

# annual report

INSPECTORATE OF PROSECUTION IN SCOTLAND

2009-2010



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# annual report

INSPECTORATE OF PROSECUTION IN SCOTLAND 2009-2010

TO THE LORD ADVOCATE

I HAVE THE HONOUR TO  
SUBMIT MY FIFTH ANNUAL  
REPORT TO THE SCOTTISH  
PARLIAMENT.

OCTOBER 2010

JOSEPH T O'DONNELL  
HM CHIEF INSPECTOR  
INSPECTORATE OF PROSECUTION IN  
SCOTLAND

LAID BEFORE THE SCOTTISH  
PARLIAMENT BY THE LORD  
ADVOCATE in pursuance of Section 79(8)  
of the Criminal Proceedings etc. (Reform)  
(Scotland) Act 2007

SG/2010/61

OCTOBER 2010

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ISBN: 978-0-7559-9675-9

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APS Group Scotland  
DPPAS10767 (11/10)

# FOREWORD

## **To the Right Honourable Elish Angiolini QC The Lord Advocate**

This is my third report as Her Majesty's Chief Inspector of Prosecution in Scotland since the office was established as a statutory one in April 2007 by the Criminal Proceedings etc. (Reform) (Scotland) Act 2007.

My duty in terms of the legislation is to secure the inspection of the Crown Office and Procurator Fiscal Service and to submit to you, the Lord Advocate, a report on any particular matter connected with the operation of the Crown Office and Procurator Fiscal Service which you refer to me.

As seems to be the norm now the past 12 months have produced cases and issues of considerable importance to the Prosecution Service in Scotland. In particular the impending decision of the Supreme Court in the Cadder case is likely to have far reaching consequences for all parts of the criminal justice system. The results of the UK Government's Spending Review are also likely to impact for many years.

The year 2009-2010 saw the completion of two further thematic reports. One of these, which was a major undertaking in conjunction with Her Majesty's Inspectorate of Constabulary (Scotland), was on the Proceeds of Crime Act which continues to be a topic of considerable media and public interest. A number of recommendations for improvement were made and these are currently being implemented.

A second report was also published (in the series of summary justice reform inspections) on the use of Compensation Offers and combined Fiscal Fine and Compensation Offers (the first report on Fiscal Fines was published in early 2009). As with the previous report on Fiscal Fines this report took a strong evidence based approach to the work as opposed to anecdotal and examined the issue of 510 Compensation Offers or combined offers. It looked at compliance with Crown Office policy and guidance. As with the initial report on Fiscal Fines the overarching conclusion was that the vast majority of Compensation Offers and combined offers had been proportionate and in accordance with the intended aims of the new provisions. Again, however, a number of recommendations for improvement were made.

The fifth of our ongoing series of Area inspection reports was also published during the year on the Lanarkshire Area. As with the four previous reports a considerable emphasis was placed on case review. Quality assurance and accountability lie at the heart of the inspection process and the case review examines how policy had been put into practice across a wide range of different types of cases from the most minor to the most serious. As part of the overall inspection of the Area a considerable input was sought and obtained from criminal justice partners and others including system users. A number of recommendations were made.

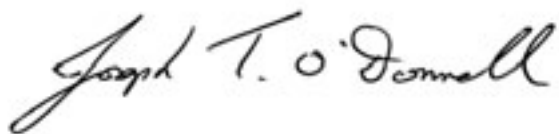
In addition to the published work a follow up report on wildlife crime was delivered to Ministers by the Police and Prosecution Inspectorates during the year. This examined progress against the recommendations made in our original report with good progress being made by the Crown Office and Procurator Fiscal Service on the parts affecting the Service.

Since it is now five years since the Inspectorate first published reports it seemed an appropriate time to examine progress against recommendations made in previous thematic and Area/Office reports. An annex on this is included in the report. Inspection, in my opinion, is about public accountability, quality assurance (both to you as Lord Advocate and Ministerial Head of the service and the wider public) and improvement. Inspection can act as a catalyst to stimulate improvement. It is gratifying to see that the overwhelming majority of our recommendations have been accepted and acted upon.

