



**THE LAW SOCIETY
of SCOTLAND**
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Call for views

PE1501/G

**Public Petitions Committee
Public Petition No PE1501**

**The Law Society of Scotland's response
March 2014**

Introduction

The Law Society of Scotland aims to lead and support a successful and respected Scottish legal profession. Not only do we act in the interest of solicitor members but we also have a clear responsibility to work in the public interest. That is why we actively engage and seek to assist in the legislative and public policy decision making processes.

To help us do this, we use our various Society committees which are made up of solicitors and non-solicitors and ensure we benefit from knowledge and expertise from both within and outwith the solicitor profession.

The Society's Criminal Law Committee (the Committee) welcomes the opportunity to consider and respond to the questions arising from the Public Petitions Committee Meeting on 14 January 2014 in respect of Petition PE1501 on public inquiries into death and has the following comments to put forward:

Comments:

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

The Committee notes the petition seeks to introduce the right to a mandatory public enquiry with full evidence release in deaths determined to be self-inflicted or accidental, following suspicious death investigations. The Committee strongly believes that the issues raised are important.

The Committee proposes to focus on deaths determined by COPFS to be self-inflicted on the basis that information has been provided in respect of the number of cases annually in which such a finding is made. Furthermore, it is implicit in such a finding that the death was caused by a deliberate act.

It appears to the Committee that there is scope for confusion as to what is meant by a public inquiry. In its written response, the Scottish Government refers to full Public Inquiries (e.g. Inquiry into the Stockline explosion). From the petition and from the transcript of the meeting of 14 January 2014 it appears to the Committee that the petition is seeking the right to some form of judicial inquiry held in public (which might only last a few days), rather than a full Public Inquiry (which can last weeks or months).

It appears also to the Committee from its consideration of the written evidence of COPFS, that there may exist a degree of misunderstanding on what is sought by the petition. The petition does not appear to be seeking a mandatory inquiry in public in every case; rather, what the petition is seeking is to give family members the right to seek a judicial inquiry. The Committee generally endorses the very careful and reasoned analysis given in the COPFS written evidence as to why the majority of families would not wish a judicial inquiry. However, the Committee believes that that it would be wrong to attach decisive weight to the views of the majority of families. The Committee believes that if a family wish the cause of a death, which appears to have been deliberately inflicted, to be determined by the sheriff in whose jurisdiction the death occurred, then it is not unreasonable for the family to be able to request a hearing before the sheriff. It would be unfair to deprive a family of the right to request a judicial hearing on the basis that the majority of families would not wish a hearing or because COPFS deemed it not to be in the public interest. The facts and circumstances surrounding every death will vary.

The Committee questions whether all the families, who, according to COPFS, have either not sought a full inquiry and/or not expressed dissatisfaction with the police and COPFS inquiry, fully appreciated that some of the evidence gathered by the police and COPFS had not been disclosed to them. It is clear from the written evidence of COPFS that, for the reasons given, not all of the evidence gathered is disclosed to families. Given that there is not full disclosure, the Committee has reservations about accuracy of the Scottish Government statement that “the nearest relatives are now given the opportunity to be fully engaged in the investigative process by COPFS”. In the absence of full disclosure, can there be full engagement?

It is not apparent to the Committee what record is kept by COPFS in respect of the minority of families who over the years have expressed dissatisfaction with the investigations of the police and COPFS in cases where there was no FAI.

The Committee respectfully invites the Public Petitions Committee to consider requesting COPFS to provide the Public Petitions Committee with details of the level of investigation carried out into the 4000 deaths classed as self-inflicted for the last 5 years. On the basis of the information provided in the Scottish Government’s letter that out of over 13,000 sudden, suspicious or unexplained deaths there are only 50 to 70 FAIs, it seems to the Committee

likely that very few FAIs will have been carried out in respect of deaths classed as self-inflicted.

The Public Petitions Committee might also wish to consider how the number of judicial inquiries in Scotland into self-inflicted deaths compares with the number of judicial inquiries carried out in other modern jurisdictions.

Given the high level of apparent suicides in Scotland, the Committee strongly believes that the issue of the right of a family to request a judicial hearing in respect of an apparently self-inflicted death is important. The Committee believes that there would be merit in ascertaining what demand there might be for an independent judicial inquiry in public into an apparently self-inflicted death if family members had a statutory right to apply to a sheriff to request an inquiry. If only a small number of families are dissatisfied, then the creation of a statutory right to request an FAI might result in a very small number of additional hearings per annum throughout Scotland; such a hearing would provide closure to those families with unanswered questions; it should have a minimal economic impact but reinforce public confidence in Scotland's system for investigation of apparently self-inflicted deaths. In such a system, the family would have a right to request an FAI. Ultimately, it would be a matter for the sheriff at a preliminary hearing to decide on the information placed before him by the family of the deceased and by COPFS whether or not to hold an evidential enquiry.

In recent years, there has been a developing trend in Scotland and in Europe to afford greater recognition the rights of victims in the justice system. Allowing the families of deceased, in which the cause of death has been assessed by COPFS as self-inflicted, the right to request to an independent judicial hearing might be seen as affording similar recognition to families. In such cases where the family does wish an FAI, the Committee suggests that there should be a rebuttable presumption in favour of holding an FAI. Unless COPFS satisfies the sheriff at a preliminary hearing that an FAI is not appropriate then an evidential hearing will be ordered. It would be implicit in such a system that the fixing of such a preliminary hearing would create a duty of full disclosure to the family of the deceased subject only to the type of restrictions which now apply to disclosure in criminal proceedings.

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

The Committee prefers not to comment in detail on the above proposal. It is quite clear that the systems in the two jurisdictions are radically different.

The Committee notes that the Scottish Government states in its written evidence it is not attracted to the idea that a system of coroner's inquests might be adopted in Scotland on the basis that the coroner must perform the very difficult task of investigating evidence and then making a judgement on evidence. The Committee questions whether this position withstands close scrutiny: it seems to the Committee very difficult to distinguish the coroner's dual role of investigating and judging from the role which COPFS performs in the vast majority of cases where there is no FAI. According to the Scottish Government, in respect of over 13,000 annual sudden, suspicious or unexplained deaths in Scotland only 50-70 FAIs are held.

The Committee notes the reference in the COPFS written evidence to judicial review. Judicial review is not available in local sheriff courts: in civil matters, it is only available in the Court of Session in Edinburgh. A family who wanted to challenge the COPFS finding of a death being self-inflicted may find it very difficult to identify a legal basis for seeking judicial review of that finding. The Court of Session, when judicially reviewing the decision, would examine the way in which that decision was made. The Court of Session would consider such matters as whether the decision was wrong in law, whether the correct process was followed and whether or not all relevant information was taken into account. The Court of Session would not consider the merits or substance of a decision.

In criminal trials, confiscation proceedings and fatal accident inquiries, evidence is led and arguments are presented by COPFS in courts throughout Scotland. The courts often disagree with the COPFS assessment and analysis of the evidence led. In the Committee's view, it seems entirely reasonable that in a modern justice system families, who do not agree with the COPFS assessment and analysis of evidence, are provided with the right to full disclosure of evidence and the right to request a judicial hearing to determine whether or not the death of a loved one is self-inflicted.

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