



The Scottish Parliament  
Pàrlamaid na h-Alba

## JUSTICE COMMITTEE

### AGENDA

26th Meeting, 2015 (Session 4)

Tuesday 22 September 2015

The Committee will meet at 10.00 am in the Robert Burns Room (CR1).

1. **Declaration of interests:** Michael Russell will be invited to declare any relevant interests.
2. **Community Justice (Scotland) Bill:** The Committee will take evidence, in round-table format, on the Bill at Stage 1 from—

Alan Staff, Chief Executive, Apex Scotland;

Laura Mulcahy, Development Co-ordinator, Criminal Justice Voluntary Sector Forum;

Professor Nancy Loucks, Chief Executive, Families Outside;

Pete White, National Co-ordinator, Positive Prison? Positive Futures;

Tom Halpin, Chief Executive, Safeguarding Communities - Reducing Offending (Sacro);

Louise Johnson, Legal Issues Worker, Scottish Women's Aid;

Emma Dore, Senior Policy Officer, Shelter Scotland;

Christine Scullion, Head of Development, The Robertson Trust;

Nicola Merrin, Policy Officer, Victim Support Scotland.

3. **Criminal Justice (Scotland) Bill:** The Committee will consider the Bill at Stage 2 (Day 2).

4. **Public petitions:** The Committee will consider the following petitions—

PE1280 by Dr Kenneth Faulds and Julie Love on fatal accident inquiries;

PE1501 by Stuart Graham on public inquiries into self-inflicted and accidental deaths following suspicious death investigations;

PE1567 by Donna O'Halloran on investigating unascertained deaths, suicides and fatal accidents;

PE1370 by Dr Jim Swire, Professor Robert Black QC, Robert Forrester, Father Patrick Keegans and Iain McKie on Justice for Megrahi;

PE1479 by Andrew Muir on complaints about solicitors;

PE1510 by Jody Curtis on the closure of police, fire and non-emergency service centres north of Dundee;

PE1511 by Laura Ross on the decision made by the Scottish Fire and Rescue Service to close Inverness control room.

Peter McGrath  
Clerk to the Justice Committee  
Room T2.60  
The Scottish Parliament  
Edinburgh  
Tel: 0131 348 5195  
Email: peter.mcgrath@scottish.parliament.uk

The papers for this meeting are as follows—

**Agenda item 2**

Paper by the clerk J/S4/15/26/1

Private paper J/S4/15/26/2 (P)

[Community Justice \(Scotland\) Bill, accompanying documents and SPICe briefing](#)

[Written submissions received on the Bill](#)

**Agenda item 3**

[Criminal Justice \(Scotland\) Bill and all other associated documents](#)

**Agenda item 4**

Paper by the clerk Petitions J/S4/15/26/3

## Justice Committee

26<sup>th</sup> Meeting, 2015 (Session 4), Tuesday, 22 September 2015

### Community Justice (Scotland) Bill

#### Note by the Clerk

#### Purpose

1. This paper provides some background information in advance of the Committee's third Stage 1 evidence session on the Community Justice (Scotland) Bill on 22 September.

#### The Bill

2. The Bill was introduced in the Parliament on 7 May and referred to the Justice Committee on 13 May. The Policy Memorandum states that "the purpose of the Bill is to replace the existing model for community justice services, which is based on eight regional Community Justice Authorities<sup>1</sup> (CJAs), with a new model". The Bill would in particular:

- require Scottish Ministers to publish both a national strategy and a national performance framework in relation to community justice,
- create a national body, Community Justice Scotland (CJS), with responsibility for overseeing and keeping Scottish Ministers informed about performance in relation to community justice provision, promoting and supporting improvements, and promoting the national strategy.
- require CJS to publish a strategy for innovation, learning and development in relation to community justice, identify and promote good practice and commission services,
- define a set of community justice partners with responsibility for planning, delivery and monitoring of community justice services at local authority level, and
- require CJS and community justice partners to co-operate with each other in carrying out their functions in relation to community justice.

3. The Bill and accompanying documents can be found at:

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/88702.aspx>

4. Further background information is available in the SPICe briefing on the Bill at:

<http://www.scottish.parliament.uk/parliamentarybusiness/91595.aspx>

#### Committee consideration

5. Written submissions received by the Committee on the Bill can be accessed at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/89548.aspx>

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<sup>1</sup> The role of CJAs is to plan, co-ordinate, monitor and report on the delivery of offender services and to produce a strategic plan for their area in consultation with statutory and non-statutory partner bodies. The membership of CJAs is restricted to elected members.

