Dear Convenor

Petition 1370 from Justice for Megrahi

I am writing in relation to your correspondence with the Lord Advocate about the steps which will be taken by COPFS to ensure that the police investigation into allegations of criminality by JFM in connection with the Lockerbie case, known as Operation Sandwood, are dealt with appropriately.

The Lord Advocate has explained he takes the view that his involvement in the ongoing criminal investigation into the involvement of others in the bombing of flight Pan Am 103 makes it inappropriate for him to having any dealings with Operation Sandwood. This is entirely consistent with the normal approach which COPFS takes in any case involving allegations against a prosecutor or former prosecutor to ensure that the prosecution decision making is independent. It is for the same reason that the COPFS prosecutors working with the Lord Advocate on the ongoing investigation are also not involved in Operation Sandwood and will play no part in the prosecution decision making once the investigation has concluded.

It may assist if I provide you with a copy of my letter to the committee of 26 June 2013 in which I explained the specific arrangements which pertain to Operation Sandwood. I also enclose a copy of my two letters of 25 February 2013 and 25 March 2013 which include general details of how COPFS deals with allegations of criminal conduct by prosecutors or former prosecutors.
I hope this information is helpful and gives you the confidence that COPFS has and will take appropriate steps to ensure that if there is any question of Operation Sandwood investigation leading to prosecution decision making then that will be considered by independent counsel appointed by the Crown Agent and such counsel will not hold a commission from the current Lord Advocate and will not have played any part in the criminal investigation into the circumstances of the bombing of flight Pan Am 103.

Yours sincerely

\[Signature\]

CATHERINE DYER CBE
Crown Agent & Chief Executive
Justice Committee
Petition PE1370

Letter from the Crown and Procurator Fiscal Service to the Convener

Petition PE1370: Justice for Megrahi.

Thank you for your letter of 6 June 2013 requesting information regarding the handling of Justice For Megrahi complaints.

I hope the committee find the following information in response to your particular questions helpful.

- What resources have been allocated by the Crown Office and Procurator Fiscal Service (COPFS) to the investigation of JFM’s allegations?

At this time, I am able to advise that the investigation of Justice For Megrahi’s allegations is presently being conducted by The Police Service of Scotland. There is no dedicated resource from COPFS attached to this investigation. I have however asked a Senior Prosecutor who has had no prior involvement in the Lockerbie Investigation and associated Prosecution to act as a conduit with the Senior Investigating Officer to ensure that access to any material that the Crown has, and that The Police Service of Scotland consider is necessary for full and thorough consideration of the allegations, is facilitated.

- Will the COPFS keep JFM informed of developments in the investigation of their allegations?

As indicated above The Police Service of Scotland is at this time conducting the investigation of the allegations made and any request for information in respect of that investigation would be for them.

- Has the COPFS instructed the Police on how to proceed with the investigation into JFM’s allegations?

As indicated above The Police Service of Scotland is at this time conducting the investigation of the allegations made. COPFS has not instructed The Police Service of Scotland as to how that investigation should proceed.

I hope that this is of assistance to the Committee.

Catherine Dyer
Crown Agent
26 June 2013
Justice Committee

Correspondence from Crown Agent & Chief Executive – complaints against the Lord Advocate in role as head of prosecution service

Thank you for your letter of 20 February 2013.

I note that Mr Ross considered that the original response did not sufficiently address the matters which he was enquiring about. I hope the following expansion is helpful.

Where any complaint relates to the work of the Crown Office and Procurator Fiscal Service (COPFS), any person or organisation who is dealt with or is affected by the work of COPFS can make a complaint under our Customer Feedback Policy. Such complaints can include anything which relates to the remit of COPFS as the Public Prosecution Service for Scotland when an individual or organisation is unhappy with the way in which a case, in which they have an interest, has been dealt with. If it is felt that any complaint is not investigated or dealt with properly by COPFS then the person raising the complaint can refer it to the Scottish Public Services Ombudsman.

As was confirmed, the Lord Advocate, like any other Minister, is bound by the Ministerial Code. Paragraph 2.36 of that Code provides that in respect of criminal proceedings the Lord Advocate, and the Solicitor General, act wholly independently of the Government. The fact that the Lord Advocate acts independently of the Government in his role as head of the systems of criminal prosecution and investigation of deaths is also specified in section 48(5) of the Scotland Act 1998.

Section 48 of the Scotland Act also provides that the Lord Advocate can be removed from Office, with the approval of Parliament, by the First Minister [s.48(1)].

Whilst not required to do so, the Lord Advocate will often provide reasons for prosecutorial decisions. The Lord Advocate is entitled to attend and address Parliament and can be required to attend Parliament to explain any perceived failure in the system of prosecution.

The Lord Advocate can be questioned by MSPs about the exercise of his functions although he may not be required to answer questions or produce documents relating to the operation of the system of criminal prosecution in relation to any particular case if he considers that it might prejudice criminal proceedings or may otherwise be contrary to the public interest.

