JUSTICE COMMITTEE

AGENDA

25th Meeting, 2013 (Session 4)

Tuesday 24 September 2013

The Committee will meet at 10.15 am in Committee Room 1.


   Not before 10.30 am

2. **Decision on taking business in private:** The Committee will decide whether to take item 5 in private.

3. **Petitions:** The Committee will consider the following current petitions—

   Petition PE01370 by Justice for Megrahi calling on the Scottish Parliament to urge the Scottish Government to open an independent inquiry into the 2001 Kamp van Zeist conviction of Abdelbaset Ali Mohmed al-Megrahi for the bombing of Pan Am flight 103 in December 1988;

   Petition PE01436 by Collette Barrie calling on the Scottish Parliament to urge the Scottish Government to legislate for the retrospective abolition of the requirement for corroboration in criminal prosecutions.

4. **Criminal Justice (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

   Rt Hon Lord Carloway, Lord Justice Clerk;

   Elise Traynor, Deputy Legal Secretary to the Lord President;

   Jacqueline Fordyce, Law Clerk to the Lord Justice Clerk.

5. **Criminal Justice (Scotland) Bill:** The Committee will further consider its approach to the scrutiny of the Bill at Stage 1.
The papers for this meeting are as follows—

**Agenda item 1**

Private paper  
J/S4/13/25/1 (P)

**Agenda item 3**

Paper by the clerk  
J/S4/13/25/2

SPICE briefing  
J/S4/13/25/3

**Agenda item 4**

Private paper  
J/S4/13/25/4 (P)

*Copy of the Bill, accompanying documents and SPICE briefing*

*Written submissions received on the Bill*

**Agenda item 5**

Private paper  
J/S4/13/25/5 (P)
Consideration of petitions
PE1370 and PE1436

Note by the clerk

Purpose

1. The Committee is invited to consider two petitions.
   a. PE1436 – Abolition of the Requirement for Corroboration; and
   b. PE1370 – Justice for Megrahi.

PE1436 – Abolition of the Requirement for Corroboration

2. PE1436 is a petition by Collette Barrie which calls on the Parliament to urge the Scottish Government to legislate for the retrospective abolition of the requirement for corroboration in criminal prosecutions.

3. The Committee last considered this petition on 25 September 2012 and agreed to keep the petition open pending the introduction of primary legislation to implement Lord Carloway's recommendations, including on corroboration.

4. The Committee is invited to agree to consider this petition alongside its Stage 1 consideration of the Criminal Justice (Scotland) Bill.

PE1370 – Justice for Megrahi

5. Petition PE1370 by Justice for Megrahi (JFM) calls on the Scottish Parliament to urge the Scottish Government to open an independent inquiry into the 2001 Kamp van Zeist conviction of Abdelbaset Ali Mohamed al-Megrahi for the bombing of Pan Am flight 103 in December 1988. The petition was lodged on 1 November 2010. The petition was carried over to Session 4 and on 28 June 2011, the new Public Petitions Committee referred it to the Justice Committee for further consideration. The Justice Committee considered the petition at its meeting on 11 December 2012 where it agreed to keep the petition open pending allegations against the Crown Office and the police being investigated.

6. The Committee last considered the petition at its meeting on 4 June where it agreed to write to the Crown Office and Procurator Fiscal Service (COPFS) regarding its position on the investigation of the allegations of JFM against COPFS and the police. The Committee also wrote to the Scottish Government asking whether it has the power to appoint an independent investigator in to the allegations of JFM.

Correspondence

7. The Committee received replies to both of its letters on 26 June. The replies from COPFS and the Scottish Government are included in Annexe A.

8. The reply from the Crown Agent, on behalf of COPFS, notes that the police are investigating the allegations and that COPFS are co-operating with the police but are not involved in investigating the claims.
9. The Scottish Government’s reply also notes that the police are investigating the claims. The letter states that it is vital that allegations of criminality are dealt with within the procedures of the criminal justice system and that only the Lord Advocate in his role as head of COPFS has the power to appoint an independent investigator to look at allegations of criminality. The letter goes on to say that, while the Scottish Government could open an independent inquiry, the scope of that inquiry would be better considered in court as an appeal. Finally, the Scottish Government reiterates that it has no plans to institute an independent inquiry.

