

**PE1501/F**

Petitioner Letter of 4 March 2014

Attn. Chris Hynd

**Re- Scottish Government, Police Scotland, COPFS and Victim Support  
Scotland Response to PE1501**

4th March 2014

In the following paragraphs I will attempt to give a response to the points raised, the barriers highlighted and the contradictions from the respective responses to our petition. It is evident that those against the proposal appear to view the petition from their organisational perspective without seriously addressing the core issue which revolves around families having greater access to information if requested. It is comforting that Victim Support Scotland supports the essence of the petition of putting families at the core of the process. A concern that arises is that some of the barriers raised do not fit in the context of the petition and may create a negative perspective when they have no legitimate basis.

To begin with I think that it is important to re-iterate the disparity of >30000 inquests/year in England in Wales to the 60 – 70/Year in Scotland and to restate the petition and the core aim that lies behind it.

***PE1501 Public Inquiries into Self-Inflicted and Accidental Deaths following Suspicious Death Investigations***

*Calls on the Scottish Parliament to urge the Scottish Government to introduce the right to a mandatory public inquiry with full evidence release in deaths determined to be self-inflicted or accidental, following suspicious death investigations.*

From these words, it is implicit that the timing of any **inquiry is after the official investigation** and actions are deemed as **complete**. The **right to a mandatory inquiry** means that it is a public review that is available **if the family deem it necessary** and in this petition it is **limited to investigations into deaths that were initially deemed as suspicious**. In essence this about giving families the right to question, learn and challenge in a public environment if required.

It is important to realise that the petition was intentionally written to ensure that an inquiry would only take place if requested and therefore bereaved families not wanting any more publicity also have their rights considered. (re- COPFS feedback) Also, the intent that any inquiry only takes place upon a decision being made is that it is explicit that the investigation has been completed and therefore, the inquiry does not delay any investigation (re- Government/COPFS Feedback). It also should have been clear from the petition meeting transcript that the type of inquiry requested is not an FAI or that as documented from the Inquiries Act 2005 (re- Government Feedback) and our intent was to have the simplest effective option possible that facilitated families having access to relevant material, as stated at the petition hearing.

Much of the feedback given by each of the departments was focussed on the current process of investigation, how it should work and highlighting where families should be involved through this process. In this area there is no dispute to the methodology or the intention of the investigation. I have no basis to dispute that the majority of investigations are thorough and satisfactorily carried out but these are not the ones that concern me. It is with this in mind and the actual needs of some families that I will review the feedback of the respective owners of the current system.

### **Police Scotland**

The most important thing to comment on is that Police Scotland does not present any tangible reason for opposing the petition.

It is evident that the current policy of Police Scotland in respect of deaths that are deemed to be non-suspicious, self-inflicted, or accidental; is that the provision of information will be the responsibility of the attending Constable. The family will be '*informed of the legal requirements in respect of certification of death and the role of the procurator fiscal*'. The letter goes on to state that Police Scotland "*encourages officers, acting within the limits of the law, to share appropriate information with families.*"

If the key phrases '*the limits of the law*' and '*appropriate information*' are left to the interpretation of an individual officer, then suspicion will remain that they can be used to avoid answering difficult questions.

Consequently, in cases where the initial assessment by the attending constable is one of 'self-infliction', there will be no further liaison or provision of information by the police. This is not a policy to put the needs of the bereaved family at the centre of the police response and provide all relevant information unless there is a valid reason for non-disclosure.

In the interests of accuracy we would also point out that under the heading '*What is your view on the suggestion that inquests similar to the coroner system in England be introduced?*' ACC Graham makes reference to the inquest into the fatal fire at Bradford, and the later inquest into the Hillsborough Tragedy. He suggests that we were using the Bradford Fire as evidence of the efficacy of the Inquest system itself and points to Hillsborough to counter this argument. It is not correct to say that we referred to Bradford as a good example of the inquest system.

