

## THE SUMMARY CASE MANAGEMENT (SCM) PILOT

### Interim Evaluation

October 2023

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## FOREWORD *by Sheriff Principal Aisha Anwar*

The Summary Case Management Pilot (SCM) seeks to reduce the number of unnecessary hearings at summary level by facilitating early disclosure of evidence, early engagement between the Crown and defence and early judicial case management. It aims to reduce the number of cases set down for trial unnecessarily and to reduce the volume of late pleas of guilty and late decisions to discontinue proceedings.

The design, development and implementation of the SCM Pilot has been overseen by the SCM Pilot Project Board (the Board) which includes representation from members of the Judiciary, representatives of the Scottish Courts and Tribunals Service, the Crown Office and Procurator Fiscal Service, Police Scotland, the Law Society of Scotland, the Scottish Legal Aid Board and the Scottish Government<sup>1</sup>.

As Chair of the Board, I am very grateful for the collaborative approach of the Board members, each of whom brings insight, expertise and experience to the work of the Board, together with a willingness to identify solutions to the challenges faced in the design and implementation of the SCM Pilot. I would like to express my thanks to them for their invaluable contributions.

Over the past 12 months, the impact of the SCM Pilot has been closely monitored in each of the three Pilot courts – Dundee, Hamilton and Paisley. Those involved in delivering the SCM Pilot at a local level as part of Local Implementation Groups, particularly, the Lead Sheriffs, Sheriff Clerk's staff, Procurator Fiscal Deputies, Police Scotland and defence faculties, are to be commended for their enthusiasm and commitment to the aims of the Pilot.

The early data is promising. Some significant early outcomes achieved in the past 12 months include:

- *At least 250 summary trials did not require to be assigned in the Pilot courts, directly as a result of early resolution due to SCM;*
- *A 25% reduction in the first citation of civilian witnesses in domestic abuse cases in the aggregated Pilot courts; and*
- *A 34% reduction in the first citation of police witnesses in domestic abuse cases in the aggregated Pilot courts.*

Notwithstanding early challenges and the acknowledgement that there is yet room for improvement in each of the Pilot courts, if current performance were to be

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<sup>1</sup> See Annex 1 for The SCM Pilot Project Board members

replicated nationally, it is estimated that during the period 5 September 2022 to 31 August 2023, around 1500 trials would not have been assigned.

These early outcomes represent tangible benefits to each justice partner organisation. Importantly, the SCM Pilot is improving the efficiency of our summary criminal courts to the benefit of complainers, witnesses, the accused and wider society.

As the Lord Justice General noted in his foreword to the report on the SCM Pilot in August 2022, “participation in the pilot represents an exciting opportunity to be at the forefront of the transformation of our summary criminal justice system.”

The Pilot is due to conclude at the end of March 2024 when it will be fully evaluated.

I look forward to tracking the progress of the SCM Pilot over the coming months as we move into the Pilot’s second year.

## INTRODUCTION

The Summary Case Management (SCM) Pilot commenced at Dundee, Hamilton & Paisley Sheriff Courts on 5 September 2022. [Practice Note 2 of 2022](#) governs the operation of the Pilot and sets out the expectations of respective justice partners.

The key objectives are to achieve:

- An increase in the percentage of cases resolved at the initial stage (first calling and continued without plea (CWP));
- A decrease in the number of witness citations issued;
- A reduction in the number of scheduled trials in which no evidence is ultimately led.

The Scottish Courts and Tribunals Service (SCTS) [report](#) introducing the SCM Pilot was published in September 2022. The report set out the background to the design and development of the SCM model, its key features and the arrangements put in place to monitor, measure and report on progress over its 18 month duration. The evaluation outcomes would be used to inform decisions on developments and future Pilot roll out.

The report fully recognised that the success of the Pilot was contingent on the willing participation of all of those involved, working together to achieve the desired outcome.

This interim evaluation report reflects on progress to date. It evaluates the key features of the Pilot over its first twelve months, providing early insights on progress from the preliminary data. In doing so, it recognises the challenges faced and explains how they were overcome. It emphasises the commitment to the collaborative approach taken throughout the design, development and implementation of the model.

In terms of early outcomes, it is clear from the data that the Pilot is having a positive impact on summary criminal business at the Pilot courts. Specifically, increased resolution of cases at pleading diet and a reduction in the number of witnesses being cited to court. The wider impact of these outcomes is also reported on, along with areas of best practice emerging from the Pilot sites.

As the Pilot has developed, the anticipated benefits are being realised by all of those involved. For example, front line officers of Police Scotland have recognised the impact of the Pilot:

*“The work that the reporting officer undertook completing the key evidence list properly and submitting all key evidence contributed to COPFS in resolving the case at an earlier stage. This officer recognised that, because the case had resolved at such an early stage, there was no requirement for further statements to be submitted and no citations would be issued for any of the civilian or police witnesses. For the police witnesses, this means that there was no risk of disruption to their rest days or planned annual leave, and the officers would not require to submit excusal requests to COPFS”.*

*(Chief Inspector Eddie Seery).*

Similarly, feedback from the defence perspective, indicates:

*“The benefits and opportunities for Defence Agents are clear to see. Being provided with full disclosure at the earliest opportunity, enables instructions to be taken from clients, pleas negotiated, where possible”.*

*(Peter Lockhart, defence agent).*

In light of the positive outcomes secured over the first 12 months of the Pilot, the Board has agreed to extend it to kennelling cases<sup>2</sup> and cases which have been reduced to summary from petition. The Board has also agreed to preparatory work being commenced on the expansion of the Pilot to Domestic Abuse cases in Glasgow Sheriff Court with a projected commencement date of January 2024. An assessment of the potential impact of the expansion is outlined in the final part of the report.

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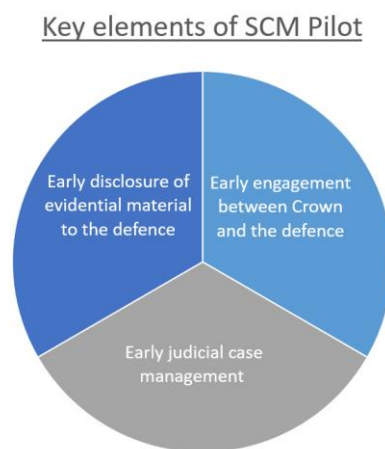
<sup>2</sup> Kennelling cases – cases where dogs are being kennelled pending disposal of the case.

## 1. KEY FEATURES

1.1 The key elements of the SCM Pilot, as illustrated in **Figure 1** below, are:

- (i) early disclosure of evidential material to the defence
- (ii) early engagement between Crown and the defence and
- (iii) early judicial case management

**Figure 1: Key Elements of SCM Model**



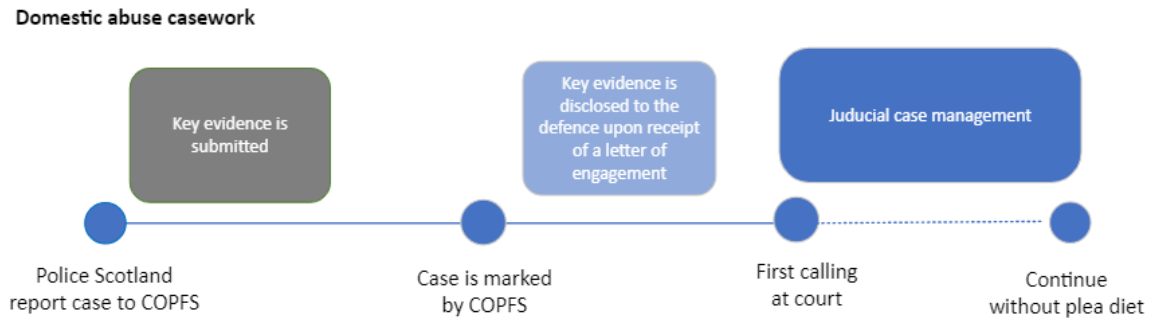
### *Early Disclosure*

1.2 The process for the provision of early disclosure for cases involving domestic abuse is different from the process for cases which do not include allegations of domestic abuse.

### **Domestic abuse cases**

1.3 In cases involving domestic abuse charges, the early disclosure is of the 'key evidence' in the case. Key evidence is the evidence required for proof of the offence such as a statement from the complainer or other eyewitnesses, photographs, video evidence and any available forensic evidence. Practice Note 2 of 2022 requires Police Scotland to identify the key evidence and to provide it when the case is reported to COPFS. COPFS thereafter disclose this material to the defence upon receipt of a letter of engagement, potentially in advance of the first calling. This optimum process is illustrated in **Figure 2** below. The volume of key evidence provided by Police Scotland is reported on at paragraph 1.6 below.

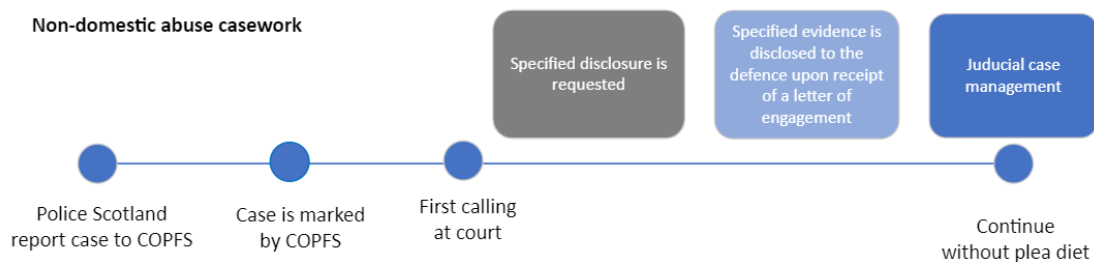
**Figure 2: Domestic Abuse Disclosure Timeline**



### Non-domestic abuse cases

1.4 In cases that do not involve domestic abuse charges, the early disclosure is classified as ‘specified disclosure’. This process applies where the receipt of specific pieces of evidence, e.g. CCTV, may assist the early resolution of the case, or enable evidence to be agreed before trial. This material can be requested from Police Scotland at any stage, but usually follows engagement between the parties, before or at the first calling of the case. Police Scotland should provide the specified disclosure within two weeks of the request being issued. COPFS will then disclose this material to the defence, provided they have received a letter of engagement. The process is illustrated in **Figure 3** below.

**Figure 3: Non-Domestic Abuse Disclosure Timeline**



1.5 Early disclosure has involved a new and demanding approach for the police, with material being submitted at a much earlier stage. With the assistance of COPFS, Police Scotland developed a system, which is currently only available as part of the Pilot, for transferring more material digitally. It enables Police Scotland to submit PDF files directly into the COPFS case management system, and multimedia files to be submitted to COPFS through a cloud-based solution, “Egress”. The evidential material is capable of being shared by the Crown with the defence digitally, removing



the need to create physical discs. In Dundee, a similar system for uploading and sharing digital evidence, the Digital Evidence Sharing Capability (DESC), is being piloted, alongside the use of Egress.