6. The Committee has to date held two evidence sessions on the Bill, on 1<sup>2</sup> and 15<sup>3</sup> September. Key issues discussed at the earlier sessions include:

- the balance between national and local responsibility for community justice arrangements proposed in the Bill,
- the role of the proposed new national body, Community Justice Scotland,
- whether the structures and governance arrangements proposed for the delivery of community justice are appropriate,
- the role of the third sector, local elected members, and victims and their families in relation to the Bill,
- commissioning arrangements, and
- resourcing of the proposals in the Bill.

7. Official reports of the meetings on 1 and 15 September can be found at: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/29847.aspx>

8. The Committee's next evidence session on the Bill is on 22 September, involving a range of third sector organisations including: Apex Scotland, the Criminal Justice Voluntary Sector Forum, Families Outside, Positive Prison? Positive Futures, SACRO, Scottish Women's Aid, Shelter (Scotland), The Robertson Trust, and Victim Support Scotland. In addition to its written submission on the Bill, Shelter (Scotland) has referred members to its recent report: [\*Preventing Homelessness and Reducing Reoffending – Insights from service users of the Supporting Prisoners; Advice Network, Scotland.\*](#)

9. The Committee's final evidence session on the Bill, involving the Minister for Community Safety and Legal Affairs, is to be held on 6 October.

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<sup>2</sup> The evidence session on 1 September involved Dame Elish Angiolini (representing the Commission on Women Offenders, Audit Scotland and the Society of Local Authority Chief Executives and Senior Managers (SOLACE) Scotland.

<sup>3</sup> Two round table evidence sessions were held on 15 September: the first involving a number of community planning partnerships, community justice authorities and local authority criminal justice social work, and the second involving Police Scotland, Social Work Scotland, Scottish Prison Service, Forth Valley Health Board, Parole Board for Scotland, and the Risk Management Authority.

**Justice Committee**

**26<sup>th</sup> Meeting, 2015 (Session 4), Tuesday 22 September 2015**

**Petitions**

**Note by the clerk**

**Introduction**

This paper invites the Committee to consider its ongoing petitions:

**PE1280:** Fatal Accident inquiries on deaths abroad

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

**PE1370:** Independent inquiry into the Megrahi conviction

**PE1479:** Legal profession and the legal aid time bar

**PE1510** and **PE1511:** Police and Fire Control Rooms

**PE1280: Fatal Accident inquiries on deaths abroad - Lodged: 05 September 2009****Terms of the Petition**

The Petition calls on the Scottish Parliament to urge the Scottish Government to give the same level of protection to the families of people from Scotland who die abroad as is currently in place for people from England by amending the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 to require the holding of an FAI when a person from Scotland dies suddenly or unexpectedly while abroad.

At present, the powers of the procurator fiscal to carry out inquiries into fatal accidents and sudden deaths ('FAIs') are set out in the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976. The terms of section 1 mean that an FAI can only be held where the death occurred in Scotland.

**Developments**

The Committee considered this petition in the context of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill, which would replace the 1976 Act. One of the main changes made by the Bill is provision (at section 6) for fatal accident inquiries to be carried out, at the Lord Advocate's discretion, into deaths that take place abroad, provided certain conditions are met (including that the body has been brought back to Scotland). The Committee took evidence from the petitioner Julie Love, chairperson of the group Death Abroad - You're Not Alone on 5 May 2015.<sup>1</sup>

Ms Love agreed that this provision would be both "helpful" and would "make a difference".<sup>2</sup> Asked whether she was concerned that, under the Bill, FAIs for deaths abroad would be discretionary and not mandatory, Ms Love replied "Definitely not. Investigations will be carried out in other countries and we do not want to mimic them in this country."<sup>3</sup>

The committee published its stage 1 report on the Bill on 1 July 2015. The Committee welcomed the main changes made by the Bill, and also called for an amendment to give the Lord Advocate the option to authorise an FAI for a death abroad, where a body has not been repatriated.

**Options**

The committee can:

- Close the petition on the grounds that the Fatal Accidents and Sudden Deaths etc. (Scotland) Bill appears to have adequately addressed the petitioner's main concerns;
- Keep the petition open and take no action for the time being. If so, the Committee may wish to consider the benefit in so doing. It will likely be some years before it is clear whether the new provision on FAIs for deaths abroad (if enacted) is working effectively;
- Take some other action (either taking evidence or seeking more information from the petitioner or another person). The Committee may wish to note that the Crown Office and Procurator Fiscal Service's draft milestone charter for bereaved families makes no direct mention of how the COPFS will respond in the case of deaths abroad.