10. JFM provided a further submission on 23 August. The submission outlines details of a meeting between members of JFM and the police on Friday 16 August and Monday 19 August. The submission is included in Annexe B. It states that COPFS has instructed the police to suspend its investigation into three of JFM’s allegations. Significant concerns are expressed about the intervention of COPFS in the police investigation. The submission asks the Committee to write to COPFS to ask for an explanation for its intervention into the police’s investigation.

11. JFM has also provided the Committee with supplementary submission noting that JFM has reported the Cabinet Secretary for Justice and COPFS to the International Association of Prosecutors (IAP). JFM allege that the Cabinet Secretary and COPFS have breached the IAP’s Standards of Professional Responsibilities and Statement of Essential Duties and Rights of Prosecutors. This supplementary submission, along with JFM’s letter to the IAP is included in Annexe C.

12. The Convener wrote to JFM on 5 September asking whether they are considering making an application to the Scottish Criminal Cases Review Commission (SCCRC) to refer the conviction of Abdelbaset Ali Mohmed al-Megrahi to the High Court. JFM replied to this letter on 7 September explaining that this is a complex area and that there are barriers to members of JFM making an application to the SCCRC. Both letters are attached in Annexe D.

13. For background information SPICe has prepared a short briefing paper outlining the role of the SCCRC. The SPICe briefing is included in your papers.

Committee Consideration

14. The terms of the petition asks the Parliament to urge the Scottish Government to instigate an inquiry into Mr al-Megrahi’s conviction. The Scottish Government has indicated that it has no plans to do so. There is a live Police Scotland inquiry into JFM’s allegations of criminality by members of the police, Crown Office and others involved in the prosecution. The Government suggests that a review of the conviction would be best undertaken through an application to appeal in the courts.

15. JFM has asked the Committee to write to COPFS to seek an explanation for the reported intervention into the police investigation. However, the Committee may wish to consider the possible perception that it is interfering unduly into a live police investigation.

16. The Committee may wish to consider what further assistance it can be to the petitioners within the terms of the petition. Members may decide that the possibilities for an independent inquiry have been fully explored. In which case, the Committee may wish to consider closing the petition.

17. If the Committee agrees to keep the petition open, Members are invited to consider how the Committee can further assist the petitioners.
Recommendations
18. The Committee is invited to consider whether:
   a. to close the petition;
   b. to keep the petition open; and if so, to consider in what way the Committee can be of further assistance to the petitioners.
Annexe A

PE1370 Correspondence
(letters from the Cabinet Secretary for Justice and the Crown Agent)

Letter from the Scottish Government to the Convener

Thank you for your letter of 6 June in relation to the Justice Committee’s consideration of Petition PE1370 from the Justice for Megrahi group. In your letter, you ask whether the Scottish Government has the power to appoint an independent investigator to deal with complaints against the Crown Office and Procurator Fiscal Service and the police.

It may be helpful if I provide some further background on this matter. On 13 September 2012, Mr Robert Forrester wrote to the Scottish Government on behalf of the Justice for Megrahi group. In his letter, he indicated that the group had evidence, including documents, raising allegations of serious criminal activity by named individuals within the Crown Office and Scottish police. Specific evidence in support of the allegations was not attached with Mr Forrester’s letter.

As indicated in the Scottish Government’s reply to Mr Forrester’s letter, the Scottish Ministers take exceptionally seriously any suggestion of inappropriate or criminal activity by individuals with key responsibilities within Scotland’s justice system. It is absolutely vital that such allegations should be reported and investigated through the appropriate procedures. Indeed, allegations of criminal activity can only be dealt with through investigation, prosecution and, ultimately, consideration by the courts.

The Scottish Ministers, other than the Law Officers, have no powers to investigate and prosecute allegations that criminal offences have been committed. Similarly, no ‘independent investigator’ appointed by Scottish Ministers would have powers to investigate and prosecute such allegations. Responsibility for these matters lies with the Lord Advocate who operates independently of the Scottish Government in relation to the prosecution of alleged crimes. This separation of duties within Scotland’s justice system is of critical importance in protecting individuals from politically motivated prosecutions.