1.6 The new procedures for submitting evidence early have presented Police Scotland with significant challenges at the operational level. That can be seen in the volume of key evidence submitted to COPFS in domestic abuse cases, from the commencement of the Pilot to 31 August 2023, shown in **Figure 4** below.

**Figure 4: Summary of Key Evidence provided to COPFS to 31 August 2023<sup>3</sup>**

	Number of Statements submitted directly into COPFS case management system	Number of PDF Images submitted directly into COPFS case management system	Number of Multimedia Files submitted to COPFS via Egress	Number of multimedia files submitted to COPFS via DESC link
Dundee	3904	173	968	499
Paisley	2778	294	848	-
Hamilton	3273	258	484	-
<b>Total</b>	<b>9955</b>	<b>725</b>	<b>2300</b>	<b>499</b>

Data Source: Police Scotland

1.7 Outwith the Pilot, the key evidential material specified in **Figure 4** would have typically been provided to COPFS at a later stage, after a not guilty plea had been tendered, witnesses cited and a trial diet had been fixed. Although providing this material at an early stage represents a recalibration of the disclosure timeline, rather than an additional demand on Police Scotland, this work now has to be done in a much tighter time frame.

1.8 The police have continued to refine and improve their performance in delivering the key evidence timeously. The figures show an improving position but there is still work to be done. Overall compliance has gradually increased, so that, for the period from the start of the Pilot to the end of August 2023, disclosure of key evidence has been made within 3 days of receipt of a letter of engagement in 79% of all domestic abuse cases. That percentage has increased to 86% over the last 3 months of that period. Delays in disclosure are being discussed and addressed in Local Implementation Groups (LIGs).

### *Early Engagement*

1.9 In non-Pilot courts, discussions between the parties about the resolution of the case, or agreement of evidence, typically take place after a trial has been fixed and at

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<sup>3</sup> The significant majority of these cases will be marked for summary proceedings but some will have proceeded on petition.

a late stage in proceedings, often as late as the trial diet itself. In the Pilot courts, earlier engagement between the parties, at a point before the trial is fixed, is intended to ensure that those discussions are brought forward, and fewer trials are fixed unnecessarily. The disclosure of key or specified evidence allows the defence to engage meaningfully with the Crown and facilitate early pleas of guilty, failing which, it prevents the unnecessary citation of witnesses where evidence is capable of agreement.

1.10 Whilst the advantages and benefits of the Pilot approach were recognised by the three defence faculties, outstanding national issues over legal aid impacted on engagement levels during the first five months of commencement. A co-ordinated approach of non-engagement with the Pilot was adopted by the three defence faculties. This was part of an overall strategy of industrial action in response to a wider legal aid dispute between September 2022 and January 2023.

1.11 In the specific context of the Pilots, defence agents had concerns over whether they would be remunerated appropriately if they engaged with the Crown before their legal aid position was fully assured. That uncertainty arose over the scope and timing of cover under the Assistance by Way of Representation (ABWOR) scheme, where cases which could be resolved at the early stages without a court appearance would not qualify for the standard summary fixed fee.

1.12 In the lead up to the commencement of the Pilot, a judicially led workshop attended by each of the justice partners was convened to discuss the issue. The Scottish Government were invited by SLAB to consider extending the scope of the Advice and Assistance/ABWOR regulations to allow for the fixed fee to be paid prior to the first court appearance, once the complaint had been issued, or where the Crown had decided to prosecute the case, before the complaint was formally issued. That change was achieved by Scottish Statutory Instrument. In addition, it was agreed at the workshop that in cases where ABWOR could not be provided due to its less flexible financial eligibility test, provision would be made for the case management stage to be deferred, pending the making of a full Legal Aid application. That is being achieved through the fixing of notional trial diets<sup>4</sup> which serve as the case management forum but the required usage has been very low.

1.13 Non-engagement manifested itself in the refusal of some firms to submit letters of engagement. This prevented the Crown from serving the disclosure early and some agents insisting on tendering a not guilty plea without availing themselves of the opportunity to consider the available evidence. Nominated defence representatives also declined to engage at the LIG meetings, impacting on the opportunity to develop local arrangements to support the Pilot and resolve any local operational barriers.

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<sup>4</sup> A diet fixed on a plea of not guilty at which no witnesses are required to attend

1.14 In some courts, however, Dundee in particular, despite the official non-engagement position, there were instances of engagement with agents taking advantage of early disclosure. This, and a pro-active approach to decision making by the Crown meant earlier resolution of cases where possible.

1.15 A key feature at Dundee was the presence of the Public Defence Solicitor's Office (PDSO). Their engagement with the Pilot provided a ready comparison with the official non-engagement approach on the part of the faculty and was extremely useful in demonstrating the utility of the Pilot.

1.16 Throughout its development and implementation, extensive consultation and collaboration with defence agents was key to addressing the specific concerns raised in relation to the Pilot, including logistics at court. The wider national Legal Aid dispute having also been resolved, defence agents, through their nominated representatives, committed to fully engage with the Pilot with effect from 23 January 2023.

1.17 Since 23 January 2023, defence engagement has steadily improved. Timeous provision of letters of engagement is being supported through (i) the provision of hard copy pro forma letters in each court for completion at the first calling, (ii) COPFS proactively seeking a letter of engagement in advance of the case management hearing and (iii) through judicial consideration of the position at first calling. Defence participation in the LIGs also allows them to identify issues regarding engagement.

1.18 In order to support the engagement process, the Crown is identifying the scope for resolution at marking stage; ensuring that the defence have opportunities to engage through local arrangements; and local deputies are able to consider and accept pleas and, where appropriate to review marking decisions in the light of any new information supplied.

### *Early Judicial Case Management*

1.19 The court's ability to case manage is dependent on the early sharing of material by the Crown and the extent of engagement between the parties. Compliance with early disclosure has gradually increased and, as noted above, wider legal aid concerns impacted significantly upon defence engagement between September 2022 and January 2023.

1.20 With the legal aid issues and concerns resolved, there is now an expectation of increased scrutiny by the court to ensure that all justice partners are adhering to the terms and the spirit of the principles of the SCM Pilot, consistent with its "duty to manage actively all stages of summary criminal proceedings" as set out in [Practice Note 2 of 2022](#). Effective judicial case management is key to ensuring the progress of cases in a manner consistent with the aims of the Pilot. Efforts are reflected in case resolution, the number and length of trials fixed and attrition at trial diet.

1.21 To support effective and consistent case management, a pro forma case management note is completed by sheriffs. The case management note covers key areas of preparation including, disclosure, agreement of evidence, issues in dispute and practical issues such as vulnerable witnesses, audio/visual equipment required at trial and dates to avoid. The note is retained with the complaint and minutes.

1.22 The application of judicial case management requires an investment of time and focus during the early stages of the court process. Interestingly, each court has implemented a bespoke strategy to incorporating case management within the court programme reflective of local demand and practices. A key point of note is that capacity for case management has been facilitated through a reduction in the number of cases calling for Intermediate Diet. This has been a result of the opportunity presented by the pre-intermediate diet meeting (PIDM) procedure, rather than through the deployment of additional resource<sup>5</sup>. The manner in which case management is included within the court programme has an impact upon effectiveness:

- (i) Dundee introduced dedicated capacity for case management hearings within two intermediate diet courts, calling on a Wednesday and Friday, each week. As a result of the success of the Pilot, consideration of further increasing the capacity for case management is ongoing due to the significant reduction in the cases calling for intermediate diet. Following robust case management at the pleading diet, intermediate diets are often no longer required.
- (ii) At Hamilton, the initial approach taken was for case management hearings to be absorbed within the existing procedural first-calling courts. This resulted in case management hearings being scheduled alongside other cases. For example, first callings, and non-case management continuations without plea to establish service and other outstanding issues. Recently, it has been recognised that the time available for case management has been limited due to the significant volume of other business. As a result, an alternative option, which replicates that used in Dundee, was identified in the court programme. Case management capacity has now been introduced within the Thursday and Friday intermediate diet courts each week.
- (iii) Paisley initially introduced two dedicated case management courts each week on Tuesdays and Thursdays. The Tuesday court was thereafter dispensed with

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<sup>5</sup> Under the Evidence and Procedure Review (EPR) Pilot, additional courts were required for case management. Under the SCM Pilot, the introduction and increased use of PIDMs has reduced the number of intermediate diets calling and provided capacity in court programming.

in order to secure capacity for the introduction of a plea surgery<sup>6</sup>. Accordingly all case management hearings are currently being dealt with on Thursdays with a loading of 10-12 cases per hour to support effective case management. The plea surgery has recently been introduced and its effectiveness cannot yet be established.

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<sup>6</sup> A plea surgery is a scheduled time and place when a PF depute is available to engage with defence agents on the resolution of cases.

## 2. INTERIM ANALYSIS OF PERFORMANCE

### *Key Performance Indicators*

2.1 Key Performance Indicators (KPIs) to measure the success of the Pilot were developed by justice partners and approved by the Board. The indicators focus on performance in relation to key and specified disclosure, volume of witness citations (first issue), rate of early case resolution at pleading diets (first calling and CWP) and effective trial outcomes<sup>7</sup>. More recently, an additional indicator was developed to indicate performance in relation to the submission of Letters of Engagement. This was in recognition of the related dependency on the release of early disclosure; disclosure cannot take place without a letter of engagement from the defence. The range of indicators are set out in **Figure 5** below and at Annex 2, which also sets out the detailed methodology applied to their calculation.

**Figure 5: SCM Pilot - Key Performance Indicators**

KPI	KPI Description	Why is this important to the Pilot?
1	Percentage of first disclosures available, within 3 days of receipt of a letter of engagement from the defence, in all domestic abuse cases at the first calling (custody, undertaking, cited).	KPI 1 measures the rate at which key evidence is disclosed by COPFS to the defence. The target is for 90% of key evidence to be disclosed within 3 days of receipt of a letter of engagement.
2	Percentage of disclosures, where requested in non-domestic cases, is provided to the defence at least one week in advance of a Continued Without Plea diet.	KPI 2 measures the rate at which specified disclosure is disclosed by COPFS to the defence. The target is for 90% of specified evidence to be disclosed at least 7 days in advance of the case management hearing, though the KPI does not currently stipulate that a letter of engagement is a prerequisite for disclosure taking place.
3	The number of witness citations issued in domestic cases.	As the Pilot aims to resolve a larger number of cases without a trial being assigned, the number of witness citations being issued should reduce. Reducing unnecessary witness citations removes unnecessary stress and inconvenience for victims and witnesses. It also minimises the resource implications associated with the citation of police officers for Police Scotland, in addition to reducing the number of documents officers require to serve.

