

## **OPERATIONAL PERFORMANCE COMMITTEE**

### **MINUTE OF MEETING HELD ON 2 SEPTEMBER 2020 BY VIDEO CONFERENCE**

#### **Present:**

Lindsey Miller	Deputy Crown Agent – Serious Casework (Chair) (DCA)
Ruth McQuaid	Procurator Fiscal, Local Court West (RM)
Jennifer Harrower	Procurator Fiscal, Specialist Casework (JH)
Kenny Donnelly	Procurator Fiscal, High Court (KD)
Anthony McGeehan	Procurator Fiscal, Policy and Engagement (AM)
Fiona MacLean	Non-Executive Director (FM)
Fiona Roberts	Head of Management Information Unit (FR)
Gioia Ezzi	PA DCA – Serious Casework (Secretariat) (GE)

#### **Apologies:**

Graham Kerr	Head of Business Management, Local Court (GK)
Sharon Duffy	Serious Casework Compliance and Resource Manager (SD)

#### **1. Welcome and Apologies**

The DCA welcomed everyone to the meeting, apologies were noted

#### **2. Minutes of previous meeting**

Minutes agreed.

#### **3. Outstanding actions**

Action 2/20: Petition Warrant Key Performance Indicators (KPIs). **Action ongoing - update to be provided at November meeting.**

The committee discussed the approach to review and assessment of KPIs and what is required for November meeting. DCA will provide a template in advance of the September meeting to allow uniformity of reporting (and suggestions for revision) from each function. Template to include any other suggestions for performance that functions need to monitor, whether committee members consider that some of the current KPIs should be streamlined, and what it is essential to measure.

**ACTION 5/20: FR to aim to circulate in early November in advance of meeting the 6 month report on KPI to feed into discussion.**

#### **4. Monthly stats/Key Performance Indicators (KPIs)**

##### High Court

There has been a significant increase in new petitions in July with August looking similar - an analysis is being done on this to seek to identify any particular trends, and this will be reported back to OPC. This has been on the back of a steady increase over 3 or 4 years.

Another pressure point is trial preparation, and because of the current trial process with remote/socially distanced juries, and the need to empanel the jury a full day before, each trial is taking longer. It can take to around lunchtime on day two to get a trial started.

It is welcomed that trials are back up and running but at present the number and nature of the trial models cannot address the backlog. DCA sits on Lord Justice Clerk's working group on jury trials and one of the issues is in terms of court estate; multiple accused trials (with more than 2 accused) still cannot run even with a remote jury, they simply do not have the capacity.

One of proposals is to start 2 High Court trials at Glasgow Sheriff Court, but accommodation for COPFS staff is proving to be a challenge in locations where courts will be running. There are some jury rooms available at the Saltmarket for COPFS staff suitably socially distanced, but we require to ensure they are equipped for those who need to work in them. The drive to get trials back up and running is welcomed, but there requires to be equal attention given to the practicalities of the support to enable the trials themselves to take place. There is also a limit to number of witness in any court building due to physical distancing.

KD will provide data in advance of next meeting on any explanations for increase in petitions.

##### Local Court (LC)

LC Performance Board has given Band 1s each an area of work to lead on and report back on a monthly basis.

##### National Initial Case Processing Unit (NICP)

NICP performance is sitting at 12,800 in terms of KPI which is 4 weeks worth of work and was sitting previously at 14,000.

There are a few extra staff allocated to NIPC as a consequence of a recent board. DCA noted that there has been a significant reduction in cases over 10 weeks old, and improving journey time, with work in hand around the 4 week mark so was not concerned as chair of OPC.

It was noted that the Crown Agent (CA) has asked for plan for reduction. Committee members noted that it is older cases where there is the concern and

NICP is continuing to meet the published target and at the moment the compliance figure sits at 77%. It was also noted that there had been an extra 650 cases reported that week by the police, which is a 20% increase from last week.

OPC members agreed that the NICP figures were within the recognised KPIs, noted that the older cases where most of the risk lies were being reduced and that the priority of the OPC at this stage was not to seek to reduce the marking work in progress at the expense of other priority work in LC as part of the post Covid recovery process.

### Summary

The outstanding trial figures from June has increased. The ongoing constraints of physical distancing when running trials courts is causing significant difficulties across the court estate.

It was noted that the current requirements in terms of the summary practice note placed a significant burden on COPFS staff, some of whom reported feeling exhausted and undervalued.

DCA LC contacted JH as advocacy lead asking if she could provide some sort of guidance on staff conducting trials virtually. JH could listen in and offer staff assistance and so would like be notified of trials.