Our response to Mr Forrester advised him that, where criminal allegations relate to the conduct of police officers or members of the prosecution service, there are established arrangements for investigating these, independent of those involved in the original case. Where there is evidence of potential criminal actions, final decisions on whether to proceed with a prosecution would be taken based on advice from Crown Counsel. In such a situation, it would then of course be for a court to reach a view as to whether a person or persons should be convicted of criminal offences.

We understand that the allegations made by Justice for Megrahi group have been reported to the police and we further understand that they are being considered in line with the appropriate procedures. We note from media reports that this included the police meeting with members of Justice for Megrahi on 16 April 2013 to discuss their allegations. The Scottish Government respects fully, and operates in accordance with, the separation of functions between Government and prosecuting authorities. We have no involvement with this process and no locus or intention to intervene or comment whilst it is on-going.

In subsequent correspondence and media releases, Mr Forrester and the Justice for Megrahi group indicated that they were, in fact, not asking Scottish Ministers to seek to investigate the specific allegations they raised but to appoint an independent body,
“from outwith Scotland”, to undertake a “full independent inquiry” into their concerns about the prosecution of Mr Megrahi.

Under the Inquiries Act 2005, the Scottish Ministers have a power to establish an inquiry into particular events that have caused, or are capable of causing, public concern, or where there is public concern that particular events may have occurred. The Scottish Government’s position in respect of calls for an independent inquiry is that the matters that an inquiry would look at would be considered appropriately as part of any court appeal that is heard in the Al-Megrahi case. No independent inquiry, whether conducted by someone from within or outwith Scotland, could review or overturn Mr Al-Megrahi’s conviction.

It remains open for relatives of Mr Al-Megrahi, or, potentially, relatives of the Lockerbie bombing victims, to ask the Scottish Criminal Cases Review Commission (“the Commission) to refer the case to the court for a further appeal. The Commission would consider the case and decide, in line with their statutory framework, whether a miscarriage of justice may have occurred and whether it is in the interests of justice to refer the case. If the case was referred by the Commission and following consideration of all relevant matters through a further appeal being heard, the court would have the power to either uphold or overturn Mr Al-Megrahi’s conviction. Mr Al-Megrahi was convicted in a court of law and the only appropriate forum for determining his guilt or innocence is a court of law. Any conclusions reached by an inquiry would not have any effect on either upholding or overturning the conviction as it is appropriately a court of law that has this power.

In addition to the matters noted above, we would also note that Lockerbie remains a live on-going criminal investigation.

In light of the above, the Scottish Government has no plans to institute an independent inquiry into the conviction of Mr Al-Megrahi. I hope this is helpful in explaining the Scottish Government’s position to the Committee.

Kenny MacAskill MSP
Cabinet Secretary for Justice
24 June 2013

Letter from the Crown and Procurator Fiscal Service to the Convener

Petition PE1370: Justice for Megrahi.

Thank you for your letter of 6 June 2013 requesting information regarding the handling of Justice For Megrahi complaints.

I hope the committee find the following information in response to your particular questions helpful.

- What resources have been allocated by the Crown Office and Procurator Fiscal Service (COPFS) to the investigation of JFM’s allegations?

At this time, I am able to advise that the investigation of Justice For Megrahi’s allegations is presently being conducted by The Police Service of Scotland. There is no dedicated resource from COPFS attached to this investigation. I have however asked a Senior Prosecutor who has had no prior involvement in the Lockerbie Investigation and associated Prosecution to act as a conduit with the Senior
Investigating Officer to ensure that access to any material that the Crown has, and that The Police Service of Scotland consider is necessary for full and thorough consideration of the allegations, is facilitated.

- Will the COPFS keep JFM informed of developments in the investigation of their allegations?

As indicated above The Police Service of Scotland is at this time conducting the investigation of the allegations made and any request for information in respect of that investigation would be for them.

- Has the COPFS instructed the Police on how to proceed with the investigation into JFM’s allegations?

As indicated above The Police Service of Scotland is at this time conducting the investigation of the allegations made. COPFS has not instructed The Police Service of Scotland as to how that investigation should proceed.

I hope that this is of assistance to the Committee.

Catherine Dyer
Crown Agent
26 June 2013
PE1370 Petitioners’ submission

PE1370: Submission and update to the Justice Committee of the Scottish Parliament regarding Police Scotland interviews related to the criminal allegations lodged by the Committee of Justice for Megrahi.