As the transcript shows, at the Petition Hearing John Wilson MSP asked a question regarding the possibility of a coroner's court type establishment be a good option to help families get the type of information that you want them to have? Would it avoid having to get full establishment of an FAI-type of court system?

We used the example of the tragic events in Bradford purely to illustrate that the inquest was concluded within a matter of days whereas the subsequent Public Inquiry lasted for many weeks. Incidentally, as someone who was present throughout that inquest, Tony Whittle can confirm that the bereaved families drew considerable solace from the evidence provided by survivors and rescuers, and from the insights that they gained by their presence at the hearing.

It is strange that ACC Graham highlights that while he has no experience of the Coroner's system, he appears not to have consulted four members of Police Scotland Executive that have serving experience in England since the impact of Article 2. Also before commenting on the limitations of the Coroners system by highlighting Hillsborough, he should have considered the following extract in response to Lord McCluskey published in The Scotsman on 17<sup>th</sup> January 2014 by Sir Stephen House;-

The chief constable writes: *"I view his comments as ill-judged, unjust, outdated and not entirely relevant to his supposed topic, which was proposed changes to corroboration.*

*"As leader of Police Scotland, I believe I speak for more than 17,000 police officers, as well as generations of retired officers, when I refute Lord McCluskey's **outdated views** on policing ...the interests of policing and public confidence are ill-served by his comments." He added: "**Of course a small number of officers let us all down, but the huge majority deserve support for the job they do. I hope his lordship reflects on this.**"*

[http://www.scotsman.com/news/politics/top-stories/corroboration-police-not-saints-remark-slammed-1-3271690?WT.mc\\_id=Outbrain\\_text&obref=obinsite](http://www.scotsman.com/news/politics/top-stories/corroboration-police-not-saints-remark-slammed-1-3271690?WT.mc_id=Outbrain_text&obref=obinsite)

This was in response to comments on corroboration in which Lord McCluskey cited Hillsborough (among others) as a concern about policing. In these almost identical response timeframes from Sir Stephen and ACC Graham, it seems it is ok for Police Scotland to use the Hillsborough example as a pertinent response for this petition when in fact it is also seriously outdated in this context. I think that in the context of the petition it is more important we consider Sir Stephen House's comment on the small number of officers that do let us down as something we must build provision for.

## **COPFS**

COPFS main objections appear to be on the basis of two main reasons:

- 1 - The proposals may have the potential to cause greater anxiety for many families.*
- 2 -Inevitably prolong the whole process of deaths investigation.*

As highlighted at the outset, neither of these are functionally the output of the petition if it was to be accepted. These appear to be based upon a literal acceptance of the Coroner system. While these could be disputed even for the Coroner's system, at no time has a complete implementation of the English Coroner system being prescribed through the petition, only as a means of highlighting the level of family participation that can exist. At the hearing we stated that there were opportunities for us to build something better, as implementation of Article 2 had been placed upon the Coroner's system rather than being developed ideally from scratch.

Significantly, the Crown Office and Procurator Fiscal Service (COPFS) do not express support for the Justice Minister's allegation of 'a lack of judicial independence', as a reason for rejecting the adoption of an inquest system. Quite correctly, they describe the Coroner as an 'independent judicial office holder'.

While COPFS talk of taking account of most bereaved families not wishing public hearings, they offer no explanation of what the phrase '*most families*' means as a proportion of the total. Nor do they explain what is done to meet the needs of those families who **do** want an inquiry. It is clear that, whilst a family's wishes are noted, they have in fact no say in the decision. This leaves families feeling they have inadequate information and no means by which they can challenge the evidence or the outcome.

The letter concludes with: *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.*

Victim Support Scotland (VSS), which works day in and day out with significant numbers of victims, and thus can be regarded as expert in this area, say: '*We support the general aim of providing a vehicle for families to receive full disclosure of information and to question the findings when the death of a loved one has been officially classed as self-inflicted or accidental by the Police and COPFS.*' The VSS experience of dealing with significant numbers of bereaved families does not lead them to the conclusion reached by COPFS.