<sup>7</sup> Effective trials are trials that proceed on the scheduled day with evidence being led.

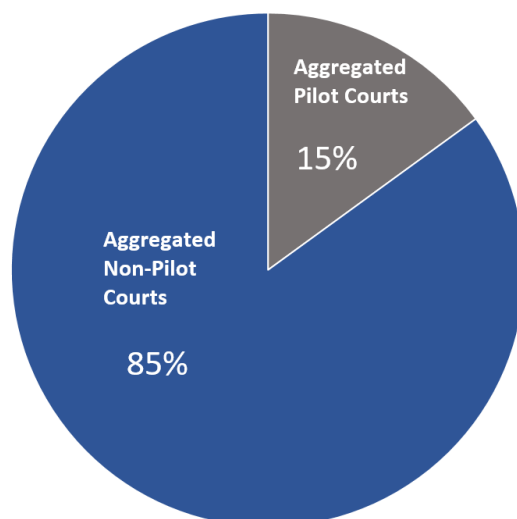
4	The percentage of cases resolved at the first appearance increases.	An increase in the number of cases resolving at first appearances reduces the number of trials being assigned and results in a quicker conclusion of the case for the victim and the accused.
5	Percentage of cases resolved at the Continued Without Plea diet.	An increase in the number of cases resolving at continued without plea diets (CWP) also reduces the number of trials being assigned.
6	Percentage of domestic cases requiring to call at an intermediate diet.	Effective case management at first calling or CWP, combined with effective Pre-Intermediate Diet Meetings (PIDMs) should result in fewer cases requiring to call for intermediate diet (ID). A reduction in the number of cases calling for ID means that court time, which would ordinarily have been occupied by IDs, can be used more effectively for other business such as case management. It also removes the requirement for the parties to schedule, prepare for and attend these diets.
7	Percentage of domestic abuse trials at which evidence is led.	Increasing the number of domestic abuse trials in which evidence is led would mean that fewer cases are being adjourned, not called, deserted, or are resolving by way of plea at a late stage. An increase in this figure would result in a greater likelihood that victims and witnesses who are cited to attend at court will be called to give evidence.
8	Percentage of Sheriff Summary domestic abuse cases where number of days between First Calling for accused and Letter of Engagement is less than 15.	This measures the percentage of domestic abuse cases where a letter of engagement is received in advance of the first calling. Without a letter of engagement being received, COPFS is unable to disclose any evidential material to the defence.

### *Performance Management Information*

2.2 The SCTS and COPFS have developed management information reports which are being used to report to the Board and LIGs on performance against KPIs. Police Scotland and Scottish Legal Aid Board (SLAB) have also developed management information for use in this Pilot evaluation.

2.3 To evaluate the overall impact of the Pilot, provision has also been made for progress to be assessed by comparison of the aggregate Pilot (i.e. Dundee, Hamilton and Paisley Sheriff Courts) and aggregate non-Pilot court position (i.e. all other Sheriff Courts in Scotland) where that comparison can be made. This approach is statistically robust. The proportion of the sheriff summary business covered by the Pilot is shown in **Figure 6** below:

Figure 6: Proportion of sheriff summary business covered by Pilot.



Data Source: SCTS

Note: The split for “all cases” and “DA” cases is similar at 15% Pilot/85% Non-Pilot

2.4 Performance in relation to KPIs 1 to 8 <sup>8</sup>on an aggregated basis is set out in **Figure 7** below, with the individual Pilot court position reflected in **Figure 8**.

Figure 7: KPI Data – Aggregate Level

	Aggregated Pilot Courts			Aggregated Non-Pilot Courts		
	Pre-Pilot	Pilot	Percentage Point Difference	Pre-Pilot	Pilot	Percentage Point Difference
	Apr-22 to Aug-22	Sep-22 to Aug-23		Apr-22 to Aug-22	Sep-22 to Aug-23	
<b>KPI 1</b>	N/A	<b>78.8%</b>	N/A	N/A	N/A	N/A
<b>KPI 2</b>	N/A	<b>39.2%</b>	N/A	N/A	N/A	N/A
<b>KPI 3</b>	636	448	<b>-30%</b>	3517	3207	<b>-9%</b>
<b>KPI 4</b>	24.4%	26.2%	<b>1.8</b>	24.2%	24.7%	<b>0.5</b>
<b>KPI 5</b>	14.0%	16.6%	<b>2.6</b>	19.3%	19.5%	<b>0.3</b>
<b>KPI 6</b>	168.3%	140.7%	<b>-27.6</b>	179.7%	161.2%	<b>-18.5</b>
<b>KPI 7</b>	13.4%	14.3%	<b>0.9</b>	12.7%	12.5%	<b>-0.2</b>
<b>KPI 8</b>	N/A	<b>60.0%</b>	N/A	N/A	N/A	N/A

Data Source: SCTS

<sup>8</sup> A list of KPIs can be found at Figure 5 and Annex 2.



Figure 8: KPI Data – Pilot court level

	Dundee			Paisley			Hamilton		
	Pre-Pilot	Pilot	Percentage Point Difference	Pre-Pilot	Pilot	Percentage Point Difference	Pre-Pilot	Pilot	Percentage Point Difference
	Apr-22 to Aug-22	Sep-22 to Aug-23		Apr-22 to Aug-22	Sep-22 to Aug-23		Apr-22 to Aug-22	Sep-22 to Aug-23	
<b>KPI 1</b>	N/A	94.0%	N/A	N/A	76.1%	N/A	N/A	68.6%	N/A
<b>KPI 2</b>	N/A	56.5%	N/A	N/A	10.2%	N/A	N/A	46.0%	N/A
<b>KPI 3</b>	189	128	-32%	164	126	-23%	283	194	-31%
<b>KPI 4</b>	22.9%	24.2%	1.3	21.0%	21.1%	0.1	26.9%	30.0%	3.1
<b>KPI 5</b>	13.6%	19.4%	5.8	11.5%	12.0%	0.6	16.1%	17.1%	1.0
<b>KPI 6</b>	173.7%	98.1%	-75.7	196.5%	170.8%	-25.7	148.0%	153.9%	5.9
<b>KPI 7</b>	10.2%	13.8%	3.5	14.7%	19.3%	4.6	14.4%	10.1%	-4.2
<b>KPI 8</b>	N/A	67.2%	N/A	N/A	47.2%	N/A	N/A	63.3%	N/A

Data Source: SCTS

(i) Early Disclosure & Letters of Engagement (KPI 1, KPI 2 and KPI 8)

2.5 **Figure 9** below details the percentage of domestic abuse cases in which Police Scotland have provided the key evidence material at the stage of reporting the case to COPFS.

Figure 9: Key Evidence Material Provided at Reporting Stage (Sept 22 to Aug 23)

	Average percentage of key evidence submitted to COPFS on time.
Dundee	70%
Paisley	73%
Hamilton	73%

Data Source: Police Scotland

2.6 **Figure 10** below details the volume of requests sent to Police Scotland for specified disclosure to be lodged in respect of non-domestic abuse cases. It also shows the percentage of cases where the specified disclosure is provided to COPFS within 14 days of the request being received.

**Figure 10: Specified Disclosure Provided within 14 Days (Sept 22 to Aug 23)**

	Number of specified disclosure requests received.	Rate of on time compliance.
Dundee	527	63%
Paisley	502	37%
Hamilton	664	64%

Data Source: Police Scotland

2.7 The timing of the release of early disclosure to the defence is key to facilitating early engagement and judicial case management. However, in line with established practice, the Crown requires a letter of engagement to be submitted by the instructed agent before disclosure can be made. This ensures compliance with Data Protection Principles in relation to the provision of information. KPI 8 illustrates performance in relation to the timely receipt of letters of engagement in each of the Pilot courts.

2.8 KPI 1 has been designed to take account of this dependency with the timescale for disclosure in domestic abuse cases set within the period of 3 days from receipt of a letter of engagement. **Figure 8** shows that since the commencement of the Pilot, the strongest performance has been at Dundee, followed by Paisley and then Hamilton. The position in relation to KPI 2 is similar in that Dundee has performed better than both Paisley and Hamilton with the lowest performance being at Paisley. Police Scotland are focusing efforts on securing improvement and consistency in performance. Data on the timing of Letters of Engagement could be added as a KPI in due course.

2.9 KPI 2 does not currently specify the requirement for a letter of engagement to have been provided. Accordingly, even where disclosure is available but has not been provided to the defence due to a letter of engagement having been withheld, this impacts negatively upon performance for KPI 2. There is therefore a direct link between the rate of letters of engagement being provided to COPFS and performance in terms of KPI 2. This explains why Paisley, where the provision of letters of engagement has been a difficulty, has a particularly low rate of timeous disclosure in terms of KPI 2. More work needs to be done by both the Crown and the defence but, even without fully meeting the key performance indicator, early disclosure is having a positive impact on the early plea rate. It can be reasonably anticipated that a larger number of early pleas would be secured if there are improvements to early disclosure.

## **(ii) Case Resolution at Pleading Diet (KPI 4 and KPI 5)**

2.10 KPIs 4 and 5 represent conclusion at first appearance and continued without plea respectively. These are the critical stages in the Pilot as resolution, which includes cases resolved by way of plea or discontinuation, will avoid the unnecessary citation

of witnesses. The outcomes for the first twelve months of the Pilot as shown in **Figure 7** above, demonstrate the significant increase in case resolution at pleading diet for the aggregated Pilot courts, in comparison with the aggregated non-Pilot courts.

2.11 The impact is further highlighted in **Figures 11** and **12** below which illustrate the shift in the not guilty plea rate (contest rate) post pleading diet (first calling and continued without plea). The significance of this is that the contest rate is an indicator of the percentage of cases where a trial diet is assigned.

