



HM Inspectorate
of Prosecution in Scotland

Annual Report

2022 - 2023

To The Right Honourable Dorothy Bain KC
The Lord Advocate

The Eighteenth Annual Report to the Scottish Parliament

September 2023

Laura Paton
HM Chief Inspector
HM Inspectorate of Prosecution in Scotland

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Foreword



This report sets out the work of HM Inspectorate of Prosecution in Scotland (IPS) between 1 April 2022 and 31 March 2023. It covers a period when the Crown Office and Procurator Fiscal Service (COPFS) continued to contribute to efforts to reduce the backlog of cases in the justice system caused by the pandemic. The aim of the justice agencies is to return the outstanding number of cases to levels more akin to those seen pre-pandemic by March 2024 for summary cases, March 2025 for High Court cases and March 2026 for solemn cases in the Sheriff Court.

In total, there were 27,406 trials scheduled at the end of March 2023, a 37% reduction compared to the peak of 43,606 in January 2022.¹ The average time between pleading diet and evidence-led trial in a sheriff summary case, for example, was 34 weeks at the end of June 2023, down from a high of 53 weeks in April 2022.

While progress is clearly being made, cases awaiting trial involve victims, witnesses and accused persons whose involvement with the justice system is more protracted than it should be. Extended case journey times place additional demands on COPFS. It must keep victims and witnesses updated throughout and manage the increased risk that they may disengage from the process as time passes. These additional demands are particularly challenging for COPFS when improving the frequency and quality of its communication with victims and witnesses has been a recurring theme in our inspections, even prior to the pandemic.

The pandemic also resulted in a significant increase in COPFS's deaths investigations work. In 2020-21, the number of death reports received by COPFS increased by 44% from 10,921 to 15,739. The number of death reports received in subsequent years has remained high. In 2022-23, it was 14,147 – still significantly above pre-pandemic levels.² In these cases, investigations require to be undertaken and there are families who must be kept informed.

To help COPFS respond to the pandemic, as well as other challenges such as the increasing complexity of casework and rising staff costs, its budget allocation was increased in 2022-23 to £180.9 million and in 2023-24 to £196.6 million. This additional funding is necessary not only for COPFS to meet the demands arising from criminal and deaths casework, but also to modernise and improve the service it provides, including through investment in digital transformation and upskilling its staff to become a trauma-informed workforce.

¹ Scottish Courts and Tribunals Service (SCTS), [Quarterly Criminal Courts Statistics – Report 20 – Quarter 4 2022/23](#) (June 2023).

² COPFS, [Case processing statistics 2018-23](#) (2023).

In 2023-24, COPFS expects 82% of its resource budget to be spent on staffing.³ This is a result of a deliberate strategy to invest as much of its available resource as possible in its staff and to reduce its non-staffing expenditure. In recent years, it has almost halved the proportion of its total spend on non-staff costs, including through effective procurement and digital efficiencies. However, there is more to be done.

Forensic pathology services

During the course of its investigations of sudden, suspicious and unexplained deaths, COPFS will sometimes require to instruct a post-mortem examination. Forensic pathology and mortuary services represent a significant non-staffing cost to COPFS – around 7% of total spend. While COPFS has a duty to investigate deaths, there is no duty on any other agency to provide forensic pathology services (although there are duties on local authorities and health boards to provide mortuary services). Instead, COPFS secures pathology services under various contracts from a range of providers across Scotland, including universities and the NHS. In light of the significant costs associated with these services, COPFS initiated a contractual audit in 2017. This highlighted a range of concerns about value for money, affordability, sustainability and contractual terms.

Since then, COPFS has been seeking improvements in contractual terms with the various providers. While improvements have been achieved, these have been incremental and ad hoc, rather than transformational. In the course of its work, COPFS has identified that its preferred model would be a national forensic pathology service. It considers this would provide consistency in service delivery across Scotland and would help it manage the significant financial and governance demands arising from the current array of contracts. However, there has been no wider impetus for a national service. In 2021, therefore, COPFS sought to procure three new regional contracts for pathology services. This procurement exercise was not successful (existing contracts were extended meantime). As a result, COPFS commissioned a Gateway Review of its forensic pathology and mortuary services programme of work which concluded that successful delivery appeared unachievable.

In light of the challenges encountered by COPFS in making further progress in this area, in late 2022, the Law Officers asked whether I might consider an inspection of COPFS's work on forensic pathology services. I committed to exploring the possibility. This involved reviewing a range of documentation and discussing the issues with key stakeholders, with a particular focus on determining what added value an independent inspection would bring.

It was clear to me that COPFS had carried out extensive work over several years in an effort to address its issues with pathology services. While it has made progress, it was also clear that it has not been able to achieve all that it would have liked, not least because securing new arrangements for forensic pathology services is not entirely within its control. This is of concern as, despite recent improvements, issues relating to value for money, affordability and sustainability persist. Recruitment and retention of pathologists,

³ COPFS, [Financial strategy 2021-2024](#) (February 2023).

for example, is a particular challenge in some areas and poses risks to the service provided to COPFS.

From the information shared with me, the case for reforming arrangements for pathology services was evident. Forensic pathology is a critical public service, and serious consideration should be given to the optimal delivery model. However, this will require the input of not only COPFS, but others such as pathologists themselves, the NHS and the Scottish Government. Rather than reform being driven by COPFS, there is a need for a co-designed approach to securing a long-term vision for pathology services and to developing a strategic business case. COPFS should play a key role in this, but should not take the lead. Given the cross-sector nature of the work, that role would more appropriately fall to the Scottish Government.

Given my statutory remit is restricted to the operation of COPFS, I was concerned that an inspection by IPS may perpetuate the COPFS-centred nature of the work already carried out, thereby limiting its value. I was also concerned that we would gather no substantial further evidence in light of the considerable work already done, and that we would expend time and resource only to reach conclusions broadly similar to those of the Gateway Review. While the needs of COPFS so that it can fulfil its duty to investigate deaths is a key consideration in the design of pathology arrangements, a broader assessment of what is needed from pathology services is required, not least one that takes into account the needs and views of bereaved families.

I therefore concluded that an inspection by IPS was not appropriate at this time, but that this assessment could be revisited should COPFS continue to encounter difficulties in securing pathology services that meet its needs.

I highlight these issues here to draw further attention to the need for reform in this critical public service, so that value for money can be achieved while also ensuring that this service meets the needs of the justice system, bereaved families and the wider public.

Inspectorate activity in 2022-23

In 2022-23, IPS published two inspection reports and commenced work on a third. We published an inspection of COPFS practice in relation to sections 274 and 275 of the Criminal Procedure (Scotland) Act 1995. These provisions regulate the use of evidence relating to the sexual history or character of complainers in sexual offence trials. This work continued the focus that IPS has had in recent years on how COPFS investigates and prosecutes serious sexual crime. We found that COPFS had responded swiftly to recent developments in case law, leading to a significant shift in how its staff manage section 275 applications. This shift will benefit complainers, ensuring that they are told when applications to lead sexual history or character evidence are made and that their views can be heard when applications are being determined. However, we also identified scope for further improvement in COPFS's approach to section 275 applications and made nine recommendations all of which are now being taken forward.

