Dear Michael

**PE1501 and PE1567: Investigating unascertained deaths, suicides and fatal accidents**

At its meeting on 5 January 2016, the Committee considered the above petitions and agreed to write to you seeking further assurances regarding the concerns raised by the petitioners.

Both petitions raise similar concerns about “closure” and the need for bereaved families to be confident that, as far as is possible, the justice system has yielded the right verdict, in cases where the cause of death of a loved one is deemed self-inflicted or unascertained.

The Committee wrote to the Lord Advocate in October last year asking for an explanation as to the safeguards that are in place to ensure that police investigations reach robust and sound conclusions in these types of cases, as well as information as to the powers families have to question the quality of such an investigation.

The Lord Advocate’s response, dated 25 November 2015 (attached in Annexe A), includes reference to the Charter for Bereaved Families, which confirms that the COPFS will update families throughout the course of an investigation, advising them of any significant developments and providing additional information on request. The Committee welcomes this as a positive development for families and recognises that the charter goes some way to addressing the petitioners’ concerns insofar as it allows for a greater degree of communication between authorities and bereaved families. The Charter appears not to allow for a case to be independently reviewed, should a family have legitimate concerns about the conclusions drawn by the Police or COPFS.
In his letter of 25 November, the Lord Advocate draws the Committee’s attention 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.”

While the petitioners accept that it would be inappropriate for bereaved families to interfere with an ongoing police investigation, it is reasonable to suggest that, on rare occasions, mistakes can be made, which might adversely affect the conclusions drawn by the police and COPFS. If, for example, evidence gathered by the police supports an erroneous conclusion and the COPFS are satisfied that there are no longer reasonable grounds for suspecting foul play then presumably a decision not to prosecute could be inaccurate.

Is the Cabinet Secretary satisfied that the current arrangements provide a sufficient degree of protection to families and, where applicable, allow them to question the findings of an investigation?

The Lord Advocate goes on to explain the relevant complaints procedures available to bereaved families, concluding: “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 the COPFS”.

The Cabinet Secretary will be aware that in England and Wales, every unforeseen death is subject to a coroner’s inquest. By contrast, the system in Scotland only publicly reviews a small proportion of deaths in the form of a Fatal Accident Inquiry.

The Lord Advocate acknowledges “that there proportionately more coroner’s inquests in England and Wales that there are FAIs in Scotland, but this does not mean that there is not the same level of investigation in relation to these types of deaths in Scotland.” The Committee does accept that FAIs and coroner’s inquests are not directly analogous and serve slightly different purposes.

Does the Cabinet Secretary consider that the Scottish system currently offers the same level of independence of scrutiny of deaths compared to our English and Welsh counterparts?

Would the Cabinet Secretary support some additional review process, outwith the current FAI mechanism, to provide additional safeguards in cases where families have legitimate concerns about the results of an investigation?

The Committee would appreciate a response by Friday 19 February 2016.

Yours Sincerely

Christine Grahame MSP
Convener, Justice Committee