On Friday 16th and Monday 19th August 2013 members of the committee of Justice for Megrahi (JFM) were invited by DCC Shearer of Police Scotland to clarify a number of points related to the eight allegations of criminality levelled at the Crown Office, Police and forensic officials connected with the Lockerbie/Zeist Case.

A full report on what transpired at these meetings, and reaction to them, may be read in the appendix, which follows this brief synthesis and comment on events.

Before the interviews were conducted with Professor Robert Black QC, Mr Iain McKie, Dr Morag Kerr and Mr Robert Forrester, Mr Shearer informed them that the Crown Office had instructed that he no longer investigate allegations 5, 6 and 7 which contained some of the most serious allegations of perjury and perverting the course of justice. He indicated that it had been decided that a fundamental conflict apparently exists now between JFM’s allegations and the Crown Office’s and the FBI’s investigation into the incrimination of further Libyan nationals, along with Mr al-Megrahi, for the downing of Pan Am 103 on 21st December 1988. He was unable to give any further explanation and gave no indication if or when the investigation might be resumed and by whom.

The JFM representatives unanimously expressed their concern at these developments and made it clear that they only served to underline the relevance of their original request to Secretary for Justice Kenny MacAskill for an independent investigation free of Crown Office and Scottish police influence.

At the conclusion of the series of interviews, it seemed that JFM had been able to provide Mr Shearer with satisfactory answers to his questions regarding allegations 1, 2, 3, 4, 8 and the addendum.

JFM’s allegations have no bearing whatsoever upon the activities of the Crown Office and the FBI in their alleged pursuit of other Libyans for this atrocity. JFM’s allegations are solely concerned with the flaws and shortcomings in the investigation of Lockerbie and the subsequent legal processes, and are aimed at UK nationals on the grounds of their having attempted to pervert the course of justice, committed perjury and been guilty of gross professional incompetence.

Given that in 2009 Dumfries and Galloway Constabulary were tasking only one single police officer with what could have amounted to no more than file management, and since JFM and others have raised the profile of this case so significantly since 2008, it is the contention of JFM that the Crown Office is indulging in a cynical charade designed to convince the public that it supports the unsupportable solely to preserve its own tarnished reputation. The long and the short of it is that if JFM and other campaigners were to evaporate from the stage tomorrow, the Crown Office’s own so called ‘live’ and ‘on-going’ investigation would dry up with a ‘No comment’.

The Scottish Parliament is the legislature of this country. The Justice Committee is the parliament’s guardian on matters of justice. The Cabinet Secretary for Justice has ultimate executive power over all matters pertaining to justice. The Crown Office is a
functionary which applies justice according to the law set down by the legislature. In this current situation the tail is wagging the dog.

The Crown Office has no right to block a Police Scotland investigation of JFM’s allegations 5, 6 and 7. The Crown Office is duty bound to instruct Police Scotland to thoroughly investigate all of JFM’s allegations including 5, 6 and 7. What kind of democracy are we living in when a group such as ours pleads with the democratically elected cabinet minister in charge of overseeing all matters in the sphere of justice to invite an independent body to study the veracity of our allegations, and he then passes our confidential communication on to the very body we are attacking? It, in turn, responds by publicly vilifying us and our allegations via the press before the investigations have even started.

Yet again the spectre of political interference rears its ugly head. Members of JFM regard this latest development as profoundly disturbing and sinister in that it confirms their original misgivings over having the Crown Office and police effectively investigate themselves. These arrogant and arbitrary actions by the Crown Office […] raise serious questions about the entire function and administration of the criminal justice system in Scotland [and the separation of powers between the executive and the Crown Office. Citizens of Scotland have a right] to a fair and impartial investigation of their legitimate concerns.

JFM believes that the Justice Committee of the Scottish Parliament, as guardians of the application of justice in Scotland, should forthwith approach the Crown Office demanding that [it] explains in detail, and in language other than ‘we cannot comment on a live inquiry’, precisely why [it] is rejecting the evidence relating to JFM allegations 5, 6 and 7.

