Letter from the Scottish Government to the Convener

Thank you for your letter of 6 June in relation to the Justice Committee’s consideration of Petition PE1370 from the Justice for Megrahi group. In your letter, you ask whether the Scottish Government has the power to appoint an independent investigator to deal with complaints against the Crown Office and Procurator Fiscal Service and the police.

It may be helpful if I provide some further background on this matter. On 13 September 2012, Mr Robert Forrester wrote to the Scottish Government on behalf of the Justice for Megrahi group. In his letter, he indicated that the group had evidence, including documents, raising allegations of serious criminal activity by named individuals within the Crown Office and Scottish police. Specific evidence in support of the allegations was not attached with Mr Forrester’s letter.

As indicated in the Scottish Government’s reply to Mr Forrester’s letter, the Scottish Ministers take exceptionally seriously any suggestion of inappropriate or criminal activity by individuals with key responsibilities within Scotland’s justice system. It is absolutely vital that such allegations should be reported and investigated through the appropriate procedures. Indeed, allegations of criminal activity can only be dealt with through investigation, prosecution and, ultimately, consideration by the courts.

The Scottish Ministers, other than the Law Officers, have no powers to investigate and prosecute allegations that criminal offences have been committed. Similarly, no ‘independent investigator’ appointed by Scottish Ministers would have powers to investigate and prosecute such allegations. Responsibility for these matters lies with the Lord Advocate who operates independently of the Scottish Government in relation to the prosecution of alleged crimes. This separation of duties within Scotland’s justice system is of critical importance in protecting individuals from politically motivated prosecutions.

Our response to Mr Forrester advised him that, where criminal allegations relate to the conduct of police officers or members of the prosecution service, there are established arrangements for investigating these, independent of those involved in the original case. Where there is evidence of potential criminal actions, final decisions on whether to proceed with a prosecution would be taken based on advice from Crown Counsel. In such a situation, it would then of course be for a court to reach a view as to whether a person or persons should be convicted of criminal offences.

We understand that the allegations made by Justice for Megrahi group have been reported to the police and we further understand that they are being considered in line with the appropriate procedures. We note from media reports that this included the police meeting with members of Justice for Megrahi on 16 April 2013 to discuss their allegations. The Scottish Government respects fully, and operates in accordance with, the separation of functions between Government and prosecuting
authorities. We have no involvement with this process and no locus or intention to intervene or comment whilst it is on-going.

In subsequent correspondence and media releases, Mr Forrester and the Justice for Megrahi group indicated that they were, in fact, not asking Scottish Ministers to seek to investigate the specific allegations they raised but to appoint an independent body, “from outwith Scotland”, to undertake a “full independent inquiry” into their concerns about the prosecution of Mr Megrahi.

Under the Inquiries Act 2005, the Scottish Ministers have a power to establish an inquiry into particular events that have caused, or are capable of causing, public concern, or where there is public concern that particular events may have occurred. The Scottish Government’s position in respect of calls for an independent inquiry is that the matters that an inquiry would look at would be considered appropriately as part of any court appeal that is heard in the Al-Megrahi case. No independent inquiry, whether conducted by someone from within or outwith Scotland, could review or overturn Mr Al-Megrahi’s conviction.

It remains open for relatives of Mr Al-Megrahi, or, potentially, relatives of the Lockerbie bombing victims, to ask the Scottish Criminal Cases Review Commission (“the Commission) to refer the case to the court for a further appeal. The Commission would consider the case and decide, in line with their statutory framework, whether a miscarriage of justice may have occurred and whether it is in the interests of justice to refer the case. If the case was referred by the Commission and following consideration of all relevant matters through a further appeal being heard, the court would have the power to either uphold or overturn Mr Al-Megrahi’s conviction. Mr Al-Megrahi was convicted in a court of law and the only appropriate forum for determining his guilt or innocence is a court of law. Any conclusions reached by an inquiry would not have any effect on either upholding or overturning the conviction as it is appropriately a court of law that has this power.

In addition to the matters noted above, we would also note that Lockerbie remains a live on-going criminal investigation.

In light of the above, the Scottish Government has no plans to institute an independent inquiry into the conviction of Mr Al-Megrahi. I hope this is helpful in explaining the Scottish Government’s position to the Committee.

Kenny MacAskill MSP
Cabinet Secretary for Justice
24 June 2013