

Crown Office and Procurator Fiscal Service

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Your ref: PE01501
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Dear Convenor

CONSIDERATION OF PETITION PE01501 CROWN OFFICE AND PROCURATOR FISCAL SERVICE RESPONSE

There are around 13,000 deaths reported to The Crown Office and Procurator Fiscal Service (COPFS) annually, of which around 800 are classed as "self inflicted".

Whilst COPFS appreciates the general aims of the petition, COPFS considers that the proposals may have the potential to cause greater anxiety for many families and to inevitably prolong the whole process of deaths investigation, and has set out the reasons for that belief in its response to the petition questions, as follows: -

Q1: What are your views on what the petition seeks and the issues raised during the discussion at the meeting on 14 January 2014?

The Crown appreciates that this is a challenging and sensitive area for public authorities with the potential for a variety of quite different and opposing views to be expressed by families affected by bereavement in circumstances where self inflicted harm cannot be ruled out as the cause of death.

It is understood that the petitioner seeks to extend the mandatory category of Inquiry required to be held in Scotland to include all deaths investigated where the investigation by the Procurator Fiscal concludes that it appears most likely that the death was a result of self inflicted injury or cannot rule out the possibility of self inflicted injury.

However it is the experience of COPFS that most families in such circumstances do not wish a mandatory Inquiry in public to take place where an investigation concludes that the circumstances point to the potential of the death having resulted from self inflicted harm.

An airing of the particular background to such deaths in public can be extremely intrusive to the bereaved families and may prove very painful and distressing for families and friends of the deceased. COPFS understands that the vast majority of families are satisfied with the investigative process and are relieved where it is decided that no such Inquiry in public is necessary.

In Scotland by convention the word suicide will not appear on a death certificate only the actual mechanism of death. It is also the case that the Crown does not publicly confirm that any death was as a result of suicide, but will privately advise the General Register for Scotland if it appears that the death resulted from 'intentional self harm,' or if it does not appear possible to confirm if that was the case or not, to allow for as full and accurate statistics as possible to be collected.

The role and function of COPFS with respect to deaths in Scotland differs from that of a coroner in England and Wales.

A coroner is an independent judicial office holder, either medically or legally qualified, who inquires into violent or unnatural deaths, sudden deaths of unknown cause, and deaths which have occurred in prison. Where suicide is suspected, then in England and Wales a coroner's inquest is mandatory regardless of the wishes of the bereaved family.

An inquest in England and Wales is a limited, fact-finding inquiry, to establish the causes of a death. It must be held in public and members of the public including media reporters have the right to attend. If the coroner decides it is important to do so, then apparent suicide notes and other personal communications will be read out at the inquest and in any event evidence will have to be led regarding the circumstances surrounding the death. In cases with the potential for a finding of death as a result of, or possibility of, self harm then often that evidence is likely to have to cover a wide range of very intimate and personal detail regarding not only the deceased, but also in many cases family members and friends.

Witnesses are required to give evidence and often the contents of letters, notes or electronic messages are referred to or read out. Witnesses evidence and the contents of documents and electronic messages are often reported though the media. There is the potential for revelation in public of matters of an intensely personal nature in connection with the deceased or family and friends. Examples which are frequently seen in media reports around coroners' inquests include material about marital infidelity, sexual and mental health issues.

Understandably this can have a devastating effect on the private lives of relatives and friends already struggling to cope with bereavement. The Committee will be aware of the widespread media reporting of a number of coroner proceedings in England and Wales in recent times where highly personal details have been reported as a result. Examples include evidence reported from the inquest around the mental health and marital relationship of PC Rathbone who had been the victim of an attempted murder by shooting and received horrific permanent injuries and who subsequently died from injuries which were apparently self inflicted.

In Scotland, as well as acting as the local independent public prosecutor in the public interest and investigating, under the authority of the Lord Advocate, deaths which appear to be suspicious where it seems from the outset to have arisen from criminality or where criminality cannot be ruled out, the Procurator Fiscal is also the public official who investigates all deaths where the circumstances are thought to require further explanation.

There are a myriad of types of death that may require further explanation and will be subject to investigation by the Procurator Fiscal such as those which appear to have been as a result of accident, medical error, public health hazard and intentional self-harm.

All investigations by Procurators Fiscal in respect of deaths in Scotland begin by ascertaining the cause of death. Most deaths reported to the Procurator Fiscal which require further explanation are reported initially because a doctor is unable to confirm the cause of death and therefore unable to issue a death certificate. The requirement to report deaths which cannot be immediately certified by a doctor is necessary not only in order to minimise the risk of undetected homicide or other crime but also in pursuance of the public interest to eradicate dangers to health and life, to allay public anxiety and to ensure that full and accurate statistics are compiled.

