

Executive Board meeting minutes

Meeting held on 17 August 2022 by Microsoft Teams

Present:

David Harvie (Chair)	Crown Agent
John Logue	Deputy Crown Agent, Local Court
Anthony McGeehan	Deputy Crown Agent, Operational Support
Keith Dargie	Head of Business Services
Sarah Carter	Director of Human Resources
Marlene Anderson	Director of Finance and Procurement
David Watt	Non-executive director
Annie Gunner Logan	Non-executive director
Fiona McLean	Non-executive director
Vanessa Davies	Non-executive director
Rob Tinlin	Non-executive director

In attendance:

Jonathan Shebioba	Director of Support Services
Ann Marie Henderson	Secretariat
Mairi Boyle	Secretariat

Apologies:

Stephen McGowan	Deputy Crown Agent, Specialist Casework
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Agenda Item 1 – Welcome and Apologies

1. The Crown Agent opened the meeting and welcomed all colleagues. Apologies were noted from Stephen McGowan.

Agenda Item 2 - Minutes of previous meeting

2. The minutes of the meeting held on 29 June 2022 were approved and can be published. David Watt noted his interest in two matters before the SPSO. There were no other conflicts of interests.

“Releasable under the Freedom of Information (Scotland) Act 2002 after the next meeting”

Action tracker

3. Item 1 – DCA Serious Casework will provide an update at the September meeting.
4. Item 2 – DCA Serious Casework advised in terms of governance the paper will be provided to ARC for consideration before coming back to the Board at the September meeting.
5. Item 3 – DCA Operational Support will provide an update under Agenda Item 8.
6. Item 4 – To be added to the year planner for 2023.
7. Item 5 – Head of Business Services provided an update on Edinburgh estates. The business case submitted by the partnership, discussed previously, is now on hold due to budget and capital pressures. There is no impact on the current budget. Glasgow estates will be dealt with under Agenda Item 6.
8. Item 6 – Business Plans will be covered under Agenda Item 5.
9. Item 7 – DCA Local Court advised that the Project Board will meet on Monday and it is hoped the Board will confirm the project can start on Monday 5 September. He gave an update on workshops currently taking place in Dundee, Hamilton and Paisley. He also reported on defence bar engagement with the pilots, which has been impacted by their issues with Legal Aid. It is hoped that with judicial management of cases this should not affect the pilots. A formal assessment of the pilots is expected at around 12/18 months. If successful the DCA will advocate for expansion to other courts. DCA Local Court to provide an update on the first quarter of the project at the December meeting.
10. It was noted that Items 8 and 9 can now be closed.
11. Item 10 – update to be provided at the September meeting.

Agenda Item 3 - Finance Update

Finance Update

12. The Director of Finance and Procurement introduced paper EB22/23(17). She reported that the annual accounts and report are almost complete, pending agreement with Audit about 2 actions on provisions. It is hoped that the accounts will be signed at the Audit and Risk Committee meeting on 24 August but signing might have to be delayed if this issue is outstanding. There will be a separate meeting with NXDs to outline the detail of this issue.

13. It was noted that the projected overspend for the current financial year has been adjusted down to reflect agreed actions and controls in all areas of expenditure. We are still looking at non-staff costs to ensure all known risks and savings are captured. On future years budget planning, there was a reminder that that the RSR indicative funding envelope is for flat cash. This is not a final budget allocation and we will go through the normal budget process for FY 23/24 and beyond. Pressures on 23/24 SG budget may not reflect the assumptions made in the RSR process so a flat cash allocation is not a guaranteed minimum allocation and engagement with SG at bilaterals will be critical. Nonetheless we are planning as far as possible on the basis of RSR and the Resources Committee has established a short life budget working group.
14. There was discussion of the fact that outstanding SG decisions on public sector pay will potentially impact the funding of pay parity; recruitment; offers of employment (where an approach focused on securing essential skill sets is being taken); and the service that COPFS can deliver.

Overtime Update

15. The Director of Finance and Procurement introduced paper EB22/23(18). Overtime continues to be scrutinised and controlled. There are fluctuations because of lags in recruitment but these should reduce in the near future.

Agenda Item 4 – Risk Register

16. Head of Business Services introduced paper EB22/23(19). He advised that the Risk Register was being actively reviewed to make sure it reflects ongoing resource and budget scenarios. Risk 1, Resources will be a standing item at Risk Management Group for the foreseeable future. There will be a specific analysis on operational performance and delivery (Risk 5). At the next meeting of RMG there will be an update on the digital strategy and on an informal project on embedding risk management culture. At the suggestion of the Board the Risk Register will be updated to include mitigations as a result of the review of leadership. The Corporate Resilience Group is due to sign off on an action plan for resilience in the event of industrial action.
17. There was an update to the Board on the recent power outage affecting Crown Office and 29 Chambers Street. It was noted that business continuity plans held up and that investment in disaster recovery systems meant all live digital services were able to continue. A review will be carried out, particularly as to whether there are lessons to be learned about our response to these incidents in a hybrid working environment.

Agenda Item 5 – Business Plan

18. Head of Business Services introduced paper EB22/23(20). He explained the context for and purpose of the corporate business plan, and proposals for publication when it is approved by the Board. There were some suggestions by NXDs on the plan format and outcomes content. After discussion, it was agreed these suggestions will be considered when developing the strategic plan for 2023-2026 and the business plan for the current corporate year will be published reflecting annual corporate reporting mechanisms.
19. DCA Operational Support gave an update on work on the new strategic plan. There is a workshop with Law Officers today for ministerial direction on priorities they wish to feature in the new plan which will be taken into consideration in drafting. It is hoped that there will be consultation on a draft and a final product for Law Officer consideration by December or January.
20. It was also noted there was scope to raise the profile of the annual accounts and report that within the organisation, particularly given the level of scrutiny this reporting involves.

Agenda Item 6 – Ballater Street Refurbishment

21. Head of Business Services set out the context for this work and introduced the Director of Support Services. Director of Support Services explained the purpose of submission of an Outline Business Case (OBC) to Scottish Government, the work that had been involved in producing the OBC and the rationale for the OBC. There was wide-ranging discussion about the OBC and how this had been received at Resources Committee.

Action: Director of Support Services to reframe OBC in light of discussions today, with a view to Resources Committee considering a revised OBC and this coming back to the Board for decision.

Agenda Item 7 – Leadership, Governance and Development

22. DCA Operational Support introduced paper EB22/23(22). He gave the context for the paper and explained how it represented a consensus on how we could improve governance to meet the challenges we face. A theme which came up repeatedly in the process of developing the paper was that of accountability to the public we serve and the need to drive culture change in the department based on understanding that obligation collectively and personally. It was suggested that external resource may be a way of ensuring we are following best practice here.
23. The Board was highly supportive of this work and approved the paper. Further updates will be provided to the Board.

Agenda Item 8 – Profile of Data Protection

24. DCA Operational Support introduced paper EB22/23(23). He explained how the formation of the Information Governance Unit (IGU) had brought a more professional approach to data protection issues including monitoring of data breaches and incidents. There has been an increase in reporting of breaches and incidents. This is thought to be an increase in reporting as a result of better awareness of our obligations in this area rather than an increase in the number of breaches and incidents. Data protection training has been mandatory for all staff. The DCA then gave examples of breaches and incidents and matters where there has been engagement with the Information Commissioner’s Office.

Agenda Item 9 – Function Updates – Operational Support

25. DCA Operational Support introduced paper EB22/23(24). The Board noted the update.

Agenda Item 10 – Function Updates – Local Court

26. DCA Local Court introduced paper EB22/23(25). The Board noted the update.

Agenda Item 11 – Function Updates – Serious Casework

27. Paper EB22/23(26) was introduced to the Board. The Board noted the update.

Agenda Item 12 – Committee Update - Resources

28. DCA Operational Support introduced paper EB22/23(27) was noted by the Board.

Agenda Item 9 – Committee Update – Business Improvement

29. DCA Local Court introduced paper EB22/23(28) which was noted by the Board.

Agenda Item 10 – Committee Update – Operational Performance

30. Paper EB22/23(29) was noted by the Board.

August 2022

EXECUTIVE BOARD
AUGUST 22 MEETING
FINANCE UPDATE

Purpose

1. This paper provides the Resources Committee with an update on:
 - The Financial outturn for the annual accounts for 2021-22.
 - Budget considerations for 2022-23.
 - Resource Spending Review.

Finance update 2021-22

2. Audit has completed with no changes to results required pending outcomes for provisions. (Appendix A)

Budget 2022-23

3. The second forecast for 2022-23 has been completed (Appendix B). The forecast reflects a current overspend forecast of £348k which has moved from £3.1m forecast overspend for May 22 forecasts. The forecasts have been adjusted to reflect agreed actions and controls that have been implemented as well as known funding drawdown.
4. The following proactive measures implemented are:
 - The Finance Business Partners and HOBMs scrutinise all non-staff costs for any options of savings;
 - Business process reviews are continuing to be carried out by the transformation teams and individual directorates. Head of MAP met with Heads of Business Management to discuss the costing of identified savings from transformation projects. This will be reported in the autumn as pilot schemes are launched and more scrutiny around time savings are carried out and analysed;
 - Teams continuing to consider options for/implementing restructures to facilitate more efficient working/reallocation of work (informed by the work carried out by transformation teams and individual directorates) to realise further savings;
 - The Workforce Planning Group established a short life working group which continues to focus on post-based control testing, prioritising vacancies according to need and challenging direct replacement of leavers as previously outlined and ensuring consistency between HR and Finance staffing information.

- Overtime continues to be scrutinised and controlled to ensure that it does not add to budgetary pressures.
5. Our budgeted FTE in 2021-22 was 2,397.33. The proposed baseline FTE is now 2,433.4 due to reconfiguration of posts. The above actions may result in a fluctuation in FTE to address the overspend position.
 6. A bid for additional funding for the COVID Deaths Investigation Team (CDIT) was submitted to Scottish Government and in year funding has been approved, with the 23-24 and 24-25 requirements being subject to normal budget bilateral discussions.

Risks:

- Staff vacancy rate realised is insufficient to produce required savings to balance the budget;
- As COPFS has agreement with Scottish Government to keep pace with Scottish Government pay rates, any pay settlements that are higher than pay policy (at SG or COPFS) would result in further financial pressures;
- Toxicology – the transition to SPA for toxicology is currently on track. If any deviation from planned transition occurs, this would have a financial impact for COPFS where using extended contracts.

Resource Spending Review (RSR) and Budget Planning

10. As a reminder, the RSR was published at the end of May with COPFS results as follows:

	2022-23	2023-24	2024-25	2025-26	2026-27	Total
Resource	169.8	170.0	170.0	170.0	170.0	849.8
Capital	5.3	11.3	9.3	6.3	Not yet allocated	32.2
Total	175.1	181.3	179.3	176.3	170.0	882.0

Note: The above table shows cash resource and capital, and does not include the non-cash ring fenced allocation for depreciation and audit fees.

11. The RSR allocations show flat cash until 2026-27. It is to be noted that this is not our final budget allocations as the allocations will go through the annual budgeting process, including bilaterals to determine our final allocations each year.
12. We do, however, need to plan as far as possible on this basis and take steps to ensure that we maximise efficiencies to ensure that we are as close as practicable to the RSR envelope indicated above.
13. The Resources Committee has established a short life Budget Planning Working Group (BPWG). This Group will contribute to the COPFS budget bid for 2023-24, carry out financial modelling and resource outcomes dictated by budget, CDIT funding, pay settlement and RSR scenarios. The Group will require to be an agile one, able to support an effective COPFS contribution to the budget process.
14. Scenario planning has been carried out and being considered by the BPWG. The assessed options and impacts will be taken to the August Resources Committee for discussion.

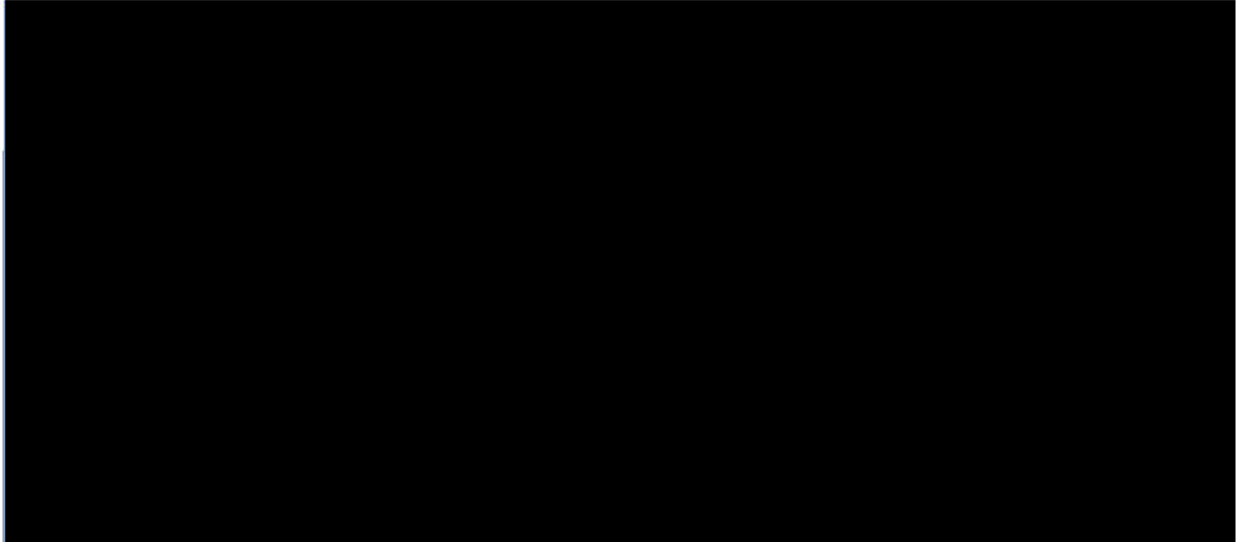
Conclusion

- 15. The Executive Board is asked to note the progress towards concluding the 2021-22 Annual Accounts.**
- 16. The Executive Board is invited to note, and if it wishes, comment on the 2022-23 forecast position.**
- 17. The Executive Board is asked to note, and if it wishes, comment on the RSR budget planning process.**

Finance Directorate

8 August 2022

The budget and outturn for 2021-22 is as follows:



EXECUTIVE BOARD
CORPORATE RISK REGISTER

August 2022 Update

Purpose

1. To provide the Executive Board with an update on the Corporate Risk Register.

Priority

2. Routine.

Update

3. Risk Management Group (RMG) last met on 28 July 2022 and reviewed the Corporate Risk Register.
4. Corporate Risk 1 (Insufficient resource to enable COPFS to meet its statutory and policy obligations and meet public expectations) and Risk 2 (Inadequate leadership and management of COPFS staff) were the subject of deep dive discussion.
5. Director of Finance and Procurement provided a paper updating on the corporate funding and forecast positions for 2022-23. Risk 1 will be added as a standing RMG agenda item for the foreseeable future.
6. Head of Business Management – Local Court attended to speak to a deep dive of Risk 2. Key risk themes were discussed and planned improvements to achieve target scores noted.
7. RMG is next scheduled to meet on 28 September 2022. In addition to reviewing the Corporate Risk Register, Risks 1 and 5 (Decline of organisational performance and service delivery) will be updated and reviewed by RMG at its next meeting. An update on Risk 6 (Inadequate digital resource and capital investment) individual components will be provided by the Chief Digital Officer who will also report on COPFS' resiliency and readiness in relation to cybersecurity threats. RMG also noted the need to factor corporate budget and resourcing positions to corporate risks.

Corporate Resilience Group Update

8. The Corporate Resilience Group (CRG) met on 7 July 2022 with a specific focus on business resiliency planning and preparedness for potential industrial action. Business Services is coordinating with Functions to devise and align established business resiliency plans with industrial action planning. An action plan will be approved by CRG by 9 September reflecting agreed outcomes and incorporating communications, stakeholder coordination and other relevant factors.

Decisions/Actions required by Executive Board

9. The Executive Board are asked to note and comment as appropriate on the Corporate Risk Register and CRG updates provided in this paper.

Keith Dargie

Head of Business Services

10 August 2022

Corporate Risk Register (July 2022)

Risk Description	Potential causes	Potential Consequences	Key Controls	Status ✓ X !	Current Risk Impact	Current Risk Likelihood	Current Risk Score	Key Actions	Target Risk Impact	Target Risk Likelihood	Target Risk Score	Target Date	Review Date	Risk Manager	Risk Owner
1 Insufficient resource to enable COPFS to meet its statutory and policy obligations and meet public expectations	<ul style="list-style-type: none"> Insufficient Financial and Human Resource; Failure to reach all the diverse groups within society and therefore lack of diverse skills and experience; Unexpected costs arising from litigation including from loss of LA absolute immunity; Managing changing public expectations; Political responses – legislation and system changes e.g., Trailing a Victims Bill which generates additional demand on COPFS, Public Inquiry into COVID Deaths. 	<ul style="list-style-type: none"> May not be able to recruit sufficient employee numbers at a sufficient level to manage existing workload and clear the backlog arising from the Covid pandemic; Inability to retain skilled staff; COPFS do not remain within budget allocations; Key discretionary activities – e.g., VIA, some procurement and some equality work - may be difficult to protect because services that are perceived as not being COPFS's core business may not be funded when difficult decisions must be made; Reputational risk and loss of public confidence if litigation cases increase from loss of LA absolute immunity. 	<ul style="list-style-type: none"> Workforce Planning Group manages and controls workforce planning - monthly meetings; Resources Committee meets monthly and reviews actual and forecast expenditure and exercises budget control as necessary; Close liaison with SG re annual spending reviews and on-going dialogue with SG Finance Business Partner; Business Services continually reviewing recruitment, development and succession planning issues to secure supply of specialist staff; Cases for additional funding are submitted to the Scottish Government when considered necessary; COPFS involved in Criminal Justice Board which continues to plan and monitor Covid recovery; Regular partnership meetings and Employee Relations Committee meetings with unions ensure ongoing dialogue with unions on industrial relations; 	<ul style="list-style-type: none"> ✓ ✓ ✓ ✓ ✓ ✓ ✓ 	4	4	16	<p>Short Term Actions</p> <ul style="list-style-type: none"> Pay negotiations with unions ongoing; Workforce plans to be agreed assessing and determining risk following 2022-23 budget settlement and RSR envelopes published for the next 5 years; Challenging funding position requires more financial and workforce modelling, assessing impacts on delivery and ability to realise required savings; Address challenges of recruitment and ensure transformation of business processes continue, ensuring the right work is placed at the right level; Monitoring of Court Recovery budgets to ensure spend is within budget and activity is progressed; Monitoring of CDIT funding utilisation and progress made. <p>Actions required to achieve target score</p> <ul style="list-style-type: none"> Preparation for and implementation of pay coherence Year 3; Continue collaborative working with Scottish Government and Justice partners; Continue work and engagement in Strategic Approach to Budgeting and RSR follow up meetings; Assess resourcing impact of changes in legislation and public inquiries. 	3	3	9	May 2022 and ongoing as response to SG budget planning milestones require	Oct 2022	Director of Finance & Procurement	DCA Operational Support

Corporate Risk Register (July 2022)

