

OPERATIONAL PERFORMANCE COMMITTEE

**MINUTES OF THE MEETING HELD ON 27 MARCH 2019
CROWN OFFICE, EDINBURGH**

Present:

Lindsey Miller	Deputy Crown Agent Serious Casework (Chair) (DCA)
Kenny Donnelly	PF, High Court (KD)
Jennifer Harrower	PF, Specialist Casework (JH)
Ruth McQuaid	PF, Local Court West (RMcQ)
Anthony McGeehan	PF, Policy and Engagement (AMcG)
Fiona Roberts	Head of Management Information Unit (FR)
Gioia Ezzi	Secretariat

By VC:

Graham Kerr	Head of Business Management, Operational Support (GK)
Fiona MacLean	Non-Executive Director (FMacL)

Apologies:

Helen Nisbet	Assistant PF, Specialist Casework
Sharon Duffy	Serious Casework Compliance & Resource Manager

1. Welcome & Apologies

DCA welcomed everyone to the meeting, apologies were noted.

2. Minutes of previous meeting

Previous minutes agreed.

3. Outstanding Actions

Action 41: FR provided update on trends – see attached summary.



OPC action point 41 -
trends in crime type.c

Major crime cases are increasing, these crimes are driven by violence, attempted murder, serious assault and serious sexual offending continues to be reported at the higher levels of 2018. There is an increase in detection of dishonesty/fraud.

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Local Court (LC) has made a bid for case preparers for economic crime. Local economic crime teams to replicate Glasgow model – spread of best practice subject to relevant, skilled resource.

Increase of 7% in sexual crime figures, although the police detection rate has slightly dropped, likely to have impact on Sheriff and Jury (S&J) rather than High Court (HC). 10.7% increase reports to police in rape (in particular in Edinburgh, Glasgow and Paisley). **Action: closed.**

Action 42: Victim Information & Advice (VIA) update. There is a timescale of July for project plan to be submitted to Law Officers, effectively looking to recommend an opt in service rather than opt out. At present it is an opt out service predominantly across COPFS with exception of the Older Persons’ Policy. In the absence of additional resources for VIA the delivery model may require to be revised. Policy colleagues are looking at preparing an Operational Instruction suggesting a revised policy in relation to housebreaking cases and the requirement for VIA support.

There also requires to be consideration of where hate crime fits in in the policy - victims not deemed vulnerable in terms of legislation and additionally some victims may not require VIA support. This remains with LC for consideration. **Action: continued to August OPC.**

Action 43: Local Court sexual offences KPI paper.

Three key matters:-

- Children, view is should proceed as suggested in relation to Key Performance Indicator (KPI) for children under 8 (not excluding children under 12) and review position. Position was discussed with the Police Scotland National Rape Taskforce (NRTF) and expectations of them. Sense is numbers are small – RMcQ to produce figures.
- Pre-petition - exceptional that cases would be sent to HC for preparation - not to be monitored by LC (interim marking Operational Instruction 3/2018 - requiring lab result/cyber) - RMcQ and KD to discuss - RMcQ to confirm numbers for referral.
- Petition Warrants (PW) – guidance to be issued to staff by mid April on how to deal with PWs. There are not large numbers but it requires a better and more regular review process. LC & HC reps to discuss.

Social Work Diversion already being monitored under Take & Implement (T&I) target.

Action: closed.

Observation was made that would be more beneficial for discussions to take place between functions prior to papers being submitted to OPC so that function reps can highlight any issues to the committee for corporate decision making .

4. Monthly stats/indicators

High Court (HC)

- Healthcheck presents challenging but positive position.
- Increase of 13% in new petitions mainly major crime which itself has seen a 45% increase.
- Precognition in progress relatively stable, starting to see additional staff in post but not fully operational yet.
- Precognition in hand over 7 months old, reduction of 22%.
- Reports to Crown Office (CO) reflects higher output from teams. Projecting 216 additional cases reported this calendar year which is a 30% increase.
- Number of indictments served is up on projection to year end - 73 indictments on last year which is a 9% increase.
- Solid foundation for migration from current processes to new KPIs.
- Homicide projecting increase of 5%, although there are not a lot of cases they are resource intensive, and the stats do not necessarily reflect the amount of resource that requires to be invested in investigation of suspicious deaths.
- Post indictment workload is a real drain on resource.

Action 44: HC & MIU to progress assessment of post indictment workload.

Local Court (LC)

National Initial Case Processing Unit (NICP)

- Improved position from what was reported at the January meeting with unmarked reports sitting at 14,500 with the aim for that to be reduced to 14,000 by end of financial year.
- Not at full complement of staff and additional support has been provided by Sherifffdoms and overtime. From a total of 29, there are currently 25 lawyers available to mark (3 on maternity leave and one long term sick). It is an ongoing challenge with numbers not going to change over next few months. Estimate that there will be a need for 33 new deposes (19 new and 14 to cover the transfer to Serious Casework), many are 2nd year trainees so they are unlikely to be in post before August.
- Aim is for the unit to have 4 weeks' worth of work but sitting at 4.5.
- Proportion of business over 10 weeks old is 50% with aim of 10%.
- Age profile for interim business over 25 weeks would like to get down to 20%, business over 50 weeks sitting at 16% would like this at 5%.
- Over last year there have been 50 new deposes in LC all requiring accreditation, and the challenging part in NICP is the need for them to get court experience as part of that process.
- Overall strategy is to make decision within 10 weeks.