**Figure 11: Not Guilty Plea (contest rate) Post Pleading Diet – Aggregate Level**

Not Guilty plea ratio at pleading diet	Aggregated Pilot Courts				Aggregated Non-Pilot Courts			
	Pre-Pandemic	Pre-Pilot	Pilot	Difference pre-Pilot & Pilot	Pre-Pandemic	Pre-Pilot	Pilot	Difference pre-Pilot & Pilot
	2019-20	Apr-22 to Aug-22	Sep-22 to Aug-23		2019-20	Apr-22 to Aug-22	Sep-22 to Aug-23	
All Sheriff Summary	65%	70%	61%	-9 pp	67%	70%	69%	-1 pp
Domestic Abuse	73%	70%	59%	-11 pp	73%	72%	73%	1 pp

Data Source: SCTS

**Figure 12: Not Guilty Plea (contest rate) Post Pleading Diet – Pilot Court Level**

Not Guilty plea ratio at pleading diet	Dundee				Paisley				Hamilton			
	Pre-Pandemic	Pre-Pilot	Pilot	Difference pre-Pilot & Pilot	Pre-Pandemic	Pre-Pilot	Pilot	Difference pre-Pilot & Pilot	Pre-Pandemic	Pre-Pilot	Pilot	Difference pre-Pilot & Pilot
	2019-20	Apr-22 to Aug-22	Sep-22 to Aug-23		2019-20	Apr-22 to Aug-22	Sep-22 to Aug-23		2019-20	Apr-22 to Aug-22	Sep-22 to Aug-23	
All Sheriff Summary	64%	69%	56%	-13 pp	71%	74%	69%	-5 pp	63%	68%	59%	-9 pp
Domestic Abuse	76%	70%	53%	-17 pp	74%	73%	67%	-6 pp	70%	68%	58%	-10 pp

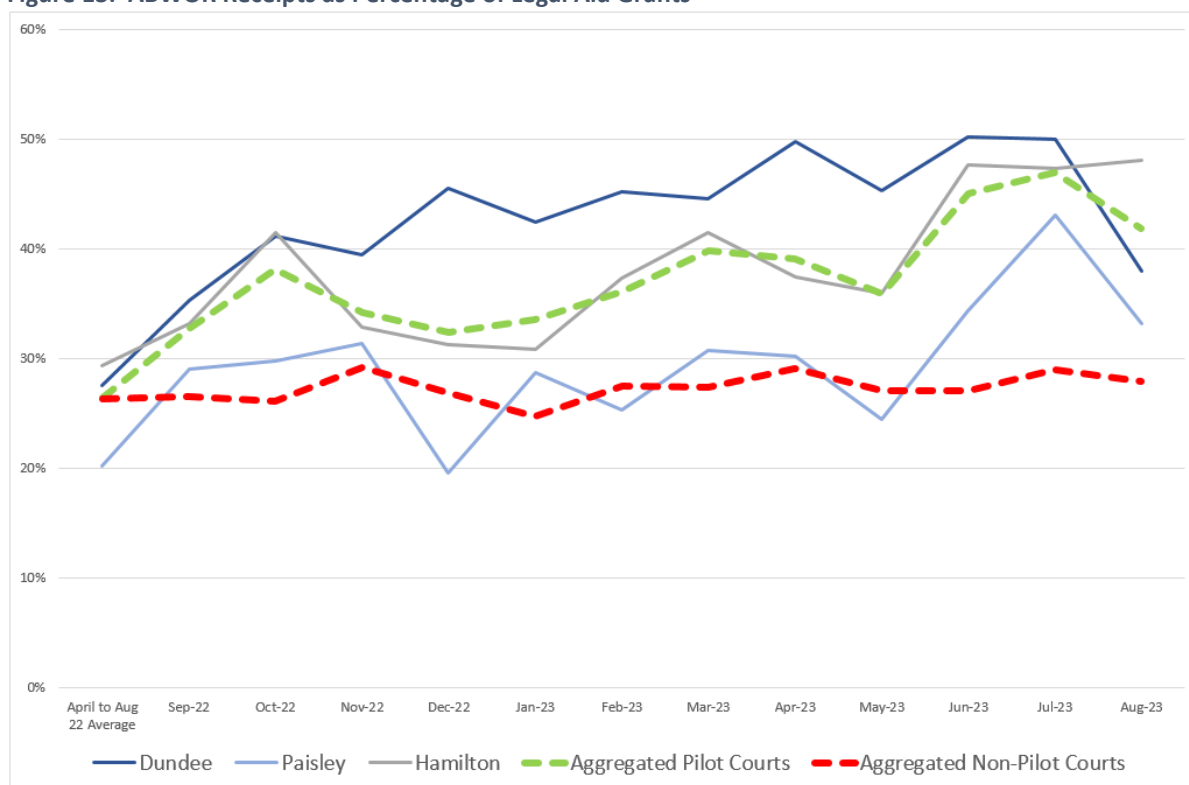
Data Source: SCTS

2.12 **Figures 11** and **12** further complement the increased rate of early resolution as demonstrated in KPIs 4 and 5. The not guilty plea rate post pleading diet (contest rate) in the aggregated Pilot courts compared to non-Pilot courts is significantly improved when compared to both the pre-Pilot and pre-pandemic periods. There is an even greater improvement in the contest rate for domestic abuse in the aggregated Pilot courts.

2.13 At Pilot court level (see **Figure 12**), the highest level of change, when compared with the pre-Pilot position, has been at Dundee. There has been a 13 percentage point improvement for all summary business and 17 percentage point improvement for domestic abuse casework.

2.14 The shift in position is confirmed in the statistics produced by the Scottish Legal Aid Board (SLAB). These show the change in the percentage of grants of legal aid for guilty pleas and continued without plea diets (ABWOR) in comparison with Summary Criminal Legal Aid for not guilty pleas (see **Figure 13**). There is a marked difference between the aggregated Pilot (rising trend) and aggregated non-Pilot position (static position). The August 2023 figures are likely to change due to a natural lag in this data provision due to cases granted at the end of the month not being included until later months.

**Figure 13: ABWOR Receipts as Percentage of Legal Aid Grants**



**Data Source: SLAB**

2.15 Increased levels of early resolution results in fewer trials being fixed. By comparing Pre-Pilot resolution against resolution in the Pilot period, it is estimated that a minimum of around 250 trials did not have to be fixed in the Pilot courts directly as a result of early resolution due to SCM. Further, if SCM had been in place for the non-Pilot courts, it is estimated that there could have been at least an additional 1250 trials not fixed. Therefore had SCM been in place at a national level, potentially at least 1500 trials would not have been fixed during 5 September 2022 to 31 August 2023. This is a compelling argument for SCM to be rolled out more widely.

2.16 The appropriate exercise of prosecutorial discretion is an important factor in securing early resolution of cases, including cases involving domestic abuse. The ability for the defence to have discussions with a deputy who has authority to discuss the details of a case has been an important feature of the Pilot. When engagement with the defence or the complainer leads to the receipt of new information, prosecutors will review whether the decision to raise proceedings remains in the public interest.

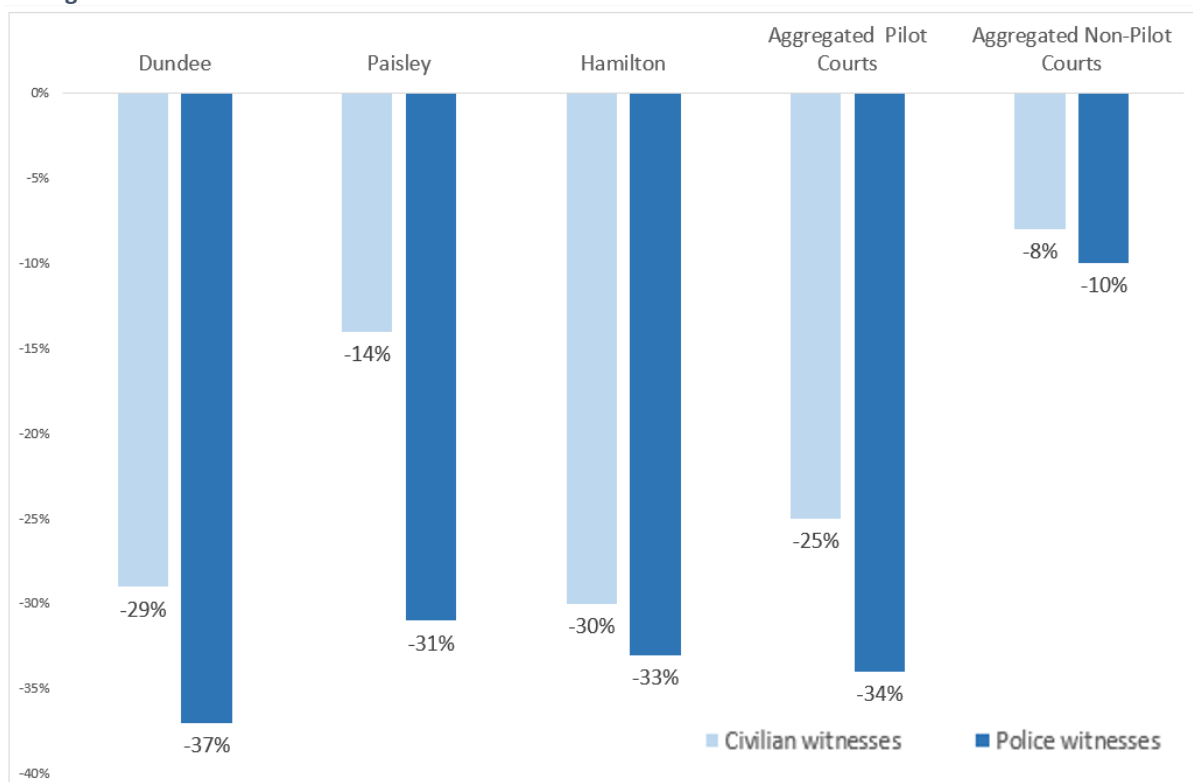
2.17 The Pilot has led to engagement taking place whereby the decision to raise proceedings in some cases, including cases involving allegations of domestic abuse, has been reviewed following engagement with the defence or the complainer. In some cases, this has led to the discontinuation of court proceedings and the accused being referred for social work diversion or the imposition of another direct measure.

Prosecutors in Dundee have been particularly proactive in reviewing prosecutorial decisions following the receipt of new information. Deputes are encouraged to seek agreement of evidence and to cite fewer witnesses in any event, in all summary cases. The impact is clearly not as consistent or extensive as where there is routine early disclosure and a formal case management process.

**(iii) Witness Citations (KPI 3)**

2.18 Performance over the first 12 months indicates a 30% reduction in the first citation data in the aggregated Pilot courts in comparison with a 9% reduction in the aggregated non-Pilot courts. Clearly, SCM is having a positive impact on witnesses in the Pilot courts. There are also benefits in the non-Pilot courts as a result of the Crown’s renewed focus on potential agreement of their evidence wherever possible. **Figure 14A** reflects the position in relation to first citations issued in Domestic Abuse cases. Actual volumes are shown in **Figure 14B**. A point of note is the decrease in the average monthly percentage of Police Witness citations issued, particularly in Dundee.

