

Operational performance committee minutes

Minutes of the meeting held on 9 March 2021 by Microsoft Teams

Present:

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

Apologies:

- Graham Kerr Head of Business Management, Local Court (GK)
- Fiona Roberts Head of Management Information Unit (FR)
- Sharon Duffy Serious Casework Compliance and Resource Manager (SD)

1. Welcome and Apologies

The DCA welcomed everyone to the meeting, apologies were noted.

2. Minutes of previous meeting

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

3. Outstanding actions

Action 49: Victim Information & Advice (VIA) remit regarding sexual offence victims. **Action ongoing, continue to next meeting.**

Action 7/20: Functions to share with Fiona Roberts papers with suggestions for KPIs by mid Jan. **Action closed.**

4. Monthly stats

High Court (HC)

Workload remains a challenge, although there has been the ability to conduct some trial business. Due to current constraints it is not possible to deal with the more complex, multiple accused cases, and so number of cases awaiting trial continues to grow.

Reporting of indictments has dipped and there are a number of explanations:

- constraints of homeworking,
- overwhelming amount of post indictment work due to the extended time between indictment and trial
- loss of some indicters to other posts.

Work is being done on this in properly understanding the trend and separately looking at improving processes and the HC team are to explore options for different approach to post indictment work to meet the huge challenge that presents in throughput of other work.

HC is at an early stage of exploring options and the hope is to have an options paper for the operational board to sign off on in due course.

There was a discussion of whether there was anything that the HC teams could stop doing, particularly in advance of 25% increase in courts as part of the recovery plan from September 2021. It was recognised that additional resource coming into the function will still impact on business as understandably it takes time to get people up to speed in new roles; even with additional resource invariably there are consequences on existing staff who are required to support the court programme.

Re multiple accused cases, because of the current restrictions there is only capacity within courtrooms for 2 accused trials, although Plans have been drawn up to refurbish the court estate at Glasgow and Edinburgh to accommodate up to 5 accused trials.

Local Court (LC)

Summary

- backlog of business over 100% increase.
- This time last year there were 16,500 trials outstanding, and it is now closer to 34,000.
- There are victims and complainers in a large number of these cases who require a service, which makes prioritisation of the VIA remit more pertinent.
- There are ongoing discussions with SCTS to maximise the court programme, strip out inefficiencies and make the best use of the court trial slots allocated.

Solemn

- new petitions have risen by 11%,
- in terms of live indictments, last year in January figure was 1,300 and now it is just under 3,500 which is a 260% increase.
- Business restarting to various degrees in Sheriffdoms but not necessarily a uniformity of approach across each sheriffdom
- LC are hopeful of meeting KPI indicting figure of 75% in 8 months, and are targeting additional resources to assist.
- Compliance with the KPI of proportion of older business of no more than 5% over 8 months old is sitting at 6% and Sheriffdom Fiscals have been asked to prioritise older work with a view to complying with the KPI for the year. Glasgow Sheriffdom in particular performed really well in relation to the preparation of indictments.

Sexual Offences

- There has been a reasonable performance, meeting KPIs and continue to do so in marking of cases.
- Reporting to Crown Counsel sits at 54% within 8 months date of receipt of police report which was noted as a good performance given the ongoing pandemic.

National Initial Case Processing Unit (NICP)

- There was a reallocation of business to the sheriffdoms and a combination of including this within general work allocation, and use of overtime, has brought the overall work in progress figures down to manageable levels.
- The police have stopped their own overtime, which is helpful in terms of gauging a more predicable throughput of business., and the work in progress is now sitting at 4.2 weeks.
- There are plans to address the age profile of that work in hand and plans include reviewing resource , trying to ensure there is a blend of experienced staff as well as newer staff to the service and that will be addressed to an extent by the various external recruitment processes.

Specialist Casework (SC)

- JH thanked the representative from the various functions for the assistance which has been provided to the Scottish Fatalities Investigation Unit (SFIU) and Covid Deaths Investigation Team (CDIT) to progress the significant increase in reported deaths from October 2020 onwards.

- The units are continuing to progress those cases in accordance with the COPFS published target, and to have all 2020 cases reported timeously for the Scottish Government (SG) figures for drugs deaths.
- CDIT – the committee noted that there is a great deal of time spent liaising with other organisations, MSPs, interest groups to update on processes for dealing with covid deaths investigations
- Resourcing – Specialist Casework is currently carrying 95 vacancies, and this include 34 additional posts funded from the most recent SR bid. As expected this is having quite a significant effect on progressing work but the nature of most of the work not the same as LC and HC in that a significant volume of work does not have those same time bars. That is not to say however that there are not pressures when it comes to progressing older cases and reducing journey times for fatalities investigation in particular

Policy & Engagement (P&E)

UN Convention on the Rights of the Child (UNCRC)

- The Bill which comes into force this year incorporates UNCRC into Scots Law
- The significance for COPFS is that the actions of COPFS will require to be compatible with the UNCRC. Within the context of a criminal case, a child will be able to take a UNCRC compatibility issue in the same way as a party can currently take a ECHR compatibility issue.
- The UNCRC requires that the best interests of a child be a primary consideration. The best interests of a child forms part of current COPFS decision making and there is explicit reference to the UNCRC in existing COPFS policies. However, we will require to review existing processes to ensure that they and our is future proofed.
- A cross functional working group, chaired by Policy, is to be set up to develop related guidance and training and review existing policies/practice.
- It was noted that, under the Bill, a compatibility issue may be taken in relation to proceedings that are live as at the date of implementation. A review of relevant live case work will therefore be required.

