Following Justice for Megrahi’s (JFM’s) submission to the Justice Committee of the Scottish Parliament (dated 23rd August 2013), regarding our interviews with DCC Shearer on 16th and 19th August, we wish to add the following in order to assist the Justice Committee in its consideration of PE1370.

On 20th September 2013, JFM despatched a letter, with several complementary inclusions, lodging formal complaints with the United Nations International Association of Prosecutors (IAP). The complaints related to the Scottish Cabinet Secretary for Justice, Mr MacAskill, and, in particular, against the current Lord Advocate, Mr Mulholland, [breaching] sections 1, 2, 3 and 4 of IAP’s ‘Standards of Professional Responsibilities and Statement of Essential Duties and Rights of Prosecutors’ (see http://www.iap-association.org/ressources/Standards_English.pdf).

We have taken this action in consideration of the claim by The Crown Office and Procurator Fiscal Service (COPFS), courtesy of a letter we received dated 22nd April 2013 from the Head of the Serious and Organised Crime Division of COPFS, Lindsey Miller, which indicates that COPFS adheres to the standards and principles laid out in the abovementioned IAP document.

I attach a copy of our letter to IAP and page three of the letter dated 22nd April 2013 from the Head of the Serious and Organised Crime Division of COPFS, Lindsey Miller, which raises the matter of COPFS’s apparent adherence to the principles of IAP, for your convenience. I hope this will be of assistance to you in your consideration of PE1370.

At a time when there is growing concern about the Crown Office and police handling of the whole Lockerbie enquiry this latest international complaint makes it even more important that our petition remains a live issue within the Scottish Parliament.

Not only are the Crown Office and police engaged in acting in their own interest by investigating the 8 criminal allegations we have made against them and others but, as we informed you in a previous submission, the Crown office has, without explanation, ordered the police to stop investigating 3 of the most central allegations.

As the 25th anniversary of the Lockerbie tragedy approaches the Scottish Government has apparently washed its hands of any responsibility for further action in relation to our concerns.

How much more important, then, that this affair remains a live issue within the Scottish Parliament and that the Justice Committee continues in its duty to, ‘scrutinise the policies and performance of the Scottish Government and its agencies in matters related to justice’; and ensures that this massive stain on our justice...
system is not buried in the cause of the unaccountable self-interest of our major prosecution agencies. Should you require further information or documentation regarding this matter, please do not hesitate to contact me.

Robert Forrester
Secretary
Justice for Megrahi
18 September 2013

Appendix

PE1370: Submission of a copy of a letter from Justice for Megrahi to the United Nations’ International Association of Prosecutors.

Dear Secretary General,

COMPLAINT

Background
On 13th September 2012, the Justice for Megrahi organisation (JFM) formally lodged a private and confidential complaint with the Scottish Cabinet Secretary for Justice Mr. Kenny MacAskill. This complaint consisted of six outline allegations against British nationals representing the Crown Office and Procurator Fiscal Service (COPFS), Dumfries and Galloway Constabulary (now termed Police Scotland Dumfries and Galloway Division) and forensic officials. For your convenience, a profile describing JFM, its history, constitution, membership and objectives is enclosed with this letter (inclusion 1).

The allegations covered attempting to pervert the course of justice, perjury, and the breach of section 44 (2) of the Police (Scotland) Act 1967 (violation of duty by a constable) in respect of conduct during the investigation into the downing of Pan Am 103 over Lockerbie, Scotland, on 21st December 1988 and the subsequent legal proceedings, including the Kamp van Zeist trial and conviction of Mr. Abdelbaset al-Megrahi. In our letter to the justice secretary we stated the following.

Given the controversy surrounding this whole affair we request that you give serious thought to the independence of any investigating authority you appoint. As a group we believe that you should appoint someone outwith Scotland who has no previous direct or indirect association with Lockerbie or its ramifications.

Before we had even received a response to our outline allegations or been asked to submit the detailed dossier we had prepared, our private and confidential letter to the Justice Secretary was passed to COPFS by Mr. MacAskill’s department (the Justice...
Directorate of the Scottish Government). This led to the COPFS issuing the following public statement to the media on 24th September 2012 (inclusion 2).

We are aware of allegations made by the Justice for Megrahi Campaign against a number of individuals in relation to the Lockerbie trial. These allegations are, without exception, defamatory and entirely unfounded. One of the allegations is also deliberately misleading in that it refers to an issue which has already been extensively and fully investigated by the Scottish Criminal Cases Review Commission which concluded there was no basis to refer the issue to the appeal court.