Risk Description	Potential causes	Potential Consequences	Key Controls	Status ✓ X !	Current Risk Impact	Current Risk Likelihood	Current Risk Score	Key Actions	Target Risk Impact	Target Risk Likelihood	Target Risk Score	Target Date	Review Date	Risk Manager	Risk Owner
2 Inadequate leadership and management of COPFS staff	<ul style="list-style-type: none"> Managers not feeling sufficiently trained or equipped to lead and manage their staff; Challenges in leading people remotely; Low compliance with Performance Management System therefore performance and absences not being properly managed; Lack of clear direction from senior leaders through business planning and objective setting; Decision-making pushed to senior levels too quickly; Not acting on results of Civil Service Survey and Pulse survey; HR support sought too late or advice not acted upon; 	<ul style="list-style-type: none"> Higher levels of sick absences; Increased number of grievances and disputes leading to successful and expensive litigation; Poor staff survey results; Increased pressure on HR due to dealing with unnecessary work associated with grievances etc. Operational performance standards decline; Staff lose confidence in management to make good decisions; Staff and management well-being negatively impacted; 	<ul style="list-style-type: none"> Communications to staff on performance management and why they should engage; Senior leadership keeping a watching brief on MI and processes around performance management and training; Analysing, acting and communicating with staff on actions taken on results of Civil Service survey and pulse surveys; Continually reviewing policies and processes to make sure they are fit for purpose; New intranet in development to improve two-way comms; Strategic plan in place up to 2023; Learning and Development Strategy to support remote management; Skilled, professionally qualified HR managers working alongside functions to provide support and advice; People Strategy 2021-23 launched May 2021. Career Movement and Development Policy launched June 2021 to facilitate staff moves and support clear career paths. Revised approach to induction devised and implemented. New Performance Management system launched 	<ul style="list-style-type: none"> ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ 	4	3	12	<p>Short Term Actions</p> <ul style="list-style-type: none"> Development of senior leader training programme – ongoing; Development of Functional Management training - ongoing <p>Long Term Actions</p> <ul style="list-style-type: none"> CMD wider applications will depend on departmental tolerance; <p>Actions required to achieve target score</p> <ul style="list-style-type: none"> Role profiles and associated training in place across all grades below SCS; Management training in place to support and equip managers to lead and manage their staff; All Function Business Plans in place to communicate succinctly the ties to the Strategic Plan; Unnecessary tasks removed to provide managers time to manage staff appropriately; Development and use of Learning Management System and Virtual Learning Environment modules in new HR IT system. 	3	2	6	Nov 2022	Jan 2023	HoBM Local Court/ Serious Casework/Operational Support	DCA Local Court

Corporate Risk Register (July 2022)

Risk Description	Potential causes	Potential Consequences	Key Controls	Status ✓ X !	Current Risk Impact	Current Risk Likelihood	Current Risk Score	Key Actions	Target Risk Impact	Target Risk Likelihood	Target Risk Score	Target Date	Review Date	Risk Manager	Risk Owner
3	Poor wellbeing and low morale of COPFS staff	<ul style="list-style-type: none"> • Mental health and increased workload could lead to increased sick leave; • Inability to keep a balance between workload and health with operational performance suffering; • Increased number of staff requiring access to Vicarious Trauma support leading to longer waiting times; • Increased pressure on HR due to dealing with additional work associated with attendance management etc; • Disputes re mishandling of disability related absence cases leading to successful and expensive litigation (employment tribunal and/or personal injury); • Failure to recruit means more pressure on teams to deliver with current resources; • Increased scrutiny (i.e., as a result of civil litigation) has significant personal impact on individuals; • The pace of change and volume of work means individuals and teams feel a lack of control. 	<ul style="list-style-type: none"> • Wellbeing strategy being implemented, including targeted communications signposting help available plus wellbeing portal on intranet; • Senior leadership keeping a watching brief on MI and processes around performance management and training; • Analysing and acting on results of Civil Service survey and pulse surveys; • Continually reviewing policies and processes to make sure they are fit for purpose; • Corporate and Sheriffdom Health and Wellbeing Committees meet regularly; • New Attendance Management Policy with e-learning available at the same time; • Future Ways of Working Project looking at how to enable better work life balance; • Wellbeing communications plan to support rollout of actions; • Flexi and annual leave monitored centrally and locally; • Regular meetings with trade unions to retain partnership approach to wellbeing actions; • Dedicated team in HR to lead on Wellbeing initiatives and to act as a central corporate resource. 	<ul style="list-style-type: none"> ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ 	3	3	9	<p>Short Term Actions</p> <ul style="list-style-type: none"> • Messaging around agile working including further comms around home risk assessments and H&S learning modules throughout September 2021. • Enhanced communications about importance of wellbeing discussion during PM quarterly conversations continuing, • Functions, HR and Corporate Comms progressing actions in advance of 2021 people survey (September 2021). • Complete recruitment for court recovery vacancies and backfill in order to reduce workload – September and November 2021; Ongoing. <p>Actions required to achieve target score</p> <ul style="list-style-type: none"> • Maintain staff numbers at new record level; • continue to develop well-being products in line with staff feedback; • Enhance line management support (taking account of remote working factors); • Improve take up of Vicarious Trauma support offering; • Implement pay policy offer and three year pay parity offer to timescale; 	3	2	6	Dec 2022	March 2022	Director of HR	DCA Serious Casework

Corporate Risk Register (July 2022)

Risk Description	Potential causes	Potential Consequences	Key Controls	Status ✓ X !	Current Risk Impact	Current Risk Likelihood	Current Risk Score	Key Actions	Target Risk Impact	Target Risk Likelihood	Target Risk Score	Target Date	Review Date	Risk Manager	Risk Owner		
								<ul style="list-style-type: none"> Continued monitoring of flexi and annual leave to make sure staff are taking regular leave/ breaks /not working excessive hours; Regular communication around support available re civil litigation / public inquiries; Bespoke support for individuals directly impacted by civil litigation/public inquiries; Continued communications and Function-led focus on quarterly conversations as a management tool for assessing and providing support for individual wellbeing; Continue to proactively assess the recruitment market, individualising recruitment strategies to the vacancy need to ensure we are agile in our response to filling vacancies. 									
4	Insufficiently skilled or experienced COPFS staff available to meet current public expectations, and to strengthen our capacity to change and improve services	<ul style="list-style-type: none"> Lack of identifiable learning culture, needs-led curricula, learning pathways or prospectus resulting in lack of clarity and poor perception/uptake of available core job role and management and leadership learning. Sub-optimal operating model of Scottish Prosecution College, insufficient availability and 	<ul style="list-style-type: none"> Quality of service being impacted, leading to inequality of access to justice for all and reputational damage; Inexperienced legal staff making the incorrect decisions at the case marking stage; Managers not feeling equipped to lead and manage their staff; Insufficiently skilled workforce to meet the demands of their roles 	<ul style="list-style-type: none"> Senior commitment to reposition Scottish Prosecution College with vision published externally. Curriculum approach to training being developed in line with role profiles, encouraging development and attendance on courses teaching skills and knowledge beyond role profiles. Senior leadership keeping a watching brief on training and 	!	✓	4	3	12	Short Term Actions	3	2	6	March 2025	Jan 2023	Head of Scottish Prosecution College	DCA Operational Support

Corporate Risk Register (July 2022)

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	<p>deployment of relevant expertise, advice and digital tools/skills.</p> <ul style="list-style-type: none"> • Sub-optimal links between learning and performance (and PAR) and career movement and development. • Training time not considered pervasive/protected • Learning needs analysis and responses are not managed timeously/centrally/ by those with educational expertise. Highly likely to place focus on lower priority areas/ divert resources from priority areas. • Learning that is delivered is not evaluated against pre-established desired outcomes nor included within MI. • Unstructured approach to selection of external courses at a local level. • Lack of focus on quality whilst delivering pandemic-driven online training • Equality of access to learning opportunities is not best supported through Further Education (FE) and Professional Development (PD) Policy and protocols. • COPFS does not meet Justice System commitments to trauma informed justice workforce knowledge and skill sets. 	<p>due to the changing complexity and sophistication of casework and working environment;</p> <ul style="list-style-type: none"> • Potential increase in litigation resulting in financial loss; • Lack of overall resilience due to insufficiently skilled resources to perform routine and specialist tasks. 	<p>supporting targets to support additional courts including allocating people to training.</p> <ul style="list-style-type: none"> • Communications to staff around the importance and requirements for training; • Scottish Prosecution College producing online training packages to support development during pandemic. • Band H Head of College appointed to lead change programme in consultation with leaders and learners. • Upskilling of all College staff on EQIA. • Head of College sits on Scottish Government Victims' Task Force Working Group 2, contributing to the development of the national trauma informed justice workforce Framework. 	<p>✓</p> <p>!</p> <p>✓</p> <p>✓</p>				<ul style="list-style-type: none"> • Member of Pay and Grading Working Group with Phase I risks managed and Phase II due to commence autumn 2022. • New College Steering Committee met in April and July 2022 with key decisions made and governance established • Supporting COPFS SLT leadership learning (ongoing). • 'learning pathways' progressed through biannual curriculum and prospectus planning involving organisation-wide learning needs analysis and Steering Committee horizon scanning and pipeline planning (first prospectus launched April 2022, second to launch November 2022.) • Continuously improve quality of online learning whilst we pivot to a greater digital offering (ongoing). • Pursue bespoke online learning College website project and phase 'switch on' of design functions from FY 22/23 (ongoing) • Modified traineeship policy in association with HR (implemented from March 2022 with Q1 progress report complete). • Proposal for introductory trauma informed learning package for Q3 							

Corporate Risk Register (July 2022)

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								approved by SET August 2022. • Refine FE policy application process and all College staff EQIA trained (summer 2022) <u>Actions required to achieve target score (applying from FY 22/23)</u> • Consultation on future of learning for deposes in first years and current accreditation policy (closed in May 2022, at review stage but practically skills gap risk mitigated by New Depute Foundation Programme). • Set out strategic change plan aligned with People and Digital Strategies for period from Apr 2023- with clear success criteria. To incorporate clear education policies for face to face and digital (ongoing, operating in line with existing 'L&D strategy 2021-2023' and agreed transitional plans) • Embed approved operating model and ensure fit for purpose website for learning design (NB: operating model is only partially approved. Recruitment timescales impacting. DPIA/security and Disclosure issues in wider HR project are impacting). • Leadership Framework to underpin learning and management programmes to be							

Corporate Risk Register (July 2022)

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								developed (see also risk 2 – now anticipate from Q4 FY 22/23 for future recommendations once Band E lead is recruited (transitional plans for the current FY approved at July Steering Committee). <ul style="list-style-type: none"> COPFS to respond to national trauma informed justice framework following its anticipated launch in autumn 2022. FE/PD policy review required. 							
5	Decline of organisational performance and service delivery	<ul style="list-style-type: none"> Capacity issues due to summary and solemn business backlog and churn; Increased journey times; Our ability to influence timely outcomes/ prioritisation of cases; Increase in the nature, complexity and sophistication of crime and our ability to deal with them; Insufficiently trained staff; Toxicology reports being unavailable to enable cases to be processed timely; 	<ul style="list-style-type: none"> Reputational damage; Potential increase in litigation resulting in financial loss; Increase in errors or failing to meet time bars resulting in cases falling; Duplication of effort due to churn requiring more resources; Higher number of victims, witness and next-of-kin waiting longer for cases to be concluded which in turn increases the volume of work to keep them updated; Inequality of access to justice for all; 	<ul style="list-style-type: none"> Allocation of experienced staff to complex and high-profile cases; Relevant training provided to equip staff to carry out their role; Engagement with targeted CJ stakeholders and groups; Operational Performance Committee and Function management review MI regularly and decide whether resources need to be shifted to keep journey times at appropriate level; SCG Project Board working closely on renewing provision of toxicology, pathology and mortuary requirements; 	✓ ✓ ✓ !	4	4	16	3	3	9	October 2022	January 2023	OPC	DCA Serious Casework
								<p>Short Term Actions</p> <ul style="list-style-type: none"> Allocation of resources to top casework priorities; Review resourcing for 22/23; Continuing discussions about how to tackle trial backlog with SG and CJ partners in context of budget 22/23; Engage with professions and government re capacity of professions to reduce backlogs more quickly; Continue to monitor, discuss performance and measures for tackling backlog of toxicology and PM reports with service providers; Publish new corporate service improvement strategy and action plan – Dec 2021. <p>Actions required to achieve target score</p> <ul style="list-style-type: none"> Budget settlement for 22/23 that enables us to recruit and retain sufficient staff 							

Corporate Risk Register (July 2022)

Risk Description	Potential causes	Potential Consequences	Key Controls	Status ✓ X !	Current Risk Impact	Current Risk Likelihood	Current Risk Score	Key Actions	Target Risk Impact	Target Risk Likelihood	Target Risk Score	Target Date	Review Date	Risk Manager	Risk Owner	
								including recovery funding; • Completion of Recruitment and transfer exercise in line with 22/23 budget allocation; • Agreement and resourcing of additional court programme; • Availability of sufficient suitably qualified professionals to staff additional courts (including judicial, courts and defence practitioners); • Review of toxicology provisions; • Completion of High Court review on streamlining VIA process; • Completion of Mental Health Session roll out for Managers; • Continue to review KPIs aligned to journey times to ensure sufficient resource allocation; • Implementation and regular review of service improvement action plan.								
6	Inadequate digital resource and capital investment	<ul style="list-style-type: none"> Restricted by pace of funding and the level of capital funding/investment available; Inability to deliver strategic business transformation or modernise critical digital systems and public facing services; CJ partners not moving at the same pace to enable best use of digital solutions; 	<ul style="list-style-type: none"> Less business process and digital casework automation to assist in reducing workload, delivering efficiencies and improving services; Core staff protected but inability to retain specialist contractors to deliver improvements to free up time and improve service delivery; Inability to continue with transformation and replacing essential 	<ul style="list-style-type: none"> Pay coherence work looking at grading and pay structures for Business Services and ISD in particular; [ongoing] Continued COPFS accreditation to the Cabinet Office PSN, Home Office PSNP and Scottish Government Cyber Essentials network security and information assurance schemes; Regular review of IT Security and information 	✓	5	3	15	Short Term Actions <ul style="list-style-type: none"> Delivery of ISD Portfolio and Digital Transformation Programme for 2022/23; Delivery of Digital Strategy Delivery Plan; Annual Cyberattack simulation exercise and testing of IT and business resiliency procedures; Recruitment, integration and retention of ISD 	3	2	6	End March 2023	Jan 2023	Chief Digital Officer	DCA Local Court

Corporate Risk Register (July 2022)

Risk Description	Potential causes	Potential Consequences	Key Controls	Status ✓ X !	Current Risk Impact	Current Risk Likelihood	Current Risk Score	Key Actions	Target Risk Impact	Target Risk Likelihood	Target Risk Score	Target Date	Review Date	Risk Manager	Risk Owner
	<ul style="list-style-type: none"> • Inability to recruit or retain sufficiently high calibre staff due to pay restraints in comparison to private sector; • Insufficient high calibre developer, infrastructure and other specialist digital resources; • Inability to employ specialist contractors or suppliers to deliver business needs. 	<p>systems, e.g. case management system;</p> <ul style="list-style-type: none"> • Investment would have to be slowed down or stopped; • COPFS IT systems vulnerable to cyber-attacks; • Information is not protected resulting in non-compliance with mandatory Government information assurance schemes and Data Protection laws; • Reputational damage 	<p>Assurance policies (via the above accreditation processes);</p> <ul style="list-style-type: none"> • Compliance with the Data Protection Act 2018 and the General Data Protection Regulation (GDPR); • Compliance with the Freedom of Information (Scot) Act 2002; • Recording of information incidents and reporting of breaches to the ICO; 	<p>✓</p> <p>✓</p> <p>✓</p>				<p>people resources in line with COPFS budget allocations to support delivery programmes;</p> <ul style="list-style-type: none"> • ISD continue seeking additional capital funding from Scottish Government funds to support COPFS' corporate, DESC, RRT and digital casework priorities. <p><u>Actions required to achieve target score</u></p> <ul style="list-style-type: none"> • Strategic and prioritised BPIC, ISD Portfolio and Digital Transformation Programme for 2022/23 onwards; • Close monitoring of BPIC and digital transformation projects for 2022/23 to assess capacity for delivering corporate business improvement priorities; • Delivery of COPFS 2022/23 digital transformation priorities, including Witness Gateway, Defence Agents Service and DESC; • CDO continue engaging with COPFS corporate and SG finance processes to bid for additional capital resources; • Successful recruitment of people resources and skills to support ISD's delivery of COPFS' corporate priorities; • Full implementation of Cyber and information management resiliency solutions and policies; 							

Corporate Risk Register (July 2022)

Risk Description	Potential causes	Potential Consequences	Key Controls	Status ✓ X !	Current Risk Impact	Current Risk Likelihood	Current Risk Score	Key Actions	Target Risk Impact	Target Risk Likelihood	Target Risk Score	Target Date	Review Date	Risk Manager	Risk Owner	
								<ul style="list-style-type: none"> Establishment of COPFS' offsite primary and secondary datacentres and enhanced IT resiliency capabilities; Comprehensive planning and resources to develop COPFS' next generation case management systems; Publication of new COPFS Digital Strategy: Jan 2023. 								
7	Inadequate contingency planning	<ul style="list-style-type: none"> Vulnerable to business continuity disruption and service delivery is more likely to fall over; Reputational damage; Impact on staff wellbeing of having to deal with consequences of business continuity disruption; Impact on financial resources of having to deal with consequences of business continuity disruption; 	<ul style="list-style-type: none"> CRG Meeting every 2 months Established emergency response procedure/governance Established digital structure and repository for all business continuity planning and material Established IT resilience processes to access electronic documentation and other lines of communication Function BCPs and Disaster Recovery Plans in place for COPFS buildings; Core skills matrix within functions to inform resilience/resource planning IT systems have been significantly enhanced; Maintaining resilience of our IT systems; Embedding of FWOW and access to Agile Working, including full digital capability to support remote working ICU Brexit Continuity Plan in place; Regular (annual) business continuity exercises; 	<ul style="list-style-type: none"> ✓ ✓ ✓ ✓ ✓ ! ! ✓ ✓ ✓ ✓ ✓ ✓ 	4	3	12	<p>Short Term Actions</p> <ul style="list-style-type: none"> On-going update of BCPs by functions/teams including development and on-going update of skills matrix Reconciliation of appropriate documentation saved and accessible within digital repository (MS Teams/Cloud) Review of corporate approach to BC planning including engagement with stakeholders/partners to share best practice Completion of COVID Lessons Learned <p>Actions required to achieve target score</p> <ul style="list-style-type: none"> Baselined Business Continuity Plans across all functions including up to date skills matrix Applying lessons learned from COVID and regular resilience testing to further develop corporate resilience and preparedness 	4	2	8	Dec 2022	March 2023	Head of Transformational Change	Head of Business Services	

Corporate Risk Register (July 2022)

