



Briefing for the Public Petitions Committee

Petition Number: [PE1567](#)

Main Petitioner: Donna O'Halloran

Subject: Investigating unascertained deaths, suicides and fatal accidents

Calls on the Parliament to urge the Scottish Government to change the law and procedures in regards to investigating unascertained deaths, suicides and fatal accidents in Scotland.

Background

The petition

The petitioner's key concerns are:

- that there should be a mechanism for challenging or reviewing Crown Office and Procurator Fiscal Service (COPFS) conclusions in relation to death investigations, and
- that families should be included more in the decisions reached in such investigations.

Fatal Accident Inquiries

Fatal Accident Inquiries (FAIs) are held to establish the circumstances surrounding certain deaths. They are presided over by sheriffs.

Mandatory FAIs must be held where someone dies in legal custody or in an accident relating to their work. An FAI can also be held where a death is sudden, suspicious, unexplained or gives rise to serious public concern. The Lord Advocate (through COPFS) has discretion to hold an FAI in these circumstances where he decides it is "expedient in the public interest".

COPFS carry out death investigations in a wide range of circumstances. However, only a small proportion of these result in FAIs. Approximately 5,500 death investigations are carried out every year, in comparison to 50 to 60 FAIs.

It is not possible to appeal the Lord Advocate's decision not to hold an FAI. There is also no mechanism to challenge the conclusions drawn by COPFS after a death investigation.

Judicial review

Certain official decisions can be the subject of a judicial review. Judicial review looks only at the procedural aspects of an official decision, rather than its strengths or weaknesses. It is also likely to be expensive. Broadly, a decision can be challenged by judicial review where it is argued that:

- the decision-maker acted outwith their legal powers,
- there was procedural unfairness in reaching the decision, or
- the decision was so unreasonable as to be irrational.

Human rights issues

Article 2 of the European Convention on Human Rights creates a right to life. The courts have interpreted this to include a duty on governments to investigate loss of life in certain circumstances. The purpose of such investigations is to ensure that laws protecting life can be enforced and that the state can be held to account where it is responsible.

The Scottish Government argues¹ that an FAI is not required in all circumstances to which Article 2 applies. Instead, the death investigation carried out by COPFS may meet the required standards.

Coroners' inquests

Certain deaths in England and Wales are investigated through coroners' inquests. A coroner's inquest must be held where there is reason to suspect: a death was violent or unnatural; the cause of death is unknown; or the deceased died in prison or legal custody.

There are significantly more coroners' inquests than FAIs. There were 29,942 inquests in 2013². However, coroners' inquests have a narrower scope. They will usually only look at when, where and how someone died.

Scottish Government Action

The Scottish Government commissioned Lord Cullen to carry out a review into FAI legislation in 2008. The [review report](#) (2009) contained a number of recommendations. Many of these are being implemented through the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill. This is currently making its way through the Scottish Parliament.

The Bill will not address the petitioner's key concerns. However, the Cullen Review made several recommendations which aimed to improve the communication between COPFS and bereaved families.

¹ See Policy Memorandum to the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill, paragraph 101.

² Ministry of Justice. (2014) [Coroners Statistics 2013 England and Wales](#).

The Scottish Government states that these recommendations have been implemented. In addition, COPFS has stated in previous evidence to the Public Petitions Committee³ that the material gathered during death investigations is available to families and can be discussed with them.

Scottish Parliament Action

The Justice Committee of the Scottish Parliament is currently considering the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill at Stage 1. Patricia Ferguson MSP has also secured the right to introduce a Member's Bill on this topic.

The Public Petitions Committee has previously dealt with a number of petitions in this area. These are summarised below:

- **PE 1501 (2013)** – the petitioner's main concern was that it is not possible for families to challenge a COPFS decision that a death is likely to have been self-inflicted or accidental.
- **PE 1280 (2009)** – the petitioner called for FAIs to be held when a person from Scotland dies abroad.
- **PE 1332 (2010)** – the petitioner's main concern was that there is no publically accessible investigation into some deaths, even where the circumstances are suspicious
- **PE 841 (2005)** – the petitioner's main concern was that lessons could be learned from road deaths if FAIs were conducted.
- **PE 767 (2004)** – the petitioner called for a review of the effectiveness of the 1976 Act.
- **PE 324 (2000)** – the petitioner's main concern was that there was no way to challenge the Lord Advocate's decision not to hold an FAI.

The Scottish Parliament also held a [plenary debate on 27 March 2008](#) looking at FAIs and surrounding concerns.

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5 May 2015

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³ Public Petitions Committee (2014). [Official Report 3 June 2014](#). Col 2321.

changes.

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