The Crerar Review continues to have an impact on inspectorates and inspection methodology. During the course of the year the Public Services Reform Bill was enacted by the Scottish Parliament and is being brought into effect. A major recommendation of the Crerar Review was greater use by organisations of rigorous, transparent self assessment methods. A start was made during the year by the Crown Office in piloting an in-house case analysis in Lanarkshire in tandem with our inspection and results of this are currently being examined and will inform future casework inspection activity.

Self assessment in the Crown Office in the sense promulgated by the Crerar Review is still in the early stages of development and dialogue is ongoing with Crown Office officials particularly the new head of Strategy and Delivery Division to take this forward.

Finally, as ever, a risk based, user focused approach is taken to the selection of topics for inspection and influences the methodology. This is very much in keeping with current inspection thinking and methodology.



Joseph T O'Donnell  
HM Chief Inspector  
October 2010

## **1 STAFF AND ACCOMMODATION**

The staff of the Inspectorate during the period of this report consisted of the Chief Inspector, a Principal Legal Inspector, a Legal Inspector, a Management Inspector and a Personal Assistant. At the time of publication the Principal Inspector was returning to the Crown Office and Procurator Fiscal Service and a new secondee has been recruited.

The number of staff is bolstered throughout the year as necessary by the recruitment of Ad Hoc Inspectors to carry out specific tasks particularly in relation to the examination of casework. These Ad Hoc Inspectors have considerable experience of the system and add flexibility to the staffing arrangements and are a valuable, cost effective additional resource.

The Inspectorate continues to occupy premises at Legal House, Gorbals Street, Glasgow. This central location puts the Inspectorate within easy travelling distance of a significant number of Procurator Fiscal Offices.

## **2 LORD ADVOCATE'S ADVISORY GROUP**

The Lord Advocate's Advisory Group (established in 2006) consists of a number of ex officio members, invited members and two lay members recruited by public advertisement.

Its primary function is to provide advice on the work programme of the Inspectorate and to keep under review the working relationship between the Inspectorate and the Crown Office and Procurator Fiscal Service.

The Group meets every 4 months.

The Group will continue to have as an invited member the head of another criminal prosecution service (currently the English Director of Public Prosecutions) which provides a useful external perspective for the Inspectorate.

The Group as a whole continues to provide invaluable advice on the work programme of the Inspectorate.

### 3 INSPECTION REFORM AND THE PUBLIC SERVICES REFORM (SCOTLAND) ACT 2010

As highlighted in last year's Annual Report the Public Services Reform (Scotland) Bill had considerable potential implications for the inspectorate.

During the course of the year the Bill was passed and received the Royal Assent on 28 April 2010.

The Act had immediate implications for the Social Work Inspection Agency, The Care Commission and aspects of Her Majesty's Inspectorate of Education.

The stated aim of the Bill was, among other things, to make provision about the exercise of scrutiny functions by certain bodies, including provision in respect of the involvement of users of scrutinised services, co-operation and joint inspections.

Aspects of the Bill were in implementation of the Crerar Review (published in September 2007) the remit of which was to evaluate the systems of regulation, audit, inspection and complaints handling and to make recommendations on a framework for the future external scrutiny of public services.

During the course of the Bill five action groups were established to take forward the report's recommendations. In particular greater emphasis was to be placed on self evaluation. One of the action groups which reported to Ministers prior to the passing of the Act looked at and made recommendations in relation to self evaluation. It reported that to be effective self evaluation would need to meet the following principles:

- Be embedded in the culture of the organisation
- Be a continuous, systematic process as opposed to an event
- Be focused on outcomes for and experience of service users
- Support the achievement of organisation or partnership objectives
- Be 'owned' by those carrying out the self evaluation
- Be built on existing good practice and relevant existing standards
- Be rigorous, comprehensive, systematic and transparent
- Be based on a wide range of evidence
- Dovetail with the essential functions of external scrutiny bodies to ensure that those who need less scrutiny get less scrutiny
- Be focused on identifying strengths and weaknesses or areas for improvement
- Involve a wide range of stakeholders
- Be recorded and reported

The Bill as passed gives powers to Scottish Ministers by order to make provision to improve public functions having regard to efficiency, effectiveness and economy including modifying, abolishing or transferring any function. Further there is a duty on listed scrutiny authorities to secure continuous improvement in user focus in the exercise of their scrutiny functions and a duty

on scrutiny bodies to co-operate and co-ordinate activity. There are also duties on publishing certain expenditure.