A further allegation made in the letter (break in at Heathrow) was fully investigated by the Appeal Court who heard evidence on the matter and concluded that it did not amount to a miscarriage of justice.

Furthermore, the SCCRC was also satisfied after full and proper investigation that there was no basis for concluding that evidence in the case was fabricated by the police, the Crown, forensic scientists or any other representatives of official bodies or government agencies. Had the SCCRC considered there to be any evidence of wrong-doing by any individual involved in the trial then it would have featured in their report as a potential ground of appeal and would have been taken up by Megrahi’s lawyers in his second appeal.

It is a matter of the greatest concern that false and deliberately misleading allegations have been made in this way in relation to a case which has followed the due course of law before the Scottish courts and resulted in a conviction which was upheld on appeal by five judges and subsequently a further appeal against conviction was abandoned by Megrahi himself.

The statement was reported by, inter alia, the Scotsman newspaper on 24th September 2012.

At no time, in no official JFM statement, written or otherwise, or in its allegations, have we accused any police officers or other officials of fabricating evidence. Nor could COPFS claim that our allegations were unfounded since, at the time, they were not in possession of the document detailing the specifics of our complaints and no investigation had been carried out.

When Mr. MacAskill finally responded to our letter, on 8th October 2012, it was by way of an intermediary, Mr. Neil Rennick (the Deputy Director of Criminal Law and Licensing at the Justice Directorate). Mr. Rennick informed us that if we wished our allegations to be investigated we must submit them to the Dumfries and Galloway Police, one of the two bodies we were accusing of serious criminal misconduct. The police are of course answerable to COPFS, also the subject of our allegations.

Having been offered no alternative, we complied with the Justice Secretary’s instruction, and in October 2012 we lodged our allegations under protest with the Chief Constable of Dumfries and Galloway Constabulary. By the time of submission our allegations had expanded to eight in total and were detailed in a thirty-nine page
document. Further material was submitted on 19th March 2013 as an addendum, and the composite document is attached as inclusion 3, provided in confidence.

On 21st December 2012 the Lord Advocate Mr. Frank Mulholland (head of COPFS) was interviewed by Mr. Magnus Linklater in the Times (Scotland edition). The article was entitled “Pro-Megrahi backers flayed by new Lord Advocate” (inclusion 4).

In this piece, it was claimed that
1. JFM’s allegations were without foundation.
2. That an outside counsel invited by the Lord Advocate to conduct an independent review of the evidence has also concluded that the conviction was sound.
3. That JFM was uttering “defamatory” comments against High Court judges who are unable to respond.
4. “I am hugely frustrated that there is an unfounded attack on the integrity of the judges involved in the process,” Mr. Mulholland said. “I saw a report on the BBC that [claimed] a high court judge – Colin Boyd, Lord Advocate at the time – perverted the course of justice. And it frustrates me that they’re not in a position to answer these allegations, these can be made without being challenged and without any real foundation.”

Our response to these accusations was
1. It is for an investigation to prove whether or not JFM’s allegations are unfounded.
2. No outside counsel has conducted a review of our allegations. What the Lord Advocate was referring to was that his predecessor, Lord Advocate Elish Angiolini, instructed an advocate depute to look over the COPFS’s case in 2007 as preparation for Mr. al-Megrahi’s second appeal.
3. JFM has made no allegations against their Lordships Coulsfield, Sutherland and MacLean, who presided over the Kamp van Zeist trial of Mr. Fhimah and Mr. al-Megrahi in 2000–01. Nor have we levelled any allegations against the judges who presided over Mr. al-Megrahi’s first appeal.
4. JFM has not levelled any allegations whatsoever against former Lord Advocate Colin Boyd.

What particularly concerns us about the above is that the head of the Scottish prosecutorial service finds it appropriate not only to vilify the complainant before an investigation has even been initiated but to [have also misunderstood the contents of the complaint].

On 16th and 19th August 2013 representatives of JFM met with Deputy Chief Constable Patrick Shearer (Senior Investigating Officer for the JFM allegations). These were Professor Robert Black QC (speaking to allegation 1); Mr. Iain McKie, Superintendent of Police Rtd (speaking to allegation 8); Dr. Morag Kerr (speaking to allegations 2, 4, and the addendum); and Mr. Robert Forrester (speaking to allegation 3).