Risk Description	Potential causes	Potential Consequences	Key Controls	Status ✓ X !	Current Risk Impact	Current Risk Likelihood	Current Risk Score	Key Actions	Target Risk Impact	Target Risk Likelihood	Target Risk Score	Target Date	Review Date	Risk Manager	Risk Owner	
			<ul style="list-style-type: none"> Engagement with external stakeholders/partners to share best practice 	!												
8	Ineffective stakeholder engagement	<ul style="list-style-type: none"> Absent or ineffective communication with criminal justice partners; Lack of stakeholder engagement and input to COPFS services both national and local e.g., Website, Witness Portal, response to local offending; Lack of stakeholder engagement and input to national and local prosecution policies; Increased stakeholder/partner demands on, or expectations of, COPFS that cannot reasonably be met; Absent or ineffective engagement with elected representatives at both national and local levels; Absent or ineffective engagement with UK and Scottish Governments; Absent or ineffective engagement with the media; Insufficient capacity 	<ul style="list-style-type: none"> Inequality of access to justice; Inequality of service provision; Reduced public confidence in COPFS and the criminal justice system (reputational damage); Increased demand upon COPFS; Decreased resource available to COPFS 	<ul style="list-style-type: none"> Crown Agent membership of the Justice Board COPFS membership of relevant sub-groups reporting to the Justice Board COPFS membership of the Youth Justice Board; COPFS membership of the Scottish Government SOC, Victims and Drugs Deaths Taskforces; Regular meetings between Law Officers and Justice Ministers, Meetings between Law Officers, Crown Agent and Head of Policy and Crown Agent and Opposition Party leaders, Justice Committee office holders and Justice spokespersons; Functional strategic and operational liaison with criminal justice partners; Corporate liaison with criminal justice partners, Scottish Government and UK Government re national events e.g. COP26; Executive Board reviews all external inspection reports to learn lessons on improving the communication with stakeholders; Operational Support engagement with stakeholders during system improvement development and implementation; Policy consultation with 3rd sector stakeholders during policy 	✓	3	2	6	<p>Short Term Actions</p> <ul style="list-style-type: none"> Internal Audit of Strategic Stakeholder Engagement commissioned; Audit report received Audit report provides “reasonable” assurance and recommends some improvements Audit recommendations accepted <p>Actions required to achieve target score</p> <ul style="list-style-type: none"> Audit recommendations: <ol style="list-style-type: none"> To consider Media Relations capacity to deal with reputational challenges; To produce a Stakeholder Engagement Plan identifying, inter alia, key stakeholders and key messages; To develop a Media and Communications Strategy. <p><u>April 2022 update:</u></p> <p>Director of Communications post designed to lead a new Communications Directorate, responsible for both internal and external engagement. Allocated budget does not allow immediate progression. To be</p>	3	2	6	Current	August 2022	Head of Policy & Engagement	CA

Corporate Risk Register (July 2022)

Risk Description	Potential causes	Potential Consequences	Key Controls	Status ✓ X !	Current Risk Impact	Current Risk Likelihood	Current Risk Score	Key Actions	Target Risk Impact	Target Risk Likelihood	Target Risk Score	Target Date	Review Date	Risk Manager	Risk Owner
			development and implementation; • Operational engagement with 3 rd sector stakeholders; • Action plans for implementation of relevant Inspectorate recommendations put in place and delivery monitored; • Delivery of an Estate's shared service with SCTS along with procurement of common services; • COPFS engagement with the UKG and SG during relevant legislative development; • Complaints Handling Process and Service Improvement Board; • Rape Crisis Feedback process implemented, and results monitored; • Sherifdom Equality Networks in place and progress monitored; • Media Relations Team engagement with media representatives and stakeholder counterparts; • Opportunities taken to promote understanding of the role of COPFS;	✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓				reviewed subject to budgetary position Media and Communications Strategy in place and implemented Stakeholder Engagement Plan to be developed reflecting Media and Comms Strategy							

Corporate Risk Register (July 2022)

Risk Description	Potential causes	Potential Consequences	Key Controls	Status ✓ X !	Current Risk Impact	Current Risk Likelihood	Current Risk Score	Key Actions	Target Risk Impact	Target Risk Likelihood	Target Risk Score	Target Date	Review Date	Risk Manager	Risk Owner
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Impact	Multiplier					
Very High	5	5	10	15	20	25
High	4	4	8	12	16	20
Medium	3	3	6	9	12	15
Low	2	2	4	6	8	10
Negligible	1	1	2	3	4	5
	Multiplier	1	2	3	4	5
Likelihood		Rare	Low	Medium	High	Very High

COPFS Leadership, Governance and Development Programme

Purpose

1. To seek Executive Board approval for the establishment of a Crown Agent led programme to examine, and improve COPFS Leadership, Governance and Staff Development structures.

Background

2. At 2016 COPFS transformed from an organisation based largely upon geographic Federations to a specialist Functional structure – Local Court, Serious Casework and Operational Support Functions This transformation included the formation of an Executive Board responsible for leading COPFS alongside 3 delegated decision-making sub-committees – Resources, Operational Performance and Business Improvement Committee.

3. COPFS is led, and the Executive Board chaired, by the Crown Agent (Band 3 Senior Civil Servant (SCS)). Each function is led, and national sub-committee chaired, by a Deputy Crown Agent (Band 2 SCS).

4. In recent years, COPFS has been successful in securing Scottish Government budgetary support to address a long-standing resource deficit. At present, COPFS is more than 50% larger than in 2016.

5. In February 2022 the Scottish Government published a new strategic plan for the Justice System in Scotland until 2026, “The Vision for Justice in Scotland”. The Scottish Government’s strategic plan recognises the importance of, inter alia, treating victims and witnesses with respect and compassion, embedding a trauma informed approach to how justice services are provided, recovering from the pandemic with a transformed justice system and the important role that digital technology now has in the justice system. COPFS’ central role in delivering these strategic aims is clear from the accompanying delivery plans.

6. In May 2022 the Scottish Government published the Resource Spending Review (RSR). The RSR covers the years 2023 – 2027 and sets out the Scottish Government’s public spending framework. The RSR is not a Budget and final spending plans will be confirmed as part of Annual Budgets. However, the RSR currently describes a challenging budgetary picture for COPFS. The Scottish Government’s expectation is that public sector organisations will deliver improved outcomes with less.

7. Staff Engagement scores from the annual People Survey have steadily improved in recent years. A number of organisational initiatives can be identified as contributing to this improved picture e.g., more relevant organisational structures, process automation and flexible ways of working. The current pay and grading review is delivering significant improvements in terms and conditions for all COPFS staff below SCS. Notwithstanding this positive picture, there is room for improvement.

8. It is essential for COPFS to meet these challenges and reasonable public expectations from the historic provision of additional resources to innovate, improve and deliver. To ensure that COPFS is fit to meet these challenges, it is necessary to test and improve leadership and governance structures, management information, and staff development arrangements.

Leadership Structure and Roles

9. COPFS is led by the Crown Agent (Band 3 SCS). Each COPFS function is led by a Deputy Crown Agent (Band 2 SCS). Each DCA is supported in their leadership of their function by Band 1A SCS staff (currently 5 Band 1A SCS staff including temporary postings).

10. COPFS has grown by more than 50% in recent years. Our senior leadership structure (Band 1A SCS and above) has contracted over the same period. The Band 1A SCS grade has been closed by Cabinet Office. No further SCS Band 1A staff can be permanently appointed as a result. Uniquely within COPFS, current SCS Band 1A staff have no pay progression mechanism.

11. The current DCA roles require both a law degree and experience as a prosecutor. At present, the highest grade available to a senior leader without these qualifications is Band 1 SCS.

12. COPFS requires a leadership structure and roles that best delivers its constitutional responsibilities, specifically the effective prosecution of crime and investigation of deaths, and best meets the proven need to provide strategic leadership at a justice system level. The leadership structure and roles must reflect the weight of those responsibilities and the scale of the organisation. The leadership structure and roles should offer meaningful career opportunities for all disciplines to ensure that we develop and retain the best public servants.

13. Longer term, “opting out” of the wider Senior Civil Service might provide the necessary structural freedom to meet these needs. In the interim, the closure of the Band 1A SCS grade means that the current leadership structure is no longer viable. It is therefore proposed that a new leadership structure and roles are developed to reflect, inter alia, the currently available senior leader grades of SCS Bands 1, 2 and 3.

Governance

14. COPFS is governed by an Executive Board alongside 3 delegated decision-making sub-committees – Resources, Operational Performance and Business Improvement Committee.

15. The Executive Board is chaired by the Crown Agent. The Board’s core members were the Non-Executive Directors, DCAs and the Deputy Chief Executive (DCE). The core membership of the Board has been recently expanded to include the Directors of Finance and Human Resources. This expanded membership was designed to reflect expert inputs regularly required for effective Board decision making.

16. The Resources, Operational Performance and Business Improvement Committees are each chaired by a DCA. The Committees’ core members are dictated by subject matter but are broadly at SCS Band 1 and 1A level. Each Committee includes a Non-Executive Director member.

17. Subsequent to the formation of the Executive Board and national sub-committees, improved national governance structures have been put in place. National governance structures now include, for example, the Audit and Risk Committee and the Scottish Prosecution College Steering Committee.

18. In parallel, Functional identities, accountability and governance structures have evolved and improved. Local Court and Serious Casework have national, functional structures for monitoring and addressing operational performance. Local Court and Serious Casework have individual business improvement structures. The consensus assessment is that these functional structures now overlap with both the Business Improvement and Operational Performance Committees.

19. The above governance structures are currently supplemented by weekly Senior Executive Team (SET) and Law Officer Briefing (LOB) meetings. Core SET membership is the CA, DCAs and DCE. Core LOB membership is the Law Officers, CA and DCAs. SET and LOB are intended to aid organisational agility, providing a weekly meeting opportunity to discuss and direct responses to high profile case, organisational and system issues. SET and LOB were not designed as decision making bodies. The real-world experience is that due to, inter alia, the pace at which organisational decisions are required, SET in particular has become a decision-making body. The consensus assessment is that these meetings now overlap with a number of governance structures.

20. As above, it is essential that COPFS meets the challenges of the next four years. We will properly be held accountable for meeting legitimate public expectations that we will innovate, improve and deliver. To aid delivery and accountability, and reflect a possibly changed leadership structure/roles, it is proposed that our current governance structures be assessed and a revised governance structure be developed as appropriate.

Management Information

21. COPFS has a central Management Information Unit (MIU). MIU produce a large suite of data in relation to operational casework used, at functional, organisational and system levels. Business Services produce a large suite of data in relation to corporate assets (estates, people, finances and IT). In recent years, COPFS has used this data to effectively manage performance, understand business demands and articulate consequential resource or budgetary needs. In relation to areas such as workforce planning, COPFS is well placed in comparison to some partners. However, it is also clear that improvement is possible.

30. The impact of the pandemic on the justice system has demonstrated that gaps exist in relation to system level operational data, including COPFS data. These gaps include demand and productivity data, necessary to understand current demands, available recovery timelines and relevant resource requirements. An illustrative example of this gap from a COPFS perspective was evidencing the additional demand upon VIA resources generated by the pandemic.

31. As above, COPFS has recently been successful in securing Scottish Government budgetary support to address a long-standing resource deficit. Going forward, the RSR currently describes a challenging budgetary picture for COPFS. The Scottish Government's expectation is that public sector organisations will deliver improved

outcomes with less. COPFS will properly be held accountable for our use of the resources we have received and will receive.

32. COPFS are developing and will deliver next generation casework systems. Within COPFS, our operational data focus has routinely been on the “pipeline” of cases and that more easily measured. Measurements such as health, quality or productivity have proven challenging to capture. It is suggested that next generation casework systems and the wider resource position create both opportunity and need to re-assess the management information that we collect and analyse and how we use it. A revised approach to management information might help drive productivity at individual, organisational and system levels, cultural change, legitimate challenge, accountability, resource allocation within COPFS and resource bids by COPFS.

Staff Development

33. COPFS relies on the quality of our leaders to deliver. Current leaders, both Procurators Fiscal and Business Managers, have been successfully nurtured and developed by COPFS. COPFS will only continue to deliver if we develop the next generation of leaders.

34. Until relatively recently, no formal talent management or succession planning schemes have been in place. Business Service Apprentice and High Potential Development schemes are now available for business staff. No similar scheme exists for legal staff. Leadership training is currently provided by COPFS. However, training provision is not uniform across relevant grades.

35. COPFS relies on the quality of our professional experts, both legal and business services, to deliver. We will only continue to deliver if we develop and retain the next generation of professional experts.

36. An area of professional expertise is prosecution in the High Court. COPFS requires a supply of talented Procurators Fiscal to prosecute as Advocate Deputes (Fiscal ADs). A formal assessment process was in place to select Fiscal ADs. However, no formal development process is in place to identify and develop the next generation of Fiscal ADs.

37. An area of professional expertise is Business Services, including Finance, ISD and HR. We have implemented the Business Service Apprentice and High Potential Development schemes to develop the next generation of professional experts. However, we face a challenge in the retention of professional experts, with competition for their skill sets from both the public and private sectors.

38. It is suggested that, in order to continue to deliver, we should work to improve our current approaches to the identification, development and retention of our future leaders and professional experts.

Recommendation

39. The proposed transformation programme would be led by the Crown Agent. The programme would have individual workstreams reflecting the identified headline issues. Some workstreams are interdependent e.g., Leadership Structure and Roles and Governance. All of the workstreams are complimentary. Each workstream would be led by a relevant senior leader.

40. COPFS rightly has a reputation for delivering. However, we face an unprecedented challenge now and in the coming years. To meet the challenge, we need to ensure that our leadership and governance structures, management information, staff development and consequential organisational culture are the best they can be. Executive Board are therefore asked to approve the implementation of a programme to deliver this transformational change.

Anthony McGeehan

Deputy Crown Agent, Operational Support

Information Governance Unit Data Breach Report 2021-22

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Information Governance Unit

The Information Governance Unit (IGU) was established in September 2020. IGU contribute to the security and appropriate handling of any personal information that COPFS deals with, leading on the investigation, monitoring and reporting of data breaches, ensuring that the Data Protection Act 2018 is adhered to. IGU are responsible for processing applications for data rectification, data erasure and restriction of processing. Furthermore, IGU provides guidance and support to employees, covering:

- Records management under Public Records (Scotland) Act 2011
- Requests under the Freedom of Information (Scotland) Act 2002

The Information Governance Unit is made up of 6 staff:

- Data Protection Officer
- FOI & Information Governance Manager
- Records & Data Handling Manager
- FOI & Data Handling Officer
- Data Sharing Officer
- Data Handling Assistant

IGU have also established networks with Information Governance teams in our partner organisations such as Police Scotland and Scottish Courts and Tribunal Service (SCTS).

Data Breaches

A Data Breach has been defined by the Information Commissioners Office (ICO) as a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data. This includes breaches that are the result of both accidental and deliberate causes.

Please see below data relating to all recorded data breaches which have happened across COPFS in 2021-22.

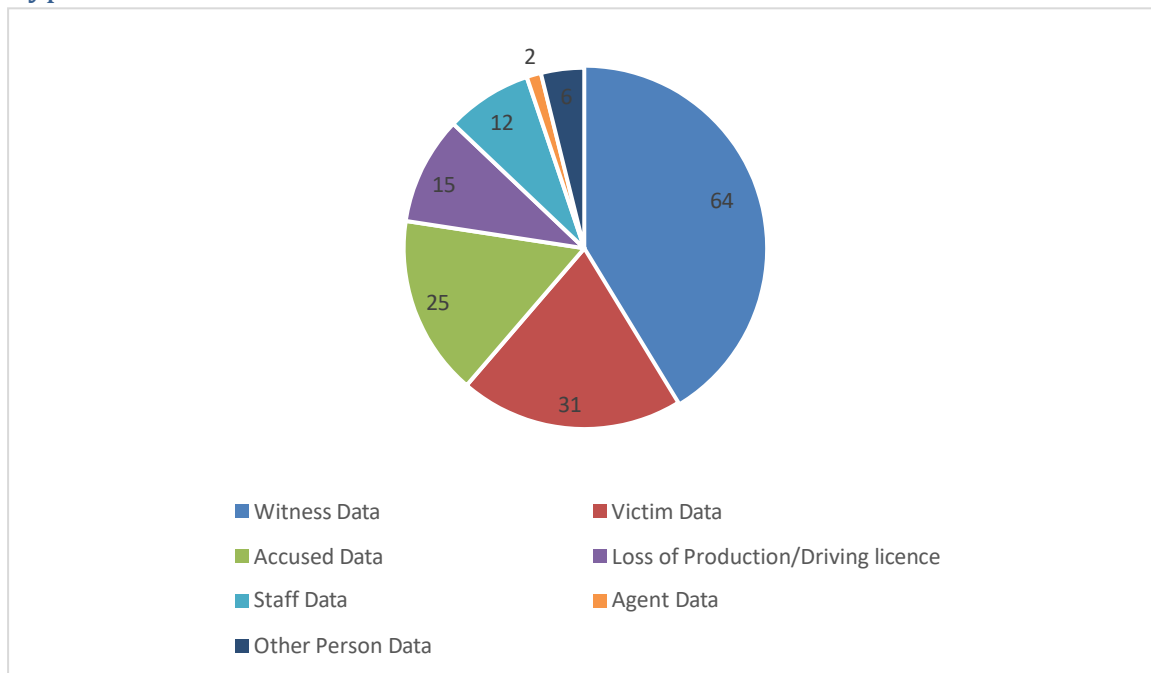
Total Number of Data Incidents (Includes both data incidents and data breaches)	172
Total Number of Breaches	155
Reported to ICO	4
Compensation payments made	1

There is a statutory obligation to report qualifying breaches, those likely to result in a risk to the rights and freedoms of individuals, to the ICO. ICO guidance advises that if left **unaddressed** such a breach is likely to have a significant detrimental effect on individuals. For example:

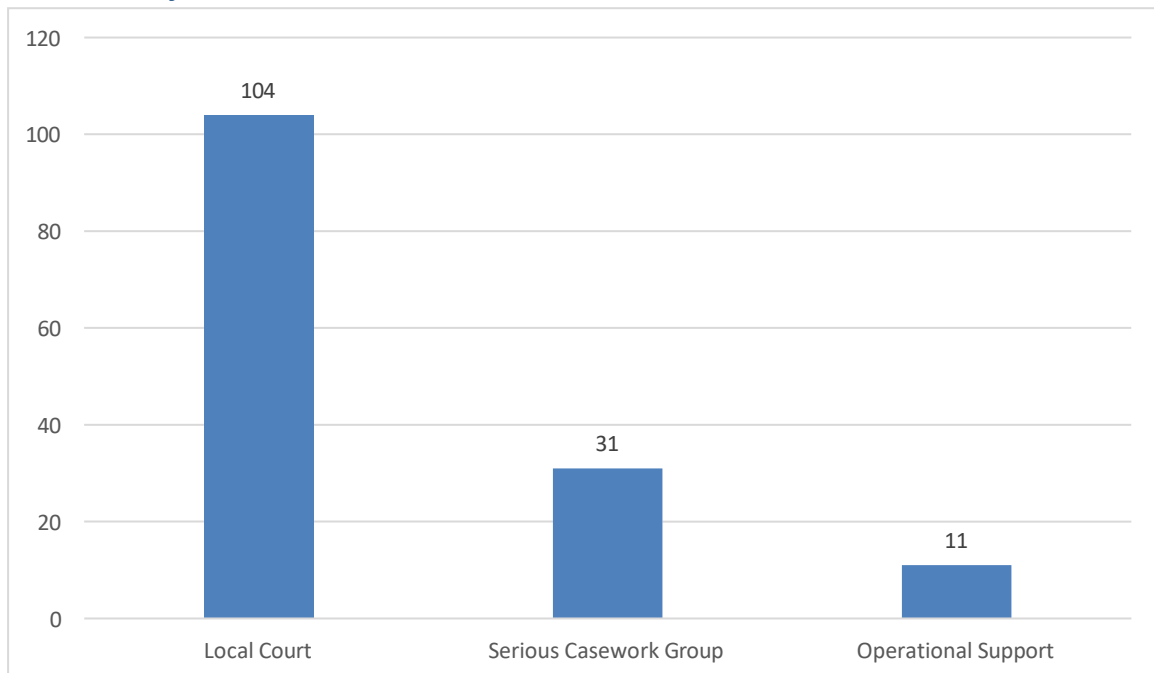
- result in discrimination;
- damage to reputation;
- financial loss; or
- loss of confidentiality or any other significant economic or social disadvantage.

