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Via email: justicecommittee@parliament.scot



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Dear Convener

Justice Committee Inquiry Report – Inspectorate of Prosecution in Scotland response

I would like to take this opportunity to welcome the Committee's report. I am pleased that the Committee has acknowledged the important role of the Inspectorate of Prosecution in Scotland (IPS) in ensuring the effectiveness and efficiency of the prosecution system and that the Committee supports its work. The Inspectorate will take account of the issues highlighted in relation to COPFS in considering our future work programme and, of course, the Committee's comments and observations regarding the Inspectorate.

Profile of IPS

I note the Committee's concern regarding the lack of acknowledgement of awareness of IPS work amongst those who provided contributions to the Committee's inquiry. Indeed, I accepted in my evidence that I had taken on board the need to increase the profile and visibility of IPS. We are grateful to the Committee for enhancing the profile of the Inspectorate through their inquiry.

I would, however, wish to clarify that IPS has regularly obtained input from experts and stakeholders in its reviews and there has never been any difficulty in securing such co-operation since I have been the Chief Inspector of IPS. Obtaining input from relevant stakeholders and experts in the subject matter being inspected is an integral part of any inspection and their views have added considerable value to the reports produced by IPS. To assist and provide reassurance, I have listed some of the organisations, agencies and persons interviewed in relation to our most recent reviews and current inspection at **Annex A**.

The Inspectorate has also benefited from input from an Advisory Body or Reference Groups of experts and relevant parties in some of our reports¹. This is a model that we will consider for future reports.

As part of the current review into the investigation and prosecution of serious sexual offences IPS has already consulted extensively with stakeholders and organisations, including representatives from Children 1st, Scottish Children's Reporter, Barnardo's, Rape Crisis Scotland, Scottish Women's Aid, Scottish Government and Victim Support Scotland. We have also met with three groups comprising of victims of sexual crimes who have had involvement with the criminal justice system, to listen to their experiences and views.

To heighten awareness of our work, I intend to expand the distribution list of our reports to a wider audience and will ensure that copies are sent to associations such as the Sheriffs Association and Criminal Bar Associations.

The IPS has been included in this year's National Scrutiny Plan that has been prepared by members of the Strategic Scrutiny Group (SSG), a group comprising of Scotland's main public sector scrutiny bodies, including Audit Scotland, Education Scotland, the Care Inspectorate, Healthcare Improvement Scotland and Her Majesty's Inspectorate of Constabulary in Scotland. The Plan is published by Audit Scotland and has a wide circulation. As part of my engagement with these scrutiny bodies, I will discuss opportunities to further raise the profile of the Inspectorate.

The current IPS inspection into the investigation and prosecution of serious sexual offences is an important and, I expect, high profile area of work, likely to raise issues of wider interest. I expect the publication of this inspection report to help raise wider understanding of the important work of the Inspectorate.

As I advised the Committee, in addition to publishing our reports on the IPS website, we will post our reports and any other relevant information on the IPS Twitter feed.

Independence of IPS (seconding from COPFS)

I note the comments of the Committee that the Inspectorate has not currently got the balance quite right in relation to the practice of recruiting most assistant inspectors from the COPFS on secondment.

As I mentioned when giving evidence to the Committee, it is common for inspectorates to have some expertise from persons who have worked in some capacity with the organisation being inspected. The findings and recommendations are ultimately the responsibility of the HM Chief Inspector who is entirely independent from COPFS. There is no input from the Law Officers or COPFS on the findings of any inspection, the recommendations made or any of the content other than to check for factual accuracy.

The Inspectorate currently employs a permanent Business Inspector from the Scottish Government and has previously recruited associate inspectors from different backgrounds where the subject matter of the inspection warrants a different skill set. For example, we recruited two associate inspectors from outwith COPFS, one who had a background in Police Scotland and the other who had previously worked in the health sector, to assist with the complaints handling report where the focus was more on customer service rather than prosecution policies and processes.

¹ Thematic Report on COPFS Response on Race Issues; Joint Thematic Report on the Provision of Services to Witnesses; and Thematic Report on Liaison in Death Cases with Particular Reference to Organ Retention.

However, many of the Inspectorate's reports involve complex areas of prosecution where detailed knowledge and experience of prosecution and the criminal law is required. Seconding prosecutors is essential to producing informed, robust and credible reports. Having a detailed knowledge of the operation of COPFS enables inspectors to ask the right questions and by having a working knowledge of the three COPFS IT/computer systems, the inspectors can interrogate the systems for the purpose of inspection rather than rely on COPFS providing data.

The Inspectorate has made a commitment to inspect the Victim's Right of Review as part of a follow-up report to the Complaints Handling and Customer Feedback report that was published in December 2015.

A crucial element of this work will be assessing whether the victim is being provided with an effective right. This will involve examining whether COPFS has taken account of all available evidence, explored all investigative lines of inquiry and instructed appropriate additional inquiries if any new information is provided by the victim. To provide credibility, this will require a detailed knowledge of investigative opportunities and legal decision making in the context of prosecution policy and will require staff that have a background in prosecution and sufficient experience of prosecutorial decision making. We will also seek direct input from those most affected, namely the victims seeking redress.

For inspections of certain areas of business, it is fully accepted that there may be benefit in employing someone with a specialised skill set or from a different background. For example, inspections of corporate functions or governance arrangements may require some specialist resource such as financial advisers or input from those with an accounting or business background etc.

I will bear in mind the observations made by the Committee when considering future appointments. However, it is my responsibility in leading what is a relatively small Inspectorate, to ensure that it has staff with the requisite skills and experience to deliver the future programme of inspection. This may include recruiting from outwith COPFS where that is merited, taking account of the planned work programme. In order to maintain flexibility and adaptability this is something the Inspectorate will keep under review, as and when its future work plan is considered.

In relation to any perception that the Inspectorate is not independent, I would reiterate that the IPS values and guards its independence and this is respected by others. Independence is provided by statute and during my time as HM Chief Inspector, there has never been any suggestion of IPS altering or amending our findings or recommendations.

Yours sincerely

Michelle Macleod
HM Chief Inspector

Interviews with key personnel at COPFS involved in the investigation of deaths,
preparation of Fatal Accident Inquiries, serious crimes and complaints handling
Air Accidents Investigation Branch
Barnardo's
British Transport Police
Care Inspectorate
Central Legal Office
Children 1st
Criminal Justice Inspection, Northern Ireland
Crown Prosecution Service, Legal Division
Defence solicitors
Health and Safety Executive
Healthcare Improvement Scotland
Home Office Forensic Pathology Unit
Independent Assessor of Complaints (England, Wales and Northern Ireland)
Maritime and Coastguard Agency
Marine Accident Investigation Branch
Mental Welfare Commission
Ministry of Justice, Chief Coroner's Office
Mortuary Managers; NHS Ayrshire and Arran, Dumfries and Galloway, Highland, and
Lothians
Northern Ireland Ombudsman
Office of Rail Regulator
Paediatric Pathologists
Pathologists – Scotland and Northern Ireland
Police Scotland
Public Prosecution Service Northern Ireland
Rape Crisis Scotland
Rail Accidents Investigation Branch
Scottish Children's Reporter Administration
Scottish Government Officials
Scottish Legal Aid Board
Scottish Public Services Ombudsman
Scottish Women's Aid
Sheriffs
Social workers
Victim Support Scotland