<sup>1</sup> Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=9935&i=90947>

<sup>2</sup> Col 19

<sup>3</sup> Col 26

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

### **Terms of petitions**

**PE1501 (lodged 13 December 2013):** The Petition calls on the Scottish Parliament to urge the Scottish Government to introduce the right to a mandatory public inquiry with full evidence released in deaths determined to be self-inflicted or accidental, following suspicious death investigations.

The Petitioner provides the following background information in relation to their petition:

“In our own case a death was immediately treated as self-infliction and not investigated despite being re-opened after inputs from the family. The police and Fiscal’s service were found to be negligent and of misleading the family. The investigation had many issues and an FAI was instructed. The FAI validated much of the families concerns and served as the basis of a request for an independent investigation. [...] The police investigated the death but were unable to pursue a number of avenues owing to previous failings, actions and the passage of time. Today this death is now open and suspicious. This case would not have been treated as self-infliction with such haste if subject to scrutiny. Likewise, loss of pertinent evidence would have been restricted by prompt challenging of available evidence.

The current system in Scotland, only requires that a death deemed to be self-inflicted or accidental is based upon probability rather than beyond reasonable doubt as in criminal cases. This has the effect that families are presented with information that supports the conclusion but have no access to anything that may contradict this. This prohibits families from effectively defending loved ones if they do not believe the findings. In essence they must carry out their own investigations if they are to raise questions to challenge findings. Also, the current system, appears to lack the effective independence required under Article 2 as the decision makers, police and the Fiscal, are both responsible for the investigation and thus cannot be deemed to independent when reviewing the findings.

It is envisaged that the inquiry will be ran on similar lines to a Coroner's inquest in England. In this it is led by someone completely independent from the investigation process, QC or Sheriff, with the family having full disclosure with the right to legal representation if requested.”

In a 22 August 2014 letter to the Public Petitions Committee, the Scottish Government stated that “it would be inappropriate and unnecessary to introduce a form of inquiry akin to a coroner’s inquest.” The letter is attached in Annexe A.

**PE1567 (lodged 28 April 2015):** The Petition calls for the Scottish Parliament to urge the Scottish Government to change the law and procedures in regard to investigating unascertained deaths, suicides and fatal accidents in Scotland. As with PE1501, the petitioner’s key concerns appear to be:

- That there should be a mechanism for challenging or reviewing Crown Office and Procurator Fiscal Service (COPFS) conclusions in relation to death investigations particularly where this follows a police investigation into the death that family members consider cursory or defective, and

- That families should generally be included more in the decisions reached in such investigations

It is not currently possible to appeal the Lord Advocate's decision not to hold an FAI. There is also no mechanism to challenge the conclusions drawn by COPFS after a death investigation. However, certain official decisions can be the subject of a judicial review. Judicial review usually looks only at the procedural aspects of an official decision, rather than its strengths or weaknesses. It is also likely to be expensive.

As noted, the PE1501 petitioners referred to Article 2 of the European Convention on Human Rights: the right to life. The courts have interpreted this to include a duty on governments to investigate loss of life in certain circumstances. The purpose of such investigations is to ensure that laws protecting life can be enforced and that the state can be held to account where it is responsible. The Scottish Government argues that an FAI is not required in all circumstances to which Article 2 applies. Instead, the death investigation carried out by COPFS may meet the required standards.

## **Developments**

The committee raised concerns about the way in which unexplained or self-inflicted deaths are investigated in different parts of the country during its consideration of the Fatal Accidents and Sudden Deaths etc. (Scotland) Bill at stage one.

The committee made no specific recommendations in its stage one report that would be likely to address the concerns raised in both petitions. Much of the petitioners' concerns appear to relate to the initial police investigation in a death, which effectively precedes the process covered in the Bill.

Several of the Cullen Review's recommendations to improve communication between the COPFS and bereaved families are being brought forward in, or in parallel with, the Scottish Government's current FAI Bill. These include:

- The introduction of a "milestone charter", setting out timescales for investigations and decisions in relation to a death being investigated by the COPFS, and the information families can expect to receive during the process;
- Provision in the Bill (section 8) requiring the Lord Advocate to give written reasons (on request) for a decision not to hold an FAI. However, it does not require the procurator fiscal to give reasons for upholding a police investigation which concludes that a death is not suspicious.