We also published a review of diversion from prosecution. In a previous annual report, I noted that one of my priorities upon being appointed HM Chief Inspector of Prosecution was to develop our approach to joint inspection and to collaborate more often with other independent scrutiny bodies to provide a broader view of key criminal justice issues. I am therefore pleased that our review of diversion from prosecution was carried out alongside our scrutiny partners, HM Inspectorates of Constabulary and Prisons and the Care Inspectorate. This allowed us to review the end-to-end diversion process, including from a policing, prosecution and justice social work perspective.

We noted an increased recognition among those agencies involved in diversion of the benefits of early intervention to address the underlying causes of offending and prevent further criminality, in line with the Scottish Government's Vision for Justice in Scotland. We found that diversion from prosecution was generally working well. However, we also found that there was scope to increase the use of diversion and to improve how it operates. We made 34 recommendations, all intended to support the agencies involved in diversion to plan and deliver diversion more effectively, to manage diversion efficiently across agencies, and to further increase the use of diversion while also maintaining confidence in its use as an appropriate response to offending behaviour.

Public confidence in diversion from prosecution is vital. In recent months, the use of diversion as a response to sexual offending has been called into question. In July 2023, the Lord Advocate announced a review of how prosecutors deal with diversion in cases of serious sexual offences such as rape. I welcome this initiative as a timely opportunity for the issues raised in our own review to be explored further and addressed.

During our review, we noted that accused persons (often those aged under 18) were on occasion diverted in relation to more serious offending, including domestic and sexual offending. In the cases we reviewed, we did not disagree with any of the decisions to divert the accused person, even when the alleged offending was serious. The decisions were appropriate given the circumstances of each case.

However, we detected uncertainty among some professionals in the justice system about whether diversion was an appropriate outcome in cases involving domestic or serious sexual offending. We were concerned that the processes for managing diversion from prosecution were designed for less serious offending, and recommended that those processes be strengthened and robustly monitored in cases involving more serious offending. We also noted that the possibility of diversion for more serious offending needs to be taken into account when allocating resources to diversion services and in the training of justice social work staff who deliver diversion interventions. There was also a need for improved communication between diversion agencies – including COPFS and justice social work – in cases involving more serious offending.

We also highlighted the need for a greater focus on the needs of complainers in cases where the accused person is diverted from prosecution. Currently, diversion is focused on the needs and circumstances of the accused person and providing them with support to address the underlying causes of their behaviour. While the impact on the complainer is

taken into account by the prosecutor when they decide whether to offer diversion, we highlighted the need to improve communication with complainers and for greater clarity on the consideration to be given to complainers during the diversion process.

Also in 2022-23, we began work on an inspection of the prosecution of domestic abuse cases at sheriff summary level. A key objective of this inspection will be to understand how victims and child witnesses experience the prosecution process, to highlight good practice and to identify areas for improvement. Data published by the Scottish Courts and Tribunals Service indicates that 95% of domestic abuse cases were heard at sheriff summary level,⁴ meaning we are focusing our attention on the service provided by COPFS to the majority of domestic abuse victims. This is a significant piece of work and the inspection will likely continue throughout 2023.

This year, we also assessed the progress made by COPFS in implementing recommendations made in previous inspections relating to the prosecution of young people, Fatal Accident Inquiries and Victims' Right to Review. Our findings are set out in this annual report. We also launched a new website to positive feedback (visit the website at www.prosecutioninspectorate.scot). In just a few months, the new website has already resulted in a noticeable increase in stakeholder engagement in our work. I would like to acknowledge the contribution of Iain Gray, our Legal Inspector, whose hard work and technical know-how helped deliver this project.

HM Inspectorate of Prosecution is made up of a small number of dedicated staff who work hard to deliver the scrutiny activity outlined above. I am grateful for their commitment and support. I also thank our scrutiny partners and all those within COPFS and across the justice system who have contributed to our work over the year. Their efforts, experiences and insights are invaluable in shaping our work.

Laura Paton
HM Chief Inspector of Prosecution in Scotland
September 2023

⁴ SCTS, [Scottish Courts and Tribunals Service, Quarterly Criminal Court Statistics – Bulletin 19 – Quarter 3 2022/23](#) (2023).

About us

1. HM Inspectorate of Prosecution in Scotland (IPS) is led by HM Chief Inspector of Prosecution who is appointed by the Lord Advocate to inspect the operation of the Crown Office and Procurator Fiscal Service (COPFS). COPFS is the sole prosecuting authority in Scotland and is also responsible for investigating sudden, unexplained or suspicious deaths and criminal allegations against the police.
2. IPS was first established in 2003, following an independent inquiry by Dr Raj Jandoo into the liaison arrangements between the police, COPFS and the family of Surjit Singh Chhokar, following the murder of Mr Chhokar and related prosecutions. One of the recommendations of the inquiry was that an inspectorate of COPFS be established, 'to introduce a measure of accountability, which is essential for public confidence'. After initially operating as a non-statutory body, IPS was placed on a statutory footing in 2007.

Mandate

3. The functions and powers of HM Chief Inspector are set out in the Criminal Proceedings etc. (Reform) (Scotland) Act 2007. The role of the Chief Inspector is to:
 - secure the inspection of the operation of COPFS
 - submit a report to the Lord Advocate on any particular matter connected with the operation of COPFS which is referred by the Lord Advocate
 - submit to the Lord Advocate an annual report on the exercise of her functions, which the Lord Advocate must lay before the Scottish Parliament.
4. The 2007 Act makes clear that in the exercise of any of the functions conferred by the Act, the Chief Inspector acts independently of any other person. When inspecting COPFS, the Chief Inspector may require any person directly involved in the operation of the service to provide her with information.
5. As well as the 2007 Act, there are a range of other duties to which IPS is subject, including duties of user focus and co-operation with other scrutiny bodies under the Public Services Reform (Scotland) Act 2010, and duties derived from the Human Rights Act 1998 and Equality Act 2010.

Our purpose

6. Our statutory purpose is to inspect the operation of the Crown Office and Procurator Fiscal Service.

Our vision

7. Our vision is to promote excellence and confidence in Scotland's prosecution service through independent, evidence-based scrutiny.

Our values

8. Our values underpin our approach to scrutiny. We always seek to demonstrate our values in the way that we work.



Independence – We act independently in all we do, providing impartial and objective scrutiny of the service provided by COPFS.

Credibility – We deliver high quality, evidence-based scrutiny and report publicly on our findings. Our approach is rigorous but fair and proportionate.

User-focus – The views and experiences of those individuals and organisations who are affected by the work of COPFS are central to our scrutiny activity. This includes victims, witnesses and next of kin as well as those who advocate on their behalf. We are also mindful of the experience of accused persons and those who represent them.

Respect – Respect for human rights is at the heart of what we do, and we support equal access to justice. We engage constructively with those we inspect, and we value the contribution they make.