The vast majority of deaths reported are as a result of natural causes and do not require further investigation once the cause of death has been ascertained by expert medical examination.

Those that do tend to require some further investigation include, where the circumstances are thought to have been possibly as a result of accident, medical error and intentional self-harm

In some cases, the Procurator Fiscal will decide that the necessary further investigations include instructing the police to interview witnesses and seize relevant items. The Procurator Fiscal will also seek any necessary relevant expert assistance of whatever type considered appropriate in the individual circumstances, such as expert review of medical treatment, to enable a full investigation of the circumstances of death to take place.

The Procurator Fiscal will take steps when necessary to secure and preserve evidence relevant to the rights of interested parties which may vary with the circumstances of the death. This is to ensure that evidence is available not only if it is decided that a Fatal Accident Inquiry (FAI) is to be held but also for the purposes of the next of kin, if they wish to raise civil proceedings.

When the Procurator Fiscal is of the view that all necessary investigation in the public interest are complete, consideration is then given to what further procedure, if any, is required, including submitting a report to Crown Counsel with recommendations as to whether or not an FAI should be held.

Apart from the limited instances listed in the [Fatal Accidents and Sudden Deaths Inquiry \(Scotland\) Act 1976](#) in which an inquiry is mandatory, in Scotland the decision to hold an FAI is at the discretion of the Lord Advocate and takes place after consideration by Crown Counsel of the investigations carried out by the Procurator Fiscal on behalf of the Lord Advocate.

When considering whether or not to instruct the local Procurator Fiscal to petition the local court to hold a discretionary FAI, the test which Crown Counsel apply is whether or not it appears to be expedient in the public interest to hold an inquiry into the circumstances of the death.

The views of the family of the deceased are taken into account in deciding whether or not to hold a discretionary FAI however the Procurator Fiscal and Crown Counsel are required to act in the public interest rather than in accordance with the wishes of any particular individual.

In Scotland each FAI is open to the public and normally held in the Sheriff Court local to the place where the death occurred. Reporting restrictions imposed by the court are rare. The Sheriff presides over the Inquiry and it is the Sheriff who determines what procedures should be followed in court, determines what the findings in fact are and any further determination to be set out including any recommendations that are to be made. As set out by Section 6 of the 1976 Act -

Sheriff's determination etc.

- (1) At the conclusion of the evidence and any submissions thereon, or as soon as possible thereafter, the sheriff shall make a determination setting out the following circumstances of the death so far as they have been established to his satisfaction—
 - (a) where and when the death and any accident resulting in the death took place;
 - (b) the cause or causes of such death and any accident resulting in the death;
 - (c) the reasonable precautions, if any, whereby the death and any accident resulting in the death might have been avoided;
 - (d) the defects, if any, in any system of working which contributed to the death or any accident resulting in the death; and
 - (e) any other facts which are relevant to the circumstances of the death.
- (2) The sheriff shall be entitled to be satisfied that any circumstances referred to in subsection (1) above have been established by evidence, notwithstanding that that evidence is not corroborated.
- (3) The determination of the sheriff shall not be admissible in evidence or be founded on in any judicial proceedings, of whatever nature, arising out of the death or out of any accident from which the death resulted

Any airing of the particular background to any death where the evidence is clear that it appears to have resulted from self inflicted harm or where that possibility cannot be ruled out in public, has the potential to be extremely intrusive for the bereaved family members and may prove very painful and distressing for them and friends of the deceased. From significant experience in meeting with such bereaved families, COPFS understands that the vast majority of families who find themselves in such tragic circumstances are satisfied with the investigative process and the conclusion reached by the Procurator Fiscal as to the circumstances, and are relieved when they are able to be advised of the results and that it has also been decided by the Crown that no such Inquiry in public is necessary.

Q2: Please detail how you engage and consult with family members in the current process?

In October 2010, COPFS launched the Scottish Fatalities Investigation Unit (SFIU), a specialised unit to take on responsibility for investigating all deaths that required further investigation allowing such investigation to be carried out thoroughly and expeditiously by dedicated specialists. As part of its duties SFIU is the central point for liaising with the nearest relatives of a deceased's family. In addition to expert investigative staff, SFIU has a dedicated and very experienced member of the COPFS

Victim Information and Advice (VIA) staff who is specifically trained on dealing with bereavement to assist with this liaison process.

SFIU provides general information to nearest relatives on the investigation of deaths by the Procurator Fiscal; it engages and consults with families of the deceased throughout the investigation keeping them apprised of the outcome of investigations; and it provides them with reasons where the Lord Advocate decides not to apply for an FAI. This engagement is done sensitively, an assessment having been made in each case as to the most appropriate method of communication in line with families expressed wishes and therefore may be done by letter, telephone or by face-to-face meetings. In many instances different relatives may wish to have different types of response and this is accommodated.