In 2021-22, COPFS reported 4 qualifying breaches to the ICO. Responses available to the ICO include fining an organisation for a breach. In 3 of the reported breaches, the ICO took no further action. 1 of the reported breaches remain under consideration by the ICO.

Types of Breaches



Breaches by Function



Data on Breaches where COPFS has been advised by external parties

ADVISED EXTERNALLY	
Member of the public	64
External Agency/Organisation	4
Victim	1
Witness	6
Accused	6
Family member	1
Agent	4
Total	86 = 54% of all breaches

All remaining breaches were identified by COPFS staff members.

Comparison to previous years

Period	Total	Difference to previous year
Financial Year 2021-22	155	+67
Financial Year 2020-21	88	+19

IGU was established in 2020. The formation of IGU has raised awareness of Data Protection and the need for proper recording of breaches and enabled better central monitoring and recording of same.

Thematic Issues

1. Addresses not being updated when informed of a change.
2. Productions not being suitably redacted (removing personal data) before disclosure to agents.
3. VIA teams keep a record of all communication with victims and witnesses of crime to ensure that we are supporting them throughout the court process, this record is called a VIA minute sheet. Breaches can occur when a person's personal data is not updated on the VIA minute sheet when a change has been made in our case management systems.
4. Two cases being worked on by admin staff at the same time, leading to staff accidentally using incorrect information.
5. Remote Print Unit putting multiple letters in the same envelope, leading to letters going to an incorrect recipient.

Improvement Work

IGU are members of the COPFS Information Assurance Group (IAG) alongside Function representatives, ISD, the College, the Departmental Security Officer and HR. IGU provide a regular report to the IAG on Data Breaches and identified thematic issues.

Membership of the Departmental Security Group (DSG) has been extended to include the Data Protection Officer.

Alongside IGU, these groups consider Data Breach issues and appropriate responses to either individual breaches or thematic issues. Responses are informed by ICO recommendations in relation to reported breaches.

Improvement work progressed during 2021-22 included:

Delivery of an e-learning package to ensure all staff have an understanding of our roles and responsibilities under the Data Protection Act 2018. The new e-learning covers both Law Enforcement Processing (LED) and General Data Protection Regulation (GDPR) elements, making it more relevant to different COPFS roles. The content of the training was informed by identified thematic issues, with relevant best practice being highlighted to participants. This training is mandatory for all staff with completion rates monitored.

IGU designed a Data Protection power point presentation, now delivered to new COPFS staff as part of their induction. IGU have also provided Data Protection awareness sessions to local offices and more in-depth sessions for Functional Business Managers.

IGU engaged with the Local Court Transformation team to assist the development of improved processes in relation to local issues re returned mail and Remote Print Unit processes. A significant decrease in related breaches has resulted.

Serious Casework have developed redaction and disclosure training for relevant Serious Casework teams. Local Court plan similar training using the Serious Casework training package.

All staff have been reminded of the Acceptable Computer Use Policy via Connect, with the reminder cascaded to Team Briefings via the Bulletin.

Function Update for Executive Board: Operational Support - August 2022

Operational Support brings together a range of central services which enable COPFS to deliver its objectives. The function currently has 398.32 FTE budgeted posts (including all 64 trainee solicitors) divided into two broad teams: Policy and Engagement and Business Services. Its budget for 2022-23 is £46.1m which includes £20.7m of centrally managed expenditure (e.g. BSS, estates and ISD budgets) and £5.3m capital.

Policy and Engagement Update

Policy and Engagement (P&E) leads on prosecution policy and supporting the Law Officers in the development of same. P&E also provides both an internal and external service in relation to Complaints, Victims Right to Review (VRR), Freedom of Information (FOI), Data Protection, Management Information, Media Relations and National Enquiry Point (NEP).

P&E have a staffing complement of 94.07 FTE staff (this includes 43.07 FTE Enquiry Point staff). Within Policy there is a staff complement of 19.35 legally qualified members of staff. Promotions and the need to fill Justice Recovery posts resulted in several SPFDs and PFDs transferring to Local Court and SCG. While it has taken some time to fill the SPFD posts, there continues to be difficulties in filling PFD vacancies. Work continues with HoBMs and Workforce Planning Group to fill PFD vacancies across the whole of COPFS.

Policy resources are currently directed to responding to the impact of COVID-19 on the justice system alongside mainstream Policy work.

COVID-19

Emergency Legislation and Prosecution Policy

At the beginning of the pandemic, Policy contributed to the urgent development, drafting and Parliamentary passage of emergency legislation. Policy developed consequential prosecution policy, guidance for prosecutors and Lord Advocate's Guidelines on Liberation for police.

The current relevant legislative framework is:

Coronavirus (Scotland) Act 2020:

- Electronic signatures and transmission of documents;
- Electronic search warrants & apprehension warrants;
- Attendance of parties by electronic means;
- Revalorisation of Fiscal Fines;
- Ability to call custody cases in any Sheriff Court;
- Extension of time limits;

Coronavirus (Scotland) (No 2) Act 2020:

- Extension of time limits in criminal proceedings;

- Authority for prison custody officers to operate on police estate;
- Continuation of Undertaking conditions following a failure to appear at court – Schedule 2, Part 1, Paragraph 6 of the 2020 Act (No.2) makes provision which enables the court to prevent the expiry of an undertaking given under section 25(2) (a) of the Criminal Justice (Scotland) Act 2016 (“the 2016 Act”);
- Extension of Proceeds of Crime procedural time limits;
- Electronic transmissions of documents to the Registers of Scotland;
- Electronic Signature and Transmission of Documents to Registers of Scotland.

The abovementioned provisions of the Scottish Coronavirus Acts will remain in force until 30 September 2022.

In June 2022 the Scottish Government passed the Coronavirus (Recovery and Reform) (Scotland) Bill in recognition of the continuing impact of the pandemic and the continuing need for a number of the legislative provisions in the Scottish Coronavirus Acts. Policy officials contributed to scrutiny of the Bill, including providing written evidence to the Coronavirus Recovery Committee and oral evidence to the Criminal Justice Committee.

The Bill will come in force on 1 October 2022 and broadly replicate the provisions of the Scottish Coronavirus Acts (above).

Policy Division will update relevant guidance for prosecutors.

Other Coronavirus Related Policy

Lord Advocate’s Guidelines on Liberation by Police during the pandemic are in place. Policy officials continue to engage with Police Scotland regarding appropriate amendment to the guidelines.

Prosecution Policy has been published to enable the wider supply of naloxone – an opiate overdose remedy – in the context of the current public health restrictions. Policy officials are engaged with Police Scotland and SG in relation to a more permanent solution.

Prosecution guidance has been provided to enable the forensic examination of sexual offences victims in the context of the current public health restrictions.

LEGISLATION

Age of Criminal Responsibility (Scotland) Act 2019

This Act raised the age of criminal responsibility to 12 years and was fully implemented as of 17 December 2021. An Advisory Group has been convened to report on implementation of the Act and consider whether the age of criminal responsibility should be further raised. Policy officials are the COPFS representatives to the group and chair a subgroup on the operational implications of any further increase. Policy officials are also members of the Data and Research Subgroup, working with key partners to collate information relevant to these considerations.

The Scottish Government has also commissioned SCRA to proceed with a research proposal looking at children aged 12–15 years who are involved in offending behaviour, to provide an evidence base to inform future discussions and policies in potentially raising the age of criminal responsibility beyond 12 years. Policy is a member of the SCRA Research Advisory Group.

Separately, a criminal justice planning group was formed under the auspices of the Youth Justice Improvement Board (YJIB). The remit of the group was to plan for possible extension of the Children’s Hearing system to all under 18s. Policy officials contributed to the Group, which has issued its final report to YJIB. It is anticipated that extension of the Children’s Hearing system will be progressed in a planned SG Children’s Care and Justice Bill.

The Scottish Government have launched a consultation on their proposed Children’s Care and Justice Bill. One of the key elements is the raising of the maximum age of referral to the children’s reporter, currently 16 unless the individual is subject to a compulsory supervision order, in which case 16 and 17 year olds may be referred. Policy officials are engaged with the Scottish Government to ensure that the consequences of raising the age to 18 is properly understood. Policy officials have begun work on understanding how the Lord Advocate’s Guidelines and Framework on Early and Effective Intervention may be amended.

The Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019

The Act includes new measures to increase the number of cases in which the evidence of children and vulnerable witnesses is pre-recorded to avoid them having to give evidence during a subsequent trial.

The first implementation phase began on 20 January 2020. That phase mandates that the evidence of all child witnesses aged under 18 in High Court cases for certain specified offences be pre-recorded.

Policy and operational staff have formed an implementation group in connection with the second phase, relating to Sheriff and Jury cases, and have started preparations for a significant change in the way evidence is taken from child witnesses. Scottish Government have not yet identified the planned date of implementation in Sheriff and Jury cases.

The recommendations made by the Lord Justice Clerk regarding routine use of pre-recorded evidence for adult complainers in sexual offences cases requires to be considered alongside planned Sheriff and Jury implementation.

Hate Crime and Public Order (Scotland) Act 2021

This Act was passed by the Scottish Parliament on 11 March 2021 and received Royal Assent on 23 April 2021. The Scottish Government’s Act modernises, consolidates and extends Hate Crime legislation.

The Act adds age and variations in sex characteristics to the list of protected characteristics, with provision to add gender at a later stage. The Act creates statutory aggravations for the 7 protected characteristics and creates a number of offences, in particular the stirring up of hatred. The Act also creates freedom of expression provisions covering all of the protected characteristics with the exception of race.

An implementation date has yet to be confirmed. Policy Division are drafting guidance for prosecutors which will be published on implementation.

The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2021

The Scottish Parliament unanimously passed the United Nations Convention on the Rights of a Child (Incorporation) (Scotland) Bill (the Bill) to incorporate the United Nations Convention on the Rights of a Child (UNCRC) into Scots Law on 16 March 2021. The UK Supreme Court subsequently held that parts of the Bill fell outside the legislative competence of the Scottish Parliament. On 24 May 2022 the SG confirmed that the Bill will be brought back to Parliament via the reconsideration stage, to address the issues raised by the Supreme Court. The final form of the Bill and date of implementation are unknown.

The Bill as currently drafted places an obligation on public authorities not to act incompatibly with UNCRC.

It is envisaged that Court Rules similar to those in Chapter 40 of the Act of Adjournal (Criminal Procedure Rules) 1996, will be created to support the primary legislation. Policy continues to work with the Scottish Government in that regard.

The legislation will require COPFS to review prosecution policies and processes relating to prosecution and the investigation of deaths which are both directly and indirectly associated with children (as accused and witnesses) to ensure that they are compatible with the UNCRC. A working group comprising representatives from Policy, SFIU and other specialised operational divisions is overseeing the review of relevant policies and processes. Sub-groups have been set up to (a) examine policies and process for engaging and communicating with child victims and witnesses, (b) examine business processes for prioritising the preparation of cases involving accused aged under 18 and (c) support the training of staff.

An e-learning module for all COPFS staff on the UNCRC principles has been developed and will have an introductory video by the Crown Agent.

Domestic Abuse (Protective Orders) Act 2021

The Act was passed by Parliament on 17 March 2021 and received Royal Assent on 5 May 2021. The Act creates protective orders for people at risk of domestic abuse to enable the removal of a suspected perpetrator of abuse from the home of the person at risk. Policy Officials are members of a SLWG created by Police Scotland and Bill Officials in relation to the Act and provide regular input to this working group. Policy Officials are also members on the Scottish Government Implementation Board which involves key partners and is to oversee the work required for implementation. Policy will continue to work with the relevant stakeholders in relation to the implementation of the Act following Royal Assent and will prepare and issue appropriate guidance to staff.

FGM (Protection and Guidance) (Scotland) Act

The purpose of the Act is to strengthen statutory protections for women and girls at risk of female genital mutilation (FGM). The Bill creates a new FGM Protection Order, a form of civil order which can impose conditions or requirements upon a person for the purpose of protecting a person or persons from FGM, safeguarding them from harm if FGM has already occurred, or for the general purpose of reducing the likelihood the FGM offences will occur. Breach of this order will be a criminal offence. The substantive provisions of the Act are not yet in force. In due course, Policy will work with SG on draft guidance.

Police, Crime, Sentencing and Courts Act 2022

The Act received Royal Assent in April 2022 and contains various provisions relating to the criminal justice system which aim to afford greater protection to the police when carrying out duties including provisions which would amend the definition of dangerous and careless driving for police officers driving in the course of work. The date for implementation of these provisions is still to be appointed.

The Act also includes other road traffic provisions including extending the ability to offer fixed penalty notices under s54 of the RTOA 1988 to Scotland, removal of the requirement to surrender driving licences to the court, the creation of an offence of causing serious injury by careless driving, higher penalties for various offences including causing death by dangerous driving and enabling police cost recovery for speed awareness courses. Policy officials are engaging with officials from the UKG, SG, and criminal justice partners on the provisions which extend to Scotland.

The relevant provisions which create a new offence of causing serious injury by careless, or inconsiderate driving in terms of section 2C of the Road Traffic Act 1988 came in force on 28 June 2022. An Operational Instruction and associated Case Marking Instruction have been published.

It is anticipated that the road traffic provisions relating to the ability to offer fixed penalty notices and removal of the requirement to surrender driving licences will be implemented on 30 November 2022.

The Act further includes provisions in relation to the extraction of data from electronic devices (see "Draft Digital Device Guidance" below) and Policy officials are reviewing a code of practice on this area.

The data extraction provisions will not come into force until the statutory Code of Practice is ready for publication. The public consultation on the Code has just concluded.

Offensive Weapons Act 2019

This UK Act received Royal Assent in May 2019 and as of 28 June 2022, has commenced in Scotland. The Act creates offences relating to the sale to those under 18, delivery and possession of corrosive substances. The Act also introduces offences relating to the sale, delivery and possession of certain bladed articles, bladed products and offensive weapons.

The Scottish Government has published its guidance on the Offensive Weapons legislation. Prior to Part 4 of the Act being commenced, a statutory surrender and compensation scheme is taking place between 1 July 2022 and 30 September 2022.

The scheme relates to offensive weapons listed within the Criminal Justice Act 1988 (Offensive Weapons) (Scotland) Order 2005, as amended.

COPFS Policy officials continue to engage with SG and Police Scotland officials in relation to the surrender and compensation scheme and the commencement of the relevant sections of the Act.

Armed Forces Act 2021

The Armed Forces Act 2021 received Royal Assent on 15 December 2021. The Act amends and updates the Armed Forces Act 2006. The Act creates a statutory responsibility on the Lord Advocate and the Director of Service Prosecutions to create a joint protocol in relation to cases which have concurrent jurisdiction. Policy officials continue to engage with officials from the Ministry of Defence, the Scottish Government and with the Service Prosecuting Authority and other prosecution authorities across the United Kingdom. COPFS Policy officials continue to engage with the Service Prosecution Authority to draft a Protocol between the Lord Advocate and the Director of Service Prosecutions. Discussions between COPFS Policy officials and the Director of Service Prosecutions are ongoing. Prior to the Protocol being published, a consultation is required from relevant individuals. It is anticipated that this consultation will begin in Autumn 2022.

Bail and Release from Custody Bill

SG published a bill relating to bail and release from custody in June 2022. Policy officials have provided relevant advice to the Law Officers and are engaged with SG regarding the passage of the Bill. The Bill is at Stage 1.

Policy officials will prepare draft written evidence in advance of Stage 2 (September 2022)

Northern Ireland Troubles (Legacy and Reconciliation) Bill

The Bill has been published and received its second reading in the UK Parliament.

The broad proposals to be delivered by the Bill are as follows:

- establish a new Independent Commission for Reconciliation and Information Recovery (ICRIR) to enable individuals and family members to seek and receive information about Troubles-related deaths and serious injuries, and to produce an historical record of what is known in relation to every death that occurred during the Troubles;
- introduce a model of conditional immunity from prosecution, for those who provide the ICRIR with a genuine account of their involvement in deaths and serious injuries arising from the Troubles in NI from 1 January 1966 to 10 April 1998; and
- provide for the delivery of an oral history and the memorialisation of the Troubles. This will involve securing the long-term preservation of existing oral history collections, with new physical and digital resources to maximise public engagement with different narratives and Troubles-related stories.

Policy officials are engaged with the SG and Northern Ireland Office (UKG) in relation to the Bill.

Fireworks (Scotland) Bill

The Scottish Parliament passed the Fireworks and Pyrotechnic Articles (Scotland) Act on 29 June 2022. The Act sets out a number of new offences in relation to fireworks and pyrotechnics, including the offence of possessing a pyrotechnic at a sporting or other event and selling fireworks and pyrotechnics to children. Policy officials will work towards implementation of the Act

Online Safety Bill

The UK Government introduced the Online Safety Bill to Parliament on 17 March 2022. It empowers Ofcom to regulate internet services. This includes the creation of a civil enforcement regime for Ofcom and a number of new criminal offences applicable to service providers for failing to respond to certain Notices served by Ofcom. The Bill also introduces new communication offences and Policy officials are engaging on these with UK Government and SG officials in connection with these offences. Policy will ensure that relevant guidance is updated. A date for implementation has not yet been fixed. The Bill is currently at report stage in the House of Commons but has been subject to timetabling pressures.

Health and Care Bill

The UK government introduced this Bill to the House of Commons in July 2021 with the intention of reforming the delivery and organisation of health care in England. The Act commenced on 1 July 2022 and introduced two new Scottish Offences to criminalise 'virginity testing' and 'hymenoplasty'. Policy Division has prepared guidance for prosecutors.

Abusive Behaviour and Sexual Harm (Scotland) Act 2016

Work has been on-going by Scottish Government to commence sections 10 to 40 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016, this will introduce Sexual Harm Prevention Orders and Sexual Risk Orders in Scotland. The current intention is that these will take effect in September/October 2022. Policy Officials have been liaising with Scottish Government officials on implementation and are undertaking work to prepare the necessary information and guidance for COPFS staff in relation to the orders.

Other Significant Policy Work

Pilot on Visually Recording the Statements of Complainers in Rape Cases

The Lord Advocate approved the implementation of a pilot project to test the effectiveness of visually recording the statements of complainers in rape cases. The pilot is taking place in three Police Scotland Divisions – Edinburgh City, Dumfries and Highland and Islands and commenced on 1 November 2019. The formal reporting of cases from the pilot area to COPFS ended on 1 May 2022. Scottish Government has commenced an interim assessment of the recordings evaluated by COPFS to date. Significant work is in progress to ensure that appropriate evaluation takes place prior to potential national roll-out. Discussions are to be held with Police Scotland in relation to the continued recording of statements in the former pilot areas whilst the evaluations are ongoing.