## **Options**

The committee can:

- Close the petitions (noting, in the case of petition 1501, that the Scottish Government appears to have made clear that it has no intention of introducing a form of public inquiry occurring at a preliminary stage to the point where an FAI would be held, along similar lines to a Coroner's Inquiry in England and Wales);

- Write to any or all of the Lord Advocate, the Cabinet Secretary for Justice, and the petitioners to seek views on whether the revised inquiry regime under the new FAI Bill and the milestone charter would adequately address both the petitioners concerns; and/or seek information from the COPFS as to how they evaluate investigations of sudden or suspicious deaths by the police and what opportunity is afforded to families to consider and challenge police findings;
- take any other action that the Committee considers appropriate (for instance, seek further information or take evidence on the issues raised).

**PE1370: Independent inquiry into the Megrahi conviction – Lodged: 01 November 2010****Terms of the petition**

The petition on behalf of Justice for Megrahi (JFM), calls for the opening of an inquiry into the 2001 Kamp van Zeist conviction of Abdelbaset Ali Mohmed al-Megrahi for the bombing of Pan Am flight 103 in December 1988.

**Developments***Operation Sandwood*

At its meeting on 21 April 2015, the Committee considered an update received from Justice for Megrahi, which included a request to consider the appointment of an “independent prosecutor” to assess the findings of the forthcoming Police Scotland investigation known as “Operation Sandwood”. ‘Sandwood’ is the operational designation for Police Scotland’s investigation of JFM’s nine allegations of criminality levelled at Crown, police and forensic officials involved in the investigation and legal processes relating to the Lockerbie/Zeist affair which led to Megrahi’s conviction. The allegations range from perversion of the course of justice to perjury. Police Scotland’s final “Sandwood” report is expected to be completed before the end of the year.

The Committee previously agreed to write to the Lord Advocate seeking his views on the appointment of an “independent prosecutor”. His response (Annexe B) outlines arrangements made by the Crown Office to employ an independent Crown Counsel who had not been involved in the Lockerbie case to deal with the matter. JFM have responded to his letter (Annexe C). They reject the involvement of an independent Crown Counsel because it does not represent an “independent, unbiased and constitutionally sound approach.’

Police Scotland regularly meets with JFM to discuss ongoing issues regarding the case. At its meeting of 28 April officers highlighted the appointment of an independent QC to enhance the professional integrity of the investigation separate from the appointment by the Crown office. The full discussion is reproduced in Annexe D.

*High Court ruling*

Separately, in December 2014 the Scottish Criminal Cases Review Commission asked the High Court for a ruling on the legal status of the victims’ relatives, to enable it to decide whether they can pursue an appeal on Megrahi’s behalf. It ruled in July that the victims’ relatives had no legitimate interest to institute an appeal against the deceased’s conviction.<sup>4</sup> It appears that the only method by which an appeal against the deceased conviction could be instigated is through the deceased’s relatives or the executor of his estate. Whilst there have been some reports indicating that Megrahi’s family wish to be involved in an appeal, the Court proceeded on the basis that the SCCRC’s reference was on behalf only of certain victims of the bombing.

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<sup>4</sup> Available at: <http://www.scotcourts.gov.uk/search-judgments/judgment?id=8ea3e6a6-8980-69d2-b500-ff0000d74aa7>

## Options

The committee can:

- Close the petition
- Continue the petition, pending the outcome of Operation Sandwood and in order to ascertain whether the family of Megrahi will pursue an Appeal (in so doing, the Committee may wish to consider seeking clarification from Police Scotland as to when Operation Sandwood is likely to conclude);
- Take any other action in relation to the petition that the Committee considers appropriate (for instance, in relation to the question over the independence of the person who would consider Police Scotland's report).

**PE1479: Legal profession and the legal aid time bar – Lodged 10 May 2013****Terms of the Petition**

The Petition calls on the Scottish Parliament to urge the Scottish Government to amend the Legal Profession and Legal Aid (Scotland) Act 2007 by removing any references to complaints being made timeously.

Section 4(1) of the Legal Profession and Legal Aid (Scotland) Act 2007 provides that the Scottish Legal Complaints Commission is not under an obligation to investigate complaints which are not made “timeously”. Section 4(3)(a) of the Act allows the SLCC to set time limits defining what “timeously” means. On this basis, the SLCC has adopted rules which explain that: “A complaint will not be accepted (unless the Commission considers that the circumstances are exceptional) if it is made more than 1 year after the professional misconduct, unsatisfactory professional conduct or conviction suggested by it appears to have occurred.

