

Justice Committee

Inquiry into the role and purpose of the Crown Office and Procurator Fiscal Service

Written submission from the Inspectorate of Prosecution in Scotland

In relation to the Committee's call for evidence regarding the Inspectorate of Prosecution in Scotland (IPS), the following information is provided for assistance.

Background

1. In 2000, Dr Raj Jandoo, Advocate, QC conducted an independent inquiry on the liaison arrangements between the police, the Crown Office and Procurator Fiscal Service (COPFS) and the family of the deceased Surjit Singh Chhokar in connection with his murder and the related prosecutions.
2. One of the recommendations of the Inquiry was that an Inspectorate of the COPFS should be established, "*to introduce a measure of accountability, which is essential for public confidence*". The Inspectorate of Prosecution in Scotland (IPS) was established in December 2003.

Statutory Provision

3. In April 2007, the IPS was placed on a statutory footing with the enactment of sections 78 and 79 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007.
4. Section 78 of the 2007 Act provides for the appointment by the Lord Advocate of an officer known as Her Majesty's Chief Inspector of Prosecution in Scotland.
5. Section 79 requires the Inspector to secure the inspection of the operation of COPFS and make recommendations that will contribute to the improvement of COPFS and enhance public confidence. The Lord Advocate may also require the Inspector to submit a report on any particular matter connected with the operation of the Service.
6. Section 79(9) specifically provides that the inspector "*is to act independently of any other person*" in exercising the functions conferred on him/her. This independence is guarded by IPS and respected by others.

Resourcing and Staffing

7. The Scottish Ministers are responsible for allocating the resources within which the IPS operates. In 2010/11 the budget allocated to IPS was £350,000. In 2011, as a result of budget revisions, the budget for IPS for 2011/12 was reduced to £320,000. From 2011/12 through to 2015/16 the budget has flat lined at £320,000, representing a decrease in real terms.

8. The current staffing complement of the IPS consists of Her Majesty's Chief Inspector, (part time post, 4 days), a personal assistant and three inspectors - one part-time business inspector and two inspectors seconded from COPFS.

Vision

9. The Inspectorate's vision is to enhance the effectiveness of and to promote excellence in the prosecution service in Scotland through professional and independent inspection and evaluation. The Inspectorate is concerned with outcomes, results and improvement.

Role of Inspectorates

10. Effective inspection provides independent public assurance to stakeholders, the public, the Scottish Parliament and others on the quality and effectiveness of Scotland's key core public services, such as that provided by COPFS. In times of budgetary constraint and rising public expectations, Inspectorates, including IPS, play a pivotal role in identifying opportunities for efficiencies and service improvement, promoting public confidence in the quality of public services and facilitating and driving forward improvement agendas.

Inspection Approach

11. It is important that the work of IPS is relevant to the issues impacting on our communities. Since 2010, in common with other inspectorates, IPS inspection activity has evolved from conducting audits in a formulaic way, to developing programmes aiming inspection resource where risks to services are greater using sector risk profiles (from inspections) and sector intelligence (such as performance data and stakeholder feedback).
12. A risk-based assessment approach accords with the ethos of the Crerar review¹ and the legislative changes, promoting a risk-based approach and a user focus in the work of scrutiny bodies, enacted in the Public Reform (Scotland) Act 2010. It also takes account of increasing specialisation in COPFS and the comprehensive re-structuring of COPFS in April 2012, where there was a move to operational work being conducted on a function based approach within three Federations, and a further re-design of management structures in 2015/16, which saw the introduction of all work in COPFS being conducted on a national and functional basis.
13. Employing this approach, IPS has produced thematic reports which look holistically at services end to end. Since being established, IPS has published 22 thematic reports, including reports on victims in the criminal justice system, organ retention, management of time-limits and fatal accident inquiries (FAIs).

¹ *The Crerar Report on the Independent Review of Regulation, Audit, Inspection and Complaints Handling of Public Services in Scotland*, published in September 2007.

14. The main way in which inspectorates have impact is through their published reports and recommendations. For maximum impact and value from inspection findings, there needs to be risk-based monitoring and follow-up.

Follow-up Reports

15. Since 2014, the Inspectorate has embarked on a rolling programme of follow-up reports to monitor the progress of COPFS implementation of our recommendations and to evaluate the effectiveness and outcomes of measures implemented. In the period covering July 2014 to August 2015 five follow-up reports were produced. Follow-up reports will continue to form part of our inspection cycle.
16. To minimise the impact of inspection on organisations, IPS seeks to ensure that there is no duplication of inspection through consultation with other scrutiny bodies, including Audit Scotland, and that the resources required by organisations to comply and co-operate with inspections are not disproportionate.