Partnership – We work in partnership with others. We support continuous improvement in COPFS, and we work with our scrutiny partners to support improvement across the criminal justice system.

What we do

9. Our focus is on the quality of the prosecution service being delivered to the public in Scotland. Our inspection reports highlight what is working well, as well as areas for development and improvement. In all of our work, a key objective is to understand the experience of those for whom the service is provided. We make recommendations that, if implemented, will enhance the effectiveness and efficiency of the service.
10. We seek to engage constructively with those inspected and to support them to deliver continuous improvement. We are mindful of the burden that scrutiny can impose on COPFS and seek to take a proportionate approach, minimising our scrutiny footprint where possible. We provide assurance to the Lord Advocate about the service being delivered by COPFS and our published reports help

reassure the public that COPFS is independently scrutinised and held accountable, thereby enhancing public confidence in the justice system.

11. Issues for inspection are selected on the basis of risk and intelligence, and following consultation with the Law Officers, COPFS and stakeholders. The Lord Advocate also has the authority to refer matters to IPS for inspection, meaning that a certain degree of flexibility in the programme is required to incorporate issues that emerge throughout the year.
12. We carry out different types of inspection activity, including thematic, follow-up and collaborative inspections.

Thematic inspections

13. Thematic inspections look holistically at an issue or a service end-to-end. These inspections can focus on specific types of case work or business approaches. In the early years of IPS, area-based inspections were carried out which reflected the structures and service delivery mechanisms within COPFS at that time. More recently, we have used thematic inspections to a far greater extent, reflecting the increased specialisation in COPFS and the functional nature of its current work.

Follow-up inspections

14. We also carry out follow-up inspections, to assess the progress made in implementing our recommendations. Follow-up inspections can provide information and reassurance to the Lord Advocate and the wider public that action is being taken in response to our inspection and that improvements in service delivery are being achieved. Due to our limited resources however, it is not possible to carry out follow-up inspections of all previous work. In 2021, we agreed a new process with COPFS which is intended to result in a more proportionate, risk-based and intelligence-led approach to following up previous inspections. Since then, COPFS has provided us with action plans in response to our recommendations. We assess those plans and, alongside supporting evidence about implementation, use them to inform decisions as to whether a follow-up inspection is merited.
15. Where IPS is satisfied on the basis of the action plan and supporting evidence that recommendations have been implemented, recommendations are closed. Progress is reported in our annual reports to maintain transparency. Where there is insufficient evidence of progress, where intelligence or an assessment of risk suggests that it is necessary, or where it is in the public interest, IPS will continue to carry out follow-up inspections. A follow-up inspection may also be carried out at the request of the Lord Advocate.

Collaborative inspections

16. We actively seek opportunities to carry out our inspection activity in partnership with other scrutiny bodies. The effective operation of the justice system cannot be

achieved by any one agency – it is dependent on a range of organisations working together at a strategic and operational level. When appropriate, a similarly collaborative approach should therefore be taken to independent scrutiny, to ensure that shared outcomes are being achieved.

17. To support this collaborative approach, we regularly engage with other criminal justice scrutiny bodies, including HM Inspectorates of Constabulary and Prisons. These regular meetings provide an opportunity to discuss and share information about developments across the justice sector and to consider an appropriate scrutiny response. We also participate in the Accounts Commission-led Strategic Scrutiny Group which meets quarterly and comprises Scotland’s main public sector scrutiny bodies. The group aims to deliver efficient and effective, well-coordinated scrutiny that supports improvement. In 2022-23, we have participated in a sub-group reviewing the remit and terms of reference for the Strategic Scrutiny Group which will result in it evolving into a Strategic Public Sector Scrutiny Network in 2023-24.

Inspection Framework

18. Our inspection activity is supported by an Inspection Framework, which helps ensure we take a consistent, professional and transparent approach to our work. Based on the European Foundation for Quality Management (EFQM) Excellence Model, our framework has six themes – outcomes, leadership and governance, processes, people, resources and collaborative work. The framework informs all of our scrutiny activity but is also sufficiently flexible so that bespoke key lines of enquiry can be developed for each inspection. In recent years, the EFQM model has been updated and one of our tasks in the life of our Strategic Plan 2022-25 is to review our own framework in light of developments in EFQM and ensure it continues to be fit for purpose.

User involvement

19. Under section 112 of the Public Services Reform (Scotland) Act 2010, IPS has a duty to secure continuous improvement in user focus in the exercise of our scrutiny functions and to demonstrate that improvement. We consider how to include service users, and those who represent them, in all our scrutiny activity. Their views and experiences are sought when scoping and planning inspections and in the evidence gathering stages. This is most commonly done through interviews, focus groups and surveys.

Our inspection activity

20. In 2022-23, we published two inspection reports – our *Inspection of COPFS practice in relation to sections 274 and 275 of the Criminal Procedure (Scotland) Act 1995* and our *Joint review of diversion from prosecution*. We also commenced an inspection of the prosecution of domestic abuse cases at sheriff summary level, and reviewed progress made in implementing recommendations arising from three previous inspections.

Inspection of COPFS practice in relation to sections 274 and 275 of the Criminal Procedure (Scotland) Act 1995

21. Published in October 2022, this inspection assessed COPFS practice in relation to sections 274 and 275 of the Criminal Procedure (Scotland) Act 1995.⁵ These provisions regulate the use of evidence relating to the sexual history or character of complainers in sexual offence trials, and are designed to protect complainers giving evidence from irrelevant and often distressing questioning.
22. Section 274 contains a general rule that evidence or questioning falling within certain categories is inadmissible in sexual offence cases. Section 275 allows the court, on application made to it, to admit evidence or questioning falling within the general prohibition at section 274 so long as certain tests are met. Sections 274 and 275 apply equally to evidence sought to be led or elicited by either the Crown or the defence.
23. This topic was chosen for inspection following developments in case law regarding sexual history and character evidence. In recent years, a series of cases have sought to clarify the import of sections 274 and 275 and to set out the correct approach to be taken to section 275 applications.⁶ These cases had been a response to challenges faced by the courts, the Crown and the defence in making, responding to and determining applications regarding sexual history or character evidence.
24. In *RR v HMA*,⁷ the court clarified the Crown's duties when engaging with complainers regarding section 275 applications. It held that COPFS has a duty to ascertain a complainer's position in relation to a section 275 application and to present that position to the court, irrespective of the Crown's own attitude. This would require that the complainer be told of the application, be invited to comment on the accuracy of any allegations within it, and be asked to state any objections to the granting of the application.

⁵ IPS, [Inspection of COPFS practice in relation to sections 274 and 275 of the Criminal Procedure \(Scotland\) Act 1995](#) (October 2022).

⁶ Including *RN v HMA* [2020] HCJAC 3; *CH v HMA* [2020] HCJAC 43; *Macdonald v HMA* [2020] HCJAC 21; *RR v HMA* [2021] HCJAC 21; *XY v HMA* [2022] HCJAC 2.