In any event consideration of the family's wishes could be accommodated in new legislation. The issue is that, apart from a costly full FAI, no system currently exists for the family to see the evidence and, where they feel it necessary, to challenge it before a final determination of 'probable suicide' is made. Crucially, and unlike Inquests, the FAI provides no opportunity for the quality of the investigation to be questioned or challenged by bereaved families.

The letter continues: *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.*

This gives the appearance of 'sitting on the fence' and seems to be another example of unnecessary secrecy in respect of the way these matters are dealt with. Whether the word suicide is used publicly or not, bereaved families are left with a situation where their loved one has been deemed by the State to have killed themselves. The guilt and stigma are hard to imagine. Added to which there are examples of Insurance Companies refusing to settle death claims when a finding of 'probable suicide' has been made. So, despite the intended 'sensitive way' in which these cases are dealt with by COPFS, the distress caused to bereaved families is in fact increased by their policies.

I think we must also deal with some realities of the current system rather than the undoubted good intentions in which it was developed.

**Comment from family** currently (not the only one) trying to get information from Fiscal's Office "they refused me also won't give me copy of report put to crown"  
"police told me verbally somethings none of which made sense to me, guess i now

need to find out how to get a judicial review of the inquiry.” “what about when the pf's are [poor] at their job and do only multiple deaths warrant attention? there should be the opportunity for family who know the case inside out to put forward their opinions personally to the crown. As I know pf in our case makes me sound irrational without foundation”

**An article ran by STV on 24<sup>th</sup> June 2013 - A survey by the FDA union of almost 1000 members in the legal sector found 81% had concerns, which the union said should act as a "wake-up call" to ministers.**

*Almost a quarter of prosecutors, 23%, said insufficient time to prepare cases was a serious cause of stress, with some of those surveyed said it could lead to mistakes in high profile cases.*

*Of those who took part, 46% said they had unrealistic time pressures in work, 33% believe they have unachievable deadlines, and **39% have to neglect some duties** because they have too much work to do.*

*FDA Scottish secretary Jim Caldwell said: "This survey shows clearly that there are **serious problems within Crown Office Procurator Fiscal Service** that need to be addressed urgently.*

<http://news.stv.tv/scotland/230617-fda-union-prosecutors-complaints-over-workload-should-be-wake-up-call/>

If there are areas to be neglected and time pressures are high, surely we have to ask which areas are most likely to suffer? Will a Fiscal be predisposed to request an FAI where they are worried about their own attention to detail or have a serious conflict with a family?

## **Government**

I believe that most of the government responses are covered throughout this document. We are not requesting FAI's, nor are we asking for full blown Public Inquiries as laid out in 2005 Act but a means of greater family access to information with public scrutiny.

There was an assertion made that the time taken for a Coroner's inquest was similar to an FAI. There was no evidence given to support this assertion, as we said at the hearing of the petition, the Coroner for Leeds conducts 500 inquests a year. They are routinely held soon after the death, are conducted sensitively and efficiently and in most cases do not involve any legal costs to the bereaved family.

The Government response is insightful in that it states that it intends to fully implement the recommendations from Lord Cullen from 2009. This report was carried out by Lord Cullen with the clear statement that the Government was happy with the FAI process before he commenced? It should be noted there are some key points from this report that highlight the focus of his report and issues surrounding the broader system that relates to our petition.