**Figure 14A: Average Monthly Domestic Abuse Witness Citation Changes (Percentages) - Pre-Pilot and Pilot to August 2023**



Data Source: COPFS

Figure 14B: Average Monthly Domestic Abuse Witness Citation Changes (Actual Volumes) - Pre-Pilot and Pilot to August 2023

Domestic Abuse: Reduction in monthly average witness citation volumes when comparing pre-Pilot to Pilot	Witness type			
	Civilian	<i>Reduction per month</i>	Police	<i>Reduction per month</i>
Dundee	27	29%	35	37%
Paisley	40	14%	49	31%
Hamilton	10	30%	28	33%
Aggregated Pilot Courts	77	25%	112	34%
Aggregated Non-Pilot Courts	137	8%	172	10%

Data Source: COPFS

2.19 The reduction in the volume of witnesses being cited is the result of a combination of factors. Though there has been a national reduction in the number of trials being assigned, the volume of citations being issued in the Pilot courts has reduced far more significantly than the non-Pilot court average. This is the result of:

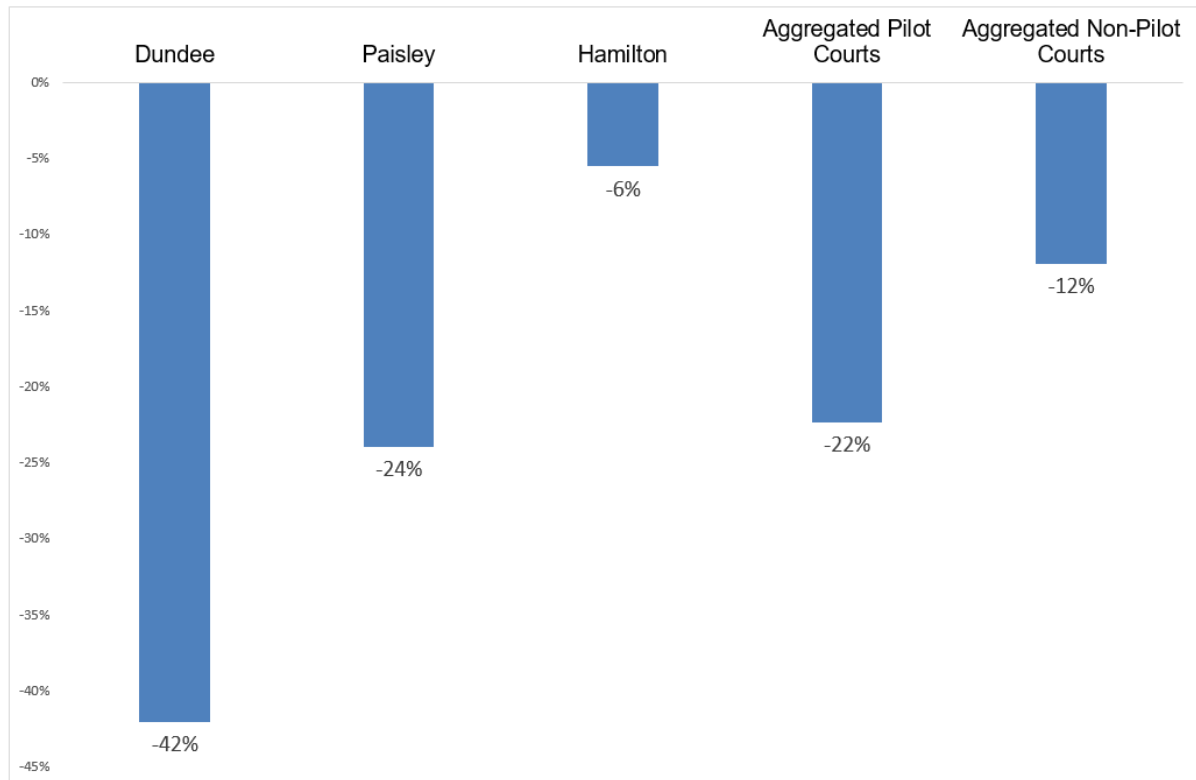
- increased rates of early resolution;
- an increased focus upon the agreement of evidence through judicial case management leading to witnesses being removed from the list of witnesses;
- a more discerning approach taken at the stage of case marking whereby fewer witnesses are marked for citation and more evidence is listed as potentially capable of agreement.

**(iv) Intermediate & Trial Diets (KPI 6 and KPI 7)**

2.20 KPI 6 focuses on the percentage change of Domestic Abuse cases registered that call for intermediate diet. The difference on an aggregate Pilot and non-Pilot court basis is illustrated in **Figure 7** with a higher reduction in the aggregated Pilot courts. The key point of note at Pilot court level is the extent of the reduction at Dundee (**see Figure 8**). This has been influenced by the approach now being taken at pleading diet. Here, effective case management in cases where a not guilty plea is tendered, is resulting in cases being continued straight to trial diet. In the event that parties' positions thereafter change prior to the trial diet, there is an expectation that acceleration will be facilitated to ensure the case calls in advance of the trial for the issue to be raised.

2.21 As KPI 6 can be influenced by the volume of registrations, **Figure 15** below illustrates the percentage change in monthly average intermediate diet callings. This further complements the trend being seen in KPI 6.

**Figure 15: Percentage Change in Average Monthly Domestic Abuse ID Callings Comparing Pre-Pilot and Pilot Period**



Data Source: SCTS

2.22 The focus of KPI 7 is on trial outcomes. The Pilot aims to increase the proportion of scheduled trials in which evidence is led rather than cases resolving at the stage of trial, by a plea being offered and accepted, being discontinued or by the case being adjourned to another date. Although the aggregated Pilot courts showed a stronger position pre-Pilot in comparison with the aggregated non-Pilot courts, the aggregated Pilot courts have shown a 0.9% improvement since Pilot commencement with a net difference of 1.1 percentage points in comparison with the aggregated non-Pilot courts.

2.23 The Pilot’s impact upon trial outcomes is subject to an element of lag due to the period of time between the trial being scheduled and the case calling for trial. Additionally, all three courts continue to deal with a significant volume of Pre-Pilot trial business.

2.24 On an aggregate basis, the proportion of domestic abuse trials in which evidence is led has increased. At Pilot court level, as illustrated above in **Figure 8**, this is particularly evident in Dundee and Paisley. The rate at which evidence is led has increased at Paisley by just under 5% and at Dundee by 3.5%.

2.25 Further improving the rate of evidence led trials, is a key objective of the next stage of the Pilot, during which the proportion of trials which have been subject to case management is expected to increase.

**(v) Impact on the Volume of Scheduled Trials**

2.26 The volume of scheduled summary trials increased significantly because of the COVID-19 pandemic. Summary recovery courts were instituted to address the trial backlog created by the pandemic until the end of March 2023. The recovery programme switched its focus from summary to solemn on [1 April 2023](#).

2.27 **Figure 16** below details the change in volume of sheriff summary scheduled trials for the aggregate Pilot and aggregate non-Pilot courts since 1 April 2023.

**Figure 16: Aggregate sheriff summary scheduled trial change**

	All case summary scheduled trial change between April - August 2023	Domestic abuse summary scheduled trial change between April - August 2023
Aggregate Pilot courts	+1%	+1%
Aggregate Non-Pilot courts	+9%	+3%

Data Source: SCTS

2.28 As highlighted in **Figure 16** above, although both the general and domestic abuse scheduled trial volumes increased in the Pilot courts, the rate of increase was significantly lower than within the aggregate non-Pilot courts. One explanation could be that the rate of early resolution within the Pilot courts has mitigated the rise in scheduled trials that has occurred nationally as reflected in the contest rate (see paras 2.11 -2.13) .

*KPI Review*

2.29 At the commencement of the Pilot it was noted that the indicators would be reviewed and developed as the Pilot progressed and processes embedded. The inclusion of new KPI 8 was identified as necessary given the dependency on the receipt of a Letter of Engagement before disclosure can be released.

2.30 The opportunity will be taken to review the terms of KPI 2. This is in the recognition that a Letter of Engagement is required in those cases and a shorter timeframe for the provision of targeted disclosure has been sufficient to secure effective engagement and case resolution prior to the CWP diet. For KPI 6 consideration will be given to looking at the difference in the volume of intermediate



diet callings rather than as a percentage of registrations. The review also provides an opportunity to consider the order of the KPIs to take account of the addition of KPI 8.

### *Performance Analysis*

2.31 While much of the impact of the Pilot is consistent across the three Pilot courts, there are elements of performance within each court which depart from general trends and point to features of particular success.

#### **(i) What Is Working Well?**

##### **Dundee**

2.32 Dundee has enjoyed the strongest general performance which reflects the strong cohesion between all justice partners there, including enthusiastic engagement by the defence. This has supported the deployment of comprehensive judicial case management whereby the prospect of resolution and agreement of evidence is thoroughly addressed before a trial is fixed. This has reduced the requirement for pre-trial procedure, including PIDMs and IDs (KPI 6).

2.33 Since January 2023, the DESC Pilot has been active in Dundee, providing Police Scotland and COPFS with an additional mechanism through which digital evidence can be transmitted and disclosed. Currently, DESC is only available for cases deriving from Dundee city, and therefore Egress remains an essential element of the SCM model.

##### **Hamilton**

2.34 Hamilton has a strong approach to the early resolution of cases. While the percentage uplift since the commencement of the Pilot is not quite as significant as in Dundee, Hamilton resolves the greatest overall proportion of casework at an early stage (KPIs 4 and 5). This reflects the pragmatic approach adopted by the defence and COPFS, and the strong engagement taking place between parties, including via the dedicated plea surgery, which was introduced prior to the commencement of the Pilot.

##### **Paisley**

2.35 Paisley has secured the most significant uplift in the proportion of trials involving domestic abuse in which evidence is led (KPI 7). Additionally, the overall proportion of evidence led trials is considerably higher in Paisley than in Dundee and Hamilton, reflecting the more efficient use of trial diets.

## **(ii) What Can Be Improved?**

2.36 Areas of potential improvement include the rate of timeous early disclosure (KPIs 1 and 2) and the consistent application of thorough judicial case management.

### **Early Disclosure**

2.37 The successful provision of early disclosure is dependent upon all justice partners working cohesively together. This includes Police Scotland providing the evidence material to COPFS within the agreed timescales, the defence submitting letters of engagement to COPFS without delay (potentially in advance of the first calling of the case) and COPFS thereafter disclosing the material to the defence expeditiously.

