

Inspectorate of Prosecution in Scotland

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## Thematic Report on the Management of Time Limits

### Follow-up report



February 2017

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# CHIEF INSPECTOR'S FOREWORD

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The thematic report on the management of time limits was published in February 2015.

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

Scotland has one of the tightest time limit regimes among comparable jurisdictions. Responsibility for complying with time limits rests with the Crown Office and Procurator Fiscal Service (COPFS).<sup>1</sup> Failure to adhere to statutory time limits has serious consequences:

- If the accused has been remanded in custody and the relevant time limit is not complied with, the accused will be released on bail.<sup>2</sup> Remand in custody is a means of managing the risk that an accused person presents, to individuals, to the community and/or to the administration of justice. Releasing such a person on bail, therefore, potentially places people in danger and/or creates a risk that s/he may try to interfere with or evade justice.
- For accused persons released on bail, failure to comply with relevant time limits brings proceedings to an end and the accused person will be free for all time from those charges.

As well as the consequences described for victims, witnesses and the community, any failure to comply with statutory time limits is likely to undermine public confidence in COPFS and, potentially, in the criminal justice system as a whole.

The focus of the inspection was the management of time limits that apply to serious cases prosecuted under solemn procedure ("solemn cases"), that is cases prosecuted in the High Court or in the Sheriff Court before a jury. Time limits apply to all solemn cases prosecuted in Scotland.

We found that COPFS has a strong record of compliance with statutory time limits, but the combination of an increasing volume of serious cases, the changing profile of serious offending and the greater complexity of such cases, within the context of reducing budgets, posed significant challenges for COPFS in the management of its solemn business and increased the risk that cases may be lost if time limits are not managed effectively.

We made 13 recommendations designed to provide assurance that the systems employed by COPFS to ensure compliance with time limits are effective, comprehensive and robust.

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<sup>1</sup> 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.

<sup>2</sup> Release from custody of an accused person until the trial or next court hearing.



# PART 1: INTRODUCTION AND BACKGROUND

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1. It is the practice of the Inspectorate to conduct follow-up inspections to promote improvement and assess the effectiveness of recommendations and their outcomes.
2. This report details the findings of the Inspectorate's follow-up review of the Thematic Report on the Management of Time Limits, published in February 2015.
3. The aim of this follow-up review is to assess and report on the progress that has been made against our recommendations.

## Methodology

- Follow-up interviews.
- Analysis of COPFS data.
- Review of practices, procedures and policies.



## PART 2: PROGRESS AGAINST RECOMMENDATIONS

4. The thematic review made 13 recommendations. All were accepted by COPFS. We have rated the COPFS response to the recommendations as follows:

- **Achieved** – COPFS has completed what was required.
- **Substantial progress** – COPFS has made significant progress in taking forward the recommendation.
- **In progress** – COPFS has taken some action to take forward the recommendation.
- **Not progressed** – COPFS cannot demonstrate any progress.

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

Number	RECOMMENDATIONS	Status
1	COPFS should introduce a formal reporting regime for solemn cases that fail to comply with statutory time limits.	
Purpose	We found there was no system to record cases that could not proceed due to the time limit having expired. The recommendation is intended to provide an accurate record of solemn cases that fail to comply with time limits and to enable the cause of any failure to be identified and actions taken to avoid repetition.	
Action taken	<p>A process for escalating cases that have not met the statutory time limit to the Operational Performance Committee<sup>3</sup> was implemented in February 2016. The Operational Performance Committee will review all such cases to identify any lessons that can be learned and take remedial action to prevent a re-occurrence.</p> <p>Any case that cannot be prosecuted due to a failure to comply with the time limit will be recorded on the COPFS IT system with a specific code. This will enable such cases to be easily identified.</p> <p>COPFS published comprehensive guidance on the rules relating to time bars, including the recording of cases that cannot be prosecuted due to a failure to comply with the time limit, on the COPFS internal intranet in December 2016.</p>	Achieved

<sup>3</sup> A group comprising of Senior Civil Service legal and business managers who meet monthly to monitor performance against targets and drive continuous improvement of solemn business.