Robert Forrester (Secretary, Justice for Megrahi).
On behalf of the Committee of Justice for Megrahi.
23 August 2013

Appendix

Over the course of Friday 16th August and Monday 19th August four of the five members of the Committee of Justice for Megrahi due to speak to the JFM allegations met with DCC Shearer and [his colleague] at Cornwall Mount (Police Scotland Dumfries and Galloway Division Headquarters) in Dumfries. The meetings were convened by DCC Shearer for the purpose of clarifying any gaps or issues which had arisen following his reading of documents relevant to JFM’s eight allegations of criminality levelled at Crown Office, police and forensic officials, and was the first contact the JFM Committee had had with DCC Shearer since the initial preparatory meeting in April.

At the Friday meeting, JFM was represented by committee members Professor Robert Black QC (speaking to allegation 1 – accusing Crown Office representatives of perverting the course of justice in relation to CIA evidence connected to Abdul-Majid Giaka’s Zeist testimony), Mr Iain McKie (speaking to allegation 8 – accusing police officers of coaching Mr Tony Gauci illegally and in contravention of police codes of conduct during the identification procedures of Mr al-Megrahi) and Mr Robert Forrester (speaking to allegation 3 – accusing the police of perverting the course of justice and/or contravening police codes of conduct with regard to Mr Manly’s evidence relating to the Heathrow break in). The interviews were brief and conducted on an individual basis. However, whilst Professor Black was interviewed alone, in the absence of JFM’s legal representative, he sat in on the interviews of Mr McKie and Mr
Forrester at their request. All the interviews were constructive and courteous at all times, and, with the exception of a minor point of information with regard to allegation 3, which was cleared up on Monday, provided Mr Shearer with all the information he appeared to be looking for and more.

The Monday meeting addressed allegation 2: the suppression of evidence of the Heathrow ingestion of the IED; allegation 4: the failure to investigate the ‘rogue bag’ at Heathrow; and the addendum: dealing with luggage positioning in AVE4041. These were spoken to by Dr Morag Kerr with Professor Black in attendance as legal representative. As with the Friday meeting, Monday passed straightforwardly.

Followers of the activities of JFM and its allegations will note that whilst allegations 1, 2, 3, 4, 8 and the addendum have now been addressed by Mr Shearer in these individual interviews, allegations 5, 6, and 7 have not. Allegation 5 covers perjury in respect of fragment PT/35b. Allegation 6 covers the failure to disclose material evidence relating to PT/35b. Allegation 7 covers the failure to follow up metallurgy findings relating to PT/35b. All of these above allegations are based on information provided by Mr John Ashton, whose book, Megrahi: You are my Jury’ revealed that the fragment PT/35b could not have originated from one of the circuit boards that were used in one of the timers that were supplied to Libya (one of which, according to the Crown, was used to blow up Flight 103).

At the commencement of the meeting on Friday 16th August between DCC Shearer and the representatives of JFM, Mr Shearer informed JFM that he had approached the Crown Office in respect of allegations 5, 6 and 7. This consultation has resulted in the following: allegations 5, 6 and 7 are not to be investigated by Mr Shearer for the time being on the ground that they conflict with the interests of the current Crown Office/FBI ‘live’ and ‘on-going’ investigation into incriminating other Libyan nationals for complicity with Mr al-Megrahi in the downing of Pan Am Flight 103 on 21st December 1988. In other words, the Shearer investigation of allegations to be spoken to by Mr Ashton has been ‘parked’. The JFM representatives unanimously expressed their concern at these developments and made it clear that they only served to underline the relevance of their original request to Secretary for Justice Kenny MacAskill for an independent investigation free of Crown Office and Scottish police influence.

The position of the Committee of JFM to this news is as follows. We are aware that members of the public do not trust the police investigation of JFM’s allegations. The fact that Mr Shearer ultimately has to report to the Crown Office on matters relating to the JFM allegations does not encourage us to suppose that Police Scotland or DCC Shearer are doing anything other than obeying instructions emanating from Chambers Street. It was Mr MacAskill who put Mr Shearer in his current position of having to deal with our allegations. [The whole issue raises serious questions about the separation of powers of the police, the Crown Office and the executive]. [This] is most regrettable and not conducive to public trust.