2.38 Whilst the provision of letters of engagement has been the most considerable barrier to facilitating early disclosure in the first twelve months of the pilot, their timely submission has improved since the resolution of the legal aid dispute. Each LIG has played a part in improving this and initiatives have been put in place in accordance with local needs, however there remains scope for further improvement as highlighted within KPI 8. A new KPI will measure how many letters of engagement are submitted prior to or at the first calling.

### **Judicial Case Management**

2.39 The maximum benefit is secured from judicial case management when the court has sufficient capacity to address, in detail, each of the considerations contained within the case management note. Opportunities to resolve cases at an early stage, or to agree evidence, can be lost in the absence of a focused approach to judicial case management.

2.40 While judicial case management has, in general, been applied robustly, it is recognised that there remains scope to achieve greater consistency. Improved performance in the receipt of early disclosure and early engagement between the crown and defence should support that.

## **(iii) Areas of Best Practice**

2.41 During the Pilot, areas of best practice have emerged that will be useful in informing the approach in future roll out of the model. Two areas of particular note are described below.

## Enhanced Engagement with Victims of Domestic Abuse

2.42 In order to enhance engagement with victims of domestic abuse, and the identification of any barrier to their participation in the criminal justice process, COPFS are trialling a new approach to engagement with complainers in domestic abuse cases in the Pilot. This involves complainers of domestic abuse being contacted by legal staff at an early stage in the case. This engagement complements the support already provided by Victim Information & Advice (VIA). It aims to de-mystify the criminal justice process, ensure that the appropriate support is put in place for complainers of domestic abuse and improve the confidence held by them in both the Crown and the wider criminal justice system.

2.43 All domestic abuse complainers are being contacted by telephone by a member of legal staff approximately two weeks following the pleading diet. Where the case has been continued without plea, this will take place during the preparation of the CWP hearing. If a plea of not guilty has been tendered and no CWP hearing has been assigned, the engagement will take place roughly two weeks following the pleading diet, independent of any court hearing.

2.44 Where the allegations involve a contravention of Section 1 of the Domestic Abuse (Scotland) Act 2018 (DASA), in addition to the telephone contact applicable in all cases of domestic abuse, complainers are offered the opportunity of a face-to-face meeting with the trial depute, in advance of the date of the trial. This meeting takes place around two weeks prior to the trial diet.

2.45 The approach is now embedded. The take up rate of the initial telephone call is encouraging and the feedback from complainers has been substantially positive as illustrated by the testimony below. The pre-trial interviews in DASA cases are taking place and have proved to be beneficial for complainers and prosecutors alike as they prepare for trial. The following testimony was given by a victim of domestic abuse, to a Procurator Fiscal in one of the Pilot courts:

*“I went through the conversation as usual advising the CWP date, early disclosure, aim of Pilot and taking views. (Complainer – name removed) advised me that she was really happy about the Pilot call and it’s actually changed her views from being not supportive of prosecution (as she was worried about criminal justice sector as a whole due to perceived failing) to being wholly supportive of prosecution and NHO. She is particularly a big fan of having the CWP as she said receiving a cite letter before being able to speak to somebody on the phone would have caused her a lot of difficulty.*

*She wanted it noted that she feels the Pilot will be extremely beneficial to people like her who have previously been victims of domestics on multiple occasions and she has a lot more faith in COPFS now.”*

*Feedback from PF Depute in Pilot Court*

## Hamilton Plea Surgery

2.46 In 2020, in response to the challenges presented by the pandemic, a Plea Surgery arrangement was designed and implemented at Hamilton Sheriff Court, in collaboration with the Sheriff Principal, sheriffs, Procurator Fiscals and defence agents. The arrangements have embedded well at Hamilton and are now an important feature of the engagement efforts there.

2.47 Initially, the surgery was held each Monday with provision made in the programme for cases to be accelerated to the following Friday for disposal. At the outset, the surgery was an appointment basis but is now used more flexibly, with engagement taking place at the convenience of parties. Additionally, the surgery is used as a mechanism to discuss cases in which a trial has not yet been assigned (i.e. cases at first calling or continue without plea stage). The outcomes of the efforts at Hamilton are reflected in **Figure 17** below. It should be noted that during the period April to August 2022 efforts were made to focus on the resolution of older case work, which is one explanation for the increased percentage during that period.

**Figure 17: Conclusion Rate at Accelerated Diet**

	2019-20	Apr 22 - Aug 22	Sep 22 - Aug 23
Hamilton	48%	86%	74%
Aggregated Non-Pilot Courts	40%	44%	39%

Data Source: SCTS

2.48 Jennifer Cunningham, PPF at Hamilton reflects on the impact.

*"The plea resolution surgery has been a success in Hamilton and is attended well by the defence bar. It has complemented the SCM Pilot and resulted in hundreds of cases resolving prior to the trial diet thus removing the need for witnesses to attend court. Over the last few months, the plea resolution surgery has become so much more and the defence are utilising the opportunity to speak to deposes about cases which have not yet been scheduled for trial, so cases calling for the first time or for continuation without plea. Not only have we seen an increase in cases resolving, but we are also experiencing enhanced engagement with the defence. "*

*Jennifer Cunningham, PPF at Hamilton*

#### **(iv) Emerging Dependencies**

2.49 Effective operation of the Pilot requires parties to be able to share and receive early disclosure material efficiently, and to engage with one another in a manner which is convenient, including virtually and in-person. The following emerging dependencies have been identified relative to these requirements:

##### **Network Connectivity**

2.50 Access to WiFi at court is essential for prosecutors and the defence. At present, Prosecutors are able to access WiFi within the court estate on tablet devices but not on laptops. Defence agents are unable to access WiFi in pertinent areas such as within cell complexes.

2.51 Establishing consistent and reliable network connectivity would enable parties to access and download early disclosure material while at court. This would inform and assist the progression of engagement between the Crown and the defence and would enable the defence to take detailed instructions from the accused. SCTS are committed to providing high quality digital access in all courts and tribunals and work is currently underway on that.

##### **Spaces to Engage**

2.52 Effective engagement between prosecutors and the defence relies upon the availability of spaces to engage within the court building. While engagement often takes place within the courtroom, engagement in court is often pressurised by time and other business. It is therefore helpful to have the option of utilising other private spaces, which can also serve as sites for engagement or resolution surgeries.

### 3. THE PILOT BENEFITS

#### *POLICE SCOTLAND*

*“The Police Service of Scotland are fully committed and support criminal justice partners in the introduction and development of the Summary Case Management (SCM) pilot. Launched in September 2022 in Dundee, Paisley & Hamilton Sheriff Courts, Police Scotland, COPFS and our partners within SCTS introduced an ambitious and innovative approach to early disclosure of evidence. This process change was always going to be challenging to operational officers. SCM did not introduce additional crime types or bureaucracy, but asked individual officers to carry out most of their investigation at the first point of contact. The identification and seizure of all available key evidence at this initial stage is crucial in identifying the accused or proving their part in the crime or offence being investigated.*

*Police Scotland share key evidence at the earliest opportunity with COPFS, as providing early disclosure provides an opportunity for cases to be resolved at the first opportunity. Targeting investigations, especially incidents of domestic abuse, ensures that justice is delivered more quickly and in a more supportive way for victims. Victims and witnesses who are particularly susceptible to additional trauma caused by attending court to provide evidence near their abuser and their supporters may be avoided.*

*Police Scotland are seeing a reduction of first issue citations for domestic cases by up to 34% in all pilot courts. This equates to around 5000 citations not being served on operational officers. This reduction is welcomed by Police Scotland as more officers are available to deliver a policing service to local communities. It also ensures that officers can be rested appropriately ensuring that they remain fit and well to continue to deliver an effective service.*

*SCM is primarily focused on improving the victim and witness experience within the Justice System and therefore Police Scotland continues to pledge support to refining and expanding this innovative and successful pilot further.”*

*Assistant Chief Constable Wendy Middleton*

3.1 In the first year of the Pilot, Police Scotland reported a total of 2325 domestic abuse cases to Hamilton, Dundee and Paisley Sheriff Courts. In addition, they responded to just over 1650 requests for specified disclosure. Over the same period, first issue citations for domestic abuse cases reduced by 34%, with a similar reduction in non-domestic abuse cases across the three Pilot courts. These savings are due to the early resolution of the case or agreement of evidence.

3.2 Close liaison between Police Scotland and COPFS, directly attributable to the Pilot, helped to ensure clarity in the concept of key evidence as distinct from all

evidence for domestic cases. It also supported the development of an increased understanding of key investigation, marking and reporting processes.

3.3 The Pilot has also allowed Police Scotland to overcome some of the issues being experienced in Divisions with the editing and managing of digital evidence. A review of arrangements has led to the download, editing and formatting of CCTV and digital evidence being undertaken at front line officer level and shared directly with the Crown. This has removed the requirement for this type of evidence to be transferred onto expensive discs and the movement of these discs around the country between evidence stores and courts. It also allows Cyber Crime to focus on more serious digital enquiries.

3.4 Since the commencement of the Pilot, there has been a steady increase in the compliance of officers submitting the key evidence for all domestic cases from 30% to the current rate of 70%. Similarly, the compliance of officers submitting all key evidence on time has increased and is now sitting nationally at around 70%. Whilst the compliance rate for officers returning the specified evidence requests is sitting at around 35%, this includes a number of requests, received outwith the agreed fourteen day timescale. If compliance was to be measured on the basis of the specified disclosure being returned before the court appearance date, the rate would increase to around 85%.

3.5 If SCM was to be rolled out nationally, it would be anticipated that compliance rates and the benefits referred to above, would continue to increase. If the national roll out of SCM realised the same reduction in citations issued, then the benefits to the work life balance and wellbeing of officers would be appreciated by all officers. Targeting cases, especially domestic abuse cases, is also seeing a dramatic decrease in first issue citations to civilian witnesses. Managing cases in this manner also creates a supportive environment for victims and witnesses who are particularly susceptible to trauma which is caused by attending court to give live evidence near their abuser and their supporters.

