Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill

Written submission from Stuart Graham

Background

1 In writing this submission of an alternative that should be considered with consideration of FAI’s I should stress that it is not really an alternative but something that should be regarded as a proposal to sit alongside FAI’s.

2 I also write this as an individual with a very personal experience of FAI’s through having two carried out for family members. Through this I have witnessed very different issues being dealt with and resulting in very different degrees of satisfaction.

3 In the first of these cases there was an FAI carried out for the fatalities from the Chinook crash in the North Sea in 1986, my brother William was on this. The second was far more recent in the FAI looking at the circumstances of death for my stepson Colin Marr who died in very suspicious circumstances.

4 The outcome for the former was very important not only to the families but also for removing the possible risk for similar events to occur. The latter was far removed from providing any kind of satisfaction and in fact it was impossible to do so. Not only did the Sheriff comment on his belief that it should not be in his court but in fact we had also asked for its cancellation.

5 Unfortunately we had to agree to an FAI in the first instance to gain access to the investigation files as there was no other mechanism available to allow us to analyse and answer the many issues our family had.

6 If anyone has followed Colin’s case they will see that there has since been many complaints upheld and further actions taken. None of this would have happened without full access to documents. Furthermore, even if our concerns had been ill founded we would undoubtedly have achieved effective closure. This is an opportunity that many families have requested but have never been given. In fact we are one of only two families in recent history to have such an opportunity.

The problem with FAI’s for most families with fatalities

7 The fundamental issue for most families suffering fatalities in Scotland is that they are not held for the benefit of families. This can be found in paragraph 43 of the policy memorandum.

8 “It is worth bearing in mind that FAIs are judicial inquiries which are held in the public interest to establish the time, place and cause of a death and to identify reasonable precautions which may be taken to prevent deaths in similar circumstances. They are not held specifically for the benefit of the families.”
Although there is a process for COPFS to work with families through investigations, nevertheless, annually there are many families unhappy or uncertain with aspects of the investigation who request FAI’s. They do this as there is no other vehicle available to give them such answers and without realisation that the type of deaths their loved one has suffered does not fit in with the remit of a Full Judicial hearing as within the format of an FAI.

While it accepted that COPFS do seek inputs from families during investigations, they also have the right to ignore these inputs. This is a valid stance as it is critical that COPFS maintain their independence and impartiality throughout an investigation.

Furthermore, it is stated that investigation findings are shared with families. This is only a partial truth as many have found, in that, what is invariably presented is the information that supports the declared outcome. In our personal experience this is way short of what was actually found.

It should always be remembered that the primary purpose of COPFS and Police is the pursuit of criminals. It has to be reasonable that there may be borderline cases that exist that get by them and do not get their full attention. Once deemed to probably not be a crime they cannot demand the same attention as maybe families would wish. This is only right with limited resource but does not nor cannot remove the concern of the family.

This is a major demarcation from the manner that accused criminals are allowed access to findings from an investigation. Not only are the findings shared fully with the accused, they also have to be assessed by senior counsel before even attempting to execute a prosecution. Even here the success rate for conviction between 1997 to 2007 was only at 68.4%. (Difficult to find data beyond this period) This does not even account for those cases that did not make it to prosecution.

This data is not meant as a criticism of the investigation capability of the police but to highlight that it is feasible that they have not got enough evidence available. If this is the case for deaths that are incredibly scrutinised, is it not reasonable to assume that errors can be made when such scrutiny is not available and thus would it not be reasonable that some families may have many questions about the investigation? Is it right that deaths can be subject to what is called a short report and deemed to be conclusive without a family’s right to fully check or challenge?

Is it right that individuals that are not obvious cases of homicide are not deserving of having their family members assess the whole truth and in some cases defend their last right?
16 I believe that the FAI would not be the correct vehicle for these families as the basis of the FAI is to look at cause of death and the ability to prevent such deaths in the future. What we found, in Colin Marr’s FAI, was that the police investigation itself was out of bounds for questioning or challenging and this was the crux of our issues.

17 When there are doubts about cause of death and experts cannot be sure, the final outcome is invariably decided through the findings of the police investigation and yet there is no comprehensive way to see this and thus challenge any aspect of the finding, save hiring your own investigator. (An action we took to good effect.) It seems quite absurd that all other experts can have their findings shared and challenged but somehow the police investigation is sacrosanct.

18 Many families are left with many unanswered questions, doubts and worries that actually may have been addressed by the investigation but this lack of compassion in allowing access to material after an investigation is complete leaves a bitter taste and an open wound forever. The biggest shame would be that this pain exists when there is no need other than that we have not thought to put a mechanism in place to allow effective closure.

How to move forward

19 In developing our petition (PE1501) we have sought to comprehend how things are carried out in England and were astounded that they were already dealing with this through their Coroner system and had 30000 inquests a year to our 60 through our FAI system.

20 While this showed the marked disparity between the way people are treated across the UK, it also served hope that it was achievable to allow more access within Scotland. Also, talks with an ex head of CID from West Yorkshire confirmed that for many people they did get a higher degree of closure, helped bridge trust with the police and in some cases they actually found cases of homicide that were previously being dismissed as self-inflicted.

21 This Coroner system though is not a panacea as many families are dragged into a hearing that they do not wish for and as we have no Coroner system it would be likely to be of high cost to implement taking many years.

22 This brings us to the principle of our thoughts on what is needed to close an enormous gap in allowing families to be more central to the Justice Process. Rather than demanding that all deaths are subject to a public review we believe that upon what is deemed to be a successful closure of an investigation and seen as accident or self-infliction (Outwith FAI parameters), families should have the right to have access to the entire investigation findings if so required.

23 This would ensure that any family that does not want to be exposed to any more pain or suffering, need not be (except FAI’s and Prosecutions). Also, those families wanting more information receive it.
24 This could be managed through release of full packages from the investigation via the family Lawyers or an organisation such as Victims Support. The essence within these proposals has been supported by Victim Support Scotland and The Law Society of Scotland through the Petitions process. Precedent for such scale of release has been set.

25 It is believed that the majority of cases when reviewed by families and their advisors would finish with a satisfactory outcome allowing closure for many. In the few that may result in challenges it is envisaged that any new investigation would be driven and agreed with COPFS.

26 If a significant change in outcome has been derived from these investigations or it has been found that there has been a significant failure to investigate in line with protocols then there should be some form of public review to learn and implement effective corrective actions.

**Benefits of suggested changes**

27 The introduction of a system allowing families full access to fatal investigation findings will allow the Justice system to place families at the heart of the system.

28 In doing so, it will be done at the lowest possible cost with the ability to satisfy family needs without major judicial changes or hearings.

29 This will also result in random testing and inspection of investigations at little extra costs, which in turn will help drive robustness into these investigations that in turn should drive greater certainty of public support and trust.

30 This would sit alongside FAI’s in providing a comprehensive review of cause of death in Scotland.

(Greater detail provided through Petition and [Justice Committee](#))

Stuart Graham
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