2	COPFS should explore with the Criminal Court Rules Council, <sup>4</sup> the possibility of amending Court rules relating to the service of indictments to enable service by means of electronic transmission to the accused person’s legal representative.	
Purpose	<p>After the initial court procedures, the “indictment” – document narrating the charges, witnesses and productions for each case – is served on the accused or accused’s legal representative. The timing of service of the indictment plays an important role for the time table of subsequent proceedings. We found that indictments are often served very close to the time limit.</p> <p>This can involve it being couriered to a prison or delivered personally by police officers to the accused or the accused’s bail address.</p> <p>The recommendation is intended to facilitate the introduction of electronic transmission of indictments to legal representatives which would simplify the process and avoid the need for manual delivery.</p>	
Action taken	<p>COPFS sought an amendment to the Criminal Procedure (Scotland) Act 1995 to enable an Act of Adjournal<sup>5</sup> to provide for something to be done in electronic form or by electronic means. The amendment was introduced in January 2017.<sup>6</sup></p> <p>Following the introduction of the amendment, COPFS has commenced discussion with the Criminal Court Rules Council on amending court rules to enable service of indictments by electronic means.</p> <p>COPFS is currently exploring two options to serve indictments electronically:</p> <ul style="list-style-type: none"> <li>• Using an existing secure website (disclosure website) which solicitors regularly access to download case material. The website provides an indelible electronic audit trail showing when the information was made available for download by the prosecution and when received and downloaded by the defence. The website would require to be developed to enable indictments to be transmitted.</li> <li>• Through a new bespoke website where solicitors will be provided with unique access to their cases. Such a website is currently under development.</li> </ul>	In Progress

<sup>4</sup> A body established under the 1995 Act to review the procedure and practices of the courts exercising criminal jurisdiction in Scotland and to assist the High Court in the discharge of its court procedural rule-making function.

<sup>5</sup> An Act setting out the rules and regulations governing criminal procedure.

<sup>6</sup> Section 111 of the Criminal Justice (Scotland) Act 2016 amends Section 305 (1A) of the Criminal Procedure (Scotland) Act 1995 and came into force on 11 January 2017.



3	COPFS should implement monthly reconciliation of all High Court cases between the High Court Unit at Crown Office and the Federation High Court Hubs.	
Purpose	While the High Court Unit and the Federation <sup>7</sup> High Court hubs did monitor the progress of High Court cases, there was no formal reconciliation process between them. Such a process would act as a check and provide reassurance that both were fully sighted on all High Court cases.	
Action taken	A process of monthly reconciliation between the High Court Unit and the High Court teams was introduced in June 2016.  Step-by-step guidance on how the process should be implemented, with explanatory flowcharts, was circulated to all COPFS staff.	Achieved
4	COPFS should issue guidance requiring the review by the Solemn Legal Manager (SLM) of any solemn case in which additional charges and/or information is received that potentially changes the character of the case and thus the appropriate forum for prosecution and applicable time limits. If there has been an initial instruction by Crown Counsel, <sup>8</sup> such cases should be re-submitted for further consideration.	
Purpose	To raise awareness of the different time limits that apply to summary, <sup>9</sup> sheriff and jury <sup>10</sup> and High Court cases and to ensure that there is sufficient time to enable a change of forum <sup>11</sup> where additional information is received that may alter the initial decision.	
Action taken	COPFS published comprehensive guidance on the rules relating to time bars, including the procedure to be followed on receipt of additional information and/or charges on the COPFS internal intranet in December 2016.  This guidance will be reinforced in a bespoke training course designed to cover all essential aspects of the law and procedures governing time limits. See recommendation 12 below.	Achieved

<sup>7</sup> COPFS was formerly organised into four Federations, each led by a Procurator Fiscal with all operational work managed within the East, West and North Federations and a National Federation including a number of specialist units including the Scottish Fatalities Investigation Unit and corporate functions.

<sup>8</sup> The Law Officers (Lord Advocate and Solicitor General) and Advocates Deputes.

<sup>9</sup> Prosecutions held in the Sheriff or Justice of the Peace Court before a judge without a jury.