## **COPFS**

*“COPFS remains strongly supportive of the Summary Case Management (SCM) initiative being piloted in Hamilton, Dundee and Paisley sheriff courts. Notwithstanding the anticipated challenges around such a fundamental change of approach, with more work being undertaken by all parties at the start of the case rather than at the end, both the early feedback and data suggest that the core elements of the model – earlier disclosure, early engagement, and effective case management - are the correct ones. They just need to be applied more consistently. The not guilty plea rate at first hearing continues to decrease as does the corresponding volume of cases listed for trial, especially in Dundee. That change is also reflected in the significant reduction in witness citations being issued (compared to non-Pilot courts) and, more recently,*

*a drop in intermediate diets being required where the initial case management has been comprehensive. The impact on the wider public, particularly victims of domestic abuse with whom we are now engaging earlier, is apparent, and our staff also find the approach more fulfilling on a daily basis. We recognise the importance of the SCM initiative and will continue to support its judicial leadership as the Pilot is refined and extended."*

*Jennifer Harrower, Deputy Crown Agent, Local Court*

## **Case Marking**

3.6 The receipt of early evidential material impacts upon the marking of cases in several ways. Though the consideration of such material lengthens the time taken to complete the marking process at the outset of a case, there is considerable benefit in being able to consider the nature and quality of the available evidence at that point. It informs the drafting of the charge and results in improved accuracy and more detailed instructions being provided to deputes in court. These instructions support meaningful engagement with the defence during the early stages of procedure, inform discussions regarding resolution and provide a foundation for the agreement of evidence.

## **Early Case Preparation**

3.7 Features of the Pilot, notably the early disclosure of material (key or specified) to the defence, and an increased focus upon engagement with them during the early stage of procedure, leads to greater resolution of cases, and the narrowing of the issues in those cases that cannot be resolved. This provides swifter outcomes for victims, witnesses, and the accused, and mitigates the stress, anxiety, and inconvenience they experience while waiting for a trial to take place. The impact can also be seen in the significant reduction in the volume of witness citations in domestic abuse cases.

3.8 An additional benefit for the Crown, even where resolution cannot be achieved through the early case management process, is that a smaller number of cases require to be prepared for trial. That reduces the burden on both legal and support staff, e.g. in citation of witnesses. Preparation in those cases can also focus on what is truly in dispute. That should increase the likelihood of the Crown being able to proceed.

## **Approach to Engagement with Victims of Domestic Abuse**

3.9 Enhanced engagement with domestic abuse complainants has changed the way in which such cases are prepared by COPFS. Direct contact between the complainant and the prosecutor allows prosecutors to be in possession of up-to-date information;



prosecutorial decisions to be taken in the context of relevant information; and ensures the greater accuracy of information provided to the court e.g., when seeking a non-harassment order (NHO). Where a trial is required, the information gleaned from the victim can also inform the trial preparation strategy and ensure that the support provided to the complainer is properly understood and sufficient to meet their specific needs.

3.10 Between 05 September 2022 and 31 August 2023, 38 percent of complainers of domestic abuse were successfully contacted by a prosecutor by telephone in the weeks following the pleading diet. A majority of complainers were pleased to be contacted by a prosecutor, regardless of their view on proceedings. These conversations enabled them to know that their case is being prepared and provides an opportunity for them to have their voices heard. While the purpose of the call is not to discuss the evidence, there have been occasions where complainers have provided further information, including sharing details of evidence not yet seized by Police Scotland. Importantly, the calls provide them with an opportunity to provide updates regarding their personal circumstances, including their preferred contact details, their availability for trial and information regarding their specific support needs or logistical requirements before attending at court. Overall, this new approach appears to be securing greater engagement of complainers through the life of the case.

## **SCTS**

*“The Pilot has identified a need to switch the emphasis from traditional intermediate diet courts to dedicated case management courts to accommodate the demand and facilitate the favourable outcomes we are experiencing”.*

*Danielle Blue, SBM, TC&F*

## **Court Programming**

3.11 The Pilot has evidenced the potential to review the programming of summary criminal business, shifting the emphasis from intermediate diet courts to dedicated case management courts. The favourable outcomes being secured by the early sharing of material, engagement between the parties and judicial case management are delivering programme efficiencies, creating capacity to support the change, from within existing resources. Whilst impact at trial diet has still to be fully assessed, early indicators are that the Pilot is creating the opportunity to rationalise and plan summary trial business on the basis that evidence will be led in those cases that proceed to trial. The impact of the early resolution of domestic abuse cases at Dundee has supported the re-profiling of summary trial courts.

3.12 In the short term, it is recognised that court programmes will provide for a hybrid arrangement as historical cases work through the system. However, in the longer term, the expectation is that the balance will shift to the front end of the process. Capacity will be available to support early judicial case management which, in turn, will negate the need for an intermediate diet. Trial court loadings will be based on the expectation that evidence will be led in those trials listed to call.

3.13 One issue that has been raised in the course of the Pilot is the two week continued without plea timescale in Domestic Abuse cases. Feedback from some defence agents has suggested that the timescale is too short and that some extra time at the beginning of the process to support resolution, may be beneficial. As the availability of early disclosure and the early engagement between the parties continues to improve, the expectation is that parties will adjust their business model to align with the Pilot timescales rather than adjusting the Pilot. However, concerns raised will be the subject of further consideration.

### **Scheduled Trial Impact**

3.14 As noted at paragraph 2.28, the increase in the rate of early resolution rate at the Pilot courts may be having a positive impact on the volume of scheduled trials at those courts.

### **Case Conclusion Timescales**

3.15 As the Pilot continues to embed, there is an expectation that there will be a positive impact on the case conclusion timescales, with improved journey times for those involved in the summary criminal process. This will be a focus of future analysis.

*"This initial evaluation provides very encouraging reading and the benefits which this initiative delivers are tangible and make a real positive improvement for those who have been part of the initial Pilot. The strong leadership and effective collaboration among justice partners has delivered positive results and there is no doubt in my mind of the improvement this makes to our summary justice process. The expansion of the Pilot will help further define what the overall impact of this change can make once applied more widely which I welcome and look forward to."*

*David Fraser, Executive Director, Court Operations*

## DEFENCE AGENTS

*“...Overall, the impact of the pilot scheme has been positive from a Defence Agent’s point of view, and despite the original concerns about the level of engagement that would be required. Everyone seems to be working towards the same goal of resolving cases that can and should be resolved and in the cases that cannot be resolved, a trial is fixed.*

*I think the criminal Bar in Dundee has been pleasantly surprised by how the pilot has been operating”.*

*Anika Jethwa, Defence Agent*

3.16. In the design of the SCM model, it was recognised that the automatic provision of key evidence in domestic abuse cases and “specified disclosure” of material in any other case where that may assist in discussion, should put the defence in a significantly different position from the early stage of the case. It would allow the defence to engage more meaningfully with the Crown on both plea and resolution, failing which, on the agreement of evidence. The expectation was that the model would lead to efficiencies for defence agents and, for accused persons, there would be the opportunity for matters to be resolved at the earliest possible stage in the process.

3.17 Defence representation on the Project Board was key to ensuring that the views of defence agents were taken account of in the design and development of the model and that there was effective communication with defence agents, at national level, on progress and any key areas of note. On securing the commitment of defence agents to fully engage with the Pilot at the end of January 2023, defence representation on the Board was extended to include a defence solicitor from one of the Pilot courts (Dundee). This aimed to ensure defence input to the development of the approach, particularly from a Pilot court perspective, as the model embeds. Throughout their involvement, the defence members of the Board have provided an essential communication link between the Board and profession.

3.18 Following the commitment to fully engage with the Pilot, the positive uptake of the Pilot measures has been evidenced in the Legal Aid statistics produced by SLAB referred to at para 2.14 above. This has been readily acknowledged by the defence members of the Project Board.

3.19 Peter Lockhart, defence agent, Project Board member and former member of the Summary Procedure Reform Board and Anika Jethwa, defence agent, Dundee and Project Board member, reflect on how the system is working and the benefits and opportunities for defence agents arising from the Pilot Approach:

*“Once full engagement was achieved in January this year, the number of cases resolved at pleading or continued pleading diet, has improved considerably. The knock-on effect is the*

*number of civilian and Police witnesses has reduced dramatically. With the changes in Legal Aid, all of this is good news for Defence Agents. Cases are resolved, sooner rather than later, reducing the number of unnecessary Court appearances.*

*The benefits and opportunities for Defence Agents are clear to see. Being provided with full disclosure at the earliest opportunity, enables instructions to be taken from clients, pleas negotiated, where possible. If this is not possible, both Crown and Defence should be aware of the essential points in dispute. This should result in further agreement of evidence and a reduction in the number of witnesses. Only those witnesses, essential to determine the issues, should be cited. That being the case, it might be possible, at some future date, to dispense with PIDMS and Intermediate Diets. These factors taken together, will reduce the amount of unproductive time Defence Agents spend in Court. This in turn, albeit while Legal Aid rates do not equate to private practice, should improve the profitability of Defence Agents business model”.*

*Peter Lockhart, Defence Agent*

*“It is clear from the figures that Dundee has “fully engaged with the pilot scheme” and the Defence Bar within this pilot Court are more than happy with the way the pilot has rolled out.....agents have found it helpful that the prosecutors have spoken to the complainers in advance of case management hearings which has helped in resolution of cases and focusing of minds.*

*The pilot scheme has been of assistance in focusing the issues, so even for the cases which cannot be resolved there is often a reduction in the witnesses that are required. Defence preparation is taking place at a much earlier stage. There is far more detailed consultations with clients at the outset. In Dundee, the case management hearings call after the intermediate diet court and there is a designated Prosecutor who is available in the morning, this assists greatly in discussions, that have to take place in respect of resolution and/or cases that require a trial to be fixed. It’s very helpful to have a prosecutor to speak to who has read the case and looked at evidence at such an early stage. Previously these discussions were taking place at a much later stage. It is normally the case that thereafter no PIDM or intermediate diet is fixed for cases that have been through the case management hearing and a straight trial is fixed which cuts down in procedure.*

*Overall, the impact of the pilot scheme has been positive from a Defence Agent’s point of view, and despite the original concerns about the level of engagement that would be required. Everyone seems to be working towards the same goal of resolving cases that can and should be resolved and in the cases that cannot be resolved, a trial is fixed. I think the criminal Bar in Dundee has been pleasantly surprised by how the pilot has been operating”.*

*Anika Jethwa, Defence Agent*

## ASSIST

*“The court stuff is such a big scary machine and I’ve never been through anything like this before. I really appreciated the conversation I had with \*PF depute\* - she was able to answer some questions for me and explain some things I’d been worried about. It really makes a difference being able to speak to someone directly involved in the case.”*

*A client of Dundee ASSIST*

3.20 Lynn MacDonald, Head of Dundee ASSIST, reflects upon how COPFS’ new approach to engaging with victims of domestic abuse is improving the quality of service provided to victims of domestic abuse:

*“Dundee ASSIST feel that the new COPFS initiative around engaging with victims of domestic abuse is a real positive. Victims are often extremely anxious around the court process and can feel quite isolated in that. Often, they will reflect on the fact that the accused get to have time with their solicitor but that they, themselves, can feel quite unprepared and in the dark about it all. Dundee ASSIST work with clients to try and ease some of the anxiousness around the whole process and with the new initiative, the fact that victims get to talk a prosecutor, can make them feel more confident and validated. It puts a more ‘human’ aspect to what can be a really daunting and overwhelming experience for victims of domestic abuse.”*

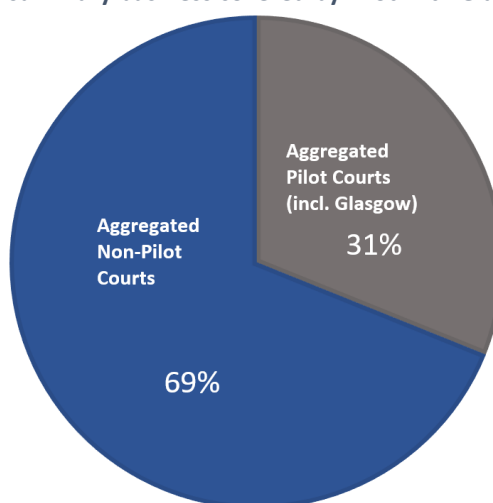
## 4. NEXT STEPS

### *Pilot Expansion*

4.1 The Pilot has been subject to ongoing monitoring and review since its commencement in September 2022. The intention was that regular interim evaluations would allow consideration to be given to whether the Pilot could be rolled out to other courts and other cases before a full final evaluation.

