Christine Grahame MSP  
Convener of Justice Committee  
c/o Justice Committee Clerks  
Room T2.60  
The Scottish Parliament  
Edinburgh  
EH99 1SP


Dear Christie,

Thank you for your letter dated 30 October 2015 regarding consideration of ‘Petition PE1501: Public inquiries into self-inflicted and accidental deaths following suspicious death investigations’. As you will be aware, Stephen McGowan, Deputy Director of Serious Casework at COPFS, previously wrote to the Convener of the Public Petitions Committee on 13 February 2014 setting out the Crown’s position in relation to various aspects of the Petition. He also gave evidence to the Public Petitions Committee on 3 June 2014 in this respect. Additionally, the Crown Agent sent a letter to you on 21 January 2015, with further information on the level of investigation carried out into deaths classed as self-inflicted in Scotland. As your current enquiry also relates to ‘Petition PE1567: Investigating unascertained deaths, suicides and fatal accidents’, it may be worth re-emphasising some of the information provided in previous correspondence.

Petition PE1567 raises questions about the way in which COPFS investigates unascertained deaths, suicides and accidental deaths and compares the system with the coroner system in England and Wales. As you will be aware, the role and function of COPFS with respect to deaths in Scotland differs from that of a coroner in England and Wales. A coroner is an independent judicial office holder, either medically or legally qualified, who enquires into violent or unnatural deaths, sudden deaths of unknown cause and deaths which have occurred in prison. Where suicide is suspected, a coroner’s inquest is mandatory regardless of the wishes of the bereaved family.

An inquest in England and Wales is a limited, fact-finding inquiry, to establish the causes of a death. This is different from a Fatal Accident Inquiry (FAI) in Scotland, which also seeks to establish whether there were any reasonable precautions which may have prevented the death or whether there were any defects in any system of working which contributed to the death or any accident resulting in the death.
It is correct to state that there are proportionally more coroner’s inquests in England and Wales than there are FAIs in Scotland, but this does not mean that there is not the same level of investigation in to these types of deaths in Scotland.

COPFS acknowledges that an investigation in to any death can be challenging and distressing for family members, but that this can be compounded when there is any dubiety about the circumstances surrounding the death. The investigation of any sudden, suspicious, unexpected or unexplained death forms a key part of the work of COPFS. In particular, the investigation of unresolved homicides is a priority, which was why a Cold Case Review Unit was established in 2011 to pursue those who have avoided initial detection for homicide.

Although initial enquiries in to any death are conducted by the Police Service of Scotland, the Procurator Fiscal can be involved at a very early stage and will direct the police investigation, particularly where there appears to be any suspicious circumstances. In all cases, the Procurator Fiscal will receive a report from the police and additional information will be requested if this is thought to be necessary to ensure a thorough investigation in terms of Article 2 of the European Convention of Human Rights. This additional information can include witness statements, medical records, expert reports or any other further enquiries that are considered appropriate.

The extent of any investigation in to a death will always depend on the facts and circumstances of a particular case. The family’s views are clearly an important consideration during this process and it is recognised by COPFS that Article 2 of the European Convention of Human Rights requires that an effective investigation into deaths must involve the nearest relatives to an appropriate extent. However, the views of the family are not the sole consideration during any investigation - indeed, it is entirely possible for different family members to have opposing ideas and concerns about the extent of the investigation. Some family members may not wish for any further enquiries to be made, on the basis that they feel it to be an invasion of the deceased’s privacy. Any deaths investigation by COPFS is carried out impartially and in the public interest, with an acknowledgement of a range of considerations including the interests of the family of the deceased.

Article 2 of the European Convention of Human Rights does not go so far as to require all proceedings following an investigation into a violent death to be public. The degree of public scrutiny required may vary from case to case: Anguelova v Bulgaria (2004) 38 EHRR 31; Ramsahai v The Netherlands (2008) 46 EHRR 43. 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.
As detailed in the letter from the Crown Agent to you, dated 21 January 2015, deaths which raise the possibility of being caused by self-inflicted injury can be categorised as follows:

(a) Deaths where there are clearly no suspicious circumstance and there is a strong basis on the facts and circumstances to indicate it was self-inflicted/suicide, for example where there is an obvious mechanism of death suggesting suicide and a suicide note has been left.

(b) Deaths where there are clearly no suspicious circumstances and the facts indicate it was self-inflicted/suicide but where the mechanism/cause of death requires further investigation, for example where it appears that the deceased has taken drugs to end their life, but toxicology is required to confirm that.