During the course of the year a Justice Audit and Inspection Forum was created consisting of all the main Criminal Justice Inspectorates in Scotland with the aim, among other things, to reduce potential duplication and the impact on bodies being scrutinised and to share evidence where appropriate.

Currently considerable joint work is done with other criminal justice partners especially Her Majesty's Inspectorate of Constabulary (Scotland). Whole system holistic approaches to inspection have been the norm for some time now.

The Scottish Government's Independent Budget Review was published on 29 July 2010. The Review contains reference to the Crerar Review and highlights the five principles identified by Crerar as governing external scrutiny namely independence, public focus, proportionality, transparency and accountability. The Review repeats the drive towards a greater emphasis on self assessment but also states that most contributors on this issue to the panel suggested there was still a need for external scrutiny subject to such scrutiny being proportionate.

As indicated in last year's Annual Report considerable contact was made with Crown Office officials to share the inspectorate's practice on inspection particularly casework examination methodology.

For the Lanarkshire inspection, referred to in this report, Crown Office and Procurator Fiscal Service staff conducted a parallel case examination. This is currently subject to review between the inspectorate and the Crown Office. At the moment this process is at an early stage of development with work now underway, following a short break in the summer of 2010, to embed it as a matter of routine practice in all areas.

#### **4 EQUALITIES ACT**

My last year's Annual Report commented on the then Equalities Bill which was progressing through the UK Parliament.

As highlighted last year the Bill had potential impact on inspectorates in a number of ways. The Act itself would apply to the inspectorates as much as any other bodies and secondly there were consideration of the role that inspection bodies should have in policing the new legislation.

The Bill received the Royal Assent on 8 April 2010 and the current plan is to bring into force the Act's core provisions in October 2010.

Briefly the intention of the Act was to provide a new cross cutting legislative framework to protect the rights of individuals and advance equality of opportunity for all, to update simplify and strengthen the previous legislation and to deliver a simple modern and accessible framework of discrimination law which protected individuals from unfair treatment and promoted a fair and more equal society (the Government Equalities Office).



The Act includes a new general equality duty which will require public authorities to be active in promoting equality and replaces the existing three equality duties covering race, disability and gender with a new equality duty covering race, gender, disability, age, sexual orientation, gender identity, religion or belief and pregnancy/maternity. Scottish Ministers can place additional specific duties on Scottish public authorities to assist delivery of the general duty. A consultation exercise is currently underway on this.

Inspecting for compliance with equality duties has long been an important part of the work of this Inspectorate and will continue to be so. The Chief Inspector sits on the Crown Office Equality Advisory Group and the joint Crown Office and Association of Chief Police Officers in Scotland (ACPOS) Group on Diversity. In addition the Inspectorate is represented on the Working Group on Interpretation and Translation (WGIT) which consists of all the main Criminal Justice Partners.

## 5 COMPLETED WORK

This report covers the period of one year to the end of May 2010.

During this period a further comprehensive Area inspection report was completed in relation to Lanarkshire. This is detailed in Annex A.

In addition a major thematic work was completed in conjunction with Her Majesty's Inspectorate of Constabulary (Scotland) on the Proceeds of Crime Act (Annex B).

As part of an ongoing review of summary justice reform a thematic report on Compensation Offers and combined Fiscal Fines and Compensation Offers was published (Annex C).

There was also an update delivered to Ministers on progress against recommendations made in the wildlife crime joint thematic with Her Majesty's Inspectorate of Constabulary (Scotland) and a résumé of this is at Annex D.

A review of progress to date against the recommendations made in earlier Inspectorate reports is contained in Annex E.

During the course of the year a contribution was made by the Chief Inspector to Sheriff Principal Bowen's Review of Sheriff and Jury Procedure published in June 2010.

Sheriff Principal Bowen's report includes a number of suggestions to the inspectorate which will be examined and are referred to in our thematic report on Learning and Development to be published shortly.