4.2 In light of the positive outcomes being secured and the learning from the Pilot over the past 12 months, agreement has already been given to the inclusion of kennelling cases. Consideration is now being given to extending the Pilot to include cases which have been reduced to summary from petition. The Project Board have also agreed to preparatory work being commenced on the expansion of the Pilot to Domestic Abuse cases in Glasgow Sheriff Court. This has a projected commencement date of January 2024. The proportion of the sheriff summary business which would be covered by the Pilot with Glasgow included is shown in **Figure 18** below:

**Figure 18: Proportion of sheriff summary business covered by Pilot with Glasgow included.**



Data Source: SCTS

Note: The split for “all cases” and “DA” cases is very similar

4.3 In terms of potential impact, assuming the same level of engagement as Dundee, it is estimated that around 180 trials would not have required to be fixed at Glasgow during the Pilot period. The potential impact on witness citations is illustrated in **Figure 19** below:

**Figure 19: Witness Citation Projections All courts & Glasgow Sheriff court**

Witness citations (first cite) in Sheriff Court Summary business	Monthly average before Pilot	A: Actual monthly average reduction in Pilot period	B: Estimate of maximum reduction per month using Dundee reduction percentage	B-A: Estimated witness citation additional reduction <u>per month</u> if all courts used SCM	B-A: Estimated witness citation additional reduction <u>per annum</u> if all courts used SCM	Estimated Civilian witness additional reduction per annum due to SCM	Estimated Police witness additional reduction per annum due to SCM
National - all Sheriff Summary	15590	1656	3898	2242	26898	13449	13449
National - Domestic Abuse	4153	499	1329	830	9960	4980	4980
Glasgow - all Sheriff Summary	2652	186	663	477	5728	2864	2864
Glasgow -Domestic Abuse	694	62	222	160	1915	958	958

Notes

Dundee average monthly reduction is 177 (25%) for 'all Sheriff Summary' and 61 (32%) for Domestic Abuse  
 Glasgow 'actual reduction' (A) is estimated using non-Pilot court reduction of 7% for 'all' and 9% for DA  
 Civilian/Police witness split averages approx. 50%/50% (ignored small volume 'other' witnesses)

**Data Source: COPFS**

*Final Evaluation*

4.4 The Pilot is due to run for 18 months with a final evaluation and report by end of March 2024.

## **Annex 1: The Summary Case Management (SCM) Pilot Project Board Members**

Sheriff Principal Anwar (Chair)  
Sheriff Principal Murray (*to February 2022*)  
Sheriff Principal Lewis (*to July 2023*)  
Sheriff Principal Murphy  
Sheriff Principal Dowdalls (*from June 2023*)  
Sheriff Principal Wade (*from August 2023*)  
David Fraser, SCTS  
Aileen Horner, SCTS  
John Logue, COPFS  
Jim Brisbane, COPFS  
Jennifer Harrower, COPFS  
Assistant Chief Constable Wendy Middleton (*from October 2023*)  
Chief Superintendent Barry Blair, Police Scotland (*to January 2023*)  
Chief Superintendent Rob Hay, Police Scotland (*from January to September 2023*)  
Chief Superintendent Pat Campbell, Police Scotland (*from September 2023*)  
T/Chief Inspector Eddie Seery, Police Scotland  
Kingsley Thomas, Scottish Legal Aid Board  
Marie-Louise Fox, Scottish Legal Aid Board  
Peter Lockhart, Defence Agent  
Anika Jethwa, Defence Agent (*from March 2023*)  
Fiona Cameron, Scottish Government



## Annex 2: Key Performance Indicators & Technical Notes

KPI	
1	<p><b>That disclosure of the key material is available, within 3 days of receipt of a letter of engagement from the defence, in all domestic abuse cases at the first calling (custody, undertaking, cited).</b></p> <p>The number of times first disclosure of material is provided for Domestic Abuse cases within 3 working days of the date the letter of engagement is recorded as being received, expressed as a percentage of the total number of letters of engagement received then apply the RAG status using conditional formatting in Excel. <i>(Data Source: COPFS)</i></p>
2	<p><b>That targeted disclosure, where requested in non-domestic cases is provided to the defence at least one week in advance of a CWP.</b></p> <p>For non-Domestic Abuse cases where the Continued Without Plea diet (CWP) has been re-scheduled for case management related reasons: the number of times disclosure of material is at least seven days before the CWP date, expressed as a percentage of all disclosures of material then apply the RAG status using conditional formatting in Excel. <i>(Data Source: COPFS)</i></p>
3	<p><b>That the number of witness citations issued decreases.</b></p> <p>The percentage change in the average monthly number of witnesses cited in the Pilot period compared to the average monthly number cited in the pre-Pilot period then apply the RAG status using conditional formatting in Excel. <i>(Data Source: COPFS)</i></p>
4	<p><b>That the percentage of cases resolved at the first appearance increases.</b></p> <p>The monthly average volume of Sheriff Summary cases resolved at first appearance divided by the monthly average volume of Sheriff Summary cases that called at first calling expressed as a percentage. Construct for the pre-Pilot period and the Pilot period and calculate the percentage point difference then apply the RAG status using conditional formatting in Excel. <i>(Data Source: SCTS)</i></p>
5	<p><b>That the percentage of cases resolved at the CWP diet increases.</b></p> <p>The monthly average volume of Sheriff Summary cases resolved at continued without plea diet divided by the monthly average volume of Sheriff Summary cases that called at continued without plea diet expressed as a percentage. Construct for the pre-Pilot period and the Pilot period and calculate the percentage point difference then apply the RAG status using conditional formatting in Excel. <i>(Data Source: SCTS)</i></p>
6	<p><b>That the percentage of domestic cases requiring to call at an intermediate diet reduces.</b></p> <p>The monthly average volume of Sheriff Summary Domestic Abuse cases that call at Intermediate Diet divided by the monthly average volume of</p>

	Sheriff Summary Domestic Abuse cases registered expressed as a percentage. Construct for the pre-Pilot period and the Pilot period and calculate the percentage point difference then apply the RAG status using conditional formatting in Excel. ( <i>Data Source: SCTS</i> )
7	<b>That the percentage of domestic abuse trials in which evidence is led at the trial diet increases.</b>
	The monthly average volume of Sheriff Summary Domestic Abuse Evidence Led trials divided by the monthly average volume of Sheriff Summary Domestic Abuse cases that called for trial expressed as a percentage. Construct for the pre-Pilot period and the Pilot period and calculate the percentage point difference then apply the RAG status using conditional formatting in Excel. ( <i>Data Source: SCTS</i> )
8	<b>That the percentage of domestic abuse cases where number of days between First Calling for accused and Letter of Engagement is less than 15 increases.</b>
	The number of letters of engagement for Domestic Abuse cases received 14 days or sooner after the date of First Calling divided by the total number of letters of engagement received expressed as a percentage then apply the RAG status using conditional formatting in Excel. ( <i>Data Source: COPFS</i> )

KPI 'RAG' status for Red or Green

KPI 1 - G (90% or above) R (below 90%)

KPI 2 - G (90% or above) R (below 90%)

KPI 3 - G (decrease from baseline) R (no change or increase)

KPI 4 - G (increase from baseline) R (no change or decrease)

KPI 5 - G (increase from baseline) R (no change or decrease)

KPI 6 - G (decrease from baseline) R (no change or increase)

KPI 7 - G (increase from baseline) R (no change or decrease)

KPI 8 - G (75% or above) R (below 75%)

## **Annex 3: Technical Notes By Data Suppliers**

### **Scottish Courts and Tribunals Service (SCTS) Data**

The SCTS statistical information contained in this interim evaluation report is derived from a long-established series of internal monthly management information reports that are populated from a monthly data extract from COPII – the live operational case management system (an administrative database) used by the SCTS to record activity on criminal court cases. The internal management information reports that underpin this bulletin undergo robust quality assurance during the production process.

Court cases are held in public and may be reported on by the media unless the court orders otherwise, for example where children are involved. While the aim is for the statistics in this report to be sufficiently detailed to allow a high level of practical utility, care has been taken to ensure that it is not possible to identify an individual or organisation and obtain any private information relating to them. We have assessed the risk of individuals being identified in the SCTS data in this report and have established that no private information can be identified.

All counts are aggregated during the data extract process which ensures anonymity. No personal details relating to individuals or companies are seen by the producer team at SCTS.

COPII is not designed for statistical purposes. If data anomalies are discovered that require a revision or correction, the SCTS, will comply with Scotland's Chief Statistician's current revisions policy.

### **Crown Office and Procurator Fiscal (COPFS) Data**

The information in this interim evaluation report is taken from the live COPFS operational database used to manage the processing of reports submitted to Procurators Fiscal by the police and other reporting agencies throughout Scotland. It is designed to meet business needs in the processing of criminal cases, rather than for statistical analysis, and the information within it is structured accordingly.

Information on each case is added or amended on the database as the case progresses. The information provided in this report reflects what was recorded at the date it was extracted.

### **Police Scotland Data**

Information in this interim evaluation report is taken from manual data returns submitted to a central point within Police Scotland where the data is then collated. This process is primarily designed to meet business needs rather than statistical analysis.

### **Scottish Legal Aid Board (SLAB) Data**

Information in this interim evaluation report is taken from monthly management information reports derived from an administrative data base that receives online legal aid submissions from solicitors. This process is primarily designed to meet business needs rather than statistical analysis.