PE1501 Response from Petitioner to Crown Office and Procurator Fiscal Service (COPFS) Submission

We would like to take the opportunity to thank you for providing us with the platform to respond to COPFS input to this review. In doing so, we would like to be clear that we fully appreciate the difficult job that both Police Scotland and COPFS must carry out. While our own experience has not been a good one, our genuine desire is for the improvement of the entire system without any prejudice.

As a follow up to petition PE1501, COPFS was asked provide information on “the level of investigation carried out into the 4,000 deaths classed as self-inflicted in the last five years”. The COPFS response sets out the manner in which they deal with reports of deaths received from the Police and implies that there is no need for change. We would like to respond to this in the context of our petition.

Problematic issues in this submission by COPFS are as follows:

1. There is a comprehensive misunderstanding of our petition.
2. This misunderstanding of our petition leads to a false premise for using anecdotal information as some justification for not supporting our proposal.
3. Concern over the level of investigation.
4. Potentially misleading in the detail of information given to families.
5. Definition of Probable Suicides and implications.

1. There is a comprehensive misunderstanding our petition.

Crown Agent Catherine Dyer suggests “Finally, if as I understand it is being proposed by the petitioner that it should be mandatory to hold an FAI into all deaths where the investigation by the Procurator Fiscal concludes that it appears most likely that the death was a result of self inflicted injury or cannot rule out the possibility of self inflicted injury this would be a real concern.”

This continual attempt to link our petition to a demand for FAI’s is not only frustrating but is entirely wrong. It has never been our intent to have our proposals embroiled in this judicial process and we have repeatedly stated that it is something much less than this that is requested. Within our earlier submissions, we have shown potential steps that could be utilised that can satisfy bereaved families. These are clearly much less than an FAI.

The frustration that this gives us comes from the fact that this was discussed at length in our very first meeting with the Petitions committee in January 2014. This is why Tony Whittle, ex head of West Yorkshire CID attended that session. We ended the session when David Stewart MSP, the Convener of the Petitions Committee, summed up the situation with these words: “Thank you for that clarification. You are saying that you are looking for some sort of halfway house—you are not asking for a full FAI every time there is an accidental death. You would sometimes seek some lesser form of inquiry, which would be some form of public inquiry.”

This position was also understood from the feedback from the Law Society of Scotland in earlier submission to the Petition Committee, where they state; “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;”

Our position was clearly understood by the Petitions Committee on 14th January 2014, and reiterated in the letter from the Law Society of Scotland in March that year. The transcript of our evidence and the relevant correspondence have been available to all interested parties for over a year now, so we cannot understand how even at this late date, this ‘confusion’ still exists.

COPFS and the Government have repeatedly rejected our petition stating that holding FAIs in all cases deemed to be ‘self infliction’ is unnecessary and would be costly. We agree entirely with this proposition. However, in continually linking our petition to FAI’s, the COPFS/Government stance continually fails to address the questions raised by the petition

2. This misunderstanding of our petition leads to a false premise for using anecdotal information as some justification for not supporting our proposal.

Our petition is about giving a bereaved family rights and choices and in no way do we set out to compel families to be subjected to unwarranted emotional turmoil, but we do believe there are families who need this for their own closure. This is not about the legalities.

From the COPFS error in understanding the petition there is an exacerbation of the negative position to our petition by COPFS stating the following: “It is the experience of COPFS that most families in such circumstances do not wish a mandatory Inquiry in public to take place and this raises important considerations in terms of Article 8 of the convention, the right to respect for private and family life.”

We have never suggested that this disclosure should be made in public and the fact is that without full disclosure a bereaved family are in no position to make a valid judgement on such a finding. In any event, if COPFS are correct, then the number of requests for disclosure would be very few and the number of requests for an ‘Inquiry in Public’ (not an FAI) would be fewer still.

In preparing for the petition we were fully aware of families that would not want the public exposure and this is why in the summary of our petition we state: “thus permitting the families of the deceased to have clear insight of all actions taken, reasons for decisions and finally enabling them to defend their loved ones’ last actions if deemed appropriate.” This last stated caveat was with the specific aim of ensuring that no family has to endure further pain if not necessary.

It appears that COPFS stance is that NO families can have the right to full disclosure because of the concern of an undetermined number of individuals. We do not believe that any group should be subjected to the stance of another group. Unlike the COPFS position we believe we have made proposals that account for the concerns outlined by them while allowing, hopefully, a few to have their needs met.

In their response to the Petitions Committee, Victim Support Scotland said “We support the general aim of providing a vehicle for families to receive full disclosure of information and to question the findings when the death of a loved
one has been officially classed as self-inflicted or accidental by the Police and COPFS”.

The Law Society of Scotland point out that the Scottish Courts often reject the conclusions reached by COPFS in criminal cases and add: “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.”

3. Concern over the level of investigation

The letter from the Chief Executive of COPFA sets out the manner in which they deal with reports of deaths received from the Police and seems to imply that their procedures are adequate. Sadly, our experience and that of other bereaved families shows that this is not always the case.

In Scotland the Police investigate deaths, not the COPFS. In each of the 13,000 cases reported annually, where appropriate, a Police Constable has attended the scene, conducted an initial enquiry and submitted a report. The thoroughness of that investigation will depend of a number of factors. Not least of these is the information available to the officer at the time. Other factors will be the time available, the level of interest and commitment shown by the officer, and that officer’s knowledge and experience.

As stated by Tony Whittle ex Head CID West Yorkshire Police

“Experience shows that killers often take steps to disguise their crime as either accidental or self inflicted and as a consequence it can be very difficult for a junior police officer to judge whether grounds exist for suspicion. Unless suspicions are aroused at the outset the PC who attends will gather basic information, liaise with the immediate family and submit a brief report to the COPFS.”