Collaborative Inspection

17. It is recognised that some issues are best addressed by a multi-agency or partnership approach. IPS has conducted joint inspections with Her Majesty's Inspectorate of Constabulary for Scotland (HMICS). These include reports on:
 - The Proceeds of Crime Act 2002 – published in October 2009; and
 - Victims in the Criminal Justice System – Phase 1 published in October 2010 and Phase 2 published in November 2011.
18. More recently IPS has worked with HMICS to consider the possibility of a joint collaborative inspection on how offenders with mental health problems are dealt with in the criminal justice system. Recognising that a significant percentage of offenders have mental health problems, there would be benefit in exploring themes such as information sharing, the use of early interventions and diversions, and to identify any gaps in service provision, examples of best practice and what achieves the best outcomes.
19. Due to difficulties in identifying a cohort of persons with mental health problems that could be tracked throughout the criminal justice system, we have concluded that it is not feasible to conduct a joint inspection at this time. We have, however, identified what would be required to enable such an inspection to take place and it is intended that this work will be re-visited as part of IPS' future work programme.

Outcomes

20. Assessing the impact of inspection can be challenging, particularly in relation to more nebulous concepts such as cultural change. Some examples of positive outcomes arising from our reports are provided below.

Cultural Impact/Public Assurance

21. The primary objective of the organ retention inspection was to ensure that there was a comprehensive and robust system to notify nearest relatives if an organ was retained. The follow-up report and subsequent audits found that, since the publication of the organ retention report, there had been only one instance where temporary retention had been necessary. In that case, there was appropriate and timely notification.
22. The inspection also highlighted medical advances had significantly reduced the need to retain whole organs and emphasised that retention should only be required in exceptional cases, prompting a cultural change in the approach to the retention of organs.

Securing Improvement

23. IPS seeks to identify more efficient methods of delivering the business. Two examples of recommendations aimed at modernising COPFS processes are:
 - The management of time limits report recommended the electronic service of indictments to the accused person's legal representative. Not only would this introduce a more efficient process, it would result in savings for the police in terms of man hours involved in serving indictments.
 - The Health and Safety Division (HSD) report recommended the introduction of electronic reporting by all specialist reporting agencies.

Policy development

24. The impact of external scrutiny is not limited to the body being inspected; it can also provide evidence to inform broader policy development and implementation.
25. In the recent report on FAIs, the inspection not only made recommendations designed to improve the efficiency and effectiveness of deaths investigations conducted by COPFS and provide better support for families, it also advocated that 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 at an early stage of an FAI.

Identification of risk

26. In making recommendations IPS is always mindful of resource implications for COPFS, particularly given recent budget constraints. The approach taken is to identify, where possible, more efficient ways that existing resources can be utilised to achieve better outcomes.
27. Resourcing issues, with the potential to impact adversely on the delivery of business, have been highlighted in a number of IPS reports, notably:

- The Summary Case Preparation thematic report, published in 2012;
- The HSD thematic report, published in 2013; and
- The Management of Time Limits thematic report, published in 2015;

28. In the latter report, we reported that:

“Crime has become increasingly global resulting in more crimes being reported that transcend territorial boundaries, as well as the evolution of ever more sophisticated means of committing and detecting crime”; and “there has been an increase in the overall volume of serious crime reported by the police as well as a marked change in the profile of such cases, including a substantial increase in reports of sexual crime.”

29. The report concluded that such factors, when set in the context of budgetary reductions, posed significant challenges for COPFS in the management of its solemn business.

IPS Programme of Inspection

30. IPS is currently undertaking a follow-up report on the Management of Time Limits. As part of the follow-up report on Complaints Handling, IPS intends to review the operation of the statutory Right to Review.²
31. Taking account of the increase in complex historic sexual abuse cases and that cases involving sexual crimes now represent the majority of the COPFS High Court workload, we have recently embarked on a review of the investigation and prosecution of sexual crimes.

Inspectorate of Prosecution in Scotland
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² Section 4 of the Victims and Witnesses (Scotland) Act 2014 introduced the right of a victim to review a decision not to prosecute or a decision to stop or discontinue a case in July 2015.