<sup>10</sup> Serious criminal cases heard in the Sheriff Court by a jury.

<sup>11</sup> Level of court proceedings with more serious offences being heard by a jury and less serious offences heard by a single judge.



5	COPFS should formalise procedures to check the accuracy of the calculation of time limits at the start of the life of a case. The calculation should be checked with the information recorded by the Scottish Court and Tribunal Service (SCTS) and verified by the SLM. Any subsequent amendment of the time limit should be entered on the COPFS case management system and similarly checked by the SLM.	
Purpose	It is critical for the calculation of the time limit that the date that the accused appears in court is recorded accurately. We found that the system of recording this data was not standardised or consistent. The recommendation is intended to address these deficiencies.	
Action Taken	<p>Step-by-step guidance on how the process should be implemented, with explanatory flowcharts, was circulated to all COPFS staff in June 2016.</p> <p>This practice will be reinforced in a bespoke training course designed to cover all essential aspects of the law and procedures governing time limits. See recommendation 12 below.</p>	Achieved
6	<p>COPFS should amend the Sheriff and Jury Case Preparation Living Document to include the following data:</p> <ul style="list-style-type: none"> <li>• The time limit for proceeding in the High Court for any cases considered borderline between Sheriff and Jury and High Court;</li> <li>• Where appropriate, the summary time limit for any statutory offences; and</li> <li>• Any amended time limits.</li> </ul>	
Purpose	To provide clarity on the different time limits that may apply if a decision is taken at a later stage to proceed in the High Court or on summary complaint.	
Action taken	The Sheriff and Jury Case Preparation Living Document <sup>12</sup> (CPLD) has been amended to include High Court, summary and any amended time limits.	Achieved

<sup>12</sup> CPLD is an electronic document contained within COPFS systems which details all the relevant information and evidence in case which can be used to decide forum and by deposes in court. The document is updated as the case progresses and will provide an up to date narrative and history of the case.



7	COPFS should include a dedicated sheet within the Sheriff and Jury court folder detailing all relevant time limits which is updated following each court hearing.	
Purpose	To ensure there is consistent and up to date information easily identifiable at all stages of sheriff and jury cases.	
Action taken	A dedicated sheet detailing all relevant time limits has been included in the court folder and is updated following each court appearance.	Achieved
8	COPFS should ensure that in all High Court and Sheriff and Jury cases that have been conjoined or where a sentence has interrupted the time limit, the new time limit for each case is reviewed by the SLM and recorded on the system and on the court files.	
Purpose	To raise awareness of the legal requirements and applicable time limits where cases are conjoined and the impact of sentences of imprisonment to custody time limits.	
Action Taken	<p>COPFS published comprehensive guidance on the rules relating to time bars, including conjoining cases and the impact of a sentence interrupting a time limit, on the COPFS internal intranet in December 2016.</p> <p>This guidance will be reinforced in the bespoke training course designed to cover all essential aspects of the law and procedures governing time limits. See recommendation 12 below.</p>	Achieved
9	COPFS should develop a comprehensive training package on the Management Information Book (MI Book) <sup>13</sup> for delivery to all solemn managers.	
Purpose	To provide awareness of the range of Management Information held on the MI Book and to improve confidence of managers in the accuracy and reliability of data held on the MI Book.	
Action taken	<p>The functionality of the MI Book is currently being upgraded following consultation with solemn managers. This is being progressed as a priority with a target for the upgrade for High Court cases to be concluded within this financial year.</p> <p>A training package for all managers will follow completion of the upgrade.</p>	In Progress

<sup>13</sup> COPFS system that provides a range of management data in a readable format.