Sexual offences – LC is due to set up a performance board on this which will drive KPIs. It was noted that LC continue to meet the KPIs in this area which is positive.

DCA asked how many trials are running in the summary courts and which get to a verdict – RMcQ will try to get figures but it was noted that very little goes ahead. Written records are taking up considerable staff time which is viewed in some quarters as additional work for not much benefit. Committee members noted the considerable pressures on staff morale and welfare, impacted by the requirements placed on the Crown by the summary practice notes

As a committee note concern on the pressures on staff.

Criminal Justice Board looking at recovery programme across all business. DCA LC is reporting traction with Sheriff Principals (SP), but there remains varying practice notes and varying approaches. There was considerable concern expressed by Committee members about volume of business in LC and impact on staff welfare of differing procedures from SPs.

### **ACTION 6/20: DCA to raise staff welfare issue at EB.**

KD highlighted issue brought into sharp focus a number of issues including home working – while it was recognised that there were benefits to home working, there was a requirement to identify pitfalls and challenges particularly in terms of management of business and also staff wellbeing (including VT).

### Sheriff & Jury(S&J)

SCTS figures have outstanding business sitting at around 1,800 whereas COPFS figures are around 2,500. A serious concern for staff is that cases will all start to operate a time bar from October.

KD confirmed that the comment on SCTS data regarding the scale of problem has parallels with HC business. There is a concern that the attrition rate applied when looking at the scale of the challenge at recovery stage underestimates the volume of business.

DCA advised that LJC group on HC business are aware of latest HC figures. OPC noted that we cannot in any way underestimate the challenge of getting S&J business up and running again give the local and geographical challenges as well as the business volumes

### Specialist Casework

For one year now Case Management Panels (CMPs) have been conducted for legacy Health & Safety Investigation Unit (HSIU) & Scottish Fatalities Investigation Unit (SFIU) cases more than 2 years old. Specialist Casework is now looking at some of the outcomes and can report that approximately 100 SFIU cases and about 45 HSIU cases have been closed. Whilst there are additional cases being added to the CMP system as they hit their 2 year anniversary, the age profile of those cases is improving. Specialist Casework has also introduced the CMP process for deaths in custody and it is demonstrating good results. Additionally there will be CMP for 2 large and complex cases; the shooting of the civilian by police officers in Glasgow and also the train derailment. It was noted that it was good discipline to introduce in these cases which will become high profile and applying the CMP discipline at an early stage will be of significant benefit.

Extradition – the review of all outgoing extradition requests to make sure we have all information and evidence needed for EAWs or red notices is almost complete.

The need to monitor morale and welfare of staff in SOCU due to impact on the staff and consequently their performance on Lord Advocate’s admission of liability in Operation Iona which was published on PF Eye.

DCA mentioned possible CMP benefit in Covid deaths and whether overarching strategic one would be beneficial. JH will update committee after giving this consideration, as it was not likely to be the same model for legacy cases but it was agreed that an overview was required.

Brexit - FM noted on Specialist paper the optimistic view on contingency planning. JH advised that the prospect of a deal appears to be dwindling but that the team was also working towards a no deal position and are continuing to engage with EU law enforcement and prosecution partners.

## Policy & Engagement

The United Nations Convention of the Rights of a Child (UNCRC) is to be incorporated into Scots Law by a Scottish Government Bill now introduced into the Scottish Parliament. The Bill would require public authorities to act compatibly with the UNCRC and provide a right of challenge where they fail to do so. Both the SG and COPFS have requested an Opinion from the Lord Advocate on the competency of the SG seeking to apply this duty to the Lord Advocate and COPFS in the prosecution of crime. If it competent, the duty may impact upon prosecution decisions in individual cases, the prioritisation of cases and prosecution policy.

The Coronavirus Acts were emergency legislation and, as a result, have a 6 month sunset clause. The Acts may be extended by two separate 6 month periods only i.e. to end September 2021. The Act’s provisions may only be continued or suspended.

A number of improvements introduced for both criminal and civil justice will therefore come to an end at September 2021. A number of the improvements are significant for system recovery. The SG are alive to this and the need for substantive replacement legislation. The challenge is that the period until September 2021 has a shortened window of legislative opportunity due to Scottish elections in 2021.

The 2020 Act suspended time bars. The period of suspension for pre- 7 April 2020 solemn cases comes to an end on 7 October 2020, requiring the extension of timebars to keep cases live within a paused solemn jury system. The risk of this situation and resource intensive nature of the currently available solutions have been highlighted to the SG and the SG have been asked to consider a legislative fix. Policy will keep colleagues up to date with any substantial developments.

## **6. AoB**

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## **7. Date of Next Meeting**

12 November 2020