⁷ *RR v HMA* [2021] HCJAC 21.

25. Our inspection focused almost entirely on how COPFS manages section 275 applications in High Court cases, although brief consideration was also given to practice in the Sheriff Court. We considered both how COPFS makes its own applications and how it responds to those made by the defence. In light of the court's decision in *RR v HMA*, we also assessed the extent to which COPFS is implementing its duty to engage with complainers regarding section 275 applications.
26. In support of our inspection, we gathered evidence from a range of sources. This included interviews with over 40 COPFS personnel involved in managing section 275 applications, as well as interviews with external stakeholders including members of the judiciary, defence counsel and Rape Crisis Scotland. We reviewed a statistically significant, random sample of 123 High Court sexual crime cases and a small number of Sheriff Court cases in which section 275 applications had been made.
27. We found that COPFS responded swiftly to developments in case law, issuing new instructions to staff and creating a training course dedicated to sexual history and character evidence. This led to a significant shift in practice regarding how section 275 applications are managed – complainers are now regularly told about section 275 applications, asked their views on the applications' contents, and those views are presented by the Crown to the court. We found the quality of Crown section 275 applications to be generally good, and we found that the Crown generally opposed applications made by the defence when it was appropriate to do so. Nonetheless, there remained scope for further improvement.
28. We made nine recommendations, eight of which were directed at COPFS and one of which was directed at the Scottish Government. If implemented, the recommendations should support further improvements in the way in which COPFS makes and responds to section 275 applications. Four of the recommendations directly related to the Crown's duty to engage with complainers about section 275 applications. Other recommendations related to guidance and training, improving record keeping, and improving processes for managing applications so as to maximise the time available to COPFS to fulfil its duty to engage complainers.
29. Upon publication of the report, the Lord Advocate accepted the eight recommendations directed to COPFS and instructed that improvement work be taken forward as a matter of urgency. The report was also welcomed by Rape Crisis Scotland who described it as a 'welcome, important and timely review'. IPS is pleased to note that progress is already being made by COPFS towards implementing our recommendations.
30. In our report, we highlighted the short timescales, set out in statute, within which COPFS is required to engage with complainers about section 275 applications. We

noted that this risked complainers being approached in a way which is not sensitive to their needs, supportive or trauma-informed. We recommended that the Scottish Government address these short timescales. This is now being taken forward, along with a new right to independent legal representation for complainers who are the subject of section 275 applications, via section 64 of the Victims, Witnesses and Justice Reform (Scotland) Bill, which was introduced to the Scottish Parliament in April 2023. The Bill, as introduced, will require that section 275 applications be made:

- no later than 21 days before the preliminary hearing in High Court proceedings, extended from the current seven days
- no later than 21 days before the first diet in solemn proceedings in the sheriff court and the intermediate diet (or trial diet, if no intermediate diet is fixed) in summary proceedings. Currently, applications in the sheriff court should be made not less than 14 days before the trial diet.

Inspection of COPFS practice in relation to sections 274 and 275 of the Criminal Procedure (Scotland) Act 1995



123

High Court sexual offence cases reviewed



238

s.275 applications assessed



173

complainers were the subject of the applications assessed (94% were female)



40+

COPFS staff interviewed



15

stakeholders consulted



9

recommendations made



Report published
19 October 2022

31. As well as our report on section 275 applications being cited in the Policy Memorandum for the Victims, Witnesses and Justice Reform (Scotland) Bill, data gathered by IPS as part of our inspection was also cited in the Bill's Financial Memorandum, to help estimate the legal aid costs arising from the proposed complainer's right to legal representation in relation to section 275 applications. Our report on section 275 applications has also generated interest outside of Scotland – our findings were cited by the Law Commission of England and Wales in

its work reviewing the law relating to the use of evidence in sexual offence prosecutions.⁸

Joint review of diversion from prosecution

32. In 2022-23, we also carried out a joint review of diversion from prosecution. The aim of the review was to assess the operation and impact of diversion from prosecution in Scotland. The review was carried out jointly with HM Inspectorate of Constabulary, the Care Inspectorate and HM Inspectorate of Prisons. Working with our scrutiny partners allowed us to provide an overview of diversion practice from a policing, prosecution and justice social work perspective, highlighting what is working well and exploring any barriers to the more effective use of diversion. Terms of reference for the review were published in March 2022⁹ and the final report was published in February 2023.¹⁰
33. Diversion from prosecution is one of several alternatives to prosecution available to COPFS upon receipt from the police of a report of alleged offending. Diversion is the process by which COPFS refers an accused person to local authority justice social work (or a partner agency) for support, treatment or other action as a means of addressing the underlying causes of the alleged offending and preventing further offending. Diversion from prosecution will be considered in any case where the person reported to COPFS has an identifiable need that has contributed to the offending and where it is assessed there is a sufficiency of evidence and that diversion is the most appropriate outcome in the public interest.
34. In support of our review, we gathered evidence from a broad range of sources. This included a survey of all community justice partnerships in Scotland regarding the operation of diversion from prosecution in their local area and a review of cases in which an initial decision to divert the accused person from prosecution had been taken by COPFS, as well as some cases in which diversion did not appear to have been considered. In addition, we carried out extensive interviews with those involved in the diversion process. This included personnel within COPFS, police officers, justice social work staff, third sector organisations involved in delivering diversion interventions, and other community justice partners and key stakeholders. We also interviewed 13 people who had been diverted from prosecution.

⁸ Law Commission, [Evidence in sexual offences prosecutions: a consultation paper](#) (2023).

⁹ IPS, HMICS, Care Inspectorate and HMIPS, [Joint review of diversion from prosecution – Terms of Reference](#) (March 2022).

¹⁰ IPS, HMICS, Care Inspectorate & HMIPS, [Joint review of diversion from prosecution](#) (February 2023).

Joint review of diversion from prosecution



200+ professionals interviewed

including from COPFS, Police Scotland, justice social work, third sector organisations and other local and national stakeholders



125

cases reviewed



30

local authority surveys completed



13

people who had been diverted from prosecution interviewed



4

local authority areas visited



34

recommendations made



Report published
21 February 2023

35. We found that the number of diversion from prosecution cases commenced rose by 12% between 2019-20 and 2020-21. This rise is likely linked to changes in prosecution policy in 2019. We noted a broader shift in public policy in recent years, with a greater focus on community justice and early intervention to address the underlying causes of offending. We welcomed this shift, as many accused persons require support for mental health, substance use or other issues and diversion from prosecution offers an opportunity for that support to be provided swiftly. Early intervention can help address the underlying causes of offending, avoid the person being drawn further into the criminal justice system and reduce or prevent further offending, to the benefit of the person, victims and communities. The people we interviewed who had been diverted from prosecution were overwhelmingly positive about their experience of diversion and welcomed the support they had received, saying it had helped them make meaningful changes in their lifestyle and behaviour.