10	<p>COPFS should develop a national uniform and comprehensive suite of management information to facilitate the effective management of the progress of solemn cases and time limits. This should include key indicators including those data integrity reports that provide a check of data essential for the accurate recording of time limits. A standard template for the collation of such information should be introduced.</p>	
Purpose	<p>The intention of the recommendation is to provide consistency and streamline existing processes through the introduction of a standard time limit monitoring spreadsheet, containing key data.</p>	Achieved
Action taken	<p>Following consultation with solemn managers, a standardised health check of key data has been produced and is circulated to all solemn operational boards on a monthly basis.</p> <p>It is intended that the upgraded MI Book will populate a standard spreadsheet from various systems and generate reports rather than relying on manual input.</p>	
11	<p>COPFS should ensure that the roles and responsibilities of those attending senior management meetings to monitor the progress of solemn cases are clearly defined and that there are contingency arrangements to deal with the absence of key personnel who attend such meetings.</p>	
Purpose	<p>To provide clarity on who is responsible for monitoring key data and to ensure there is a clear understanding of the roles and responsibilities of solemn managers.</p>	Achieved
Action taken	<p>The remit of the High Court and Sheriff and Jury Operational Boards were amended to include a requirement to serve all indictments within statutory time limits and to ensure that there are appropriate business planning arrangements in place to manage time limits.</p> <p>The Operational Boards include all senior managers with responsibility for the investigation and prosecution of serious offences. The Boards monitor time limits and any areas of risk on a monthly basis and have collective responsibility for ensuring compliance with time limits.</p>	



12	COPFS should introduce mandatory training on all aspects of time limits for all legal and administrative staff involved in the investigation, preparation and management of solemn cases.	
Purpose	The intention of the recommendation is to address gaps in knowledge identified in the review and to ensure that all those involved in the preparation and investigation of solemn cases have a comprehensive understanding of the law, rules and complexities of managing time limits.	In Progress
Action taken	<p>This will be delivered by a bespoke training course designed to cover all essential aspects of the law and procedures governing time limits.</p> <p>The training package has been prepared including e-learning<sup>14</sup> and classroom based teaching materials. It is currently being quality assured. It is anticipated that the training will be rolled out to the service in early 2017.<sup>15</sup> In the longer term the intention is to embed the training into the induction and other core training provided to all staff in COPFS.</p> <p>At the conclusion of the training, all staff will require to demonstrate competency and understanding through completing a detailed knowledge check. The results of the knowledge check will inform the approach to be taken in subsequent face to face training.</p>	
13	COPFS should introduce a new milestone to indict all High Court bail cases seven days prior to the expiry of the 10 month time limit.	
Purpose	The recommendation is aimed at mitigating the risk of failing to meet time limits by reducing the number of cases indicted close to the time limit.	Achieved
Action taken	COPFS has introduced an additional milestone aimed at ensuring all High Court bail cases are indicted at least seven days prior to the expiry of the 10 month time limit.	

<sup>14</sup> An electronic learning package to assist COPFS staff with bespoke areas of training.

<sup>15</sup> The timing is intended to coincide with the Sheriff and Jury reforms arising from the Criminal Justice (Scotland) Act 2016.



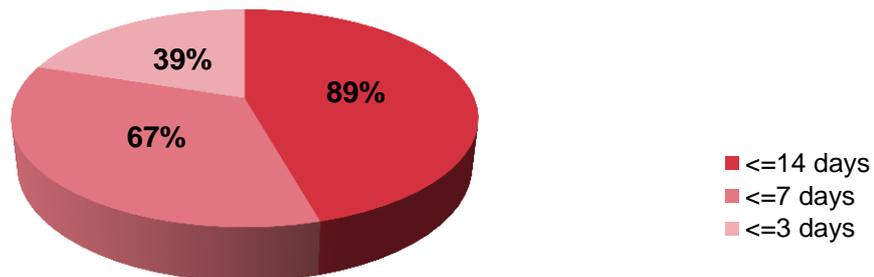
## PART 3: OVERVIEW

6. In our thematic report on the management of time limits, we concluded that managing time limits has become more complex with crime becoming more global, an increase in the volume of serious crime as well as a marked change in the profile of such cases, including a substantial increase in reports of sexual crime.
7. While the number of solemn cases has fallen slightly,<sup>16</sup> the proportion of sexual offences of the overall COPFS High Court workload has increased and now constitutes 71% of their caseload in comparison to 50% at the time the report was published. Overall the number of sexual crime charges has increased by 84% since 2010-11. In particular the number of charges of rape or attempted rape reported to COPFS has more than doubled since 2010.<sup>17</sup>
8. It is therefore more important than ever that there are robust systems to manage cases within time limits.