Under the Parliament’s Standing Orders questions about the operation of the systems of criminal prosecution and investigation of deaths are answerable by the Law Officers.

Examples of when a Lord Advocate has addressed Parliament include the address following the acquittal of Angus Sinclair and the address regarding the handling of the Chhokar prosecution.

If any complaint alleged criminality by a current Lord Advocate in the exercise of their role as head of the system of criminal prosecution in Scotland then this would be
investigated by the Police as it would in any ordinary case. It would only be formally reported by the Police to the Crown Agent if it appeared that there was a sufficiency of evidence to allow consideration of criminal proceedings. The Crown Agent would allocate the consideration of such a case to an appropriately independent person.

This is also the process which is followed if any allegation of criminal conduct is received against any Member of the Scottish Parliament.

Where any report was formally received from the Police by the Prosecutor Fiscal regarding a former Law Officer (when it appeared there was a sufficiency of evidence following the carrying out of the normal Police investigation) the current Lord Advocate could, if appropriate, recuse himself or herself of any involvement in consideration of the case and arrangements would be made by the Crown Agent for Independent Counsel to the decision on action.

I hope this is helpful.

Catherine Dyer
Crown Agent & Chief Executive
25 February 2013
Thank you for your letter of 7 March 2013.

I note that you have requested clarification on four points.

For ease of reference I have provided a response below in respect of each under the headings set out in your letter.

It may be of assistance if before turning to these responses I set out some initial information regarding roles and function within COPFS and the circumstances which surround appointment to the offices of Crown Agent, Procurators Fiscal and Advocate Deputes.

**Role and function of the Lord Advocate**

The Lord Advocate is the Ministerial Head of the Crown Office and Procurator Fiscal Service, and the head of the systems of criminal prosecution and the investigation of deaths in Scotland and I understand the Committee’s question to relate to that aspect of the Lord Advocate’s role.

As the Committee is aware in addition to his role as independent prosecutor in the public interest the Lord Advocate is a Minister in the Scottish Government and is also the chief legal adviser to the Scottish Government on Scottish legal matters, both civil and criminal.

The International Association of Prosecutors’ ‘Standard of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors’ states that the use of prosecutorial discretion ‘should be exercised independently and be free from political influence’ and requires prosecutors to ‘perform their duties without fear, favour or prejudice’.

No one can require the Lord Advocate to institute criminal proceedings or to abandon a prosecution. It is fundamental to the prosecution of crime in Scotland that decisions in individual cases are immune from political influence or other pressure.

The COPFS Prosecution code which can be found at [www.crownoffice.gov.uk/Publications/2005/06/Prosecution-Code](http://www.crownoffice.gov.uk/Publications/2005/06/Prosecution-Code) contains a general explanation of the various factors which may properly influence prosecutorial decisions.

**Role and function of the Crown Agent**

The Crown Agent is a Senior Civil Servant appointed as Chief Executive of the COPFS, acting as civil service head of the staff and principal legal advisor to the Lord Advocate on prosecution matters.
Present or former Law Officers play no part in the appointment process in respect of
the Crown Agent.

Role and function of Advocate Deputies and Crown Counsel

Advocate Deputies, together with the Lord Advocate and Solicitor General, comprise
Crown Counsel. Crown Counsel consider the sufficiency of available evidence in
law in serious and sensitive cases which have initially been reported to Procurators
Fiscal by the Police and other Specialist Reporting Agencies (SRA) and decide on
the appropriate prosecutorial response to be made in the public interest and when
appropriate prosecute cases in the High Court.

Crown Counsel is a collective entity. Their individual decisions are noted publically
as having been made by “Crown Counsel” and no individual is identified as the
specific decision maker (in the same way for example as decisions are said to have
been made by “Parliament” or “Government”)

Role and function of Procurators Fiscal

Procurators Fiscal act as the local representative of the Lord Advocate within a
Sheriff Court District. In respect of all cases reported to them by the Police and
Specialist Reporting Agencies, which do not require decision by Crown Counsel,
they consider the sufficiency of available evidence in law and decide on the
appropriate prosecutorial response to be made in the public interest. When
appropriate, Procurators Fiscal prosecute cases in their local courts on behalf of the
Lord Advocate.

Holding of Lord Advocate’s Commission

The Crown Agent does not hold a Commission from the Lord Advocate.

Procurator Fiscals and Advocate Deputies do hold the personal Commission of the
Lord Advocate.

Processes to deal with any complaint of alleged criminal conduct by a Law
Officer, former Law Officer, Procurator Fiscal or person working within COPFS
(or of alleged criminal conduct by a family member or close associate of any
such office holder or person working within COPFS)

The aim of the processes that would be put in place if a Standard Police Report
contained a complaint of alleged criminal conduct by a Law Officer, former Law
Officer, Procurator Fiscal or person working within COPFS (or of alleged criminal
conduct by a family member or close associate of any such office holder or person
working within COPFS) is to ensure that “justice is seen to be done”.