36. Overall, we considered that diversion is working well and is developing in the right direction. The publication in 2020 of national guidelines on diversion had been a significant milestone, and we welcomed ongoing work to revise these and hoped that they would be relaunched to achieve widespread awareness and understanding of current policy and practice. We also, however, found scope for improvement in how diversion from prosecution operates and we made 34 recommendations. These recommendations are intended to support the agencies involved in diversion – including COPFS, Police Scotland, justice social work,

community justice partners, Community Justice Scotland and the Scottish Government – to continue to plan and deliver diversion services more effectively, to manage diversion efficiently across agencies, and to maximise diversion while maintaining confidence in its use as an appropriate response to offending behaviour.

37. We found that there are several ways in which diversion could be increased, including by:
- improving the quality of information submitted by the police to COPFS to assist appropriate decision making by prosecutors
 - further increasing consistency in case marking by COPFS
 - ensuring the processes for managing diversion across agencies are as effective and efficient as possible
 - increasing the take-up of diversion by accused persons. While diversion is voluntary, more could be done to tackle the high level of non-engagement in the diversion assessment process.
38. We also found that there needs to be a recalibration of the processes for managing diversion from prosecution to account for cases in which the accused is diverted in relation to more serious offending. While diversion may only be used infrequently in such cases, there is nonetheless a need to strengthen the processes for managing them and to ensure they are robustly monitored.
39. By its very nature, diversion from prosecution is focused on the needs and circumstances of the accused person and on providing them with support to address the underlying causes of their behaviour. While the impact of the offence on the complainant is taken into account by the prosecutor when they decide whether to offer diversion from prosecution, there should be a greater focus on the needs of complainants when diversion proceeds. In particular, there is a need to improve communication with complainants where the accused person in their case has been diverted.

The prosecution of domestic abuse cases at sheriff summary level

40. In early 2023, we began an inspection of how well COPFS manages and prosecutes cases involving domestic abuse cases at sheriff summary level. This is the forum in which the majority of cases involving domestic abuse are prosecuted.
41. As well as considering COPFS's standard approach to preparing and prosecuting domestic abuse cases at sheriff summary level, we will assess and compare the bespoke arrangements for managing domestic abuse cases:
- calling at the Glasgow Domestic Abuse Court, where dedicated resources are committed to improving the justice process
 - falling within the remit of the Summary Case Management Pilot, taking into account the focus on facilitating advanced disclosure, early resolution, enhanced victim engagement and an accelerated trial process. To manage our

own resources and in light of the progress made in implementing the pilot in Dundee, we will focus our scrutiny on domestic abuse cases calling in that area in particular.

The Summary Case Management Pilot

The pilot introduces a new approach to managing cases at summary level with the aim of reducing the number of cases that are set down for trial unnecessarily and reducing the volume of late pleas of guilty and late decisions on discontinuation, thereby reducing the adverse impact on victims and other witnesses. A key feature of the new approach is the early disclosure of key evidential material and early judicial case management.¹¹ The pilot commenced in Dundee, Paisley and Hamilton on 5 September 2022, and is expected to run for 18 months.

42. Our inspection will examine how well COPFS is fulfilling its obligations and commitments to victims in domestic abuse cases. This will include how well COPFS keeps victims informed throughout the life of a case, how victims are engaged and involved in the justice process, and the extent to which COPFS takes steps to ensure victims are supported and protected. We will also give special consideration to child witnesses in domestic abuse cases, in light of the recent introduction of the statutory aggravation intended to reflect the harm caused to children by domestic abuse.¹²
43. The key inspection questions we will seek to answer are:
 - 1) How well does COPFS support its staff to prepare, manage and prosecute domestic abuse cases at sheriff summary level?
 - 2) How well does COPFS prepare, manage and prosecute domestic abuse cases at sheriff summary level? This will include consideration of issues such as prosecutorial decision making, plea adjustment, and how COPFS manages cases in which there are counter allegations or in which the victim is reluctant to engage with the justice process or requires additional support to do so.
 - 3) How efficiently are cases progressed by COPFS?
 - 4) How well does COPFS support and protect, and communicate and engage with victims and child witnesses? To what extent is COPFS delivering a person-centred and trauma-informed service?

¹¹ Further information about the pilot is available in SCTS, [The Summary Case Management Pilot – The transition from EPR and way forward](#) (August 2022).

¹² Domestic Abuse (Scotland) Act 2018.

5) To what extent does COPFS use quality assurance and other feedback mechanisms (such as feedback from victims or support organisations) to improve its approach to domestic abuse cases?

6) How well does COPFS work with partner agencies at both a strategic and operational level to progress cases efficiently and to improve the experience of victims and child witnesses?

7) How well are domestic abuse cases managed by COPFS in line with bespoke local arrangements, including cases falling within the Glasgow Domestic Abuse Court and the Summary Case Management Pilot? What are the key features and characteristics of these local arrangements that contribute to well-prepared, efficiently progressed cases that better meet the needs of victims?

44. Terms of reference for this inspection were published in May 2023.¹³ A report is expected later in the year.

Following up on previous recommendations

45. In our Annual Report 2021-22, we noted that the inspectorate had agreed a new process with COPFS which would result in a more proportionate, risk-based and intelligence-led approach to following up recommendations from our previous inspections.¹⁴ This involves COPFS providing us with an action plan in response to our recommendations as well as supporting evidence about implementation so that we might assess the progress being made. This will inform our decision as to whether recommendations have been achieved or not achieved, or whether implementation is in progress. It will also inform our decision as to whether a follow-up inspection is merited.

46. This year, we assessed information supplied by COPFS in late 2022 in relation to the implementation of recommendations made in previous reports on:

- The prosecution of young people¹⁵
- Fatal Accident Inquiries¹⁶
- Victims' Right to Review.¹⁷

47. Overall, we found that in respect of some recommendations, action was taken promptly and this should have led to improvements in service delivery which we welcome. In particular, a significant amount of work has been carried out in relation to supporting improvement in death investigations. Progress has been slower in relation to recommendations arising from the inspections of the prosecution of young people and Victims' Right to Review. We appreciate that the

¹³ IPS, [The prosecution of domestic abuse cases at sheriff summary level – Terms of Reference](#) (2023).

¹⁴ IPS, [Annual Report 2021-22](#), paragraphs 44-46.

¹⁵ IPS, [Thematic report on the prosecution of young people](#) (2018).

¹⁶ IPS, [Thematic review of Fatal Accident Inquiries](#) (2016) and [Follow-up review of Fatal Accident Inquiries](#) (2019).

¹⁷ IPS, [Thematic report on the Victims' Right to Review](#) (2018).

diversion of focus and resources to the emergency pandemic response will have interrupted progress for a time, although in some areas, we consider that greater progress could have been made prior to the pandemic. We anticipate that the new process for following up recommendations – of receiving and reviewing action plans shortly after the publication of our reports, and of greater dialogue with those responsible for taking forward the recommendations – will result in a more timely assessment of progress in future and the opportunity to highlight any lack of progress at an earlier stage.