**Developments**

During its consideration of the petition on 21 April 2015 the committee agreed to keep this petition open until after the Scottish Legal Complaints Commission’s rules changed. These changes were due to take effect in July 2015 but have been delayed. Once introduced they will increase the time from one to three years and will coincide with an alternative dispute directive resolution procedure. (NB: in his appearance before the Public Petitions Committee, the petitioner’s preference was for there to be no time bar.)

**Options**

The committee can:

- Close the petition on the basis that the Scottish Legal Complaints Commission rules will be changing to allow more time in which to make a complaint; but in so doing, the Committee may wish to write to the SLCC seeking clarification on when the rule will change).
- Write to the SLCC along the lines set out in the previous bullet point, but keep the petition open until a reply is received
- Take any other action in relation to the petition that the Committee considers appropriate (for instance, take evidence or seek further information from relevant stakeholders).

## PE1510 and PE1511: Police and Fire Control Rooms

### Terms of the petitions

**PE1510 (lodged 23 March 2014)** calls on the Scottish Parliament to undertake a committee inquiry into the closure of Police, Fire, and Non-Emergency Service Centres north of Dundee. In particular, the major concerns raised have been the loss of public knowledge; public safety; officers being off the street and overwhelmed in managing the increased workload this would create.

**PE1511 (27 March 2014)** calls on the Scottish Parliament to urge the Scottish Government to review the decision made by the Scottish Fire and Rescue Service to close the Inverness Control Room.

### Developments

In his recent statement on Policing, Michael Matheson, Cabinet Secretary for Justice agreed to implement HMICS recommendations concerning the control centre reform programme, stating:

*“it should take place only when the current control rooms in Govan and Bilston Glen have a full complement of trained staff, and when the systems and processes are capable of taking additional call demand from the north, when the new area control room in Dundee is fully operational, and after a detailed and independently assured transition plan is developed and delivered. HMICS recommends that centres in Dundee, Aberdeen and Inverness should remain open while that takes place. That is what will now happen. The remaining phase will proceed only once the Scottish Police Authority and HMICS are completely reassured that all the issues have been addressed.”*

With specific regard to the Scottish Fire and Rescue services, Audit Scotland published its review in May of this year, following the merger of the eight fire and rescue services in 2013. The review notes the comments made by Her Majesty’s Fire Service Inspectorate (HMFSI) and in particular, the attention that must be paid to staff retention and engagement with regard to the pending finalisation of control room structures to avoid any reduction in operational response.

The committee also took evidence from Chief Fire Officer, the chair of SFRS, HM Chief inspector of SFRS and FBU Scotland on 28 April. The matter of control room resilience was discussed, and the panel were unaware of a substantial loss of cover. The transcript from that meeting can be viewed here:

<http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=9921&i=90842>

### Options

The committee may wish to:

- Close petition PE1510 on the basis that control room closures will be considered in the course of the Sub-Committee on Policing’s ongoing work on local policing (including call handling arrangements);
- Keep petition 1510 open pending the HMICS full report on call handling which is expected to be published in October;

- Close petition PE1511 on the basis that the issues it raises will be taken into account in the Committee's forthcoming evidence-taking and report on Fire Services reform, which the Committee must report on before the end of the session;<sup>5</sup>
- Take any other action in relation to the petitions that the Committee considers appropriate (for instance, take additional evidence to that set out in the preceding bullet points or request further information from relevant stakeholders).

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<sup>5</sup> By virtue of the Police and Fire Reform (Scotland) Act 2012, section 124

**Annexe A**

PE1501/I

Justice Directorate  
Civil Law and Legal System Division

T: 0131-244 4842 F: 0131-244 4848  
E: hamish.goodall@scotland.gsi.gov.uk

Ned Sharratt  
Assistant Clerk  
Public Petitions Committee  
Public Petitions Clerks  
Room T3.40  
The Scottish Parliament  
Edinburgh  
EH99 1SP

In 2014 Scotland Welcomes the World



22 August 2014

Thank you for your letter regarding Petition PE1501.

Petition PE1501 calls on the Scottish Parliament *"to urge the Scottish Government to introduce the right to a mandatory public inquiry with full evidence release in deaths determined to be self-inflicted or accidental, following suspicious death investigations."*

The Committee has specifically asked the Scottish Government for its views on the discussions that took place at the Public Petitions Committee meeting on 3 June 2014 when taking evidence on Petition PE1501.

The Government's views in relation to the issues raised by Petition PE1501 were provided in the letter from the Cabinet Secretary for Justice on 6 February 2014 and the position largely remains the same, except as further explained below.