At the earlier meeting Mr. Shearer informed the JFM representatives that, following discussions with COPFS, he had been instructed at that time not to call a fifth witness, Mr. John Ashton (author of Megrahi: You are my Jury, published in
February 2012 by Birlinn Ltd., Edinburgh), to speak to allegations 5, 6 and 7. Mr. Ashton, formerly a researcher for Mr. al-Megrahi’s defence team, established some eight years after the conviction that a crucial item of material evidence concerning a shard of printed circuit board was misrepresented at trial […] by a forensic witness. The reason provided by DCC Shearer for these allegations being sidelined for the foreseeable future was that they conflicted with COPFS’s own investigations, in which they are attempting to implicate other Libyan nationals they believe may have been complicit with Mr. al-Megrahi in the bombing of Pan Am 103.

We find this incomprehensible. Our allegations relate specifically to the conduct of British nationals regarding what we contend were their criminal acts during the investigation of the Lockerbie atrocity and the subsequent legal proceedings, between 1989 and 2000. We can see no possible link between these matters and any COPFS mission to incriminate further Libyan nationals in 2013. We have enquired as to what possible conflict might exist, but have not received a reply.

Breach of IAP Principles
In a letter to JFM dated 22nd April 2013 Lindsey Miller (head of the Serious and Organised Crime Division of COPFS) appeared to indicate that COPFS adheres strictly to the principles of the United Nations International Association of Prosecutors (IAP). Particularly, but not exclusively, these responsibilities include the duty of a prosecutor not to act in their own interest but always to serve and protect the public interest, be free from political interference, and generally to be to be consistent, independent, impartial and transparent.

It is our contention that both the Scottish Cabinet Secretary for Justice Mr. MacAskill and the Lord Advocate Mr. Mulholland have [breached] these principles and are in contravention of the IAP’s Standards of Professional Responsibilities and Statement of Essential Duties and Rights of Prosecutors (www.iap-association.org/ressources/Standards_English.pdf). Please see inclusion 5 appendix A for a more detailed list of standards that we believe have been breached.

We appeal to the IAP to intervene on our behalf in Scotland and to bring to bear whatever powers are available to ensure that our allegations are treated in accordance with the terms laid out as described above.

Conclusion
The above failures by the Crown to prosecute independently and in line with established principles have been the subject of considerable comment in Scotland.

Mr. Leonard Murray JP (retired), BL, SSC, KCJSJ, KCHS, who is recognised as one of the greatest criminal solicitors of his generation, has stated.

This is the most insidious and most frightening scandal in the judicial process of Scotland in living memory. And that is not just a hysterical outburst. It is quite unbelievable that Crown Office should act this way.

[...]
In a recent judgement in the Scottish Court of Session on 3rd September 2013, in the appeal by Kevin Ruddy against (first) the Chief Constable, Strathclyde Police and (second) the Lord Advocate, the ruling by Lord Eassie included the following (www.scotcourts.gov.uk/opinions/2013CSIH73.html).

[50] In our view, it is important to note what the ECtHR said respecting the burden of proof moving to the state, where matters lie wholly or largely within the exclusive knowledge of the state. We consider that it is a coherent and logical extension of that approach to the burden of proof that, where an issue arises as to a prima facie want of structural independence in the hierarchical structure under which any investigation bore to be carried out, the state should similarly be required to demonstrate the presence of the requisite structural independence.

And:
While counsel for the Lord Advocate submitted that in that observation Hale LJ may have been setting a ‘gold standard’, we did not understand him to contend that the adequacy of the reasons for rejection of a complaint of mistreatment by the agents of the state could not constitute an important element in meeting the need for there to be patent means for founding public satisfaction as to the impartiality and adequacy of the investigation.

Finally, the IAP may wish to compare and contrast the behaviour of COPFS with the views delivered by The Attorney General of England and Wales, Dominic Grieve QC MP, in a speech delivered on 9th September 2013 at the 18th Annual Conference and General Meeting of the International Association of Prosecutors in Moscow, entitled “The rule of law and the prosecutor”. (www.gov.uk/government/speeches/the-rule-of-law-and-the-prosecutor – also see inclusion 6.)

The destruction of Pan Am 103 was a heinous atrocity which killed 270 people. The trial which followed appeared to place the burden of proof on the defence rather than the prosecution. The resulting conviction was obtained, in our view, by reprehensible means including perjury. The result was a miscarriage of justice for Mr. al-Megrahi and a denial of justice to these 270 victims and their loved ones. We hope the IAP will be able to exercise its powers to assist those who are working to restore justice in this case.

Please do not hesitate to contact me should you require further information.

Robert Forrester
Secretary
Justice for Megrahi
September 2013