

Operational Performance Committee

Minutes of meeting held on 11 August 2021 by Microsoft Teams

Present

Stephen McGowan	Deputy Crown Agent – Serious Casework (Chair) (DCA)
Kenny Donnelly	Procurator Fiscal, High Court (KD)
Anthony McGeehan	Procurator Fiscal, Policy and Engagement (AM)
Graham Kerr	Head of Business Management, Local Court (GK)
Fiona McLean	Non-Executive Director (FM)
Jennifer Harrower	Procurator Fiscal, Specialist Casework (JH)
Ruth McQuaid	Procurator Fiscal, Local Court West (RM)
Peter Motion	Legal Assistant DCA – Serious Casework (Minutes) (PM)

1. Welcome and Apologies

The DCA welcomed everyone to the meeting, there were no apologies.

2. Minutes of previous meeting

The minutes of last meeting were agreed and can be published.

3. Outstanding actions

- Action 2/21: SMcG to advise EB of target change in CAAPD and provide paper for sign off. **Update:** Next EB on Wed 18th Aug 21 so paper will go to the board for approval then. **CLOSED.**
- Action 3/21: HC and LC to nominate reps/chair for the respective subgroups for UNCRC Bill. **Update:** One subgroup, LC chair still to be identified. **CLOSED.**

4. Terms of Reference (DCA)

Terms of Reference (ToR) circulated for consideration. Consideration regarding the purpose of the OPC discussed, including various representations made. Areas covered by the ToR may be getting explored elsewhere in the business so it was highlighted that some duplication of work may be occurring. It was also considered that KPIs and targets may be getting conflated. There has been discussion regarding purpose of KPIs, including expectation of the service recovery, public expectation and how they sit with additional funding. It is unclear if the OPC is meeting the remit outlined in the ToR at present, so whilst there may be a purpose for the OPC it seems to be focussed on targets rather than cross-service consultation.

It is understood KPIs came into existence following an audit into case progression. Prior to KPIs, it is understood that targets were utilised which were published. The OPC focussed on understanding the organisational pressures across the business with a view to achieving the targets. It allowed sight of the businesses strategic plans and how those aligned and assisted within the service delivery. It was considered that the OPC is helpful to allow members to understand the position and concerns across functions and how other areas of the service were operating. It was identified that there are now other groups in each function which focus on the business service of each function, such as Performance Committees, which hold people accountable for performance and service delivery in each function. It seems therefore that the OPC perhaps ought to be considering wider issues as KPIs and targets were already under consideration within each function. Examples of positive outcomes of the OPC were highlighted, but it was considered that these were isolated and the focus of the OPC may require to be assessed to ensure that the whole remit of the OPC is being achieved.

It was recognised that there were other committees within the organisation which may be facing the same challenges in terms of remit and their place in the structure of the organisation. Such committees were established following the structural reorganisation of the business and now that has matured, it may be that the purpose of the committees will require to be reassessed so that the organisation needs of the business are considered in the round. It was considered that there is a need for the OPC to continue to assess and ensure that processes are working properly, and that the OPC allows the opportunity to consider the subtleties of particular issues which is valuable and cannot be replicated in written updates alone. The OPC was appropriate for this oversight and that should continue with appropriate consideration of the wider remit of the OPC.

It was agreed at the DCA for Serious Casework will discuss with the other DCAs for their views in respect of the performance and work of other committees and will report back to the OPC with views. Meantime, the purpose of the committee and ToR will remain under review until wider discussion has taken place.

NEW ACTION (4/21): DCA SC to speak with other DCAs for views of other committees and will report back to the OPC.

5. Coronavirus Emergency Legislation

AMcG provided an update and explained that the Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland) (No.2) Act 2020 (the 2020 Acts) contain provisions designed to enable Scotland's response to the coronavirus pandemic. The 2020 Acts were emergency legislation and had sunset clauses of 30 September 2021. Prior to the summer recess, Parliament passed the Coronavirus (Extension and Expiry) (Scotland) Bill. The Bill extends the majority of the criminal justice provisions until 31 March 2022. The Bill also allows secondary legislation, an affirmative SSI, to be used to extend the Acts further to 30 September 2022.

It is understood that the SG plan is to use the SSI to extend the justice provisions to 30 September 2022. However, it is also clear that there would have to be a major development for there to be any further extension (this is separate from consideration of whether, independent of the pandemic, there should be legislation to permanently enable a modern criminal justice system e.g., the ability to conduct business electronically). COPFS have to plan for the time bar extensions no longer being available.

It was recognised that this may be more manageable in solemn proceedings, however consideration will require to be made regarding solemn bail cases subject to the suspension and those that are not, to ensure a careful transition. Summary cases will require more considered planning given the reliance on police reporting timeously, case marking and availability of court slots. It was also recognised that police reporting timelines are affected by SPA timelines which were extended in relation to forensic analysis. If this is not managed, it could lead to cases time barring before COPFS has the opportunity to consider. It was also highlighted that Local Court already has pressing priorities, including the age profile of cases and resourcing challenges.

It was considered that a case will require to be put to the SG for planning purposes highlighting the challenges that will face the organisation. There is a further meeting taking place with SG in September 2021 to consider further. It has already been highlighted that it is very difficult to forecast for September 2022 at present, not least due to the potential progress of the pandemic, and that the challenge is not isolated to COPFS but rather a wider system issue which may be best understood at Justice Board/Criminal Justice Board level.

It was advised that all functions will require to consider this. It was recommended that function leads work back from September 2022 to identify what the appropriate priorities will be to ensure the needs for September 2022 are met with appropriate analysis to identify what resources and work will be required. This should be taken away by function leads to incorporate and work into business plans. It was noted

that the update was helpful and should start to be considered and actioned by function leads in business plans.

6. AoB

There was no AoB.

Date of Next Meeting: 22 September 2021