#### **Family involvement in death investigations**

The Cabinet Secretary's letter of 6 February provided information on how families are now supported during death investigations by Crown Office and Procurator Fiscal Service (COPFS) and in particular by the COPFS Victim Support and Advice Service (VIA).

Victim Support Scotland currently provides support for families who have been bereaved through murder. The Government has noted that COPFS will consider a referral mechanism for bereaved relatives in other cases, including FAIs, to Victim Support Scotland.

The Government has noted the suggestion by the Law Society of Scotland that there should be a right to request a preliminary hearing before the sheriff in whose jurisdiction the death occurred. The purpose of the hearing would be to determine whether there should be a further inquiry in the small number of cases where the bereaved family is dissatisfied with the death investigation or the decision of the Lord Advocate to exercise his discretion not to hold a fatal accident inquiry (FAI).

St Andrew's House, Regent Road, Edinburgh EH1 3DG  
[www.scotland.gov.uk](http://www.scotland.gov.uk)

Lord Cullen has recommended that where the Lord Advocate decides not to apply to the sheriff for an FAI, written reasons for the decision should be provided to relatives of the deceased: in many cases COPFS already provide very detailed written reasons to families concerning these decisions. COPFS' practice does also reflect, however, that in other cases the families involved may wish decisions to be communicated through other appropriate means.

There is already a remedy available to bereaved relatives if they not agree with the decision of the Lord Advocate regarding the holding of an FAI: this is judicial review.

The creation of a statutory right to request a hearing to determine whether an FAI is held is not, however, appropriate. FAIs are judicial inquiries held in the public interest specifically to determine the time, place and cause of death and any reasonable precautions which might be taken to prevent deaths in similar circumstances in the future.

FAIs are therefore not specifically held on behalf of the bereaved family. Indeed some families do not want FAIs to be held into the deaths of their loved ones as they do not want the details of the death to be aired in public.

#### **Patricia Ferguson's Inquiries into Deaths (Scotland) Bill**

The Scottish Government will consider the content and detail of Patricia Ferguson's final proposals when they emerge after consultation. The Government believes, however, that the efforts made by COPFS in recent years to keep families informed as to progress in death investigations and to give them an opportunity to express concerns provides bereaved families with the kind of involvement envisaged in Ms Ferguson's Bill.

#### **Government Bill to modernise the law on fatal accident inquiries**

As the Committee is aware, the Government is committed to bringing forward legislation within the lifetime of this Parliament to implement the recommendations of Lord Cullen's Review of Fatal Accident Inquiry legislation.

A public consultation, seeking views on the Government's policy proposals for a prospective Bill on fatal accident inquiries in Scotland, has been published and closes on 9 September 2014. The consultation may be found at:

<http://www.scotland.gov.uk/Publications/2014/07/6772>

The proposals, arising from the recommendations made by Lord Cullen, intend to modernise the way in which FAIs are handled in Scotland. The consultation also seeks views on:

- building on the recommendations implemented by the Crown Office to make the system more efficient;
- extending the categories of death in which it is mandatory to hold a fatal accident inquiry;
- obliging those to whom sheriffs direct recommendations at the conclusion of the inquiry to respond to the sheriff about compliance;
- permitting discretionary FAIs into deaths of Scots abroad where the body is repatriated to Scotland; and
- options for holding FAIs in alternative accommodation.

**A different system more closely related to the system of coroners' inquests**

The Scottish Government remains of the view expressed in the Cabinet Secretary's letter of 6 February that it would be inappropriate and unnecessary to introduce a form of inquiry akin to a coroner's inquest.

**HAMISH GOODALL**

*THE RT HON FRANK MULHOLLAND QC*



LORD ADVOCATE'S CHAMBERS  
25 CHAMBERS STREET  
EDINBURGH EH1 1LA

Telephone: 0844 561 2000  
Fax (GP3): 0844 561 4076

Christine Grahame MSP  
Convener  
Justice Committee  
Scottish Parliament  
Edinburgh  
EH99 1SP

*FM* May 2015

*Dear Christine,*

**Petition PE1370: Justice for Megrahi**

Thank you for your letter of 28 April 2015 seeking my view on the petitioners' suggestion of appointing an independent prosecutor to consider the forthcoming Police Service of Scotland report.

I had anticipated this as a potential issue some time ago given my involvement in the investigation and the nature of the allegations which have been made. Arrangements were therefore put in place for independent Crown Counsel who has not been involved in the Lockerbie case to deal with this matter if and when the need arises.