The Procurator Fiscal does not always attend the scene, speak to witnesses or may not direct any investigative activity. He or she is significantly dependent on the officer’s report. Consequently, if the officer has made a mistake the Fiscal has little way of knowing this.

Context also has to be made that to have a death decided upon as ‘probably self-inflicted’, this is not beyond reasonable doubt nor is it tested publicly. Today in England suicide is tested beyond reasonable doubt and the findings are tested publicly. They publicly state that they put the bereaved families at the heart of the system.

4. Potentially misleading in the detail of information given to families.

We have always recognised that full disclosure of information may not be necessary or appropriate in all situations but it has been accepted by all parties that a bereaved family need to know what happened to their loved one and why it happened. Without this basic knowledge they cannot begin to come to terms with their loss and move on. It is incomprehensible that while we have in the region of 60 deaths annually with disclosure through the FAI process, whilst in England there are
30,000 deaths with information disclosure. Surely **there is a middle ground** to close this absurd differential.

Our request is for full information disclosure **after an investigation has been completed and a decision has been made.** This is to ensure that the Police and COPFS have the ability to run their investigation without hindrance to their professional protocols.

**An issue that exist before completion of the investigation** lies within the process as highlighted by COPFS. Here are three points raised by Catherine Dyer in her response to The Justice Committee:

1. “The nature and **level of investigation required will very much depend** on the surrounding facts and circumstances and level of **concerns expressed by nearest relatives** during the investigation.”

2. “SFIU provides **general information to nearest relatives** on the investigation of deaths by the Procurator Fiscal; it engages and consults with families of the deceased throughout each investigation **keeping them appraised of the outcome of investigations;**”

3. “Where the **family of the deceased wish to be advised of the information uncovered** as a result of the investigation then SFIU will appraise them of what the investigation has found and **share all relevant information as far as possible.**”

**There is a risk the inputs from COPFS can be misleading.** The information given above could suggest that all of a family’s inputs are acted upon and that they are given **ALL** appropriate findings. For some families this is a **major demarcation from reality.** For some, the information that is given is that which supports the Police/COPFS conclusion and gives **no or little to that which provides any significant contradiction.** Also, a family’s input **MAY be considered but CAN be ignored.** This last point, we believe, may be valid as it is imperative that an investigation is impartial.

**Factual examples** exist where families have **been informed that interviews took place when they didn’t;** that there were statements to support the deceased’s negative state of mind when in fact far more statements existed that challenged this; and **informed that lines of investigation had been followed when they had not.**

Regardless of these factual examples, **surely a family that has given input to an investigation that they deem to be important, has the right to access** the investigation to test the findings. It would be seen as criminally negligent if an accused gave an alibi or alternative account of events and this was never investigated. **ANYONE accused of taking criminal action has the right to question the findings of an investigation but those deemed to have been involved in their own death currently have no personal rights.** It would be seen as criminal if an accused gave an alibi and this was never investigated.

Previously the Petitions Committee were informed by COPFS that full information **could not be shared with bereaved families,** prompting the **Law Society to point out** that “Given that there is not full disclosure, the Committee has reservations about the 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?”

In their response to the Petitions Committee, Victim Support Scotland said “We support the general aim of providing a vehicle for families to receive full disclosure of information and to question the findings when the death of a loved one has been officially classed as self-inflicted or accidental by the Police and COPFS”.

5. Definition of Probable Suicides

While this last point is not a direct focus of our petition, hopefully, it should serve as support of the merits in what we are seeking.

Within the data sets highlighted in the COPFS response we see that the deaths that are recorded as “probable suicides” by National Records of Scotland (NRS) are captured into two groups. The first is “intentional self harm” and the second is classified as “events of undetermined intent”. It’s the second that we would like to consider further.

In the NRS documents “events of undetermined intent” are characterised as:

1. cases where it is not clear whether the death was the result of intentional self-harm;
2. an accident;
3. an assault. (We would point out that in Scottish law a death resulting from an assault is a homicide. Therefore the NRS figures may well include homicides which have not been identified as such.)

The statistics show that between 1999 – 2010 almost 30% of ‘probable suicides’ came under the heading of “events of undetermined intent”. This equates to 2895 deaths over this period that are assigned as ‘probable suicides’ despite the lack of evidence.

During the same period 7008 deaths were deemed as “intentional self-harm” (where some evidence exists. If we take this in the context of homicide over the same period (based on 2005 – 2010 data) we have around 1296 homicides. Combining both gives us a total of 8304 determined deaths.

If undetermined deaths over the identified period was split pro rata to the “proven” rates of suicide and homicide outlined by NRS it would equate to 15.5% of these death being assigned as potentially homicide. (It should be borne in mind that suicide does not need to be proven beyond reasonable doubt in Scotland.) This would equate to 452 of the 2895 as being possible homicides!!

(Some consideration should be given for estimated accident contribution)

While the NRS suggests that undetermined deaths are assigned as ‘probable suicides’ because most will likely be from that camp, is it not reasonable to believe that some will be for other causes including homicide?
We only write this to highlight that many bereaved families have serious questions that our society has failed to answer, so it seems appropriate that they should have a right to seek to have greater understanding of the investigation and its findings.

**To summarise:**

The assertion that we have asked for an FAI in each case is incorrect.

The assertion that we would subject all families to unwanted pain is incorrect.

Disclosure of key information could, with minimal cost, be made by the COPFS, perhaps via Victim Support Scotland, to those few families wishing to question or challenge a finding of self infliction etc.

The determination of self infliction is not beyond reasonable doubt and must be prone to risk and errors.

Many deaths are unresolved in Scotland

Giving families closure is not only humane but can support the Crown Office and Police when their findings are supported.

**Stuart Graham**

**6 March 2015**