1. "1.1 I was appointed by the Scottish Ministers "to review the operation of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976, which governs the system of judicial investigation of sudden or unexplained deaths in Scotland, so as to ensure that Scotland has an **effective and practical system** of public inquiry into deaths which is fit for the 21<sup>st</sup> century". (*This is about a Judicial system not about who or what should be included*)
2. In para 1.2 he says: **It was clear to me that the Scottish Government considered that the system of fatal accident inquiries ( FAIs) worked well** (*Hardly an indication that he intended to start with a clean sheet and design a system to meet the needs of the public.*)
3. para 3.38 the Prison Service pointed out that "*procurators fiscal have on occasions unwisely relied on police statements instead of taking precognitions*", so there is clear evidence that police statements cannot be relied upon to tell the whole story.
4. Para 4.28 It was suggested that other deaths should also be subject to mandatory FAIs. They include unexpected deaths of young people; drug-related deaths; road deaths; fatal fires; and unresolved murders or homicides. (See also Patricia Ferguson MSP Consultation paper)
5. Para 4.29 I am not persuaded that the case for FAIs in these cases is such that, regardless of the circumstances, it should be in the public interest that the deaths must be the subject of an FAI. As I have already said, the Lord Advocate can still exercise his or her discretion in respect of them and, indeed, may be under a duty to apply for an FAI where not doing so would breach article 2 of the ECHR.

While we see concerns mentioned over the role of the Fiscal, we also see a call from others for further inquiries and while it is stated that these fall in the remit of The Lord Advocate, there has been no increase in FAI's actually applied in this timeframe. It should be clear that there are a number of groups asking for greater access to information and the right to question decisions.

With regards the examples given by Mr McAskill in relation to Public Inquiries he cites three such cases. It is interesting that all three took great effort and cost on behalf of those impacted to get a hearing. The Hepatitis Public Inquiry actually came about and was actually referenced in Lord Cullen's report as it concerns a ruling against The Lord Advocate who refused an FAI into this issue suggesting there was no basis of serious public concern.

Page 9 see Kennedy and Black v. Lord Advocate 2008 SLT 195.

## **Conclusion.**

I have to start this section with a question. Why do none of the respondents deal with the Article 2 requirement of "sufficient public scrutiny". Why does our nation have such an aversion to public inquiry/disclosure and family consideration while hiding behind legal process?

It is clear that we have a significant gap between we the petitioners and Victim Support Scotland in contrast to that of the Organisations that today make up the present Judicial system. On one hand it is asked that bereaved families are placed at the centre of the process and consideration is given to their rights for closure and in some cases even defend their loved one, this perspective is supported by many people who have been exposed to the failings of the existing system. On the other we have a position given that this would be costly, there is no need and it would impact on other bereaved families. I hope it is clear that while these latter aspects need to be considered they are not barriers but issues that are considered within the petition.

It is imperative that the processes used in dealing with these issues take account of the reality we face and not the hypothetical perfection of the existing system. We can see from Police Scotland that there are a few officers that let everyone down, we see that some families are still frustrated and not trusting of the system, we see that The Lord Advocate can be wrong, we see from the FDA analysis that Fiscal's are under pressure and will neglect some duties. This latter point is supported in the comments from Lord Cullen as highlighted by prison Officers in the 2009 report.

If we can accept that families need information for closure, errors can be made, shortcuts can be taken, corruption can occur and that even individuals can jump to conclusion, is it not fair and proper to recognise that some families will have serious questions that need addressed. Even if the system is perfect and there are no issues, surely it is in everyone's interest to have this ratified publicly.

We contend that the situation could be dramatically improved if there was a genuine desire to seriously place bereaved families at the centre of any process, if, as a first step a bereaved family was provided with all the relevant information. Where necessary sensitive information, names and other personal details could be redacted as happens in criminal cases and managed through legal representatives if required. The family could then make a judgement about the proposed finding. In the event that they are content that the investigation was thorough and they accept the finding then no public inquiry would be necessary. However, in those cases where the family wish to challenge the investigation and/or its outcome, then a public inquiry on similar lines to the Inquest system would be held. This would have a threefold effect:

- 1 – Families feel empowered and actually become part of the system.
- 2 - It would provide a form of appeal and lead to more reliable outcomes
- 3 - Those charged with investigating deaths or reaching decisions about them would do so knowing that the quality of their work may well be subjected to public scrutiny, leading to improved performance and increased public confidence and further satisfying Article 2.

Ultimately though, this should not be about legal requirements but about making a **choice** on behalf of ordinary people.