## 6 CURRENT AND FUTURE WORK PROGRAMME

The future work programme will continue to be influenced by the Crerar Review and the Public Services Reform (Scotland) Act. Five comprehensive Area inspections have been completed. It is likely that future Area inspections will concentrate on a single theme or themes and look at these particular themes across all 11 Areas simultaneously thus providing quicker benchmarking. The current work programme includes the first of four joint reports with Her Majesty's Inspectorate of Constabulary (Scotland) on the treatment of victims in the Scottish criminal justice system. This has involved working with stakeholders and partners such as Victim Support Scotland and Women's Aid.

A thematic report on the Learning and Development Division of the Crown Office and the operation of the Prosecution College in Glasgow is also shortly due for publication.

Later in the current year reports will be published on the Crown's approach to knife crime in Scotland and a thematic report on community engagement.

During the year the Inspectorate obtained corporate membership of the International Association of Prosecutors and the Chief Inspector continues to attend the UK Heads of Inspection Forum which is a useful means of sharing thinking on inspection across the many strands of inspection and regulation.

## 7 FREEDOM OF INFORMATION

The Inspectorate has its own publication scheme for Freedom of Information issues, the scheme having been approved by the Information Commissioner in January 2009.

During the year to the end of May 2010 15 requests were made under the Act for information and these were all dealt with within the appropriate time limit.

The Chief Inspector continues to be a member of the Scottish Public Information Forum which holds its meetings in public and invites comments from members of the public on Freedom of Information issues.

## 8 BUDGET

The Inspectorate's budget for 2009-10 was £350,000. The expenditure was as follows:

Staff salaries	£289,003.36
Admin expenses	£ 29,264.97
Total	<u>£318,268.22</u>

## ANNEX A

# LANARKSHIRE AREA INSPECTION

The Lanarkshire Area inspection was the fifth of our inspections of the 11 Procurator Fiscal Areas.

As with previous inspection reports the subject matter was comprehensive including a detailed examination of individual cases, management issues, relations with criminal justice partners, equality and diversity and securing public confidence.

The report was published in May 2010. The Lanarkshire Area is the third largest area in the Crown Office and Procurator Fiscal Service in terms of the volume of reports received. It forms part of the South Strathclyde Dumfries and Galloway Sheriffdom and covers Sheriff Courts in Airdrie, Hamilton and Lanark. There are also now, following court unification, Justice of the Peace Courts at Coatbridge, Cumbernauld, Hamilton, Lanark and Motherwell.

As part of the inspection 134 individual cases were reviewed of which 115 were summary, 11 were Sheriff and Jury and 8 were High Court cases.

A slightly different approach was taken to reporting on this examination with comments listed under general headings such as court preparation and progress, disclosure, Victim Information and Advice etc rather than a blow by blow account of all the cases looked at.

As a result of the examination of these cases 6 recommendations and 7 suggestions were made. However we considered that overall, decision making across the whole range of crimes was sound and expeditious. High Court cases were particularly well prepared and prosecuted reflecting the resources placed by the Procurator Fiscal Service at the top end of dealing with criminality.

The question of “churn” was raised by various parties in relation to Lanarkshire. While this is not exclusively the province of the prosecution it was recommended that the Lanarkshire Area carry out a review in relation to preparation time with a view to addressing such churn as may be attributable to the Crown and to set up a monitoring system to deal with this.

In the “high risk” areas of race cases and domestic abuse cases legal decision making was also sound but some policies were not followed. Victim Information and Advice generally had good compliance with initial contact with victims about decision making and case progress although we did highlight some concerns regarding the accuracy of information supplied, ongoing contact and some other issues.

Sheriff and Jury cases raised some particular issues we felt should be addressed and generally our findings were in line with the findings of Sheriff Principal Bowen’s Review of Sheriff and Jury Procedure referred to elsewhere in this report.

An evidence based approach to inspection is taken and we are grateful to the Witness Service for facilitating witness surveys at court (as with previous inspections). Fifty witnesses responded to our request for information while they were at court and generally the replies were positive about an experience which was never going to be welcome.

Feedback from criminal justice partners and stakeholders was generally good including Women's Aid and Rape Crisis with high hopes expressed for the benefits arising as a result of the Sexual Offences Review.

