Justice for Megrahi submission for the consideration of PE 1370 by the Justice Committee of the Scottish Parliament on 1st March 2016

We refer to the Justice Committee meeting of 23rd February 2016 and specifically to the related Lord Advocate’s letter of the same date.

We are extremely concerned that the Lord Advocate appears to be treating JfM and the Justice Committee with disrespect in suggesting that it is our insistence on an independent assessment of the Operation Sandwood report that is the issue and not his complete failure to provide a coherent response to our legitimate concerns.

As you will be aware the above petition was originally lodged with the Petition’s Committee in 2010 and passed to the Justice Committee in 2011. We now find ourselves in 2016 and despite a steady flow of correspondence between the Justice Committee, JfM and the Lord Advocate we are no nearer resolving these concerns.

The Lord Advocate’s latest letter is disingenuous and confusing, adds little clarity to matters and raises a number of important issues.

He opens by stating: ‘The allegations made by JfM are being considered by Police Scotland in accordance with due process.’

Given that due process is the legal requirement that the state must respect all legal rights that are owed to a person and balance the power of law of the land and protect the individual person from it we would argue that due process is most certainly not being followed.

The Lord Advocate continues: ‘An independent senior counsel at the Scottish Bar, with no prior involvement in the Lockerbie investigation and associated prosecution, has been appointed to undertake prosecutorial functions in relation to the police investigation. This role includes providing an independent legal overview of the evidence, conclusions and recommendations and directing the enquiry when required.’

We find this paragraph extremely confusing.

By implication the Lord Advocate appears to be stating that the Crown has already established this system of independence within the ongoing police investigation. If this is the case then, at the police investigation stage at least, the Lord Advocate would appear to have acceded to our independent prosecutor request.

It is our understanding however that the ‘independent senior counsel’ presently assisting the police was appointed by Police Scotland without reference to the Crown Office to aid the police investigators during their enquiries and not to in any way perform functions normally carried out by the Crown. It is also our understanding that his/her identity is not known to the Crown Office and while that person might be performing some of the scrutiny functions normally carried out by the Crown Office they can in no way be defined as undertaking, ‘prosecutorial functions’.

If this ‘independent senior counsel’ is not the one presently working with the police as part of their investigation then whom is the Lord Advocate referring?
It could be of course that this is the independent counsel he states he has appointed to consider the police report when it is submitted to the Crown Office. While we would welcome this move one absolutely critical question remains.

‘When this independent prosecutor considers the police report and makes his recommendations will the Lord Advocate and/or Crown Office have the power to ignore or change these recommendations or are they totally committed to implement the independently recommended action in full?’

If the Lord Advocate/Crown Office enjoys the power to overrule the ‘independent senior counsel’ then any claim to independent prosecution is a fiction.

The Lord advocate continues: ‘I note that JfM suggest that because Mrs Dyer considered, and did not uphold, a complaint by Mr Ashton in her correspondence to him in February 2013 that she cannot be said to be impartial.’

Our position remains as indicated in our Justice Committee submission of 4th January 2016 that, for the several reasons stated in that submission, Mrs Dyer as Crown Agent and the Lord Advocate’s principal legal adviser on prosecution matters cannot be described as independent and impartial.

In rejecting this argument the Lord Advocate states: ‘I do not agree that the process in place in COPFS requires to be amended to address this sweeping and unfounded assertion that Scotland’s Prosecution Service cannot act independently in the public interest in a criminal investigation.’

Yet again he brushes over the detailed case made for the appointment of an independent prosecutor, fails to address any of the many concerns raised over the years and seeks to generalise and turn the criticism back on those who have the temerity to logically challenge his views.

We share John Finnie MSP’s belief that this debate should be one of process and not personality but it is becoming increasingly difficult to hold to that position as Mr Mulholland continues to ignore the genuine concerns of JfM and the MSP’s on the Justice Committee.

At the last Justice Committee meeting Mr Finnie requested that the 8 questions we had previously submitted to the committee be put to the Lord Advocate. We agree with this recommendation.

Whatever action the committee decides upon however it seems constitutionally relevant that the Lord Advocate should detail the process by which he intends to proceed and to indicate if in the final analysis he and/or Crown Office officials will have the final say over what Crown action results from the Operation Sandwood report.

We believe it would be a total denial of justice if Parliament was dissolved for the May election without these important matters being resolved.

Robert Forrester, on behalf of the Committee of Justice for Megrahi.

Secretary: Robert Forrester. 11 Bridge Street, Longtown, Cumbria CA6 5UB.