5. Key Performance Indicators

Committee members discussed current performance against KPIs taking into account the restrictions on the court programme due to the pandemic, and the current workloads across the functions. As per the action at the January meeting, each function had prepared papers on current performance and recommendations for monitoring of performance and governance in the coming FY.

Members recognised that compliance with the existing KPIs this year has not been realistic nor achievable particularly in the current environment of increasing

caseload, prioritisation, influence of post-indictment caseload in the high court, insufficient resource, home working and external matters out with COPFS control such as other agencies' priorities, plans and capabilities.

The feedback from staff in all functions is that they are endeavouring to work to a compliance framework which is unrealistic and unachievable in the current circumstances, and this in turn impacts on productivity and morale. A focus on a compliance culture puts undue pressure on teams and it was recognised by members that this is a real opportunity to revisit and rethink the KPIs to ensure that they are meaningful and that the organisation is measuring the thing for right reason.

Members recognised the need for good governance, but agreed that the recommendation to Executive Board would be to depart from the current onerous series of KPIs, for more streamlined and clearer KPIs focusing on measuring the "health" of the business, assisting with prioritising caseloads and reducing journey times. Coupled with the influx of resource expected in the first 3 to 6 months of this coming FY, there will be a significant opportunity to make real inroads into backlogs, improve service to complainers, victims and witnesses, drive up and reduce journey times.

Some main issues from the discussion are highlighted as follows:

High Court

The High Court function update in January 2021 confirmed that progress in the implementation of the agreed current KPI's structure had been slow, particularly on the indicting KPI.

The impact of the significant increase in cases indicted but awaiting trial has tripled over the past 18 months, reflecting an increase both pre and post the initial lockdown in March 2020. The consequential impact of this means that two thirds of Case Preparer caseloads are now post indictment cases. The churn involved in these cases once indicted going through PH, CPH and Trial in most instances has meant that multiple ADs are involved in each case that results in numerous additional enquiries made of Case Preparers requiring extensive additional investigation and preparation.

This then has had an impact on their ability to investigate their pre indictment casework before submitting for CCI. The headline caseload numbers at present are as follows:

- Cases indicted awaiting trial – 936.
- Cases awaiting indicting – 172.
- Cases PWIP – 717.
- Cases not yet allocated – 253.

Improving a long term KPI compliance strategy will remain a key priority as part of the wider Criminal Justice Recovery plan over the next 3 - 5 years but an alternative approach to performance is recommended.

All of the HC KPIs are in two parts

- (i) to report a case for CCI and
- (ii) to serve an indictment.

In High Court KPIs are separated into 4 categories as follows:

- Category 1 – to be reported within 60 days, and indicted within 70 days
- Category 2 – to be reported within 6 months, and indicted within 7 months
- Category 3 – to be reported within 7 months, and indicted within 8 months
- Category 4 – to be reported within 8 months, and indicted within 9 months

The current YTD compliance across the collective 4 categories for the reporting KPI (PTCO) ranges from 23% to 37% whilst the indicting KPI (INDI) ranges from 2% to 9%.

There are a very large number of category codes within those 4, many of which are complex both to understand and apply, which may affect accuracy of their use (and consistency of use within different units in High court). The number of these codes and the very subtle graduations between some of them reflected the casework position at the point in time when we moved to the new KPIs but they are recognised now as unnecessarily complex and too numerous. Managers confirm there has been no recent requirement for data analysis using the codes, which may reflect a present lack of utility in having them.

The proposal is to amend the target dates slightly but move to these 4 categories only for governance purposes.

Specialist Casework

It was recognised that within SC units have their own KPIs, many of which require to be measured manually and in the main SC suggest that these should remain in place, as long as there was a benefit to the overall business.

- For all SOCU cases which fall within the Lengthy & Complex Cases criteria and therefore managed under the Large case protocol, the current KPI is for all pre petition work to be concluded within 8 or 10 months. Such cases are proactively managed by the Case Management Panel (CMP) process. Very few if any of the cases subject to the CMP process have pre-petition investigations concluded within 8 months. The recommendation therefore is that the Target Report Date (TRD) for each individual case is fixed by the CMP at the second meeting of the panel. SC therefore propose a third category of pre-petition cases for cases on the L & C case list namely " Pre-petition cases which are being prepared in terms of Practice Note 1 of 2018

on Lengthy and Complex cases to be reported within the timescales agreed by the Case Management Panel"

SC recommend that we continue to seek to comply with the published targets (separate from KPIs) for CAAPD and SFIU.

Local Court

It was recognised in LC there is a large volume of staff with large turnover and there requires to be an ability to articulate to staff in terms of expectations re KPI compliance, with a suggested focus on journey time rather than overall volume.

A series of proposals was circulated to the meeting, but before they can be recommended for implementation, there requires to be a further discussion with Local Court leadership

In general LC were content that solemn KPIs were achievable and gave a good indication of the health of the business, but that some KPIs such as NICP take and implement (which is tied into the criminal justice 26 week target which is clearly not being met at the moment) required further consideration.

6. AoB

FMcL thanked LRM as last chairing of the meeting before moving to new role.

Date of Next Meeting: 28 April 2