Following the publication of our report the recommendations were considered by the Crown Office and accepted. The Area Fiscal has been tasked with putting together an Action Plan for implementation of our suggestions and recommendations and it is intended to review these as soon as possible.

## ANNEX B

# PROCEEDS OF CRIME ACT 2002

This thematic report was conducted jointly with Her Majesty's Inspectorate of Constabulary (Scotland) and was published in October 2009. It had the remit of inspecting the arrangements in police forces and the Crown Office and Procurator Fiscal Service for implementing the Proceeds of Crime Act 2002 in Scotland (this included with the consent of the Lord Advocate a review of the Civil Recovery Unit).

The methodology embraced a wide variety of evidence gathering techniques including meetings with key leaders in organisations, interviews with operational staff in both the police and the Crown Office and Procurator Fiscal Service, questionnaires to supplement information on emerging topics, focus groups and benchmarking exercises both with the police and Crown Prosecution Service in England and with current policy and practice in the Republic of Ireland.

The 2002 Act was a major piece of legislation applying both in England and Scotland following concerns about the limited ability of the courts to order confiscation of the benefits of their crimes from convicted criminals. In some cases the value was considerable.

In Scotland the 1987 Criminal Justice (Scotland) Act provided confiscation powers in drug trafficking cases and was extended in 1995 to cover non drug offences. The offender in appropriate circumstances is ordered to pay a specific sum equivalent to the financial benefit of the crime. It did not involve confiscation of property such as houses, cars, boats etc.

In addition the police were given powers to seize cash which was reasonably suspected of being connected with drug trafficking. The courts were then asked to forfeit this cash and no conviction was necessary.

In 1998 all the various powers and processes were reviewed and consolidation and extension was considered necessary and the 2002 Act was passed.

The whole basis of the approach is to make crime literally not pay and the Act extended the scope of criminal activity which could be considered for criminal confiscation from drug dealing and trafficking to a fuller range of financially motivated crimes. The previous powers of investigation into financial affairs were also broadened and the mechanisms for removing the benefits of criminal activity strengthened.

The main findings of our joint report were that –

1. Effective use of the powers contained within the Act was being made in relation to serious organised crime particularly in the sphere of drug related crime. In the Crown Office and Procurator Fiscal Service a specialist unit (National Casework Division) had been created to deal with the money laundering provisions and to tackle serious organised crime.
2. Beyond the specialist units there was less evidence that there was consideration being given to the powers in the Act in mainstreaming its provisions by those dealing with lower level crime. At operational levels there was much less awareness of how the provisions of the Act could be invoked to combat a wide range of offending. Reliance was placed on specialists to identify opportunities to seek restraint orders to prevent disposal of criminal proceeds and lead to eventual confiscation.
3. The report indicated that the civil recovery and taxation provisions of the Act had not been fully exploited. The system in relation to the Crown Office and Procurator Fiscal Service was that a process had been put in place which required a referral of cases to the Civil Recovery Unit only from the National Casework Division. This meant that only those cases reported for prosecution which either failed or were not proceeded with could be reported to the Civil Recovery Unit. There was no direct route for law enforcement agencies to report a case for civil recovery even where it was clear that there was insufficient evidence to reach a criminal standard of proof. This meant that the mindset was essentially prosecution focused to potential exclusion of the civil recovery provisions.
4. This lack of mainstream knowledge in both the police forces and in the Crown Office and Procurator Fiscal Service had resulted in the powers contained in the Act not being used to their full potential. Lower level criminals who might carry out a high volume of financially rewarding crime and whose profit from crime might be the most visible in communities were not routinely being subject to financial investigation by law enforcement agencies for potential confiscation.
5. The report concluded that there was more scope to use the powers in the Act to remove the financial benefits of crime at all levels across Scotland and that it provided a significant opportunity for law enforcement agencies to disrupt a much wider range of criminality.

The joint report recommended that the way forward was –

1. A more focused use of all three strands available under the Act could be made including early decisions on whether cases should be reported for prosecution or for civil recovery.
2. A shift in culture across all organisations in order that consideration of financial investigation became everyone's responsibility rather than the exclusive role of a small number of specialists, it would become "mainstream". In relation to the Crown Office and Procurator Fiscal Service the report recommended that in order to promote the mainstream agenda a portfolio owner or champion should be appointed to produce a plan to mainstream arrangements throughout the Service.