48. A general theme arising from our assessment of the action plans supplied by COPFS is that COPFS is able to point to measures taken in response to recommendations, but sometimes lacks evidence as to whether change has been achieved as a result. For example, while a policy change might have occurred in response to a recommendation, there was sometimes a lack of evidence to show that the policy change had led to changes in practice. Discussions with COPFS have already begun as to how the quality of the information supplied to the inspectorate can be improved.
49. Our assessment of which recommendations have been achieved is set out in more detail at Appendix 1. In summary, we do not propose to carry out a follow-up inspection of any of the three inspections. However, we consider that two would benefit from fresh scrutiny in the years ahead.

The prosecution of young people

50. Published in 2018, this report examining how COPFS prosecutes young people made 12 recommendations. While some recommendations were acted on promptly, others remain in progress five years later. Of the 12 recommendations, we consider that three have been achieved and three are in progress.
51. The remaining six recommendations have not been achieved. While action had been taken in relation to some, we did not consider it to be sufficient. In our *Joint review of diversion from prosecution*, published in 2023, we found that the issues giving rise to the recommendations made in 2018 persisted and similar recommendations have been made again. This is disappointing as, had further progress been made in relation to the 2018 recommendations, the need to make similar recommendations in 2023 may not have arisen. Given that the recommendations made in 2023 are broader (they relate to adults as well as young people) and are based on more recent findings, we propose that our efforts on monitoring progress will be focused on the more recent recommendations.
52. We do not propose following up further on the three recommendations which are in progress. Given the significant legal and policy changes in relation to the prosecution of young people which are imminent (including the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill and the Children (Care and Justice) (Scotland) Bill), we consider that it would be more appropriate to scrutinise this area afresh once those changes take effect.

Fatal Accident Inquiries

53. The inspectorate published a thematic review of Fatal Accident Inquiries in 2016, and carried out a follow-up review in 2019. The first review resulted in 12 recommendations. In the follow-up review:
- five of the initial 12 recommendations were considered to have been achieved
 - two recommendations had been superseded by Act of Sederunt (Fatal Accident Inquiry Rules) 2017
 - four recommendations were considered to be in progress
 - one recommendation had not been achieved.
54. The follow-up review also made three new recommendations.
55. Having reviewed information supplied by COPFS, we now consider that of the 15 (in total) recommendations relating to death investigations:
- 10 have been achieved
 - two have been superseded by Act of Sederunt (Fatal Accident Inquiry Rules) 2017
 - three are still in progress, with substantial progress having been made in relation to one of them.
56. In the 2019 follow-up review, the then HM Chief Inspector of Prosecution indicated that IPS would carry out a further follow-up inspection in 2020. This did not take place in light of the emerging pandemic and other competing priorities. Given the progress that has now been made, we do not plan to carry out any further follow-up of recommendations made in relation to Fatal Accident Inquiries. However, we continue to share the concerns of bereaved families about the timeliness of death investigations and the quality of communication between COPFS and next of kin.¹⁸ We also note the high degree of public interest in this area of COPFS's work. Taking into account the significant developments in this area, not least the increase in death investigations as a result of the pandemic, the creation of the Covid Deaths Investigation Team as well as the Custody Deaths Unit, and new governance arrangements introduced for death investigations earlier in 2023, we consider this should be an area for fresh scrutiny in the near future. This scrutiny should focus on current performance, rather than following up previous recommendations.

Victims' Right to Review

57. In 2018, IPS published a thematic report on Victims' Right to Review (VRR) and made 11 recommendations. We consider that:
- four recommendations have been achieved
 - seven recommendations remain in progress, with substantial work having been carried out in relation to some recommendations.

¹⁸ In relation to the timeliness of death investigations, COPFS has a key performance target of conducting the investigation and advising next of kin of the outcome within 12 weeks in at least 80% of cases. In 2022-23, this was achieved in 65% of cases – a rise from 50% the year before, but still below target.

58. Additional recommendations could have been considered achieved if evidence had been provided of the impact of actions taken (through, for example, quality assurance or auditing cases or correspondence with victims).
59. Although progress on the Victims' Right to Review recommendations has been slower than we would have expected, we do not propose at this stage to carry out a follow-up inspection. We will take the opportunity to consider issues relating to the Victims' Right to Review during the course of other scrutiny work.

Inspection programme 2023-24

60. Our inspection programme for 2023-24 includes:
- **an inspection of the prosecution of domestic abuse cases at sheriff summary level**
As noted above, IPS commenced this inspection in early 2023. This is expected to be a significant piece of scrutiny activity and work on this issue will continue throughout 2023.
61. At the time of writing this annual report, IPS is reviewing our future inspection programme and will consult with the Law Officers, COPFS and other stakeholders on issues that would benefit from independent scrutiny.
62. Also in 2023-24, we will continue to review progress made in implementing recommendations from previous inspections, with a particular focus on:
- the management of criminal allegations against the police¹⁹
 - COPFS practice in relation to sections 274 and 275 of the Criminal Procedure (Scotland) Act 1995²⁰
 - diversion from prosecution.²¹

¹⁹ IPS, [Inspection of the management by COPFS of criminal allegations against the police](#) (September 2021).

²⁰ IPS, [Inspection of COPFS practice in relation to sections 274 and 275 of the Criminal Procedure \(Scotland\) Act 1995](#) (October 2022).

²¹ IPS, HMICS, Care Inspectorate & HMIPS, [Joint review of diversion from prosecution](#) (February 2023).

Other inspectorate activity

Launch of IPS website

63. In March 2023, we launched a new website at www.prosecutioninspectorate.scot. Previously, our reports were published on the Scottish Government's website. Our new, standalone website reinforces our status as an independent inspectorate, allows us to collate all our content in one accessible place, gives us greater control over our content and allows us an opportunity to communicate more effectively with our audience. The website was launched to positive feedback from stakeholders, however we will keep working to make the website as easy to use and as accessible as possible.

64. The creation of the website helps take forward one of our key strategic objectives for 2022-25 – to increase awareness of and engagement and confidence in our inspection activity. Since the website's launch, there has been a noticeable increase in interest and engagement in our scrutiny activity from stakeholders and the general public, which we welcome.

The inspectorate in 2022-23

Finance

65. The inspectorate is funded by the Scottish Government. Our budget for 2022-23 was £425,000, an increase from £400,000 in 2021-22 primarily to take account of rising staff costs. Staff costs typically account for the majority of our annual spend – in 2022-23, staff costs made up 93% of our annual spend.

66. In 2022-23, our expenditure was as follows:

Staff costs ²²	393,200
Subsistence and motor mileage	596
Printing and binding	6,861
Travel and accommodation	1,616
Hospitality	498
Conference fees	759
Other running costs	19,290
Total	£422,820

67. In 2022-23, the inspectorate's costs linked to travel and accommodation and subsistence and motor mileage rose compared to the previous year. However, they continued to be less than normal due to changes in working practices brought about by the pandemic. While some in-person inspection activity resumed, this year most of our meetings and inspection interviews were still carried out virtually. This was because the majority of the people we meet with and interview continue to predominantly work from home.