The Latin phrase “quis custodiet ipsos custodes?” (Who guards the guardians?)
encapsulates the question that might otherwise legitimately be asked by the public in
such circumstances.

The type of process followed in such a case aims to ensure transparency and make
clear the necessary emphasis on independence as to decision making. This is in
order is to avoid any suggestion that the relevant Law Officer, Procurator Fiscal or person working within COPFS had any influence on the final decision as to action in such a case.

Against that background I hope that the Committee find the following responses to be of assistance:

1. **Confirmation of how complaints of a non criminal nature against the Lord Advocate and whether they would be dealt with in terms of the COPFS Customer Feedback Policy.**

   The route followed to deal with a complaint of a non criminal nature against the Lord Advocate would depend on the specific nature of such a complaint.

   If it referred to behaviour or conduct by the Lord Advocate then this would be dealt with under the Ministerial Code.

   If the complaint related to prosecutorial decisions, for example a decision to take action or not take action in a specific case or in relation to an investigation into a death, then this would be dealt with under the COPFS Customer Feedback Policy.

   The current Customer Feedback Policy which can be found at [www.crownoffice.gov.uk/Publications/2010/10/Customer-Feedback-Policy-PDF](http://www.crownoffice.gov.uk/Publications/2010/10/Customer-Feedback-Policy-PDF) has three potential stages for consideration by COPFS of a complaint. Our aim is to resolve any complaint as early as possible but if the person initiating the complaint remains unsatisfied with the COPFS response after stage 1 they can request that the circumstances are considered further by a more senior manager within COPFS. If they remain unsatisfied with the response at stage 2 they can request consideration at stage 3. All complaints that require to be considered at Stage 3 are dealt with personally by the Crown Agent.

   If the complaint is about a prosecutorial decision, that will be reviewed afresh by a senior lawyer who did not make the initial prosecutorial decision at each stage.

   After all 3 stages of the COPFS procedure have concluded if an individual remains dissatisfied with the decision to uphold or not uphold their complaint or the way in which their complaint has been handled, then they may raise the matter with the Scottish Public Services Ombudsmen (SPSO).

   The SPSO will consider the way the complaint has been handled by COPFS and does not review prosecutorial decisions as these decisions are matters for the public prosecutor to make independently.

2. **Clarification as to when the police will report a case to the Procurator Fiscal and who takes a decision on what action (if any) is appropriate.**

   In all cases the police only submit a Standard Police Report where they consider that there appears to be a sufficiency of evidence to prove that a crime has been committed. The process that would be followed if the Standard Police Report related to a present Law Officer is attached at Annex A.
The process that would be followed if a Standard Police Report related to a former Law Officer is attached at Annex B.

3. **Confirmation if a Lord Advocate has required to recuse him/herself from consideration of any case involving a former Lord Advocate.**

I am not aware of any Standard Police Report being received against any former Law Officers.

4. **Confirmation of the processes in place for reporting and recording of cases where allegations of criminal behaviour have been made against individuals within the Crown Office, and in particular whether all cases where criminal allegations have been brought forward are kept on record, including unfounded ones.**

Where a Standard Police Report (SPR) is received containing allegations of criminal conduct by any individual who works within the COPFS (or of alleged criminal conduct by a family member or close associate of a person working within COPFS) then the process at Annex B is adopted.

All SPR’s have an unique reference number allocated on receipt by COPFS to allow an audit trail of submission by the police, receipt of the SPR by COPFS and the decision taken by COPFS regarding action or no action.

The information about decisions as to prosecutorial action in each case is also recorded on the police database and the Criminal History System (CHS) respectively. The Criminal History System (CHS) is a national database whose primary function is to record the criminal history records of individuals. CHS includes information on pending, ongoing and concluded criminal cases. It also records disposals such as direct measures offered by the Procurator Fiscal and records findings of guilt by the courts and details the sentences imposed.

I hope that this information is of assistance to the Committee.

Catherine Dyer  
Crown Agent and Chief Executive  
25 March 2013
Criminal Complaint reported against present Law Officer to the Police

Police Investigate and if there is sufficiency of evidence

Police Send a Standard Police Report direct to the Crown Agent

Crown Agent considers and instructs Counsel (not Crown Counsel who are appointed by the Lord Advocate and hold his/her Commission)

Independent Legal Counsel makes the decision about any action to be taken
ANNEX B

NB – In some circumstances the identity of the accused may be anonymised to further bolster confidence that the identity of the alleged accused has not influenced the prosecutorial decision.

That may not always be possible, for example due to media reporting around the circumstances of any alleged offending behaviour. The Crown Agent or Director of
Serious Casework may also decide whether it would be more appropriate for Counsel who is not a member of Crown Counsel to be instructed to consider the case per Annex A.

This procedure is also adopted for any reports received against high profile celebrities or Members of Scottish or UK Parliament.