The report concluded with four main recommendations namely:

1. That as a matter of routine the use of the Act should be mainstreamed within the Crown Office and Procurator Fiscal Service so that all confiscation opportunities were considered.
2. That the Serious Organised Crime Taskforce (with its Ministerial leads) broaden its focus in relation to the proceeds of crime and develop a strategy in order to co-ordinate action among partner criminal justice agencies.
3. That the Crown Office (and police) should appoint leads or champions to focus on mainstreaming throughout their respective organisations.
4. That the current processes used in the Crown Office and Procurator Fiscal Service (and police) be reviewed to ensure their effectiveness in all aspects of this work.

Following publication of the report there was general acceptance of the recommendations and in relation to the Crown Office and Procurator Fiscal Service an implementation group was set up to take forward the recommendations and a champion was appointed. A number of workstreams were created and monitored and reports are given to the taskforce on progress.

The recommendation that law enforcement agencies should have a direct route to the Civil Recovery Unit was not fully accepted in its terms but a new process of 'expedited' referrals from National Casework Division to either civil recovery and/or taxation is being piloted to address the difficulty highlighted by the report. This pilot, set up earlier this year, particularly sought cases from crime reporting agencies that were considered to be appropriate for these alternative options to prosecution and confiscation.

A wide ranging conference took place in March 2010 in taking forward the agenda of reform suggested in the joint report.

The joint report represents good practice in taking a holistic view of an important aspect of the criminal justice system and one which has the potential to seriously reduce the benefits of criminal activity.

## ANNEX C

# THEMATIC REPORT ON COMPENSATION OFFERS

As part of an ongoing review of summary justice reform a second report on direct measures was published in January 2010 on the use of Compensation Offers and combined Fiscal Fines and Compensation Offers (a first report on the use of Fiscal Fines was published in March 2009).

Summary justice reform as contained in the 2007 Criminal Proceedings etc (Reform) (Scotland) Act had raised several concerns particularly in the area of non court disposals for assault.

This report (as with the previous report on Fiscal Fines) adopted an evidence based approach and a random selection of cases was examined taken from all 11 of the Procurator Fiscal Areas in Scotland. The sample included all possible levels of Fiscal Fine and bands of Compensation. 120 combined offers were examined and 151 stand alone compensation offers were examined in addition to an earlier sample.

As with the examination of Fiscal Fines the overall conclusion was that, looking at the number of cases examined and the range of offences, that the use of Compensation Offers and combined Fiscal Fine and Compensation Offers was proportionate and generally in line with the philosophy of the enhanced use of these measures. Crown Office policy in this area has not been made public but the Inspectorate had access to the policy when examining the cases.

A number of queries were made but these were generally of a minor nature and four recommendations for improvement were suggested.

These were:

1. That the guidance on the use of Compensation Offers be clarified by the Crown Office. In particular there should be a clear indication of whether compensation should be a first consideration and only excluded for good reason (as envisaged by the McInnes Report leading up to the Act).
2. In the case of combined Fiscal Fines and Compensation Offers that there be revised guidance on the calculation of the relative amounts in order to simplify the procedure.
3. That revised guidance be issued to marking Deputes for the choice of the payment period with regard being given to the circumstances and means of the offender.
4. That the Prosecution Code be updated to include information on the new provisions on direct measures.

The recommendations made in the report were accepted by the Crown Office and Procurator Fiscal Service.

An update on implementation is contained in Annex E.



## ANNEX D

# UPDATE ON WILDLIFE CRIME

A report compiled jointly by Her Majesty's Inspectorate of Constabulary and the Inspectorate of Prosecution in Scotland on the arrangements for preventing and investigating and prosecuting wildlife crime was published in April 2008.

This joint report had been commissioned by the then Minister for the Environment Michael Russell and supported by Frank Mulholland, the Solicitor General for Scotland. It was subject to a debate in the Scottish Parliament in May 2008.

It followed widespread concern about increases in wildlife crime in Scotland particularly in relation to the killing of raptors.