(c) Deaths where there are clearly no suspicious circumstances but from the facts it is not clear that the deceased intended to take their own life.

(d) Deaths where there are clearly no suspicious circumstances and the facts indicate it was self-inflicted/suicide, but the background circumstances necessitate a more detailed investigation, for example where the deceased was either under medical care or had recently been, perhaps for depression, and concerns have been raised about the standard of care or where perhaps a critical incident review has taken place.

(e) Deaths where suspicious circumstances cannot be ruled out and full investigation is required in order to rule out homicide.

I enclose a copy of this letter for your information, which sets out the level of investigation involved in each of the categories referred to above, but would like to draw your attention specifically to the fact that where suspicion cannot be ruled out, the death must be investigated as a suspicious death. This remains the case until such time as the Procurator Fiscal is satisfied that there are no longer reasonable grounds to suspect that the death may be homicidal or caused by the criminal act of another person. In order to rule out homicidal or criminal acts, a detailed further investigation will be required, which may include a full forensic examination of the locus including fingerprint examination, DNA analysis, toxicological examinations, examination of any available CCTV evidence and analysis of mobile phones and other devices.

Petition PE1567 calls for the creation of an appeals system in an effort to include family members in any decisions made in relation to the investigation. I also note that in relation to Petition PE1501 the Justice Committee is now looking for further information on the police investigation and what opportunity families have to scrutinise an investigation if they consider that they have reasonable grounds to question its reliability. You have also asked what safeguards are currently in place to ensure that police investigations reach robust and sound conclusions in these types of cases.

As you will be aware, the Crown’s approach to communicating with family members is now being formalised in the ‘Charter for Bereaved Families’, which is due to be published when legislation is passed.
It will confirm that the family will be kept updated throughout the investigation and that they will be advised of any significant developments. Where the family of the deceased wish to be advised of the information uncovered as a result of the investigation then the Procurator Fiscal will appraise them of what the investigation has found and share all relevant information as far as possible. If family members wish to have sight of evidence obtained during the investigation such as pathology or other expert reports and photographs then this will be disclosed in as sensitive a way as possible. For instance sometimes the post mortem report disclosure will be arranged through the family GP where, for example medical terms require to be explained and the family prefer that is done in such a setting. Any further investigation that may be required as a result of additional matters which may be raised by family members will be considered and, if appropriate, instructed and the results explained.

Communicating with family members is a two-way process, and the Procurator Fiscal will always take into account the concerns of the family when considering whether any further enquiries should be instructed. Their views are also taken in to account when reaching any decision on whether or not there should be a discretionary Fatal Accident Inquiry or whether I should exercise discretion no to hold an inquiry into a death falling into the mandatory category on the basis that the circumstances of the death have been sufficiently established during criminal proceedings.

If the family are unhappy about how the investigation is progressing, they can let the police or the Procurator Fiscal know about this at any time. There are also a number of formal remedies which are available to them. If they are unhappy about the standard of service they receive from the police, they can follow an established process to make a complaint. It is also possible to complain to the Police Investigations and Review Commissioner, who can conduct a complaint handling review.

If families are unhappy about the investigation by the Procurator Fiscal, again a formal complaints procedure can be followed. Information about this procedure is available on the COPFS public website. During this process, if it is felt that further enquiries should be made in to the circumstances surrounding a death, then these will be instructed. Additionally, as the ‘Charter for Bereaved Families’ will confirm, it will also be possible for family members to seek a review of a decision taken on whether a Fatal Accident Inquiry should be held.

If the family are dissatisfied with how COFFS have handled their complaint they are entitled to raise that with the Scottish Public Services Ombudsman (SPSO). It should be noted however, that while the SPSO is the final stage for concerns about how COPFS have handled a complaint, they are not an appeal body for any legal decisions we have taken.

It is entirely appropriate that the final legal decision, short of judicial review, on the extent of any further investigation rests with the Lord Advocate, who acts independently as the head of COPFS. I am committed to the effective, impartial and prompt investigation of deaths and am mindful of the State’s obligations under Article 2 of the European Convention of Human Rights.
This means that any investigation must be independent, reasonably prompt, open to a sufficient element of public scrutiny and one in which family members must be involved to an appropriate extent. In some circumstances this will necessitate the holding of a Fatal Accident Inquiry, but not in all cases. If there is any evidence at any time during this investigation of criminality, then this will be pursued in accordance with our commitment to give priority to the prosecution of serious crime.

Best wishes,

FRANK MULHOLLAND QC