68. Our 'Other running costs' rose in 2022-23 due to the procurement of our independent, standalone website.

Staff

69. As at 31 March 2022, the staff of IPS was 4.4 full-time equivalents and consisted of the Chief Inspector, Assistant Inspector of Prosecution, Legal Inspector, Business Inspector and a Personal Assistant.

70. The current Chief Inspector was appointed in 2019 to serve a three-year term. She was reappointed for a further three-year term in 2022.

71. In 2022-23, the posts of Assistant Inspector of Prosecution and Legal Inspector were held by individuals seconded from COPFS. Their knowledge and familiarity with COPFS systems and procedures assists the inspectorate in its scrutiny activity,

²² No member of staff earned in excess of £150,000.

and the secondments offer COPFS personnel an invaluable development opportunity. The remaining staff are civil servants employed by the Scottish Government.

72. In taking forward our Strategic Plan 2022-25, and particularly our strategic objective of ‘We will enhance our organisational resilience and invest in our people’, we have been reviewing our staffing model. As noted in our Annual Report 2021-22, we initially sought to increase our permanent inspection resource in order to boost our capacity, increase our resilience and rebalance the mix of permanent and seconded staff. Unfortunately, additional funding was not forthcoming due to the current financial climate yet there were deficiencies in our staffing model that still required to be addressed. In 2022-23, we reviewed our staffing model again, deciding to replace our seconded Assistant Inspector of Prosecution (whose secondment was due to end in 2023) with a permanent member of staff. It is anticipated this change will boost our resilience, provide a greater degree of stability in a small team, and allow IPS a longer-term return on the investment we make in the training and development of our staff. The recent move to pay parity between COPFS and Scottish Government staff allowed us to make this change at no extra cost. We are grateful to all those seconded prosecutors who have held our Assistant Inspector of Prosecution post over the years – their expertise and insights have been invaluable and they have made a significant contribution to the work of IPS. Recruitment for a permanent Assistant Inspector of Prosecution began in early 2023 and the successful candidate took up post in July.

Register of interests

73. At the time of her appointment as HM Chief Inspector in 2019, Laura Paton had served as a trustee of the charity Together (Scottish Alliance for Children’s Rights) since 2016. Her involvement in Together was noted in the register of interests held by the Scottish Government and highlighted on the inspectorate’s web pages, and her appointment as HM Chief Inspector of Prosecution in Scotland was likewise noted in Together’s register of interests. Appropriate safeguards were in place to avoid any potential conflicts of interest. In September 2020, Ms Paton was elected as Vice Chair of Together, and continued in her role as trustee. In the interests of transparency, her involvement in Together is noted in the inspectorate’s annual reports as well as any inspection report which deals with any substantial issue of children’s rights. Ms Paton’s term as Vice Chair and as a trustee of Together ended in September 2022.

Freedom of Information requests

74. IPS is subject to the Freedom of Information (Scotland) Act 2002. We publish information about our work, including our inspection reports, on our website. In 2022-23, we received seven freedom of information requests, all of which were responded to within the required timescale.

Appendix 1 – Status of recommendations

Thematic report on the prosecution of young people (2018)

	Recommendation	Status	Rationale
1	COPFS should guard against ‘net-widening’ by dealing with jointly reported offenders who do not fall within the Lord Advocate’s Guidelines and those who have not yet turned 16 where the presumption is that they should be dealt with by the Reporter.	In progress	Action taken and a review underway with Police Scotland and the Scottish Children’s Reporter Administration, but insufficient evidence provided that change has been achieved.
2	COPFS should prioritise consideration of the review that offenders aged 16/17 subject to a Compulsory Supervision Order (CSO) are presumed to be dealt with by the prosecutor.	Achieved	COPFS published a new prosecution policy on accused under 18 years and diversion in Operational Instruction 5 of 2019 (OI 5/19) clarifying that in all cases where the accused is aged 16 or 17 and subject to a CSO, there is a presumption that the accused will be dealt with by the Children’s Reporter.
3	COPFS should liaise with Police Scotland to standardise the provision of information on any known vulnerabilities or individual and/or family circumstances that may have a bearing on the appropriate prosecutorial action. The report should specify if there are none identified or whether the offender refused to divulge such information.	Superseded by new recommendation	This issue persists, as noted in our <i>Joint review of diversion from prosecution</i> (2023). This recommendation is now superseded by Recommendations 9-11 of the 2023 review. The new recommendations are directed to Police Scotland.
4	COPFS should ensure that there is a written record of discussion with the Reporter, in all jointly reported cases, including the factors taken into account in determining who should deal with the young person.	In progress	COPFS created a new process for recording decisions in jointly reported cases involving child accused in Operational Instruction 3 of 2020, but no

			evidence has yet been provided to demonstrate that the process change is embedded in practice.
5	COPFS should facilitate the maximum use of diversion (or a lesser form of alternative action) for all young people under 18 years. Where there are compelling reasons in the public interest to prosecute they should be clearly recorded by prosecutors.	Achieved	Addressed by OI 5/19, but we note there is a residual risk of diversion not being chosen as the most appropriate prosecutorial option when marking is carried out by local court or some specialist units.
6	COPFS should improve the timeline of cases involving young people where diversion is offered.	Superseded by new recommendation	Progress made in relation to timeliness of marking, but issue persists in relation to overall timeline of cases. Superseded by Recommendation 17 of <i>Joint review of diversion from prosecution (2023)</i> .
7	COPFS should introduce a national streamlined process for communicating with social work departments and offenders to support the effective operation of diversion.	Superseded by new recommendation	Issue persists. Superseded by Recommendation 23 of <i>Joint review of diversion from prosecution (2023)</i> .
8	COPFS should review and simplify all correspondence issued to young people being offered diversion.	Superseded by new recommendation	Issue persists. Superseded by Recommendation 29 of <i>Joint review of diversion from prosecution (2023)</i> .
9	COPFS should tailor communication to the individual needs and vulnerabilities of young offenders taking account of, any known, equality issues.	Superseded by new recommendation	Issue persists. Superseded by Recommendation 29 of <i>Joint review of diversion from prosecution (2023)</i> .
10	COPFS should, on completion of diversion, confirm in writing what action, if any, is to be taken.	Superseded by new recommendation	Issue persists. Superseded by Recommendation 29 of <i>Joint review of diversion from prosecution (2023)</i> .
11	COPFS should clarify whether the applicable age requiring Crown Counsel's instructions, prior to any proceedings being commenced for children aged 13, 14 or 15 years, is the age of the child at the	Achieved	COPFS has clarified in case marking instructions that no proceedings may be taken against a child aged 13, 14 or 15 at

	date of the offence, when the police report is submitted or when there is a decision to prosecute.		the date of the offence without the instructions of the Lord Advocate or Crown Counsel (with the exception of some road traffic matters for those aged 15).
12	COPFS should explore the possibility of expanding the scope of the Driver Improvement Scheme and/or the feasibility of introducing a new road safety programme to address low-level road traffic offences.	In progress	Work is underway in consultation with relevant partners but there is no evidence of resolution as yet.