Guidance on sexual history evidence

Policy is doing extensive work to update policy and guidance for prosecutors in light of several recent Appeal Court judgements regarding the appropriate approach to applications to lead evidence of a complainer's past sexual history. New guidance in

relation to the impact of s275 on docket evidence was published in March 2021 and a draft of a revised chapter 9 of the Sexual Offences Handbook (which addresses sexual history evidence) will be submitted to Law Officers for their approval shortly.

Simplified Notification Process

Section 6 of the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 will, when implemented, facilitate a swifter, automated means of submitting Vulnerable Witness Notices for child and deemed vulnerable witnesses seeking only standard special measures to the courts. Policy Division has been working with VIA, ISD and SCTS to facilitate this new process. A pilot is ongoing in Local Court and a pilot is planned for High Court. If those are successful it is anticipated that section 6 can be implemented later in 2022.

Review of Older Persons Policy

Witnesses aged 60 and older and automatically referred to VIA in terms of the COPFS Older Persons policy. Policy Division has been asked to review that threshold given feedback received by VIA that many of those referred do not require nor want VIA input.

Guidance regarding Extra-Territorial Jurisdiction (ETJ)

In the past 5 years various pieces of legislation have created ETJ for the Scottish Courts in respect of various different offences, Policy Division is reviewing published guidance and also drafting new guidance for NICP in relation to summary cases which involve relevant offences committed outside of Scotland.

Information Commissioner's Opinion

On 31 May 2022 the IC published an opinion regarding the processing of victims' personal data in rape and serious sexual offences investigations. Policy Division is reviewing relevant policy to ensure that it is in line with the opinion and will then liaise with People and Learning Division regarding the creation of training for COPFS staff.

Joint Investigative Interviews (JIIs)

Policy is working with Police Scotland and Social Work Scotland to improve the quality of JIIs capturing the evidence of child witnesses. There are three pilot projects ongoing to test a new interviewing model. Policy has created an evaluation process to measure changes in quality of JIIs. The first two pilots are taking place in North Strathclyde and Lanarkshire a third pilot in Glasgow has commenced. Policy is working with the High Court Unit to implement an evaluation model for JIIs falling outside of the pilot projects. Policy is also working with operational staff in areas out with the initial pilot areas to assist as the new model is rolled out nationally to ensure nationwide consistency of application.

Barnahus

Policy are involved in work around the potential for a Barnahus (Children's House) in Scotland. The Scottish Government have a manifesto commitment to developing 'Bairn's Hoose' and they aim to ensure that all eligible children who are victims or witnesses to abuse or violence will have access to a 'Bairns' Hoose' by 2025. Children below the age of criminal responsibility, whose behaviour has caused harm, will also have access to the services it will provide.

Heath Improvement Scotland and the Care Inspectorate have been jointly commissioned by the Scottish Government to develop Bairns' Hoose Standards

together with key agencies which includes COPFS. Policy are working these bodies to ensure the development of these standards are cognisant of the adversarial system in Scotland and the role of the Lord Advocate as head of investigation and prosecution of crime. The intention of the Scottish Government is to publish 'Bairns' Hoose' Standards by end of 2022. Work on the standards commenced in February 2022 and COPFS are represented on the group. Consultation on the standards will commence on 15 August 2022 with the group reconvening in the Autumn to consider changes to the draft standards in light of feedback from the consultation. The Bairns' Hoose Standards will be considered and approved by the Law Officers before final publication.

Nurse Sexual Offence Examiners

The former Lord Advocate approved a pilot project to test the viability of Nurse Sexual Offence Examiners (NSOEs) in the Scottish criminal justice system. Two NSOEs were identified and began performing supervised forensic medical examinations of complainers in cases involving rape/attempted rape/sexual assault at Archway Glasgow in February 2021. COPFS Policy and People and Learning Division provided training about the Scottish criminal justice system to the two successful candidates. Policy will monitor relevant cases to assess the viability of the role. The original two NSOEs have left their posts and the pilot project is currently paused. A cadre of nurses have undertaken a degree course in Forensic Medicine at Queen Margaret University with a view to implementation of the new role should the pilot be successful. COPFS Policy Division and People and Learning Division have provided input and training. Scottish Government are considering an expansion of the Pilot areas involved in the NSOE pilot and the Law Officers have confirmed that they are content with that proposal. Scottish Government are exploring the recruitment of some of the recently trained NSOEs to use in these expanded areas.

Drugs Death Taskforce

The Scottish Government formed a Drugs Death Taskforce to lead a response to the high level of drug related deaths in Scotland. COPFS are members of the Taskforce.

The Taskforce published its report in July 2022.

Policy are engaged with the work of the Taskforce which is relevant to COPFS.

NES Trauma Informed Knowledge and Skills Framework

Dr Caroline Bruce in NES has prepared a Scottish Government funded draft knowledge and skills framework for justice sector professionals to enable the recognition of trauma and how to address it. Policy officials met with Dr Bruce to discuss the development of the framework and provided the necessary input into this work. The draft framework was reviewed by the Prosecution College and a minute was submitted to the Senior Executive Team, with input from Policy officials. The Prosecution College submitted formal feedback on the framework to SG and NES and this will now be taken forward by the Victims Taskforce.

Victim Impact Statements

Following a Scottish Government consultation on “widening the scope of the current victim statement scheme” policy officials met with Scottish Government colleagues in relation to the Scottish Government’s proposed “next steps”.

As a consequence of these discussions the Senior Executive Team have instructed the creation of an internal COPFS short life working group to explore the proposed changes to the scheme and provide Scottish Government with appropriate information on the necessary process changes and resource implications for COPFS in relation to the proposals. Policy Division is a member of this working group and are continuing to liaise with Scottish Government.

UK Data Protection and Digital Information Bill

The UKG introduced the Data Protection and Digital Information Bill to Parliament on 18 July 2022. The purpose of the Bill is to create “post-Brexit freedoms to create an independent data protection framework”. The Bill amends the Data Protection Act 2018 and simplifies the data protection regime in the UK.

A working group consisting of law enforcement agencies across the UK was established to consider the reforms to Law Enforcement Processing. Policy officials continue to participate in discussions and meetings. The next meeting of the working group is scheduled for Autumn 2022.

Review of the Investigatory Powers Act 2016

The UKG are conducting a review of the Investigatory Powers Act 2016 and Policy officials are working with the Home Office in particular in relation to reviewing data extraction/ interception provisions in relation to both routine forensic analysis but also obtaining information from external servers/ the cloud.

Body Worn Cameras

Police Scotland are in the process of providing body worn video cameras to armed police officers across Scotland. Police Scotland is also progressing its plans to introduce body worn video (BWV) cameras to more police officers and staff across Scotland. This development has the potential to significantly impact on the way that evidence is gathered, and the processes involved in the revelation, disclosure and presentation of that evidence. Policy officials will be supporting the work of a new working group looking at the impact on COPFS and the criminal justice system. It is anticipated that this working group will combine with a working group in relation to the use of mobile devices to capture initial evidence. A meeting of the combined group has not yet been scheduled.

Electronic Monitoring of Bail

The provisions of Part 1 of the Management of Offenders (Scotland) Act 2019 which facilitate electronic monitoring of bail are now in force and internal guidance has been published for COPFS staff. COPFS Policy officials will continue to engage with SG and other officials to monitor progress.

Bail Supervision

Scottish Government officials are examining the landscape of bail supervision, including a review of the current Bail Supervision Guidance, which was published in 2019. Policy officials are involved with this work.

Restorative Justice

Scottish Government are leading on the development of policy in relation to Restorative Justice. Community Justice Scotland are responsible for implementation. Policy officials continue to work with both agencies, and Police Scotland in relation to the implementation of Restorative Justice in Scotland.

Drones

The Air Traffic Management and Unmanned Aircraft Act 2021 received Royal Assent on 29 April 2021.

Schedules 8, 9 and 10 of the Act create the offence provisions, stop and search powers for the police and the powers for police constables to issue Fixed Penalties for certain offences relating to unmanned aircraft. Schedule 9 came into force on 29 June 2021. Schedule 10 of the Act provides that the Secretary of State may, by regulations, prescribe the offences as fixed penalty offences for the purpose of this Schedule. As of 25 July 2022 these Regulations have not been laid yet.

National Enquiry Point (NEP)

The number of Enquiry Point operators working in the office increased following changes to health and safety guidance on social distancing. The increase in both telephone calls and email requests following the re-opening of courts has continued.

BUSINESS SERVICES UPDATE

At the end of July 2022, the number of staff in post (SIP) in Business Services was 215.25 FTE. There are currently 25 FTE vacancies.

The current Business Services organogram is at **Annex A**.

The Business Plan for 2022-23 sets out the delivery priorities for each of the units which comprise Business Services.

Below are some of the main Business Services 2022-23 delivery activities to date. Detailed deliverables and schedules for 2022-23 are included in the published Business Plan:

- Annual audit and completion of 2021-22 accounts;
- Management and monitoring of 2022-23 budgets and court recovery funding and capital investment;
- Supporting Resource Spending Review (RSR) and Capital Spending Review (CSR) processes;
- Leading and supporting Wellbeing, Inclusion and Diversity via working as part of a focussed team;
- Working as part of a Pay & Grading Project to review and implement pay parity agreements;
- Managing 2022-23 pay negotiations;
- Launching the new COPFS website on 30 May;
- Implementing a new HR digital system and services on 30 June;
- Designing, planning and implementing the cross-Justice Digital Evidence Sharing Capability (DESC), supporting a pilot commencing in Dundee in autumn 2022 as part of phased evaluation and national rollout from spring 2023;
- Implementing and supporting new agile working policies and Digital Workplace facilities to facilitate Future Ways of Working strategic business aims;
- Finalising a new Desk Booking Corporate App enabling staff to digitally book a desk to support agile working and a new Overtime and On-call claims App replacing current paper and manual processes; both new Corporate Apps will be released via pilot evaluation in late summer/early autumn;
- Ongoing consultation and engagement with staff and stakeholders on Estates transformation and defining requirements and planning options;
- Implementation of new Digital Meetings solutions in all offices to provide innovative and integrated Microsoft Teams meetings and collaboration facilities for staff working in the office, home or from any connected location;
- Launch of the Scottish Prosecution College Prospectus and working with stakeholders to plan and develop COPFS' learning and development curriculum;
- Successful independent SQA qualifications processes and procedures review;
- Holding a series of Senior Leaders events to further develop leadership capabilities, awareness and to support business delivery with the next event taking place on 5 September and 5 and 6 October;
- Completion of the Digital Workplace Exchange Online migrations;

- Planning for the final design, development and evaluation of COPFS' new Witness Gateway solution later this year (project plans published in September) and developing Defence Agent Service digital solutions to transform services to witnesses and defence agents;
- Deploying a new version of the CMiC App for use late summer in Sheriff and Jury cases;
- Development of the Electronic Reporting to Crown Counsel digital casework solutions for implementation to agreed plans later this year.

Business Services is committed to supporting colleagues across COPFS on a day-to-day basis and delivering business improvements and transformation projects and innovation. Progress in providing day to day support is monitored by the Business Heads at their monthly meeting using KPI trackers. While the tracker does not cover all Business Services activity it provides a picture of key service delivery. The latest KPI figures can be found at **Annex B**.

The detailed Business Services priorities for 2022-23 are published in the Business plan and delivery progress will be reported in line with corporate governance processes.

EXECUTIVE BOARD

FUNCTION UPDATE: LOCAL COURT

Purpose

1. To provide the Executive Board with a short update on current performance and progress as we recover from the Covid-19 pandemic and look ahead to planned improvements and reform in 2022/23. Further details are provided in Annex A.

Priority

2. Routine.

Recommendation

3. The Executive Board is invited to note this report.

**John Logue
Deputy Crown Agent
Local Court**

Aug 2022

ANNEX A

1. Current Priorities

- Business Planning for 2022-23. The Business Plan is complete; it and has been shared with stakeholders and we have received positive feedback. We have developed an implementation plan to supplement the LC Business Plan and to demonstrate how progress will be monitored.
- We are monitoring implementation of the agile working policy. It is still at an early stage, and we are cognisant of the fact that the majority of staff in Local Court have to work in specific locations office/court as part of the long-established rota process. We will be reviewing it in the autumn to learn lessons and where required will adapt our approach to make sure the policy is implemented correctly and fairly across Local Court.
- Preparations are ongoing for the restart of the Summary Case Management (formerly EPR) pilots in Dundee, Hamilton and Paisley. Local Implementation Groups have been established to agree the processes which will operate in the 3 court districts. Engagement by the defence in the pilots has been variable. Nevertheless, the pilots are currently scheduled to commence on 5th Sept 2022.
- Reduction of the pandemic backlog in the summary and solemn courts.

2. Staffing

- We continue to recruit across all grades and all locations to ensure that we achieve and maintain our agreed staffing position of FTE of 1,117. As at 1st July there were 1,107 FTE in post in Local Court. Local Court continues to take on the majority of new legal staff to the department which requires us to continue the transfer of existing legal resource to SCG. We are also aligning our legal staff vacancy rate with that of SCG and OS, which requires us to transfer 18 legal staff from Local Court.
- We continue to adopt an agile approach to our resourcing aligning our recruitment with our transformation strategy which will increase our ability to undertake elements of our work from a neutral location. This will improve our service delivery and improve our processes. The location neutral staff will rotate with staff in local offices allowing for greater use of the policy in our small and medium sized offices.

3. NICP

- Performance against the main KPI for 2021/22 (marking 75% of cases within 28 days of receipt) was 73.5%. The current performance this year is 74.3%.
- The number of unmarked cases as at 8.8.22 was 16,634. This equates to a little over 5 weeks' worth of work.
- As the unit continues to focus on the older interim marked cases there is good progress to report. The number of interim marked cases has reduced from 5001 (in Jan 2022) to 2482 (as at 8.8.22). The interim marked cases reported before 2022 have reduced from 2643 to 923 in the last quarter. Steps are being taken to build capacity and capability in NICP and priority continues to be given to reducing the age profile of cases. Second year trainees continue to undertake a period of secondment into NICP and

ANNEX A

resource is being transferred from LC offices to NICP to accommodate the transfer of undertaking marking for the SCM pilot offices.

- NICP will have a significant role in the success of the Summary Case Management pilot to ensure that additional evidence is considered, assess which cases are suitable for resolution and agree evidence to focus upon the areas in dispute. Guidance for staff in relation to the pilot has been developed

4. Solemn Casework

- Performance against the main solemn KPI (indicting 75% of cases within 8 months of first appearance) is currently sitting at 56% 2022-2023.
- The solemn workload has continued to increase as a result of a further 6.01% increase in new petitions in 2021/22 (compared with 16.9% increase in 2020/21). The projected increase for 2022-2023 is currently a further 0.63%. The number of cases being prepared for indictment has increased by a further 25.15% since 1 April 2021, in part due to delays in obtaining forensic evidence. There has been a further increase of 3.69% so far for the FY 2022-2023. As at 14 April 2022, the number of cases indicted to court but still to go to trial has increased by a further 5.6% since 1 April 2021 (compared to the 60.5% increase in 2020/2021). This figure has fallen slightly in 2022-2023 by -1.3%
- Performance against the age profile KPI for cases being investigated (no more than 5% of the cases over 8 months old) is now at 15.14% due to the consequences of the pandemic. We have recently increased the number of investigative assistants in one sheriffdom to address particular age-profile concerns and will, as part of the business planning, consider what further steps are required to improve performance against this KPI.
- Sexual offences teams are working well in the preparation of cases for trial – performance exceeds the KPIs for initial decision making and we are seeing steady improvement in our reporting for indictment. A review of the KPIs for sexual offences is ongoing.
- Overall, our performance in respect of taking initial decisions in solemn level offending is strong - 85% within 28 days of receipt of report but the challenge is to progress this work with delays in obtaining cyber evidence presenting a particular concern.

5. Sheriff Summary Work

- At end of FY 2021-22 there were 38,089 outstanding summary trials. There are currently 34,236 outstanding summary trials. This represents a reduction of approx. 4k trials since April 2022.
- There has been some improvement in the domestic abuse case journey time. Most courts are just over the 10 week target.

6. Information and Advice

- The backlog of cases has increased the number of cases in which we provide our information and advice service for victims and witnesses.

ANNEX A

- Work is being undertaken to estimate the resource impact of introducing a right for children to have their evidence taken by commissioner in Sheriff and Jury trials.
- Work is also being undertaken to assess the resource impact of rolling out the High Court Victim Strategy to solemn sexual offences in Local Court following a pilot in Glasgow.

7. Conclusion

Local Court staff continue to attend offices and courts as implementation of the agile working policy progresses. Local Court management remains in dialogue with SCTS about safety measures in court and a revised recovery court model to address the increased number and age-profile of outstanding trials and to deliver a high-quality service. It is likely that, by the beginning of the next financial year, as the picture in summary continues to improve that some of the additional summary recovery courts will convert to additional solemn courts and there will be focus on those jurisdictions where the number of outstanding trials is greater.

**John Logue
Deputy Crown Agent
Local Court**

Aug 2022

EXECUTIVE BOARD-HIGH COURT FUNCTION UPDATE

PEOPLE

The majority of our staff are now on Agile working. Workloads accumulated during the pandemic and staff experience levels (34% of case preparers have less than 1 years' experience continue to dominate discussions).

The court programme reduced during the summer months, but there remains a significant churn of cases. This produces additional demands to staff in keeping victims and witnesses engaged in the process.

The following actions are being prioritised:

- The introduction, from 1 August, of a Witness Assistance Team to improve our service on witness excusals and witness availability
- A review of HC VIA-their roles and responsibilities, their line management structure, their communications to victims.
- New KPIs and objectives focused primarily on clearing outstanding cases over 10 months old, improving compliance with current KPIs on reporting dates for custodies and child witnesses (under 12 years) cases
- The introduction of a more user-friendly fully electronic model of reporting
- An end-to-end process review of EOC with the introduction, if appropriate, of a centralised team to address the myriad of additional tasks associated with this format of eliciting testimony.
- Improving our process for identifying and facilitating level transfers from Local Court to ensure vacancies are filled without unnecessary delay.
- Minimum standards for reporting of cases to the indicting team.

SEXUAL OFFENCES REVIEW

In December 2021, the Lord Advocate, announced that a review would be carried out of how prosecutors in Scotland deal with reports of sexual offences. The review will be carried out by Susanne Tanner QC, Assistant Principal Crown Counsel, assisted by a core team from COPFS. The review will report by Autumn 2023.

Terms of Reference have been agreed by the Lord Advocate and a paper outlining the review and its implications will be brought to the next meeting of the Board.

PERFORMANCE

HC Performance is measured across the disciplines of Homicide, RTFIU, Major Crime and Sexual Crime.

1.INITIAL DECISION MAKING

- Our KPI is to take 75% of initial decisions within 4 weeks (**83%**)

- Our KPI is to take 90% of initial decisions within 8 weeks (**90%**)
- Our KPI is to take 95% of initial decisions within 12 weeks (**95%**)

All current KPIs are being met and performance has improved on all categories from FY 21/22.