JFM did not submit its allegations in any mischievous or malicious manner and yet even before the police investigation had begun, the [Crown Office] saw fit to criticise their efficacy and accuracy in a highly public vilification of JFM. In our opinion it is the duty of Police Scotland and the Crown Office, as public servants, to preside over a thorough investigation of all eight of our allegations irrespective of whether or not they conflict with any other investigation before them. Our allegations have no connection whatsoever with any Crown Office investigation into the incrimination of other Libyan nationals being conducted by the Crown Office, they are entirely independent and should be treated as such. Indeed, it has previously been stated by JFM’s secretary, Mr Forrester, that the current so called live and on-going investigation is little more
than a charade and eye-wash to deceive the public into thinking that the Crown Office’s hands are clean in this affair, and that, had it not been for the efforts of JFM and others of late, such an ‘investigation’ would more than likely never have suddenly inflated itself from a single officer in Dumfries in 2009 tasked with file management into the political tool it has become today.

At the Friday meeting, Mr Shearer made it plain that he clearly did not feel at liberty to divulge exactly what conflict exists between the issues of PT/35b, allegations 5, 6 and 7, and the apparently unrelated investigation being headed up by the Crown Office. Moreover, he was obviously also not at liberty even to inform JFM who the SIO of the Crown Office investigation is.

JFM regards this development as profoundly disturbing in that it confirms our misgivings over allowing the Crown Office effectively to investigate itself. It questions the entire function and administration of the criminal justice system in Scotland. The citizenry of this country are now put on notice that the Crown Office can direct Police Scotland not to investigate, or to defer indefinitely investigation of, any allegation which calls into question the conduct of the Crown Office itself. This is an outrageous scandal which has far reaching consequences. To some Lockerbie may be history, nonetheless, this current dispute is history in the making in the here and the now. Furthermore, it has the most serious of bearings on the nature of the relationship between a people and how it perceives justice, forms it and endorses it, and all that that implies, and moreover, how that society wishes those whom it appoints and entrusts to administer justice to apply such upon itself.

What we are witnessing here is a Crown Office which is completely out of control and has become a law unto itself. Far from the image of Scottish justice that Mr MacAskill likes to wax lyrical about, the current conduct of the Crown Office is beginning to bear a much closer resemblance to the types of systems prevalent under politically repressive regimes. Scotland’s criminal justice system is now a patient in dire need of intensive care if it is to survive in a form worthy of even minimal respect […].

JFM will, in separate documents, now be requesting the Justice Committee of the Scottish Parliament to study the developments regarding its allegations currently before the Crown Office, and furthermore, will be considering whether our complaints should be referred to bodies such as Amnesty International and the United Nations International Association of Prosecutors (UNIAP) on the grounds of the Crown Office’s blatant contravention of the UNIAP’s ‘Standards of Professional Responsibility and Statement of Essential Duties and Rights of Prosecutors’ under sections 2 and 3 of said document (adopted by the UNIAP on 23rd April 1999).
PE1370 Petitioners’ submission

Supplementary submission and update to the Justice Committee of the Scottish Parliament regarding formal complaints to the United Nations International Association of Prosecutors concerning the conduct of the Scottish Cabinet Secretary for Justice, Mr MacAskill, and the Lord Advocate, Mr Mulholland.

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\(^1\) 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

\(^1\) A copy is available from the clerks.
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 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 ECHR 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
PE1370 Correspondence
(letters regarding a possible application to the Scottish Criminal Cases Review Commission)

Letter from the Convener to Justice for Megrahi

Thank you for your submission of 23 August to the Justice Committee outlining the recent meeting between members of Justice for Megrahi and officers from Police Scotland.

The Committee will consider the submission, in the context of Petition PE1370, in the near future. In advance of the Committee’s considerations, it would be helpful to know whether Justice for Megrahi is aware of any intentions to refer the conviction of Mr Abdel al-Megrahi to the Scottish Criminal Cases Review Commission for review.

Christine Grahame MSP
Convener, Justice Committee
5 September 2013

Letter from Justice for Megrahi to the Convener

Thank you for your letter. The short answer is yes. However, the situation in totality is infinitely more complex.

