibility of obtaining special measures – they were simply advised that special measures were not applicable.

In a case involving an offence of assault and robbery with three accused the victim phoned prior to the trial advising that he was fearful of repercussions. Although VIA discussed arrangements to meet him at the side door of the court there was no exploration of whether special measures could be made available. Ultimately a plea of not guilty was accepted as the victim would not engage in the trial proceedings.



167. Where victims/witnesses were automatically entitled to special measures these were routinely obtained. Where, however, there was the possibility of victims/witnesses being vulnerable due to fear or distress or they were at risk of significant harm an inconsistent approach was taken to exploring whether special measures were necessary or appropriate and at times little was done to support these witnesses.

Key Findings

Standard special measures were obtained in 100% of cases for victims/witnesses who were automatically entitled to such measures.

There was an inconsistent approach taken to exploring whether special measures were necessary or appropriate for victims/witnesses who were not automatically entitled to standard special measures but have other vulnerabilities.

Taking Evidence by a Commissioner

168. Despite being available since the late 1990s, taking evidence by a commissioner⁴⁷ was rarely used until a High Court Practice Note, providing guidance on how to take such evidence and requiring the defence and prosecution to give early consideration to whether a witness is vulnerable and a commission was necessary, was issued in 2017.⁴⁸

169. COPFS subsequently revised their guidance⁴⁹ providing a presumption in favour of taking evidence by a commissioner for all victims under 18 and to consider it as an option for other witnesses who may benefit from giving evidence in this way in cases proceeding in the High Court. It further stipulated that while the practice note did not apply to the sheriff court, it does represent best practice and could be followed when making child and vulnerable witness applications.

What we found

170. Of the 73 cases:⁵⁰

171. There was only one case, where an application for taking evidence by commissioner was made by the prosecutor. It involved a child victim under the age of 12 years and a sexual offence. The commission hearing is yet to take place.

172. There were two other cases where taking evidence by commissioner was considered.

- One involved an offence of assault and robbery of two adult victims who had various vulnerabilities including learning difficulties. Proceedings were initially instructed for the High Court and Crown Counsel instructed psychological

⁴⁷ Section 271I of the 1995 Act: Involves giving evidence before a person appointed by the court (a commissioner). All of the evidence can be taken by this special measure. The recorded evidence is then played at the trial.

⁴⁸ Practice Note No.1 of 2017

⁴⁹ Issued March 2018.

⁵⁰ Excludes four warrant cases and 18 cases where there was a Section 76 plea as consideration of Evidence on Commission would not arise.



reports for the two victims and consideration to be given to taking evidence by commissioner. However, following the death of the co-accused, the case was reviewed and taking account of the less serious criminal record of the remaining accused, it was decided to proceed in the sheriff solemn court. Screens and a supporter were obtained for both victims.

As the forum is irrelevant to the ability of witnesses to give evidence, it is disappointing that taking evidence by commissioner was not explored following the change of forum.

- The other involved an offence of assault to severe injury, permanent disfigurement and robbery where the two child witnesses were aged 12 when the case was reported to Crown Office and 13 at the time of indicting. On instructing proceedings before a sheriff and jury Crown Counsel specified that the evidence of the children should be taken by commissioner. However, despite repeated attempts, VIA were unable to contact the parents of the children to seek their views. In absence of this information, VIA prepared an application seeking a TV link and a supporter for the children. Following a plea of guilty to an amended charge, the children were not required to give evidence.

173. We identified two other cases involving sexual offences and victims under the age of 18 where taking evidence by commissioner may have been considered.

- In one case involving a victim with vulnerabilities who was 14 at the time of report and 15 at the time of indicting, there was excellent communication with the victim's foster mother throughout the case but taking evidence by commissioner does not appear to have been considered. Standard measures of a TV link and supporter were obtained. Following a plea of guilty to an amended charge the victim did not have to give evidence.
- The other involved two victims, aged 13 and 14 respectively at the time of report and 14 and 15 when the indictment was served. Both had vulnerabilities and one had a development disability. While there was excellent communication with the mother and foster carer of the victims, there was no discussion of taking evidence by commissioner.