2. REPORTING PRODUCTIVITY

We reported **871** cases to Crown office for FY 20/21

We reported **874** cases to Crown Office for FY 21/22

This represented a **0.3%** increase in the level of reporting over the last reporting year. We are encouraged by a **7%** increase in productivity in the first quarter of 22/23 compared with the same period in 21/22 but recognise the need to significantly improve productivity, and this is an objective for the function. We had hoped for a greater increase by now however we are feeling the impact of the ongoing delay in filling vacant legal posts with 7 legal posts still remaining unfilled after a significant period. The situation has been exacerbated by maternity leave in small, specialist units which cannot easily absorb the impact especially when combined with the impact of training up inexperienced staff and responding to the ongoing demands of an increased and aging caseload.

3. SERVICE OF INDICTMENTS

Our target is to serve 80% of indictments within 9 months of CFE

In FY20/21 SCG achieved **44%** collectively

In FY21/22 SCG achieved **40%** collectively

In FY22/23 SCG are currently achieving **42%** collectively

The current relevancy of this longstanding internal “target” is questionable when balanced against the imperative of indicting out of target cases to reduce our ageing profile of cases. For FY 22/23 a key objective is to reduce the proportion of our petitions aged 10 months (from CFE) and 12 months (from receipt) which makes this target counterproductive.

4. INDICTING PRODUCTIVITY

We issued **759** indictments from April-Jan in 20/21

We issued **760** indictments from April-Jan 21/22

This represented a **0.13%** increase in the level of indicting. We hope to see a more substantial rise in productivity when our remaining indicter vacancy is are filled. While we have identified the candidate, they cannot be released from RTFIU until someone suitable is identified for RTFIU’s ongoing legal vacancy.

There will certainly be a need for greater indicting capacity if we are to succeed in our aim to indict all cases over 10 months old whilst also concurrently indicting custodies however it is recognised that this would place increased pressure on our PH cycles.

5. s76 INDICTMENTS (including other SCG disciplines)

We issued **58** s76 indictments in FY 20/21

We issued **34** s76 indictments in FY 21/22

This represented a **39%** reduction in the level of accelerated pleas by s76. This was disappointing but given that 70% of our business is sexual offending which does not naturally result in early resolution, and levels of outstanding HC trials are 140 % higher than pre-pandemic levels it is perhaps not surprising that we struggle to obtain early resolution. We have however seen an increase of **9%** in this FY which is hopefully a sign of a turnaround.

Our level of outstanding trials remains high. As of 29 July there are 890 trials outstanding compared with 390 pre-pandemic.

6. INPUT

We received **1249** petitions across HC in FY 20/21

We received **1119** petitions across HC in FY 21/22

This was a reduction of **10.4 %** in the level of new petitions which is welcomed but figures from the first quarter of FY22/23 shows an unwelcome increase of **6.5 %**.

7. AGE PROFILE

Age of casework is a particular concern when considering the profile of our victims, the age of some of the offences we are investigating (and the age of the accused) and our current reliance on time-bar extensions. Our objectives for 22/23 are to reduce the levels of petitions over 10 months from the current level of **21%** down to 5% and to reduce the overall age profile of unindicted SPRs over 1 year old which also, co-incidentally sits at **21%**, down to 10%. We have not yet managed to progress this objective in the first quarter. The most significant pressure is in Sexual Offences where we have already recognised the need for a strengthened senior legal management team and look forward to welcoming an additional Band G legal manager in the near future.

8. KPIs

As indicated previously, our KPIs are currently under urgent review. Only 19% of HC cases met their KPI for journey times in FY22/23 and we have been unable to either achieve or improve that performance in the first quarter. We have however improved our performance, and are meeting all KPIs, for initial decision

making and are making progress on reducing the age profile of unallocated petitions and also on interim marking where we have seen a reduction in the age of outstanding SPRs over 1 year old from **54%** to **20%**.

HC had been operating a difference standard from LC in terms of some of its measurements of journey times for sexual offences and it was recognised that this was not sustainable. As a consequence, the Sexual Offences Strategic Group was set up in March 22 to bring together both functions involved in this casework. There is a clear consensus that joint KPIs around initial decision-making should continue but KPIs for reporting and indicting require further review by the group before it can report to DCAs and ultimately to OPC on any proposed changes. It is acknowledged that reducing age profile has to take priority over reducing individual journey times albeit there is a clear desire to provide a focused improvement in journey times for young child witnesses.

One of the unique HC challenges over journey times is the indicting process. While LC can indict their own cases with a quick turnaround the HC indicting process adds an extra layer of quality assurance which requires the input of Crown Counsel. The aforementioned unfilled vacancy in the Indicting team, the challenge of maintaining the AD cohort at an effective level and the pressure not to overload PH sittings means the Indicting team face competing priorities and the reality is that they require to focus their resource on custodies and bail timebars. This reality must be addressed in terms of HC objectives for 22/23 and our future focus is therefore on the following:

- Initial decision making within 4, 8 and 12 weeks
- Significant reduction in interim marking over 6 months
- Significant reduction in pre-petitions over 9 months
- Increased productivity of case preparation teams and indicting teams
- Improved performance on journey times for child witnesses under 12
- Reporting cases to agreed timescales and to agreed minimum standards
- Significant reduction in petitions over 10 months (CFE) 12 months (SPR)

Ruth McQuaid 8.8.22

REPORT FROM SPECIALIST CASEWORK FOR EXECUTIVE BOARD MEETING**1. Serious and Organised Crime Unit**

The unit covers a diverse range of work including Serious and Organised Crime; Counter Terrorism; Major Economic Crime; Money Laundering; Solicitors cases; Election offences; Bribery and Corruption and Miscellaneous specialist casework. All significant SOCU cases are intimated to PCC and HCU to allow early allocation of ADs and to provide an oversight of cases within the unit. This has dovetailed with the Practice Note relating to Lengthy and Complex criminal trials in the High Court. Of the **96** live SOCU cases (spanning 122 SPRS), there are currently **19** operations (comprising **31** SPRs) on the lengthy and complex case list.

There have been **89** upon-conviction Serious Crime Prevention Orders (SCPOs) granted in Scotland, chiefly for SOC cases and **1** 'stand-alone' SCPO.

There are now **24** live SCPO orders (including 4 granted in England) and **7** cases spanning **9** SPRs submitted relating to breach of SCPOs:

- 3 cases relate to the same accused and the accused has now been indicted on several charges of breaching his SCPO, with a trial fixed for 05.09.22
- The same accused has now been reported for a 4th case for which he is now RIC. The case is now being prepared with a view to HC proceedings.
- 4 cases (2 of which are for the same accused) are being prepared within LC with a view to Sheriff and Jury proceedings, with each accused having appeared on petition and admitted to bail
- 1 case proceeding on summary complaint with a TD on 21.09.22

There have been **8** Trafficking and Exploitation Prevention Orders (TEPOs) granted in Scotland to date.

i) Notable Convictions

*Details of notable convictions are contained in the **Annex** to this report.*

ii) Ongoing cases:

SOCU continues to work on a significant number of live cases:

- **2** cases (spanning **2** SPRs) where a petition warrant is out for execution
- **1** case (spanning **1** SPR) where a petition invite has been arranged
- **1** (spanning **1** SPR) case where the petition warrant is being held pending the outcome of another case
- **33** cases (spanning **37** SPRs) are being prepared as pre-petition
- **36** cases (spanning **45** SPRs) where the accused have appeared on petition, **13** of which are currently utilising the covid extensions.

Report from Specialist Casework for Executive Board Meeting in August 2022

- **16** cases (spanning **26** SPRs) have been indicted for High Court proceedings
- **9** cases (spanning **9** SPRs) have been indicted for Sheriff and Jury proceedings, **8** of which will be prosecuted by SOCU deputes
- **1** summary complaint (spanning **1** SPR) which will be prosecuted by a SOCU depute

Additionally, the Unit has oversight of **26** large/complex cases being worked on by reporting agencies and not yet formally reported to COPFS.

SOCU is also providing SLM and case preparer assistance to MCT in relation to a petition case where further charges were added to the indictment arising out of Venetic material.

Details of the ongoing noteworthy cases are contained in the Annex to this report.

iii) High Court prosecutions

SOCU has **16** cases now indicted to the High Court, all of which are currently awaiting trial, and a further **31** on petition where High Court proceedings are anticipated.

iv) Sheriff & Jury prosecutions

The Unit currently has **9** cases indicted for Sheriff and Jury proceedings, and a further **4** on petition where Sheriff & Jury proceedings are anticipated. Many are long and complex cases, and they are spread across the country. SOCU trial deputes have been assigned to most of them. The Local Court function is also providing a depute to conduct a trial at Inverness where the case is not particularly long or complex.

v) Other Matters of Interest:

Expedited Referrals –To date, **7** applications from Police Scotland and **3** applications from DWP have been considered and referred to the CRU.

Independent Reviewer of Terrorism Legislation – SOCU has now commenced engagement with the IRTL in relation to his 2021 annual report, which will have a focus on the 'online' aspects of terrorism and law enforcement. Various information has been requested by the IRTL and there will be further consultation in due course. SOCU is also assisting with the revision of the 'Letter of Rights' document which is issued by police to persons detained under the terrorism legislation.

Report from Specialist Casework for Executive Board Meeting in August 2022

2. Proceeds of Crime Unit (POCU)

Confiscation and restraint

In the financial year 1.4.2021 to 31.3.2022, 197 confiscation orders were secured to a total value of £4,856,156.49. In the 22/23 financial year to 05.08.202, 60 orders totalling £708,537.41 have been secured.

In the financial year 1.4.21 to 31.3.22 a total of 19 restraints were secured totalling £8,258,876.21. In the current 22/23 year to date, 8 restraint orders have been obtained restraining £4,223,643.58 of assets. Temporary restraint by moratorium extension was secured on 116 occasions suspending access to assets of £15,526,801.70 pending further investigation with a view to full restraint. In 22/23 to date, 12 extensions are in place securing £1,150,264.13

Notable cases and ongoing restraint work

Contained in Annex attached

Courts

The pre covid system of work in courts on proceeds of crime work has largely returned resulting in deputies requiring to travel to courts across the country for proof work or difficult procedural hearings. In relation to restraint and moratorium work each sheriffdom will deal with these in different ways, some content to deal with these virtually and others insisting on in person hearings. Thus far no significant problems have been experienced.

Staffing

The remaining vacant legal post in POCU has now been filled. The new depute took up post on 02.08.2022. A hybrid system of home and office working was commenced mid-May and is working well, satisfying business needs and staff wellbeing.

3. Appeals

Courts

All conviction and sentence appeals for High Court are now in person and have been since the omicron restrictions were relaxed. Procedural hearings continue to be conducted by WebEx platform. As a result of ongoing issues with wifi connectivity in court, it is rarely possible to have the same AD conducting all the day's business as it is not possible to do the virtual business from the court where the in-person hearings are to take place.

During the pandemic, most ADs were happy to use digital documents making provision of case papers a much easier task but due to the return to in person hearings and the lack of access to COPFS systems in court, Appeals staff have had to return to the formulation of hard copy papers. Also the lack of access to such tools as Westlaw means that Appeals staff cannot access these in court to assist the AD in addressing any ad hoc points arising. The issue has been raised by Appeals Band G with the head of COPFS IT. As the responsibility for the systems in court rests with SCTS there is a reluctance to take remedial action.

Report from Specialist Casework for Executive Board Meeting in August 2022

The issue was raised at the Appeal Court Users Group in February and again at the end of April. Lord Mathews, the Administrative Judge, chairs this group and has expressed concern at the lack of facilities. Faculty are also similarly disadvantaged. The PCC has been tasked with providing a paper with recommendations on steps to be taken. Band G is assisting in this process. The matter is to be raised again at the next users group meeting.

The Sheriff Appeal Court continues to proceed by WebEx platform.

Staff continue to submit written submissions and other documents electronically.

Notable casework

Contained within annex attached

Staffing

The unit is still carrying a 0.6 PFD vacancy. Discussions are ongoing in relation to these. Arrangements for staff return to Crown Office in line with our optimum business model commenced on 28 May 2022. Appeals unit is operating a hybrid system of office/homeworking with rota attendance of staff in order to attend courts, support Crown Counsel and to satisfy general business needs.

4. International Cooperation Unit (ICU)

A. Overview

The number of Incoming Extradition cases in 2021 was the lowest number of any year for which ICU have records. The number of Outgoing Extradition cases was also low. The number of incoming MLA cases was within the expected range of 400-500. Outgoing MLA is the exception in that ICU surpassed our record from 2013: 232 Outgoing MLA cases is the most ICU have ever opened in one year.

There continues to be a much higher number of outgoing TV link requests compared to pre-pandemic figures. Although numbers of new Extradition cases are down, our pre-existing extradition caseload has become more complex to manage as a result of Brexit and other international events; and because the TACA warrant provisions are as yet untested, we anticipate an increase in extradition appeals in 2022.

B. Brexit

General

The Trade and Cooperation Agreement (TCA) was ratified by the European Parliament on 27.04.2021. Whilst the TCA was meant to have direct effect in EU Member States from 01.01.2021, there remained issues with Netherlands and Portugal who required domestic legislative changes to bring aspects of the TCA

Report from Specialist Casework for Executive Board Meeting in August 2022 into effect. Both have now introduced the necessary legislation allowing extradition to and from the UK to resume.

The second meeting of the Specialised Committee on Law Enforcement and Judicial Cooperation, which is the body overseeing implementation of the TCA and resolution of issues arising, will be held on 13.10.2022. The agenda will include review of TCA implementation to date and aspects of work that had been mandated under the TCA, including consideration of the EU-UK MLA template form the UK proposal for which is currently being considered by EU MS. The ex-ante evaluation of the use of PRUM (DNA and fingerprint exchanges) has been signed off by the e EU Council following an evaluation by a team of specialists. The UK completed a fingerprint connection with Austria and a connection with France was being tested.

Nationality Bar

Ten countries (Croatia, Finland, France, Germany, Greece, Latvia, Poland, Slovakia, Slovenia, Sweden) have declared an absolute nationality bar with Czechia and Austria confirming they will only extradite their nationals if the requested person consents to extradition which, in essence, is tantamount to an absolute bar.

Belgium, Ireland, Spain and Italy have declared no bar to surrender. The remaining eleven have asserted conditional bars, a combination of reciprocity and return to serve any sentence. Portugal have also imposed a high offence threshold confirming that they will only extradite for offences of terrorism or serious organised crime.

A number of domestic cases involving extradition requests for Polish nationals have already been adversely impacted. Home Office continue to work with the Polish Ministry of Justice to finalise a draft MoU on Cooperation in Criminal Matters covering extradition, mutual legal assistance, criminal records exchange and transfer of sentenced persons to complement the TCA and better support effective bilateral cooperation. The previous Head of ICU contributed to the draft MoU which contains a joint commitment to resolve the surrender of Polish nationals to the UK.

Unfortunately, progress appears to have stalled both with the amendment of the Polish domestic legislation and the MOU. The Home Office continues to liaise with Poland in the hope of obtaining an update on implementation/likely timescales

There is an issue with Czechia whereby, following application of the Czechian nationality bar, it is anticipated that the UK will routinely seek to consider transfer of proceedings to Czechia. However, Czechia are refusing to take transfer of proceedings, citing the UK's reservation on Art 21 of the Convention on MLA in Criminal Matters as being the reason. Czechia's analysis is that the reservation has reciprocal effect and therefore applies to Czechia vis-a-vis UK (even although Czechia do not have a reservation in place). Home Office are considering an exchange of letters with Czechia on this specific point.

Report from Specialist Casework for Executive Board Meeting in August 2022
Ministerial engagement continues with Latvia, Greece and Croatia to make representations that they too should consider legislative amendments to remove the bar to extradition of own nationals (as these three countries unexpectedly introduced nationality bar under TCA). No substantive progress has been made to date.

The following contingency measures are in progress:

- ICU worked closely with the CPS on the comprehensive list of questions on domestic law, procedure and provision of support for victims and witnesses, for EUMS who have notified a nationality bar, to inform decision making around potential transfer of proceedings in individual cases.
- ICU is working with PSoS to update intelligence for all outstanding warrants impacted by these notifications, with meetings occurring regularly.
- ICU received a capture from MIU of all indicted cases where the case data records the nationality of the accused. Unfortunately, nationality is not recorded in all cases and work is being undertaken with PSoS to explore whether they can provide better MI. This work has currently stalled but it is hoped that an agreement can be reached with Police Scotland on this topic.
- ICU had been in discussion with Policy/DCA about recommendations on whether the bail manual requires to be amended to highlight nationality bar considerations and ensure special conditions of bail are sought on first appearance in appropriate cases. The former Head of ICU drafted a revised paragraph for DCA for Serious Casework and the Deputy Head of Policy for consideration in advance of Bail Manual revision proposals being sent to SET. The CPS have recently updated their bail guidance along similar lines to the revision proposed.
- ICU has captured historical surrender data from EU countries from 2018 onwards to provide a comparative analysis of the anticipated number of cases that may be now impacted. An updated comparative analysis of pre and post Brexit trends for MLA and extradition cases has now been completed but it is still too early to determine any definite trends given the relatively short period since Brexit and the fact that the data will have been skewed by a lack of international travel for a significant period over the last year due to Covid restrictions.
- The former Head of ICU liaised with Deputy Head of Policy concerning the need to develop policy and guidance on consideration of transfer of proceedings. The former Head of ICU produced a draft for consideration by the Deputy Head of Policy. The draft has been updated by the current Head of Extradition and the process has now been approved by the Law Officers and published on Connect.

Report from Specialist Casework for Executive Board Meeting in August 2022

- The International Victim Strategy Subgroup has now finalised, revised process guidance, templates letters, and a VIA script for dealing with nationality bar/transfer of proceedings cases. This will be published on CONNECT shortly. ICU delivered inputs to both the High Court and Local Court VIA workshops and High Court and Local Court International VIA SPOCs are now in place to provide support and guidance on international cases.

Data Adequacy Decision on the Law Enforcement Directive

The Law Enforcement Directive (LED) data adequacy decision is now ratified. The UK issued a Ministerial Statement on 1 July, welcoming the decision. Separately, ICU is represented at the Data Protection Law Enforcement Group which relates to the UKG's plan to reform the DPA 2018. A specific concern for ICU will be to ensure that any proposed reform is likely to maintain consistency with compliance with EU data adequacy standards.

International Criminality Cooperation Board (ICCB)

The Home Office led Internal Security Delivery Board (ISDB) has been replaced by ICCB with the broader scope of strategic oversight of the UK's approach to international law enforcement and criminal justice cooperation. There is restricted operational representation on the Board but the Head of MLA and the Head of Extradition are members. The last meeting took place on 21 July 2022.

Ministerial Deep Dive on Post Brexit Impact

A ministerial deep dive meeting on Brexit with Scottish Government, COPFS and PSoS officials took place on 19.01.2022. The Head of Extradition and Head of MLA provided updated briefings to the Head of EU Justice, Scottish Government in preparation for the meeting and answered questions from Ministers. A range of statistics were prepared for the meeting by the ICU Business Manager

C) Extradition

From beginning of January 2022 until the end of July 2022, ICU have received **56** new extradition requests, of which **50** were from EUMS and **6** from rest of world. **47** arrests have been made since 1st January 2022: **45** on Part 1 requests (TACA warrants or retained EAWs), and **2** Part 2 requests. So far this year there have been surrenders made from Scotland on **21** warrants, **21** to EUMS and 0 to rest of world. In total, **61** incoming TACA warrants have been received since the agreement came into force on 01/01/2021 until the end of July 2022.