Q3: The petitioner seeks to involve the family in the whole process with full access to information. What more can be done to meet the concerns of family members, short of holding an FAI?

In any death, COPFS discloses information in a sensitive way to the bereaved family members. A copy of the post mortem report is provided to the family if they wish. This is sometimes arranged through the family GP where, for example, medical terms require to be explained and the family prefer that is done in such a setting. SFIU also provide the family with other information, where the law allows. Examples include toxicology reports, collision investigation reports or vehicle examination reports. Reference is made to previous evidence and information that has been provided by COPFS to the Justice Committee in relation to what information is given to families where there has been a fatal road collision, and the sensitive handling for the provision of that information ([letter from COPFS 13 March 2013](#); [Justice Committee Report 7th May 2013](#)). In most instances it will be the case that, if they wish, family members will be provided in person with copies of reports prepared for the investigation by any technical or forensic experts such as road policing, scientific and medical experts. They will also be advised of the names of witnesses who have provided statements to the police.

Where the family of the deceased wish to be advised of the information uncovered as a result of the investigation then SFIU will appraise them of what the investigation has found and share all relevant information. If family members wish to have sight of evidence obtained during the investigation such as pathology or other expert reports and photographs then this will be arranged. Any further investigation that may be required as a result of additional matters which may be raised by family members will be considered and if appropriate instructed and the results explained. The decision as to what enquiries require to be carried out to fully inform the investigation rest with the Procurator Fiscal.

However access to copies of all information engathered in investigations would not, in most cases, be considered appropriate by COPFS as it would undoubtedly contravene legal obligations which public authorities, including the police and COPFS, have under legislation such as the Data Protection Act 1998

It is well recognised that the protection of the overarching public interest requires that the specific results of police and prosecutorial investigations remain confidential unless criminal or FAI proceedings in court allow evidence to be led.

It is for that reason also that there are specific exemptions under the Freedom of Information (Scotland) Act 2002.

For example family members may express a wish to access all witness statements taken by the police, but the legal position is that the police are legally entitled to obtain witness statements only to assist their investigation of accusation of criminality or of a death which requires further explanation. They are not at liberty to pass on such statements to third parties.

They may pass these to the Procurator Fiscal legally, but solely for use by COPFS in the context of the Crown's investigation, and thereafter while COPFS may arrange for disclosure to another party, the scope of such provision of copy statements is strictly limited under the rules of disclosure for court proceedings only.

That means that witness statements obtained by the police are usually only provided to legal representatives.

However, where a family is not going to be legally represented at an FAI there are mechanisms for information, such as witness statements, to be shared for the strict purpose of allowing the family member to prepare to represent themselves at the FAI. Where such an instance arises, the material is provided following the obtaining of strict undertakings from the person receiving it around the use to which it can be put.

COPFS recognises the needs and wishes of the family of the deceased are very important and should always be given proper and careful consideration. There is also a need for an independent investigation and an objective assessment of the circumstances to be carried out by the Crown on behalf of the wider public interest.

Q4: What is your view on the suggestion that inquests similar to the coroner system in England be introduced?

As noted in question 1, the Procurator Fiscal, who acts on behalf of the Lord Advocate, is independent of the police and the court. It is the duty of the Procurator Fiscal to investigate all deaths which require further explanation.

The Lord Advocate has discretion whether or not to hold an FAI, apart from the instances in which an FAI is mandatory.

Article 2(1) of the European Convention on Human Rights (ECHR) imposes on member states an obligation to ensure that there are effective procedural laws that protect the right to life, and, in cases involving state agents or bodies, to ensure their accountability for deaths occurring under their responsibility. Where the Inquiry into the cause of death is not a mandatory requirement, the Lord Advocate currently has discretion, taking into account Article 2(1) of the ECHR, to instruct the Procurator Fiscal to petition the court to hold an FAI. Parties such as close family members who can demonstrate personal interest also have the right to challenge the decision of the Lord Advocate by means of a Judicial review. Such a remedy has been sparingly used.

A Coroner's Inquest into suspected suicide is mandatory and does not take into account the public interest test.

As previously explained above, COPFS does not agree that there appears to be any public wish for the introduction of a coroner system such as that in England and Wales. COPFS considers that the introduction of such a system of mandatory public inquiry would burden many families as a result of the inevitable outcome currently experienced in England and Wales which sees highly sensitive and private information about the circumstances surrounding the death of a loved one being available to the public contrary to their family's wishes.

Yours faithfully

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