Since the dropping of Mr al-Megrahi’s second appeal and his subsequent death, the question of applying for a third has always been a consideration. JFM, being a campaigning justice organisation, however, has no locus in this regard, and we are confident that were we to make such an application, we are quite certain that it would be rejected out of hand. Realistically, the only individuals who may have such a locus, beyond the al-Megrahi family themselves, are those members of the UK Families Flight 103 who consider that Mr al-Megrahi was the victim of a gross miscarriage of justice. JFM does not represent UKFF103, nor have we ever, and is, therefore not in a position to speak for UKFF103. As a support group for the British bereaved, UKFF103 is a very different organisation to ourselves and as such we are not in a position to confirm any intentions on their behalf. Indeed, you may also be aware that some members of UKFF103 do not disagree with the Zeist verdict, and therefore, it seems highly improbable that UKFF103 would ever make an application for a third appeal as a group. Moreover, given that highly unstable situation in Libya, I am informed that the al-Megrahi family are not entertaining such action for fear of the potential perils which may result.

What I believe I can say, without betraying any confidence, is that individual members who were bereaved by the tragedy of 103 and who are convinced that Mr al-Megrahi was a victim of a miscarriage of justice certainly would wish to make such an application to the SCCRC. However, their situation is very much circumscribed by two major factors. Firstly, the enormous cost implications and, secondly, the fact that they have expressed an unwillingness to submit an application without the consent and support of the al-Megrahi family. As you will appreciate, with circumstances in Libya being as fraught as they are, it may be some considerable time for such approval to be forthcoming, if ever,
I hope this goes at least some way towards clarifying the situation.

Robert Forrester
Secretary
Justice for Megrahi
7 September 2013
Justice Committee

25th Meeting, 2013 (Session 4), Tuesday 24 September 2013

Petition PE1370

Scottish Criminal Cases Review Commission

This short briefing outlines the role of the Scottish Criminal Cases Review Commission with particular reference to its ability to review cases for referral to the High Court in certain circumstances – that is, cases which have been the subject of previous appeals; cases where previous appeals have been abandoned; and in cases where a person who has been convicted has died.

The Scottish Criminal Cases Review Commission (“the Commission”) was established by section 194A of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”). The Commission’s role is to review and investigate criminal cases where it is alleged that a miscarriage of justice may have occurred in relation to a conviction, a sentence or both. The grounds upon which the Commission may refer a case to the High Court for appeal are that they believe that a miscarriage of justice may have occurred and that it is in the interests of justice that a reference should be made. In determining whether or not it is in the interests of justice that a reference should be made, the Commission must have regard to the need for finality and certainty in the determination of criminal proceedings.

It is important to note that the High Court may reject a reference from the Commission if it considers that it is not in the interests of justice that any appeal arising from the reference should proceed.

The Commission can accept applications to review convictions or sentences that it has previously reviewed and has done so in the past. There is no time limit on a person applying to the Commission, nor is there any set limit on the number of times a conviction or sentence can be reviewed, although generally, the Commission will not accept a case for review where the only issues raised are the same as matters it rejected in a previous review.

Where a previous review resulted in the Commission referring the case to the High Court for an appeal, but the appeal was unsuccessful, the Commission would normally consider the reasons given by the court for refusing the appeal before it would accept the case for a further review.
Similarly, if an appeal which followed a reference by the Commission was subsequently abandoned, the Commission would normally consider the reasons for abandonment of the appeal before it would accept the case for a further review.

The Commission can also accept an application for a review of a conviction where the person who has been convicted has died. The decision on whether to accept such a case for review will depend on various factors including the locus of the person who was asking the Commission to review the case. This is important as the High Court will only hear appeals in relation to the convictions of deceased people where the person representing the deceased at the appeal is an executor of the deceased or where it appears to the court that the person has a legitimate interest in the case\(^1\).

Therefore, where the person who applies to the Commission on behalf of a deceased person is not the deceased’s executor or a family member, before accepting the case for review, the Commission would normally seek the views of the deceased’s family and executor, if possible. The Commission would also consider whether the person applying on the deceased’s behalf has a legitimate interest in the case. Thereafter, the Commission would accept the case for review only if it considered it to be in the interests of justice to do so.

Graham Ross
SPICe Research
19 September 2013

---

\(^1\) Section 303A of the Criminal Procedure (Scotland) Act 1995 as amended.