I hope this is helpful.

*Best wishes,  
Frank.*

**FRANK MULHOLLAND QC**



INVESTOR IN PEOPLE  
The Scottish Government

**Annexe C**

**Justice for Megrahi (JFM) submission to the Justice Committee of the Scottish Parliament consideration of PE1370 on 15th September 2015.**

On the 28th April 2015 the Convener of the Justice Committee wrote to the Lord Advocate seeking his view on JFM's suggestion that an independent prosecutor be appointed to consider the forthcoming Police Scotland 'Operation Sandwood' report.

In his response of 8th May 2015 the Lord Advocate stated that it was his intention to appoint an, *'independent Crown Counsel who has not been involved in the Lockerbie case to deal with this matter if and when the need arises.'*

[http://www.scottish.parliament.uk/S4\\_JusticeCommittee/General%20Documents/20150508\\_LA\\_to\\_CG.pdf](http://www.scottish.parliament.uk/S4_JusticeCommittee/General%20Documents/20150508_LA_to_CG.pdf)

In our letter to the committee dated 29th May JFM, objecting to this decision, we observed:

*'If the Lord Advocate is proposing a Crown Office advocate depute as an independent prosecutor to consider any Police Scotland report stemming from the investigation of JFM's 9 allegations of criminality, known as Operation Sandwood, such a proposal falls well short of JFM's concept of an independent, unbiased and constitutionally sound approach.'*

[http://www.scottish.parliament.uk/S4\\_JusticeCommittee/General%20Documents/20150526\\_JFM\\_response\\_to\\_LA.pdf](http://www.scottish.parliament.uk/S4_JusticeCommittee/General%20Documents/20150526_JFM_response_to_LA.pdf)

Our letter lays out precisely why JFM objects in the strongest possible terms to the Lord Advocate's proposal contained in his letter to the convener dated 8th May 2015 and we would ask the committee to fully consider our detailed objections at its 15th September meeting.

In particular JFM wishes to emphasise the following passage from page 4 of its 26th May letter:

*'We strongly believe that in order to acquire a fair, unprejudiced and truly independent reading of the final police report a special prosecutor must be appointed by a process independent of the Lord Advocate and the Crown Office, and must be seen to exercise his/ her decision-making and prosecutorial functions without reference to the Lord Advocate and the Crown Office.'*

*'Since the Lord Advocate's position and independence as head of the prosecution system in Scotland is enshrined in the Scotland Act, such a mechanism must be put in place by the Lord Advocate himself, failing which, the Scottish Government should seek from the UK Government a section 30 Order in Council to enable the Scottish Government to do so.'*

We believe that these facts offer the Justice Committee a way forward.

Over past years a number of serious questions have been raised about the office of the Lord Advocate, the Crown Office and the Scottish Justice System in general.

The collapse of the Andy Coulson trial, the hasty decision to take no proceedings in relation to the Bin Lorry accident are but two examples.

The astonishing public outbursts in relation to our 9 allegations first from the Crown Office and then from the Lord Advocate to which we have already referred before they even knew what the allegations were, are two more cases in point.

This latest attempt by the Lord Advocate not to surrender his control, despite irrefutable evidence that he should, only serves to provide further focus to these concerns and throw serious doubt on the Crown's internal decision making processes. We feel it is important to emphasise that while we have highlighted the actions of the current Lord Advocate and Crown Office this only serves to highlight a much more central concern about the general constitutional and political position of the Office of the Lord Advocate and the Crown Office.

We believe that the only authority providing any form of political oversight of the Scottish Justice System is the Justice Committee and as such we believe that your continuing monitoring of the action of the prosecution authorities in relation to our petition is critical and very much in the public interest.

We would respectfully urge the Committee to allow Petition PE1370 to remain on the table.

**The Committee of Justice for Megrahi.**

Annexe D

31<sup>st</sup> August 2015

Christine Grahame MSP  
Convenor, Justice Committee  
Justice Committee Clerks  
Room T2.60  
The Scottish Parliament  
Edinburgh  
EH99 1SP



Deputy Chief Constable  
Iain Livingstone QPM

2 St Ninians Road  
Randolphfield  
Stirling  
FK8 2HD

Tel: 01786 456036

[DCC.CrimeOpsOffice@scotland.pnn.police.uk](mailto:DCC.CrimeOpsOffice@scotland.pnn.police.uk)

**LOCKERBIE AIR DISASTER – PE 1370 – JUSTICE FOR MEGRAHI (JFM)**

I refer to my previous correspondence on Police Scotland's response to the criminal allegations presented by Justice for Megrahi, and the assurance provided by the Chief Constable Sir Stephen House to provide the Justice Committee with updates on progress.