DCA mentioned new presentation of stats - easy to follow and thanked MIU.

Sheriff & Jury (S&J)

- KPIs being met for indictments within 8 months – only 3% business is over 8 months old.
- There has been an improvement in sexual offence case preparation over last few months - all South Strathclyde S&J cases have met target over year 64%, North Strathclyde over 80% and others 50/60%. Local ownership and restructuring seems to have had an impact.
- Starting from February monitoring sexual offence KPIs, waiting on readout of performance for February but anticipate having quite positive response.
- VIA LC not at stage to implement recommendations from Inspectorate report for HC sexual offence victims but piloting a post petition process for Glasgow.
- Police quality – auditing exercise was carried out of interim marking which was shared with the police NRTF who then asked for further analysis. Intend to work with the police on additional training for officers.
- Cases require interim marking due to premature reporting, lack of clarity in writing of report, cyber cases reported with only a small amount of offending being addressed, making it difficult to assess forum and resulting in an overall lack of clarity in terms of where there is actually a sufficiency of evidence. Instead of using investigative liberation of a suspect to allow further enquiries to address some of these issues there continues to be a resistance to that process with the police simply submitting a report with COPFS required to direct enquiries which should have been carried out before the report was submitted. Quality group chaired by RMcQ meets quarterly to monitor feedback.

Action 45: RMcQ to share analysis of sexual offence interim marking and to provide update from next Quality Group.

Summary

Nothing to report on an exceptional basis. Overall outstanding trials are down.

Specialist Casework

- Management information provided is very much a work in progress but grateful on work which has been done. Serious and Organised Crime Unit (SOCU) figures are not accurate with steps being taken to rectify this.
- SOCU - staffing challenge including not filling all additional legal management posts and over last few months couple of additional cases have come to fruition; 3/4 bribery cases, 2/3 counter terrorism cases.
- Scottish Fatalities Investigation Unit (SFIU)
 - Good performance in terms of key targets and focussing on reducing journey times.
 - Focus from politicians is increasing.
 - Staffing figure and complement is relatively healthy, seeing an improving picture but there is still a requirement for significant training for new staff and additional work in terms of the SFIU modernisation project.

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-Response to the recommendations of the Inspectorate Report on FAIs is showing a positive picture of how we can address the Inspectorate’s concerns in respect of taking on board the recommendations.

-There are pressures in terms of toxicology analysis - service providers are not meeting target of 6 weeks, and even though an interim relaxation of 8 weeks was agreed to accommodate staffing pressures at the lab there is no evidence that it is improving. An accurate record is being kept of targets not being met so can explain if failing to meet KPI. There is an impact on committing to the Family Liaison Charter, and proposal is to write to nearest relatives to explain the position and keep them informed. SFIU meeting with toxicology providers to get a better understanding of how they propose to address this and further recommendations will be provided to the DCA to assist with the ongoing negotiation and adjustment of the pathology/mortuary/toxicology contracts.

-The commitment in the FLC to allow nearest relatives the option to VRR a decision not to hold an FAI has until recently not been articulated in the decision letters issued from SFIU. Since the option to allow a VRR has been expressly stated in the decision letters, there has been an increase in the number of VRR requests.. AMcG referred to a previous VRR case which had not been progressed timeously. It was agreed that a robust ‘bring up’ system and escalation process was required for any cases where the right to VRR had been intimidated.

Policy and Engagement

- Public audit and post legislative scrutiny committee looking at section 48 exemption under Freedom of Information Scotland Act (FOISA) on the basis that currently decisions taken by COPFS in relation to FOI requests relating to the Lord Advocate’s retained functions of investigation and prosecution of crime, and investigation of sudden and suspicious deaths cannot be reviewed by the Scottish Information Commissioner (SIC). SIC has given evidence to the committee that this exemption should be revisited.
- AMcG advised that a response to a FOI request from an MSP did not comply with statutory time limit and that failure resulted from an oversight, with the result that the MSP complained to SIC about our FOI handling regime. We were able to satisfy the SIC that the individual case was not systematic and information was provided on each instance where the target had not been met. The investigation is now at an end with no further action.
- The committee noted that the Scottish Public Services Ombudsman (SPSO) has upheld a complaint against COPFS regarding the standard of a fatalities investigation and the lack of proactive communication with nearest relatives. SPSO has questioned the appropriateness of the business responding to a complaint about the business where it is part of a continuing relationship. Our practice is to resolve a complaint at front line is possible and resolve it quickly, which is considered to be far better for the complainer. Consideration is being given to that when the organisation responds to SPSO on that finding.

5. KPIs

Starting to measure KPIs - change in reporting to OPC in next few months both in terms of information and how that is presented.

6. Remit

Revised remit on agenda for next meeting – redraft to be provided in next month for discussion.

7. AOB

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8. Date of Next Meeting

Wednesday 1 May 2019 @ 14:30hrs.