### Service of Indictments

9. In the thematic report on the management of time limits, we reported that of the 181 accused persons who were served with an indictment for proceedings in the High Court after the nine month target period<sup>18</sup> in 2013/14, 55% were indicted within three days or less of the time limit. We concluded that any increase of cases being indicted out of target increased the risk of cases failing to comply with the statutory time limits.
10. Undertaking a similar analysis, over an equivalent time period, for accused persons who were served with an indictment for proceedings in the High Court after the nine month target period in 2016/17,<sup>19</sup> we found that of the 219 persons indicted after the nine month target, 195 (89%) were served within 14 days or less of the time limit, 146 (67%) within seven days or less and 86 (39%) within three days or less.<sup>20</sup>
11. Chart 1 provides a breakdown of indictments served within 14 days or less.

Chart 1



**% High Court Indictments served within 14 days or less to time limit**

12. While the reduction from 55% to 39% of cases being indicted within three days of the time limit is positive and demonstrates a concerted effort to minimise indicting close to the time limit, there are a significant number of indictments still being served within seven days or less of the time limit.

<sup>16</sup> There has been a 4% decrease between 2013-14 and 2015-16.

<sup>17</sup> There were 660 charges of rape and attempted rape in 2010-11 which has increased to 11,440 in 2015-16.

<sup>18</sup> Internal COPFS target to serve indictments.

<sup>19</sup> Source: COPFS MI Book on 10/01/17.

<sup>20</sup> Excludes indictments served between 9 months and 9.5 months.



## Concluding Remarks

13. COPFS has implemented a substantial number of the recommendations made, resulting in:
  - More robust procedures for recording, amending and monitoring time limits;
  - Increased awareness of time limits that apply in different circumstances and forums; and
  - Clarity for managers as to who is responsible for monitoring the progress of solemn cases.
14. The introduction of a new milestone with the focus on minimising cases being indicted close to the time limits has had some success although as noted above there is scope to reduce this further.
15. The three recommendations that remain outstanding do, however, have the potential to make a substantial difference.
  - Late indicting of cases remains a significant risk. Electronic service of indictments would go a long way to mitigate this risk. With the introduction of the power to make provision for something to be done in electronic form through Acts of Adjournal, including serving or conveying any document (or copy),<sup>21</sup> we strongly urge COPFS to progress the introduction of electronic service of indictments as a priority. This has the potential, not only to simplify the process for serving indictments, but to incur savings for COPFS, and for the police in terms of man hours employed to physically serve indictments approaching the time limit.
  - Recommendation 9 is intended to simplify the management of time limits for managers and eliminate the manual collection and inputting of data. The introduction of an upgraded MI Book will provide a uniform and consistent method of recording and obtaining accurate and up to date information in an electronic format.
  - The report highlighted a lack of awareness on the part of some staff of the legal consequences of failing to progress cases within statutory time limits and the absence of training on the management of time limits and the relevant law. COPFS has developed a thorough and comprehensive training package covering all aspects of time limits. It also includes guidance and training on the new provisions being introduced by the Criminal Justice (Scotland) Act 2016 that apply to Sheriff and Jury proceedings, and it is currently intended that the training will be rolled out close in timescale to the implementation date for these new Sheriff and Jury provisions. The training will be attended by both legal and administrative staff with responsibility for the management and monitoring of time limits on a regular basis.
16. Bespoke training will undoubtedly increase the ability of all involved to effectively manage time limits. While it makes sense to deliver training on the new provisions relating to Sheriff and Jury procedures close to their implementation – currently planned for the end of the financial year – we understand that if there is any slippage to that timetable, COPFS will consider rolling out the time limits training separately. We see significant merit in such an approach given the potentially serious consequences that can follow non-adherence to statutory time limits.

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<sup>21</sup> Criminal Justice (Scotland) Act 2016: Explanatory Notes.

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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 it also responsible for investigating sudden deaths and complaints against the police which are of a criminal nature.

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

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