174. For children and young people aged under 18, the forum where they give evidence is irrelevant. The trauma of the experience is not diminished by giving evidence in the Sheriff Court as opposed to the High Court.

175. The main policy objective of the Vulnerable Witnesses (Criminal Evidence) Scotland Bill, introduced in the Scottish Parliament in June 2018, is to improve how children and vulnerable witness participate in the criminal justice system by enabling greater use of pre-recording their evidence in advance of a trial. It proposes, subject to certain exceptions, that all victims and witnesses under the age of 18 should, in the most serious cases, have their evidence pre-recorded usually by the special measure of evidence by commissioner. It will apply to all cases prosecuted under solemn procedure. In anticipation for the enactment of the Bill, COPFS should revise its approach and introduce a consistent approach on the use of taking evidence by commissioner for all those under 18 in solemn proceedings.



Recommendation 7

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



ANNEX A – SURVEY OF DEFENCE PRACTITIONERS

We issued an online survey to 42 defence firms (48 solicitors) to obtain their views on whether the reforms had changed and/or improved Sheriff and Jury business. There was a 33% response rate.⁵¹ All those who responded had at least three years' experience in solemn work, regularly conducted first diet courts and, with one exception, conducted sheriff and jury trials on a regular basis. All had experience of conducting this type of work both before and after the reforms.

69%⁵² of the respondents found the reforms had a positive impact, 19%⁵³ found that there had been no impact and 12%⁵⁴ found that they had a negative impact. Of those who stated there had been a positive impact:

- 64% reported there was better communication between the Crown and defence.
- 55% saw better scheduling of trials.
- 36% reported there was more time to prepare between service of indictment and the first diet.
- 36% stated there was increased judicial management.
- 36% concluded that the combination of the above factors provided a positive impact.

Chaotic timetabling, onerous burdens on defence, failing to identify where there might be witness issues and having to travel to other courts⁵⁵ were highlighted as having a negative impact.

In response to the question “What could be done better to help improve the efficiency of solemn business in the Sheriff Court?” the responses included:

- Earlier/speedier disclosure⁵⁶
- Legal involvement of the prosecutor at an earlier stage allowing for meaningful discussion e.g. acceptable pleas
- The prosecution responding better/quicker to correspondence
- More clarity of when cases will call
- Less Section 67 notices
- Increased funding for SCTS and the prosecution service.

⁵¹ 16 solicitors.

⁵² 11 solicitors.

⁵³ 3 solicitors.

⁵⁴ 2 solicitors.

⁵⁵ It appears from responses that these issues reflect one particular Area.

⁵⁶ As part of our case review we examined whether disclosure caused delays at first diets. We did not find this to be the case, however, there were occasions where reports, etc. were sent to the defence just days prior to the first diet as they had only just been received by the Crown e.g. expert reports.



ANNEX B – VICTIM INFORMATION AND ADVICE (VIA) REMIT

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

- Victims in all serious cases, where the nature of the offence merits solemn proceedings. If, however, a case is only to proceed on indictment because of the status of the accused, as opposed to any feature of the victim, that victim will not be eligible
- The next of kin in cases involving deaths which are reported for consideration of criminal proceedings and death cases where a Fatal Accident Inquiry is to be held
- The next of kin in all cases where there are likely to be, or it becomes clear after initial investigation, that there will be significant further inquiries, or where, in all the circumstances, it is considered that the assistance of VIA would be appropriate
- Victims in cases of domestic abuse (not just assault but any incident of a domestic nature e.g. breach of the peace)
- Victims in cases with a racial aggravation and cases where it is known to the Procurator Fiscal that the victim perceives the offences to be racially motivated
- Cases involving children (as victims and/or as witnesses)
- Victims in cases involving sexual offences
- Cases involving vulnerable witnesses, i.e. witnesses who:
 - have learning difficulties
 - have physical disabilities
 - suffer from mental health problems
 - are Asylum Seekers or witness with language difficulties
 - are terrified of accused and/or of reprisals
 - are victims in cases where sexual orientation or gender identity may give rise to vulnerability
 - Victims of domestic abuse involving abuse by children against their parents or parents against adult children
 - Victims and witnesses over the age of 60.



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About the Inspectorate of Prosecution in Scotland

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

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