Since the beginning of January 2022 until the end of July 2022, **22** requests have been received from operational teams.

Since the beginning of January 2022 until the end of June 2022, we have issued **12** Outgoing requests – **7** TACA warrants to the EU and **5** Part 2 requests. There have been **13** arrests abroad, **9** on TACA warrants/legacy EAWs and **4** Part 2.

Report from Specialist Casework for Executive Board Meeting in August 2022
There have been **7** returns from abroad to face trial in Scotland thus far in 2022, **6** from the EU and **1** non-EU.

High Profile Extradition casework

See case sensitive annex.

D) Mutual Legal Assistance

From the beginning of January 2022 until the end of July 2022, ICU have received **218** requests for assistance from other jurisdictions (“Incomings”), of which **183** were from EU Member States and **35** from rest of world.

ICU have received **116** requests for assistance in obtaining evidence abroad from operational teams (“Outgoings”) and have issued **38** requests, of which **19** were to the EU and **19** to rest of world.

High Profile Mutual Legal Assistance casework

See case sensitive annex

5. Criminal Allegations Against the Police Division (CAAPD)

The CAAPD hybrid working model has been operational from w/c 9 May 2022. All CAAPD staff now attend in the Hamilton office at least one day a week and, for the remainder of the working week, continue to work from home. Arrangements have now been made so that there is a physical presence in the CAAPD office on every day of the working week.

During 2021 the Executive Board authorised the introduction of a revised CAAPD published target to operate retrospectively from 01 July 2021; that decision was reached following the cessation of the CAAPD practice of “freezing” targets pending the arrival of essential evidential material from investigative agencies.

The new key CAAPD target is to:

- Complete investigation of complaints of criminal conduct by police officers and advise complainer of the outcome within 6 months of the report to the Procurator Fiscal in at least 75% of cases.

As at the end of May 2022 the CAAPD Year to Date Performance for 2021-22 against the new target was 92%.

A rota remains in place for attendance of CAAPD administrative colleagues at Hamilton PF’s Office to ensure that all essential operational tasks that cannot be undertaken from home are attended to. i.e. hard copy mail, disclosure of material via pen drive/DVD, etc.

Report from Specialist Casework for Executive Board Meeting in August 2022

The CAAPD management meetings and CAAPD team briefings are continuing to routinely take place via Microsoft Teams but, following the introduction of the hybrid working model, there is now the capability of holding and increased number of in-person meetings.

On occasion virtual meetings with CAAPD complainers, or next of kin, are also taking place via Microsoft Teams; with complainers joining meetings as an external invitee.

There has been some recent turnover of personnel within the division. Understandably, it will take some time for new additions to the team to become familiar with the very particular nature of CAAPD work, and the bespoke processes in place, whereby they are able to contribute at full capacity.

There are currently three Band D (Precognition Officer) vacancies within CAAPD.

Professional Standards Department (PSD) and Police Information & Review Commissioner (PIRC)

Both Police Scotland PSD and PIRC maintain an effective service to CAAPD.

CAAPD continues to receive a steady number of referrals each month.

It is understood that both organisations are continuing to work flexibly with personnel routinely working from home but also attending at places of business, from time to time, as the need arises.

Bespoke arrangements have been put in place with PSD/PIRC for the receipt and lodging by CAAPD of copy productions/case related material.

Effective communication has been maintained with the regular liaison meetings still taking place by Microsoft Teams.

Details of the casework highlights are contained in the Annex to this Report.

i) Other matters of interest

Dame Elish Angiolini QC published her report on the system for dealing with complaints against the police on the 11 November 2020.

Advice was provided to the Law Officer's following publication.

In summary, while there are only four recommendations that directly relate to the work of COPFS/CAAPD – centring on issues of improved accessibility and suggestions for increased instructions to PIRC – there are many other recommendations that will significantly impact on the work of other criminal justice stakeholders.

Report from Specialist Casework for Executive Board Meeting in August 2022
The four recommendations directly related to the work of COPFS/CAAPD have all been successfully implemented.

CAAPD continues to be significantly involved in further consideration, and implementation, of many of the other recommendations to ensure that any changes to the system of investigation of criminal complaints made against on duty police officers continues to take account of the Crown's central role in the process and the constitutional position of the Lord Advocate.

The Cabinet Secretary for Justice and the Lord Advocate have published their formal response to the report and, since then, a Ministerial Group tasked with providing governance and assurance over the work of the Strategic Oversight Group and the Practitioners Working Group have met.

The Head of CAAPD continues to explore the implications arising from Dame Elish's recommendations and has been involved in discussions in respect of suitable arrangements for governance, reporting on progress, categorisation/prioritisation and next steps. He continues to represent COPFS at the quarterly Practitioners Working Group (PWG) meeting.

The Scottish Government public consultation in respect of those recommendations that require legislative change recently commenced on 24 May 2022 and will run until 16 August 2022.

The unit remains involved in the ongoing triage of "excessive force" complaints, categorised by the police as 'non-criminal', to provide reassurance that all cases involving an inference of criminality are being reported to CAAPD. A recent COPFS audit of all assault/excessive force categorised complaints received by PSD took indicates that in the vast majority of cases PSD has appropriately categorised the complaint and has correctly identified the optimal arrangements for future investigation/progression. In future it is anticipated that PIRC will assume an enhanced audit function with regards the work of PSD in accordance with their statutory responsibilities. In addition, from October 2021 there is a standing instruction that all assault allegations, appearing to engage Art 3 rights, are now automatically referred to PIRC for investigation.

Finally, HM Inspectorate of Prosecution in Scotland has completed her review of how COPFS manages criminal complaints against the police. CAAPD fully engaged with the review as it progressed. The final version of the report was published on 9 September 2021. CAAPD/COPFS has now commenced work on formulating a formal response to HM Inspectorate, setting out a detailed plan for managing implementation of the recommendations and confirming the arrangements for the governance and assurance of that process. The latest meeting of the COPFS "HMIPS working group" took place on 23 June 2022 and all recommendations have been allocated to a nominated lead official for progression. Updates on progress are being routinely provided to the COPFS Audit and Risk Committee (ARC).

6. Scottish Fatalities Investigation Unit (SFIU)

Report from Specialist Casework for Executive Board Meeting in August 2022

Staffing

The Deputy Head of SFIU role and 2 PPF roles are currently being filled by TRS. Faith Millar will transfer to the Deputy Head of SFIU role (date to be assigned).

New Deaths

Details of the total numbers of deaths received as at 24 July 2022 (all deaths reported to COPFS) can be found in the table below:

SFIU WEEKLY SNAPSHOT OF WORKLOAD / PERFORMANCE	
Death Cases Received as at 24 July 2022 <i>(including SFIU, CDIT, HSIU, Homicide & RTFIU deaths – ie all deaths reported to COPFS)</i>	Full Reporting Year 2019/2020 – 10,896
	Full Reporting Year 2020/2021 – 15,712
	Full Reporting Year 2021/2022 – 15,313
	April 2022 – 1187
	May 2022 – 1171
	June 2022 – 1070
	July 2022 – 794
	Reporting Year to Date from 01 April 2022 – 4221

Active Death Investigations

As at 6 July 2022, there were **8201** active death investigations across COPFS. This is down from **8258** in June 2022.

Fatal Accident Inquiries

SFIU continues to progress all ongoing death investigations including mandatory and discretionary fatal accident inquiries.

Report from Specialist Casework for Executive Board Meeting in August 2022
As at 25 July 2022:

- There were **29** FAIs (21 mandatory and 8 discretionary -1 case is a conjoined FAI into 3 deaths- with scheduled court dates).

There were **4** discretionary FAIs for which dates are awaited.

As previously forecast, the expectation that the number of discretionary FAI instructed by Crown Counsel will increase, is being realised. Discretionary FAIs generally require a significantly greater preparation period and court time commitment as compared with mandatory FAIs. As at 03 August 2022, Crown Counsel have instructed **11** discretionary FAIs during 2022. This is an increase from **8** (2021), **3** (2020) and **6** (2019). This includes HSIU cases.

See case sensitive annex

SFIU Continuous Improvement

A DVI (Disaster Victim Identification) training exercise was held at Tulliallan Police College on 20 July 2022 which was attended by staff across SFIU.

Training was delivered by SFIU at Tulliallan on 22 July 2022 to police officers involved in reporting deaths cases.

Pathology

Post Mortem Reports

The temporary admin team continue to process post-mortem reports. The temporary contracts of 4 temporary staff have been extended to 2 September 2022. A reduced level of overtime has been made available to legal staff to mark post- mortem reports while there are a number of vacant posts at present due to TRS and Maternity Leave.

As at 14 July 2022 the details of the outstanding PM reports which had been received by COPFS and required to be processed were as follows:

2020: 1

2021: 24

2022: 350

Total: 420 (up from 375 the previous month, an increase during the peak leave period).

This compares very favourably with the position over the last 6 months:

- 23 December 2021 – 2126 reports to be processed.
- 20 January 2022 – 1541 reports to be processed.

Report from Specialist Casework for Executive Board Meeting in August 2022

- 24 February 2022- 1108 reports to be processed.
- 24 March 2022 – 914 reports to be processed.
- 28 April 2022- 772 reports to be processed.
- 26 May 2022 – 521 reports to be processed.

Case Management Panels

As at 19 July 2022, there were **151 cases** in SFIU over 2 years old (up from **141** in June 2022) and **100** (down from **102** in June 2022) deaths in custody (this incorporates SFIU and CDIT deaths in custody).

It is of note that SFIU experienced a significant increase in the number of death reports from 2019/2020 as compared with 2020/2021 and 2021/2022 also had significantly high number of death reports. This will have implications for the number of cases that may enter the CMP process at future points.

7. COVID Deaths Investigation Team (CDIT)

- i) Case load.

COVID DEATHS INVESTIGATION TEAM STATS								
Stats as at Monday 01 st August		New Care Home Deaths	New Worker Deaths	Retrospective Care Home Deaths (pre 21/05/2020)	Retrospective Worker Deaths (pre 21/05/2020)	Deaths in Custody	Other Deaths	Total
	Overall total number of deaths now with the COVID Team	2468 (up from 2454 last week)	28 (same as last week)	1767 (same as last week)	10 (same as last week)	15 (same as last week)	1133 (same as last week)	5417 (up from 5403 last week)

Report from Specialist Casework for Executive Board Meeting in August 2022

CDIT is working closely with Police Scotland to receive sudden death reports and care home briefing papers in respect of all deaths pre and post 21 May 2020. Recent figures from Police Scotland (as at 18.07.22) in relation to care home resident deaths indicate there have been **4819** resident Covid deaths over **677** care homes. Of those 4819 care home deaths CDIT has received **3667** death reports from Police Scotland or direct from medical practitioners.

In addition, CDIT has received reports in respect of **37** front-line workers where they may have contracted the virus during the course of their employment.

CDIT has also received reports of **15** COVID-19 related deaths in custody.

Lastly CDIT has had **1163** hospital deaths intimated to the team.

Work continues to ingather all of the relevant material and review the circumstances of the deaths.

8. Health and Safety Investigation Unit (HSIU)

HSIU oversees all health and safety related investigations, including deaths, and leads the investigation and prosecution of health and safety cases (including Corporate Homicide) across Scotland. The Unit works closely with dedicated Senior Crown Counsel.

The Unit conducts all health and safety prosecutions in Scotland and is also responsible for the preparation and conduct of Fatal Accident Inquiries arising from an accident in the course of employment or at a workplace which are deemed to require specialist input.

There are currently **167** live reported cases.

HSIU is currently engaged with police and reporting agencies for death, injured party or regulatory cases, providing advice and input on **17** cases. These include complicated multiple accused health and safety cases.

The number of unallocated cases currently sits at **37**. Principal Depute work to allocate cases is on-going.

The CMP process continues to expedite cases more than 2 years old. There are currently **83** cases for CMP (**61** involving a fatality, **22** with injured parties or regulatory offences).

Staffing

An additional PFD joined CDU on 18.07.22.

Report from Specialist Casework for Executive Board Meeting in August 2022

HSIU Fatal Accident Inquiries

Pending (no First Notice lodged) – **32**

Pending (cases where we expected to lodge First Notice by 30.06.22) – **1** (draft lodged)

Scheduled Dates – **6**

Total – **39**

Casework Highlights

HSIU is continuing to report cases for CCI, agree pleas and identify dates for court. First notices are being prepared and deputies are liaising with SCTS to progress cases for FAIs. HSIU is engaging with SCTS to progress FAIs, including use of WebEx.

See case sensitive annex

9. Wildlife and Environmental Crime Unit (WECU)

The Wildlife and Environmental Crime Unit (WECU) is responsible for the prosecution of all wildlife and environmental crime reports throughout Scotland (with a few minor exceptions). WECU also marks case reports principally involving allegations of animal cruelty and neglect (animal welfare cases).

WECU liaises with the Scottish Government (including policy and legal queries, contributing to parliamentary questions, ministerial briefings, FOI requests); and with external stakeholders, Police Scotland, and other reporting agencies including local authorities, SEPA and the SSPCA.

WECU CASES OVERVIEW

WECU has a total of **113** cases. Of these, **46** cases relate to wildlife offences, **17** cases were reported principally by the Scottish Environment Protection Agency (SEPA), **6** other environmental cases were reported by Police Scotland/ Local Authorities, and there are **44** animal welfare cases. (*From Monthly Statistics 22.06.2022 to 19.07.2022*).

Of WECU cases calling in court during this period: **4** cases called for pleading diet, **1** was continued without plea, **10** cases called for intermediate diet, **7** cases called for trial diet, **1** for a s.76 diet and **1** for sentence deferred.

An additional 2 cases were considered by WECU but were not taken by WECU due to the particular circumstances of the cases and in 1 further cases advice and guidance was provided to reporting agencies. 2 cases were reported to Crown Counsel.

Report from Specialist Casework for Executive Board Meeting in August 2022
It should be noted this is a 36% increase overall in the number of cases dealt with in comparison to the figures provided to the last Executive Board with a 31% increase in wildlife cases, 21% increase in those reported by SEPA and a 67% increase in animal welfare cases.

STAFFING

Due to the temporary abstraction of the head of unit and one member of legal staff being absent due to illness the unit currently has 1 TPPFD and 2 PFDs. (3:5)

COVID-19 UPDATE: PERFORMANCE

WECU staff continue to work from home with attendance at court for procedural hearings and trials, and attendance at offices, as and when required. Electronic processes and procedures have been implemented and WECU staff are all working effectively and progressing casework, with attendance at offices at a minimum. Regular communications are being maintained with stakeholders including Police Scotland and SEPA, by MS Teams.

In the past month staff have attended at courts in Lothian & Borders, Strathclyde, Tayside, Central & Fife, Grampian and the Highlands & Islands.

CASEWORK

WECU staff continue to prosecute Wildlife and Environmental Crime, and mark animal welfare cases. A review is ongoing to assess whether WECU should also be responsible for the prosecution of forestry crime. This is not currently under the remit of WECU. This would enable WECU to take forward the recommendations from UK Wildlife Toolkit, which was instructed by DEFRA.

WECU Policy work/ Liaison with SEPA/ Media

Current Priorities include:

Wildlife Crime Report – The Crown has provided statistical input to the Scottish Government annual wildlife crime report. Report published at the start of April 2022 shows a rise in wildlife crime between 2019 and 2020 of 13%.

- **PAWS Legislation, Regulation and Guidance Group**– The Scottish Government is currently considering amending wildlife legislation to address inconsistencies. Consideration of highlighting specific legislation and associated issues will be undertaken and examined by this group including the Head of WECU. A government consultation will also take place to consider increasing wildlife powers for the SSPCA which WECU will be asked to comment upon.

Report from Specialist Casework for Executive Board Meeting in August 2022

- **Scottish Government National Litter and Fly tipping Strategy** WECU will contribute to the Consultation Process relating to fly tipping and enforcement issues.
- **COPFS Climate Change Working Group: 27.7.22** The Head of WECU sits on this group, which focuses on reducing COPFS' carbon footprint.
 - **PAW Raptor Persecution Delivery Group**– COPFS was represented at this Partnership Against Wildlife crime group.
- **Liaison with and evidence given to Scottish Government at Holyrood on Hunting with Dogs Bill: 22.6.22**
- **SOCFT Meeting and liaison with SEPA re Operation Puffin and advice on progressing cases involving OCG and commercial waste**
- **Scottish Partnership Against Rural Crime 7.6.22** WECU now participate in this multi-agency group focusing upon tackling all aspects of rural crime. Attendance to consider final draft and discuss launch of SPARC 3-year strategy. Next meeting 6.09.22
- **WECU input into Wildlife Crime Investigators Course, Tulliallan - 17.6.22** : A talk and plenary was delivered to the police wildlife investigators course highlighting the role and work of WECU
 - **Fish and Fisheries Crime Awareness Day 29.6.22**– Attendance by all three WECU deputies at training day between Fisheries Management Scotland, Police Scotland, Marine (Scotland), water bailiffs and WECU which was highly successful in both training, highlighting and solving evidential issues and reporting in poaching and fisheries cases.
- **Serious Crime Prevention Orders** – Work is being undertaken to identify potential WECU cases in which Serious Crime Prevention Orders would be appropriate to address Environmental crime. A meeting was held between WECU, SOCD, SEPA and Police Scotland to consider the principal aim of the use of the orders. The PD in WECU further met with SEPA to identify specific cases for consideration. A process for case referrals is being discussed. Draft SCPO to be discussed with depute dealing with case so far identified.
- **Forestry Crime** – The UN Toolkit has been completed in relation to the enforcement and prosecution of Wildlife and Forest Crime in the UK and has made certain recommendations. DEFRA are due to publish this report. WECU

Report from Specialist Casework for Executive Board Meeting in August 2022 are considering taking responsibility for the prosecution of Forestry crime, to enable these recommendations to be taken forward. WECU does not currently prosecute Forestry crime. A review of the previously reported Forestry cases is being undertaken, in order to consider the relevant charge codes and to assess the potential impact on WECU.

- **Meeting with SEPA** The PD in WECU continues to meet with SEPA every 6 weeks to discuss current casework and any relevant issues (Operational WECU/ SEPA Meeting). There is also a second WECU/ SEPA Executive meeting every 6 weeks to discuss wider WECU/ SEPA/ environmental issues.

WECU continues to contribute to SEPA's Productions Review.

The cyberattack and the effects of the pandemic continue to affect SEPA's ability to access information on their systems. WECU has provided support to SEPA by providing SEPA with case information, witness statements and Productions, while SEPA strives to overcome the difficulties.

Update from SEPA re egress switch to allow productions and CCTV to reach COPFS electronically.

Discussion re whether River Engineering could be added to the fixed monetary penalties SEPA extend under LA guidelines.

Meeting with SEPA 8.07.22 to discuss actions to be addressed re COPFS and SEPA crossover as part of SOCTF.

- **Scottish Government Snaring Review** - WECU has provided statistics from the last 5 years to contribute to the Scottish Government's Snaring Review.
- **Dog Fertility Clinics** – The WECU team has given consideration to general issues affecting a number of search warrants in relation to an emerging trend of offences surrounding dog fertility clinics and the use of needles to take blood by lay persons. Report prepared for CC. CCI received re approach to be taken and meeting held with SSPCA and Scottish Government to discuss how this is to be progressed. New report being prepared for CC. Implications for the Veterinary Surgeons Act 1966.
- **Carcass Disposal Rollout**- up to date statistics to be provided by police in anticipation of the disposal of stored carcasses as productions in WECU cases and introduction of new system to deal with this in future. WECU procedure to be added to the COPFS protocol.