Thematic review of Fatal Accident Inquiries (2016)

	Recommendation	Status	Rationale
1	Scottish Fatalities Investigation Unit (SFIU) should implement monthly reconciliations of all active deaths investigations between SFIU National and the SFIU Divisions.	Achieved	See <i>Follow-up review of Fatal Accident Inquiries (2019)</i> (the 2019 report).
2	SFIU National should introduce a streamlined reporting/notification process for Fatal Accident Inquiries (FAIs).	Achieved	See 2019 report – outstanding element of this recommendation covered by new Recommendation 1 in 2019 report.
3	SFIU National should review, update and centralise all guidance and policies on the investigation of deaths.	Achieved	Action taken as part of SFIU Modernisation Project.
4	COPFS should introduce an internal target for progressing mandatory FAIs.	Achieved	See 2019 report.
5	Where criminal proceedings are instructed and the circumstances of a death require a mandatory FAI: <ul style="list-style-type: none"> COPFS should issue guidance requiring an instruction by Crown Counsel on whether a mandatory FAI is likely following the criminal proceedings; and 	Achieved	Action taken per 2019 report, as well as parallel proceedings/investigations policies and protocols and updated guidance to staff.

	<ul style="list-style-type: none"> COPFS should ensure there is a debrief between the team dealing with the criminal case and SFIU, at the conclusion of the criminal proceedings. 		
6	COPFS should ensure that all operational case related emails are recorded and imported into the case directory.	In progress	Action taken but insufficient evidence provided of change being achieved.
7	There should be a single point of contact for the nearest relatives throughout the criminal proceedings and any subsequent FAI.	Achieved	See 2019 report.
8	SFIU National should explore with the Death Certification Review Service (DCRS), the possibility of the review service providing a consultative forum for SFIU to discuss medical cases.	Achieved	See 2019 report.
9	COPFS should explore with the Scottish Civil Justice Council, the possibility of introducing rules to facilitate the attendance of 'expert' witnesses at preliminary hearings to reach consensus on areas of agreement and identify areas of contention.	Superseded by FAI Rules 2017	See 2019 report.
10	COPFS should provide a single point of contact for the nearest relatives in all FAIs.	Achieved	See 2019 report.
11	SFIU should provide written notification to all participants on the issues COPFS intends to raise at the inquiry.	Superseded by FAI Rules 2017	See 2019 report.
12	SFIU should agree a Memorandum of Understanding (MoU) with all investigative agencies that have responsibility to investigate the circumstances of certain types of deaths.	Substantial progress	An MoU with the Police Investigations and Review Commissioner has been agreed while work on MoUs with other agencies remains in progress.

Follow-up review of Fatal Accident Inquiries (2019)

	Recommendation	Status	Rationale
1	To provide a clear audit trail in each case the work stream to record all information in the case directory should be prioritised and documents should be recorded and named in a structured manner.	Achieved	Action taken including templates for recording, guidance and training on importing and naming documents.

2	In order to assess compliance with the Family Liaison Charter a record of the wishes of the family should be recorded on the charter template.	In progress	Action taken, but insufficient evidence provided of change being achieved.
3	SFIU should prioritise the FAI of any death of a young person in legal custody.	Achieved	Action taken, including new guidance and creation of Custody Deaths Unit.

Victims' Right to Review (2018)

	Recommendation	IPS status	Rationale
1	COPFS should provide guidance on the factors to be considered and the approach to be taken to conducting VRRs – it should be supplemented by workshop training for the core participants involved in such reviews.	Substantial progress	Guidance drafted but final approval remains outstanding. Once approved, training will be delivered.
2	COPFS should ensure that the factors taken into account and the reasons for the initial decision and the outcome of the review are recorded in a consistent and standardised manner.	In progress	Reminders issued to staff about recording and recording templates in use, but limited evidence provided to show this is now embedded in practice.
3	COPFS should ensure that reviews, involving specialist areas of law, including sexual crimes, are conducted by a prosecutor with the relevant specialist skills and expertise regardless of whether the offence(s) is likely to be prosecuted at solemn or summary level.	Achieved	Reviews now undertaken by specialists not previously involved in case.
4	COPFS should clarify who is responsible for notifying victims of any decision to discontinue proceedings in summary cases that do not fall within the VIA remit and reinforce and embed existing policies regarding notification of decisions not to prosecute and to discontinue proceedings.	In progress	Guidance revised. Further progress is linked to work to address Recommendation 5.
5	COPFS should work towards a system of notifying all victims of decisions not to prosecute, whether through the use of IT solutions or otherwise.	In progress	Options to deliver this recommendation explored in depth. Work to deliver an expanded notification model is ongoing.

6	COPFS should undertake a review of the VIA remit to assess whether it remains appropriate following the prosecution policy review.	Achieved	Review carried out, concluding that remit should remain as is.
7	COPFS should undertake a review to identify all summary offences, involving victims and a statutory time limit, where there is no suitable alternative charge, with a view to extending notification of decisions not to prosecute to such offences.	In progress	Recommendation 7 likely to be addressed upon delivery of expanded notification model noted at Recommendation 5.
8	COPFS should raise awareness in the Procurator Fiscal Offices of the importance of identifying requests from victims to review decisions not to prosecute or to discontinue proceedings and to transfer them without delay to the Response and Information Unit (RIU) to enable reviews to be completed within any time limits.	Achieved	Addressed through staff bulletins, briefings, training.
9	COPFS should provide substantive and understandable reasons for initial decisions not to prosecute or to discontinue proceedings to victims who are notified of such decisions.	In progress	Template letters have been revised to encourage staff to provide reasons for decisions. COPFS expects to evidence improvement or implementation by end 2023.
10	COPFS policy should reflect that the VRR response should be communicated in a manner consistent with previous communication, in terms of the victim strategy or, in death cases, with the Family Liaison Charter and in accordance with any equality considerations.	Achieved	Policy updated.
11	COPFS should avoid issuing multiple template holding replies and provide an explanation for the delay and an indication of the timescale for completion for all cases that are likely to take longer than 20 days.	In progress	Action taken but insufficient evidence provided to demonstrate this is now embedded in practice.



HM Inspectorate of Prosecution in Scotland
Legal House 2nd Floor
101 Gorbals Street
Glasgow G5 9DW

Telephone: 0300 020 1185
E-mail: IPS@gov.scot

About HM Inspectorate of Prosecution in Scotland

HM Inspectorate of Prosecution in Scotland (IPS) is led by HM Chief Inspector of Prosecution who is appointed by the Lord Advocate to inspect the operation of the Crown Office and Procurator Fiscal Service (COPFS). The functions of HM Chief Inspector are set out in the Criminal Proceedings etc. (Reform) (Scotland) Act 2007. The 2007 Act makes clear that in the exercise of any of the functions conferred by the Act, HM Chief Inspector is independent of any other person. COPFS is the sole prosecuting authority in Scotland and is also responsible for investigating sudden deaths and complaints against the police which are of a criminal nature.

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