

PE2168/A: Guarantee Legal Aid for "Death or Serious Injury" victims in legal action against Police Scotland

Scottish Government written submission, 28 July 2025

Does the Scottish Government consider the specific ask of the petition to be practical or achievable?

This petition seeks non-means tested legal aid for all victims and families of medically confirmed "Death or Serious Injuries" incidents which occur during an interaction with Police Scotland personnel. It is however unclear from the petition what the nature of legal proceedings are that the petitioner envisages should be covered by legal aid.

The Police Investigations & Review Commissioner (PIRC) is responsible for carrying out investigations into serious incidents involving the police, including deaths in custody, the serious injury of a person in police custody, or the death or serious injury of a person following contact with the police. Investigations by the PIRC do not include evidential hearings, and victims and/or family members would not need legal representation during these investigations.

More broadly, inquiries into Sudden Deaths and Fatal Accidents are governed by the [Inquiries into Fatal Accidents and Sudden Deaths etc. \(Scotland\) Act 2016](#). Under section 2 of the 2016 Act it is mandatory to hold an inquiry into a death where, at the time of death, a person was in legal custody, including being in police custody.

Legal aid is available for families participating in FAIs on the same basis as other civil proceedings. The financial eligibility thresholds for civil legal aid are relatively generous and those who are entitled to participate in an FAI, such as family, are assumed to have probable cause. Over the last 5 years, 80% of applications for civil legal aid were granted, and last year only 3 applications were refused.

Where a person died in prison or police custody, the SLAB will look favourably on an application. SLAB has confirmed a high grant rate of applications for civil legal aid in FAIs. Some applicants may be asked to make contributions towards the cost of their publicly funded legal assistance; however, contributions are based on legal aid rates rather than private rates, and therefore are significantly more affordable.

What, if any, action the Scottish Government is currently taking to address the issues raised by this petition, and is any further action being considered that will achieve the ask of this petition?

On 7 April 2025 Scottish Ministers used the discretionary powers available to them to put in place an interim measure that provides non-means tested legal aid for close family members participating in deaths in custody FAIs. As of 10 July 2025 legal aid under this determination has been granted. .

The Scottish Government is committed to bringing forward primary legislation

that would provide for non-means tested legal aid for families participating in deaths in custody FAIs, including non-means tested advice and assistance from day one. That bill will be developed to include potential recommendations made by the independent review of FAIs that will report by the end of this calendar year, meaning that it will not be introduced in this parliamentary session.

The Scottish Government is also committed to working with the UK Government in pursuit of lifting Crown Immunity as it is a reserved matter. Crown immunity under the 1974 Act remains a reserved issue however, the former First Minister wrote to the former Prime Minister in January 2024 calling for a serious discussion on whether Crown immunity should continue apply to bodies such as SPS.

The Scottish Government will continue to pursue the lifting of the Scottish Prison Service's corporate Crown Immunity under reserved health and safety law with the UK Government, and have recently raised this matter directly with UK Ministers. A Ten-Minute Rule Bill on the subject has now been introduced into the UK Parliament.

Is there any further information the Scottish Government wish to bring to the Committee's attention, which would assist it in considering this petition?

In her [independent review of complaints handling, investigations and misconduct in relation to policing](#), published in November 2020, Dame Elish Angiolini made a recommendation regarding legal aid support for bereaved families when a person dies in police custody, or following police contact (Chapter 25, page 394 - 401- Complaints arising from deaths in police custody or following police contact):

- Recommendation 74: In Article 2 cases (Right to life - death at the hands of State agents), in order to facilitate their effective participation in the whole process, there should be access for the immediate family of the deceased to free, non-means tested legal advice, assistance and representation from the earliest point following the death and throughout the Fatal Accident Inquiry.
- Recommendation 76: For cases where the Fatal Accident Inquiry may last several weeks, the Scottish Government should consider the feasibility of a scheme to pay reasonable travel and subsistence expenses and compensation for loss of earnings of the next of kin.

In the February 2021 [joint response](#) the Cabinet Secretary for Justice and Lord Advocate said:

As Dame Elish highlights in the Final Report, the European Court of Human Rights has made clear that meaningful victim involvement and constructive engagement with complainers is a fundamental requirement for a fair and effective system. There are currently systems in place to support a member of the public throughout the process if they wish to make a complaint. PIRC employs specially trained Family Liaison Officers, who play a key role during investigations by keeping victims and families informed and providing advice; and COPFS has a Victim Information and

Advice (VIA) service with offices around Scotland. All three organisations also give information on a variety of appropriate support and advocacy groups on their websites.

We recognise the importance of victim and family involvement in Article 2 investigations, we see merit in the recommendations from Dame Elish in this regard and will give careful consideration to the recommendations relating to access to legal support (Final Report recommendation 74) and financial support for families during Fatal Accident Inquiries (Final Report recommendation 76) to work through the legislative and resource implications. The Minister for Victims and Community Safety has assured Parliament that as part of wider planning for a new Legal Aid Bill, the Scottish Government will consider the issue around legal aid entitlement for relatives involved in Fatal Accident Inquiries [*see item 4. above*]. We will be taking this forward as part of a programme of wider reform around legal aid in Scotland, and intend to introduce a Bill in the next Parliament.

Since the Review was published in November 2020 the Scottish Government has undertaken extensive work alongside policing partners to implement recommendations. To-date 59 out of 72 non-legislative recommendations have been delivered and five reports setting out progress have been published on the Scottish Government website. Additionally, the Police (Ethics, Conduct and Scrutiny) (Scotland) Act 2025 discharges or paves the way via regulations for the majority of the legislative recommendations to be discharged.

A further update to report on the recommendations will be provided to Parliament before the end of the parliamentary term and subsequently published on the Scottish Government website.

Civil Law and Legal Systems Division