Report from Specialist Casework for Executive Board Meeting in August 2022

- **Heritage Crime** - Attendance at Scottish Heritage Crime Group. Awaiting statistics to be provided by Historic Environment Scotland re numbers of offences reported in this area for consideration of reporting directly to WECU. Report being prepared for head of Specialist Reporting.
- **Advice provided to SOCFT**- re puppy farming cases involving OCGs from Ireland
- **Animal Welfare Reporting** – repeat evidential deficiencies identified in animal welfare cases. Training day arranged with SSPCA Chief Inspectors and Superintendent to discuss specific problems and solutions to improve reporting on 30 August 2022. Paper prepared ahead of meeting outlining topics, prepared and circulated for consultation amongst WECU legal staff and to be provided to SSPCA in advance.

10. Civil Recovery Unit (CRU)

i) Sheriff Court Team (SCT)

The SCT continues to support local fiscals and law enforcement partners in cash cases. Court business is predominantly dealt with remotely by the sheriff courts. The Unit has 14 account forfeiture cases (shared between the SCT and asset recovery team) and 46 listed asset cases.

ii) Asset Recovery Team (ART)

The ART has 10 cases with active Prohibitory Property Orders (freezing orders) and 2 cases where a recovery order has been granted. Financial investigators are starting to make arrangements to conduct disclosure order interviews again which had been difficult to arrange as a result of social distancing guidelines.

Details of noteworthy cases are contained in the Annex to this report.

iii) Economic Crime Bill

CRU, other members of COPFS and Police Scotland received papers from Scottish Government policy colleagues setting out Home Office proposals for provisions on seizure and realisation of crypto assets in a further UK Economic Crime Bill, and CRU has provided comments. CRU will be instructing Counsel to provide an Opinion on difficulties experienced in obtaining information from certain organisations outside Scotland by production order and Counsel has been asked to consider whether a legislative fix is required.

iv) Expedited referrals from SOCUC and referrals from COPFS

Report from Specialist Casework for Executive Board Meeting in August 2022
CRU continues to receive a steady flow of referrals, reported by Police Scotland and DWP, under the new expedited referral process where cases are referred from SOCU. The new system is working well.

The Unit is also rolling out a new process for Financial Investigators to undertake individual detailed briefings with Police Scotland crime managers to raise awareness of civil recovery work, as the number of referrals the Unit are able to progress from other areas of COPFS is lower than in previous years.

v) Remittances to Scottish Consolidation Fund

The sum remitted to the SCF up to week ending 31.07.22 amounted to £1,525,944.

vi) Staffing

CRU are conducting interviews w/c 8.08.22 for a new post, of SCT Leader.



CROWN OFFICE
& PROCURATOR
FISCAL SERVICE

SCOTLAND'S PROSECUTION SERVICE

Resources Committee minutes

19 July 2022 meeting, held via Microsoft Teams

Releasable under the Freedom of Information (Scotland) Act 2002 after the next meeting.

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Present

Members

Anthony McGeehan, Deputy Crown Agent (Operational Support) (Chair)

Marlene Anderson, Director of Finance and Procurement

Sarah Carter, HR Director

Sharon Davies, Head of Management Accounting and Planning

Graham Kerr, Head of Business Management (Local Court)

Fiona McLean, Non-Executive Director

Gavin Anderson, Deputy Head of Business Management (Serious Casework)

Elaine Hales, Head of Business Management (Operational Support)

Doreen Crawford, Head of Workforce Planning and Reward

In attendance

Ian Palmer, Finance and Procurement Executive Assistant (Secretariat)

Apologies

Keith Dargie, Head of Business Services & Chief Digital Officer

Thomas Lindie, Head of Business Management (Serious Casework)

Jonathan Shebioba, Director of Support Services

1. Welcome

The Chair welcomed the group and apologies tendered were noted.

2. Minutes from meeting held on 30th June 2022

The Committee confirmed that the minutes were an accurate reflection of the meeting.

3. Action Log

The Committee noted the Action Log and agreed the following :

Action point 18 is being progressed outwith the committee and can be removed from the tracker.

4. Finance Update 2021-22

Director of Finance and Procurement presented paper **RC 20(22)** for information and approval. After discussion the paper was approved. Key features included:

2021-22 outturn shows an underspend of £1.7 million.

2022- 23 budget – second forecast has been completed. Forecast overspend currently stands at £1.48 m (from earlier forecast in May 2022 of £3.1m). This remains closely monitored and a variety of spending and value for money controls are in place across the department.

General update was provided in relation to serious crime and high-profile case costs.

Resource Spending Review shows flat cash until FY 26-27. Resources Committee have established a short-term working group (BPWG) to contribute to the COPFS 2023-24 budget bid. The group will help explore various financial modelling and resource scenarios.

Recruitment

There was lengthy discussion in relation to various recruitment and staffing strategies, particularly given the requirements of the developing COVID Deaths Investigation Team (CDIT). The Head of Workforce Planning and Reward reiterated that the Recruitment Team were on hand to offer any advice or assistance.

It was agreed that the Committee will recommend to Senior Executive Team (SET) to proceed with offering start dates for current recruits.

Head of Business Services & Chief Digital Officer will work with functions to analyse the position in relation to posts being vacated and any ensuing recruitment needs. The structure and composition of this group is being decided. Outcomes will be reported to SET.

5. Corporate Risk Register

After a brief discussion, it was agreed to postpone this matter to the next Committee meeting (31 August 2022) in order to incorporate any updates from the July Risk Management Group Meeting.

6. Function Procurement Report

COPFS Glasgow - Ballater Street Project Business Case

Head of Business Management (Local Court) gave a brief outline of the position to date.

As part of the Departmental Estates Strategy it had been decided to look at the optimum utilisation of office space at the existing Ballater Street building currently occupied by PFO Glasgow.

Feasibility studies being carried out in respect of any potential re-housing of the Scottish Prosecution College (SPC) and other units currently based in Legal House to Ballater Street. Project timetable and possible decant arrangements were discussed.

A wider review of the structure of COPFS premises in the west of Scotland is also being carried out.

There was a lengthy discussion in relation to project funding. The Director of Finance and Procurement confirmed that a number of proposals are being explored both in terms of the sources of funding and the duration of the funding arrangements.

A Business Case is currently being finalised and it was agreed to hold an additional Resources Committee meeting in the near future to further explore matters. Outcomes of that meeting will be relayed to the Executive Board Meeting in August.

Secretariat will issue a meeting request to members.

7. Any Other Business

No other item of business was raised.

8. Date of next meeting(s):

Ballater Street Project (Business Case)	11 August 2022 at 1500 hrs (MS Teams)
COPFS Resources Committee	31 August 2022 at 1400 hrs (MS Teams)

EXECUTIVE BOARD
BUSINESS PROCESS IMPROVEMENT COMMITTEE
AUGUST 2022 UPDATE

Purpose

1. To provide the Executive Board with an update on the progress of the work of the Business Process Improvement Committee (BPIC).

Priority

2. Routine.

Update

3. BPIC last met on 8 July and is next scheduled to meet on 6 September 2022. This update provides an overview on the business improvements and digital transformation priorities for 2022/23.

Business Process Improvement and Digital Transformation Programme for 2022/23

4. BPIC discussed the business process improvements and digital transformation programme for 2022/23. An overview of the digital transformation programme for 2022/23 is available at [Annex A](#).
5. The programme sets out a comprehensive and strategically aligned programme of business transformation and improvements for:
 - Supporting an agile and hybrid workforce;
 - Digital solutions underpinning the improvement of services and transforming ways of working;
 - Delivering Vision for Justice and Summary Reform transformation and legislative change priorities;
 - Further implementing the Digital Strategy delivery plan to maximise the use of digital technology to modernise, innovate and transform services and the way we work across all areas of our business.
6. Local Court and Serious Casework Group priorities for improving and transforming existing systems and processes to improve the efficiency of casework, support justice system reform and tackling case backlogs is a key focus for resource and delivery prioritisation.
7. BPIC will confirm a detailed delivery plan for business and process improvement priorities at its meeting in September. This will reflect planning for key projects - including the Next Generation Digital Casework project (with funding confirmed for 2023/24 and 2024/25) - and factoring resources and capacity to deliver. Not all projects are planned for completion during the corporate year, with some projects involving initiation in 2022/23 or multi-year delivery.
8. This programme involves delivery of scale, scope and complexity. ISD will work closely with stakeholders across all areas of COPFS to plan, scope and deliver the defined business improvement projects and solutions. Details will be published on Connect. ISD will provide BPIC with a progress delivery statement and progress dashboard on the BPIC priorities, including interdependencies and resource and capacity information at each meeting.

Delivery Updates

9. Progress updates for some of the key digital business solutions and improvements implemented or in advanced delivery or planning over Q1 - 2 are summarised below:

Improvements or projects completed

- New COPFS website launched [30 May];
- Hate Crime Bill Aggravators – impact assessment and solutions agreed with Justice Partners;
- Vulnerable Witness Notices Pilot;
- Implementing the new HR digital system and products [30 June];
- Completing the Digital Workplace Exchange Online migrations;
- Digital Meeting Rooms technologies installed and available in all main offices to deliver the Digital Strategy vision and support new Agile working policies and ways of working;

Improvements or projects in advanced delivery or development

- Advanced technical work and planning to enable the migration of the first of the onsite datacentres to a new offsite datacentre [Late August 2022];
- Finalising a new Desk Booking Corporate App enabling staff to digitally book a desk to support agile working and a new Overtime and On-call Claims App to replace current paper and manual processes; [Late summer/early autumn for pilot evaluations and implementation];
- Deploying a new version of the CMiC App for use in Sheriff and Jury cases [Phased release from late summer].
- Launching ISD's extended hours of support [September 2022];
- Implementation on a phased delivery of the Microsoft Teams integrated corporate telephony digital solutions [From Q2 2022/23];
- Development of the Electronic Reporting to Crown Counsel digital casework solutions for implementation to agreed plans later this year;
- Designing, planning and implementing Digital Evidence Sharing Capability (DESC), supporting a pilot commencing in Dundee in autumn 2022 as part of phased evaluation and national rollout from spring 2023 (Ongoing);
- Publishing detailed project plans in September for evaluating the new Witness Gateway later this year and developing the Defence Agent Service digital portal to transform services to witnesses and defence agents.

10. BPIC noted updates on ISD's latest staff recruitment positions, including temporary resources to support the delivery of DESC. BPIC will continue receiving ISD resource and recruitment updates at each meeting to enable it to monitor capacity to deliver and prioritise corporate business improvements. These elements will be reflected in BPIC's detailed delivery plan referred above.

Decisions/Actions required by Executive Board

11. The Executive Board are invited to note delivery progress and comment as appropriate on BPIC's portfolio priorities for 2022/23.

John Logue

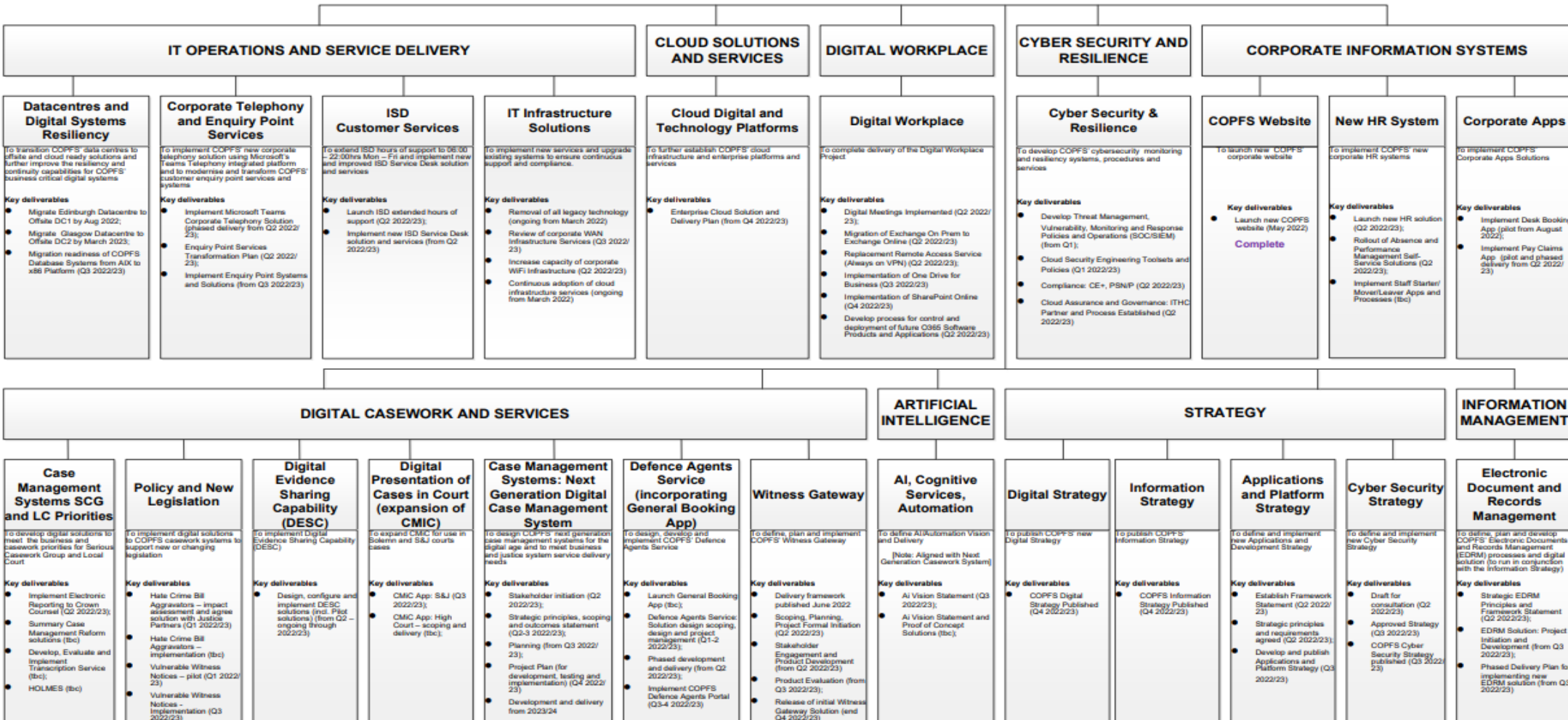
Deputy Crown Agent - Local Court

9 August 2022



COPFS Digital Transformation Programme 2022/23

July 2022



Contact: Chief Digital Officer, Information Services Division

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Operational Performance Committee

Minutes of meeting held on 3 August 2022 by Microsoft Teams

Present:

Stephen McGowan	Deputy Crown Agent – Serious Casework (Chair) (DCA)
Jennifer Harrower	Procurator Fiscal, Local Court (JH)
Laura Buchan	Procurator Fiscal, Specialist Casework (LB)
Kenny Donnelly	Procurator Fiscal, Policy and Engagement (KD)
Robert Tinlin	Non-Executive Director (RT)
Janie Patterson	Head of Local Court Operational Delivery & Performance (JP)
Gioia Ezzi	PA DCA – Serious Casework (Secretariat) (GE)

Apologies:

Ruth McQuaid	Procurator Fiscal, High Court
Graham Kerr	Head of Business Management, Local Court
Fiona Roberts	Head of Management Information Unit

1. Welcome and Apologies

The DCA welcomed everyone to the meeting, apologies were noted. DCA welcomed JP who was covering for GK.

2. Minutes of previous meeting

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

3. Outstanding actions

Action 6/22: Recovery Mapping – paper due for next meeting of Committee.

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4. Monthly Stats/Key Performance Indicators

High Court (HC)

Paper 1 was noted in RMcQ's absence.

RT highlighted that the stats tell the position but there is no context or background. Not necessarily looking for an explanation but more for comment. DCA advised there are published targets but that the KPIs are not adding very much so moved to reduction in number of cases which we rely upon emergency legislation. Committee just needs some comfort roundabout this and agreed it would be useful.

Action 7/22: For next meeting functions to demonstrate progress on stats/KPIs and if no progress to provide background and context.

Local Court

- Working on new management information and performance, with someone seconded to assist with this. JH agreed it would be useful to have more background and context to why KPIs and performance is as it is (see Action 7/22).
- National Initial Case Processing - there has been minor increase in unmarked cases, but age profile has improved. One of the reasons for this increase is slight increase in police reporting and at a time peak leave time for staff.
- Summary Case Management Pilot – Summary Case Management Board has confirmed will start on 5 September. Few anxieties: do not expect full defence agreement, agreed as a Board, given wider picture on legal aid and not knowing precisely if issues will be resolved, to still proceed with pilot. Each of 3 pilot courts have local implementation groups.
- Performance – live indictments stayed pretty static over last few months. High level due to the pandemic and courts being shut for substantial period. Discussion with Scottish Courts & Tribunal Service ongoing with view to looking now to focusing more on Solemn Sheriff & Jury (S&J) courts, the additional courts due to court recovery, forward projection, with the likelihood will be back around pre pandemic levels in by 2023/24. Proposal for beginning of next financial year is that there will be transfer of some of those additional summary courts to S&J courts to assist in bringing down live indictments.

Specialist Casework

- LB agreed re requirement more background on stats/KPIs. Although huge amounts of info will require to be stripped out, it would be useful to have for next OPC. (see action 7/22)
- There has been a sharp increase in instruction for discretionary Fatal Accidents Inquiries (FAIs). From March to date there has been 50% increase with anticipation 4 more to be marked soon. Discretionary FAIs are more complex,

OPC
03/08/2022

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take more time to prepare and so puts pressure on teams. Anticipate seeing his as a continuing trend. This in turn will put pressure on the estate on SCTS identifying court space for some of these FAIs which can take some weeks in court. Meeting with PCC to discuss plans and allocated ADs.

- Wildlife & Environmental Crime Unit gave evidence to Holyrood on the Hunting Dogs Scotland Bill, that evidence went well.

Policy & Engagement

- With regard to temporary legislation Coronavirus Recovery Bill which was passed on 28 June 2022, and gives some comfort in relation to extended time bars, that Bill will come into force on 1 October 2022. The legislation is effective until 20 November 2023, with provision for Scottish Ministers to extend provisions up until 20 November 2025. Process of review ongoing through life of legislation. With change to timebars, this will require to change time bar calculators and require to make sure rigor around governance of that. It is a risk and the sooner guidance is circulated the better. Policy conscious of this and some work is being done in functions, Information Systems Division and Management Information unit around the calculator with everyone satisfied the process in place will be robust.
- There has been a preliminary meeting with Heads of Business Management regarding the intention to work more closely with functions around development of new policy. With the Transformation Team and Central Operations Team now in place there is an opportunity to engage in early stages of evolution of new policy. Also trying to put governance around what goes into Policy from individual teams.

5. Recovery Mapping

Further Serious Casework paper to be provided for next meeting (see Action 6/22).

Local Court working through looking at various different ways to identifying cases and getting proper processes in place. It is a work in progress with team pulled together to work on this.

6. AoB

There was no AoB.

Date of Next Meeting: 1 September 2022