24 recommendations were made in the report, seven of which related to the Crown Office and Procurator Fiscal Service.

Again all these recommendations were accepted by the respective parties and it was decided that both inspectorates would do an update for Ministers. This was reported to Ministers in November 2009.

The update reflected good progress being made by the Scottish Government and key partners in developing an effective national structure – PAWS (Partnership Against Wildlife crime in Scotland) to deliver a national strategy. Considerable work had been undertaken to raise awareness of wildlife crime which had involved the media and the creation of a PAWS website. The media remained an important conduit for getting messages about wildlife crime across to the public.

In relation to the Crown Office and Procurator Fiscal Service it was found that their champion maintained a high profile nationally both within the COPFS and with other relevant agencies. The follow up inspection found that there had been further implementation in relation to specialist wildlife prosecutors which had been highly commended in our original report and better communication with wildlife enforcement agencies was noted. A training needs assessment had been carried out in accordance with our recommendations and a number of the specialists reported that they were benefiting from increased and improved training.

The follow up report again highlighted the difficulties in successful prosecution of many kinds of wildlife crime which take place in geographically remote areas where the early discovery of the crime and consequential safeguarding of evidence or indeed availability of eyewitness evidence are difficult or unlikely. The evidential difficulties concerning this type of illegal activity remain a high hurdle in securing successful prosecution. In this context the follow up report noted that the legislation, regulation and guidance sub-group of PAWS was intending to take forward a review of the law of vicarious liability. This followed one of our recommendations. The sub-group considered whether it would be appropriate to place any provision for criminal vicarious liability before Parliament for its consideration on this matter.

In general good progress had been made by the Crown Office and Procurator Fiscal Service in implementation of those aspects of the joint report which related exclusively to the Service.

## ANNEX E

# UPDATE ON PREVIOUS REPORTS

### 1. Thematic Reports

(i) [Race Response \(published 21 March 2005\)](#)

12 recommendations were made. All were accepted. Thereafter all individual Procurator Fiscal Offices (and Crown Office HR Division) were inspected for compliance and individual reports published. Current Area inspections include inspecting for equality with a sample of race cases being examined.

(ii) [Service to Witnesses \(published 21 April 2006\)](#)

6 recommendations were made and all were accepted.

Largely, effect was given to these through the introduction of the joint protocol among the Crown Office and Procurator Fiscal Service, Scottish Court Service and the Witness Service (part of Victim Support). This was updated in 2008 and 2010 and again is currently under review. It is brought to the attention of new staff and Deputes.

(iii) [Deaths Thematic and Organ Retention \(published 18 July 2007\)](#)

9 recommendations were made, all were accepted. All have been implemented apart from two dealing with IT issues. The new IT system (Phoenix) designers will consider incorporating these into the new system.

(iv) [Complaints Against the Police \(published 16 January 2008\)](#)

There was one major recommendation concerning review of policy and procedure and some other suggestions for improvement. Crown Office is in the final stages of signing off a new Complaints Against the Police policy. The Association of Chief Police Officers in Scotland (ACPOS) has been consulted on the new system.

(v) [Natural Justice \(published 16 April 2008\)](#)

See Annex D.

(vi) [Fiscal Fines \(published 25 March 2009\)](#)

[Compensation Offers \(published 9 February 2010\)](#)

These two linked reports contained seven recommendations in total and all were accepted. Some have been implemented and others are in the process of being implemented including revisal of the Prosecution Code.

## 2. Area Inspection Reports

(i) Dumfries and Galloway (published 31 January 2008)

5 recommendations were made and accepted. The Area Fiscal at the time prepared an implementation plan and monitoring continues to take place.

(ii) Grampian (published 15 May 2008)

5 recommendations were made and accepted and became the content of the first discussions between the then new Area Fiscal and her Crown Office line manager. The issues raised in the recommendations continue to be addressed either locally or nationally.

(iii) Ayrshire (published 21 August 2008)

(iv) Highlands and Islands (published 2 February 2009)

No specific recommendations were made in these two reports although some factors (including good practice points) were highlighted.



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ISBN: 978-0-7559-9675-9

This document is also available on the Scottish Government website:  
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APS Group Scotland  
DPPAS10767 (11/10)

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