On 28<sup>th</sup> April 2015 I hosted a meeting at Tulliallan, between Police Scotland and the JFM Liaison Group. A summary of the meeting is enclosed for your information.

I wish to take this opportunity to provide my continued assurance that the police investigation into the allegations presented by JFM is progressing with due diligence and is both thorough and robust. The enquiry is fully independent and impartial and the engagement between Police Scotland and JFM remains positive and constructive. The liaison meetings are held on a bi-monthly basis and continue to provide a valuable mechanism for regular engagement.

I trust that you find this update to be useful and informative. Please do not hesitate to contact me should you require any further information or clarification.

Yours sincerely

Iain Livingstone QPM  
Deputy Chief Constable

**MEETING RECORD (Précis)**

**Police Scotland and Justice for Megrahi (JfM)**

**Tulliallan: Tuesday 28<sup>th</sup> April 2015**

**Present:**

**Justice for Megrahi (JfM):** Iain McKie; James Robertson.

**Police Scotland:** Deputy Chief Constable Iain Livingstone; Detective Superintendent Stuart Johnstone; Detective Chief Inspector Scott Cunningham.

**Apologies:** Len Murray

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**Agenda**

This is the seventh meeting held to facilitate liaison between Police Scotland and JfM in respect of the ongoing investigation by Police Scotland into JfM's complaint of 9 criminal allegations made in September 2012. This was particularly timely following the last meeting of the Justice Committee on 21st April 2015 where JfM proposed consideration of the principle of appointing an "independent prosecutor" to consider the forthcoming Police Scotland report.

DCC Livingstone introduced the meeting and welcomed those present whilst noting the apology sent by Len Murray.

All agreed that the regular liaison meetings were invaluable and vital to maintain the trust between both parties and withstand any scrutiny, but also to discuss progress and other matters raised particularly as the investigation moves forward.

Both parties acknowledged the recent meeting and discussions by the Justice Committee on 21st April 2015 and the media reporting of the public response from the Crown Office that the Lord Advocate "will play no role in prosecutions linked to the Lockerbie bombing if a fresh police investigation unearths evidence of criminality by Crown Office staff".

*(N.B. This was clarified further in a letter dated 8<sup>th</sup> May 2015 from the Lord Advocate to the Justice Committee Convener where he confirmed in relation to an independent prosecutor considering the forthcoming Police Scotland report, that arrangements were in place for an independent Crown Counsel who has not been involved in the Lockerbie case to deal with this matter if and when the need arises.)*

JfM re-stated their previous position that they were opposed to any involvement by the Lord Advocate or Crown Office and favoured the recent suggestion by Professor Robert Black that an "independent prosecutor" be appointed.

DCC Livingstone stressed that the appointment of an independent QC by Police Scotland was intended to enhance the professional integrity of the investigation.

DSU Johnstone stated that the overall scope of the enquiry had developed considerably and it was important that timescales should not be allowed to interfere with the thoroughness of the enquiry.

JfM expressed its satisfaction at receiving general updates on the progress of the enquiry and totally accepted that its detailed findings must remain totally confidential. They continued to have complete confidence in the police investigation.

DCC Livingstone confirmed that there had been no contact between the police and the Crown Office since 10th March 2014 and reiterated Chief Constable Sir Stephen House's commitment to this enquiry into JfM's legitimate allegations and the importance of public confidence in that enquiry.

The future "Appeal Court" hearing set by Lady Dorrian in relation to the SCCRC's referral for a decision on whether the victims' families have a "legitimate" interest was discussed. Although they have no direct involvement, JfM believes that the relatives have a 'legitimate interest' and hope that their application will be accepted by the High Court.

DSU Johnstone confirmed a new Interview Advisor had joined the team and after reviewing the work completed on allegation 1, she had moved onto assessing the report for allegation 8. She is now embedded to support the entire investigation.

JfM asked for an update in relation to all 9 allegations which was provided by DSU Johnstone.

## **Conclusion**

It was agreed that a confidential record of discussions be maintained and circulated to both parties. An agreed brief précis will be drafted by Police Scotland for agreement by JfM prior to Police Scotland passing this to the Justice Committee and JfM to their members.

Finally, Police Scotland assess that enquiries will continue until late summer 2015 when a further review will take place.