Attention: Justice Committee

Thank you once again for taking the action to request this response from The Lord Advocate and for having the opportunity to respond to it. In reading this letter, I recognise that it is responding to two Petitions and while on the surface they may seem similar, they in fact cover completely different stages of the investigation process.

I think that the letter does not add much to what has been said before from COPFS on this matter. Regardless of that, I do regard any improvement in working with the family and the setting up of the Cold Case Unit as a positive factor. However, whilst the implementation of these changes will undoubtedly improve the service provided, it is clear from the letter that this unit will only consider ‘unresolved homicides’ and will not impact on cases determined to be self inflicted or accidental. It is these cases that cause us serious concern. What must be recognised is that, to implement these improvements, we must see that the improvement was deemed to be needed. This is not in any shape a criticism of the past but a recognition that at any given time we gain insight and see the opportunity to raise our standards.

It is in this context that we have raised our petition.

Our petition is not about how the investigation is handled nor is it a criticism of Police Scotland in comparison to The Police across the rest of the UK. Our petition is a suggestion on how to help families that feel the need for greater insight to help aid closure when losing a loved one. It is about how they are considered within our system. The information given in this letter does not address this, as it is still very much from the COPFS perspective of what they think the family needs. It concerns me that this has been a consistent theme from the outset in the responses given. In setting out our Petition we have recognised and accepted that some families will not want to have a public review, but surely we need a method to help those that do?

If you have read the papers recently, you will see that the story of Annie Borgesson is raised again. This is continuously raised through the anguish of her mother and her family wanting what they would see as the truth. This is 10 years of torture for this family and there will never be an end for them as we do not have a system that aids their closure. The essence of our argument lies at the heart of this situation, if the investigation into Annie’s death was thorough and conclusive, what harm can there be to facilitate a full release of available documents. If this family saw this and it helps them see why the conclusion was reached surely that is in everyone’s interest? Instead they investigate and find things that they bring to the police and are told this is not new information. How can the family have known this if they have not had access to all of the information available. Not only are they subject to an ongoing trauma but they may be pursuing actions on areas already known to our authorities. This is not only a waste but it is inherently and needlessly cruel. Surely there should be a presumption that the family may have access to any relevant information unless its release would cause a real risk of serious prejudice to an important public interest.

We recognise that there may be some concern from some families or members of families that may not want a public hearing, but raising this point disregards our inputs on managing this. It is also an argument given based upon nameless people in anecdotal situations as opposed to real families right now and as far as I have seen almost every year asking for greater disclosure.

I believe that valid concerns have to be understood and in doing so they can also be thoughtfully and compassionately managed.
It is recognised in the letter that there is a disparity in the number of inquests held in England and Wales in comparison to Scotland. I think that this disparity has to be addressed on two levels. The first is asking if we are truly a nation that believes in Social Justice, is it right that the people of Scotland have significantly less rights than those in England and Wales, to review, question and if needed challenge findings through a public vehicle? This is a purely emotional, compassionate and logical question and in no way a legal question. I think it is important to ensure that the system we have, while being legally sound has the compassion and consideration you would expect from a modern open society.

The second part is the legal question and this is a question rather than any opinion. Both England and Scotland are guided by and expected to live to the Articles of The Human Right Convention. We see that in England and Wales that every unforeseen death is subject to a Coroners inquest and is thus tested publicly and therefore one must believe that there can be no doubt it fully meets the requirement of independence and public scrutiny. In contrast we see that in Scotland we only publicly review a very small proportion of deaths in the form of FAI’s. The vast majority of those deaths are prescribed by their nature to warrant an FAI. There is no randomness or depth of public scrutiny of the deaths that lie out with those previously prescribed.

We also have to look at the question of independence in a similar fashion. In Scotland it is noted by the Lord Advocate that the investigation into a sudden or suspicious death will be led by the Fiscal. It is the Fiscal that is expected to raise a requirement for an FAI if it is deemed to be required and this is in turn reviewed by the Lord Advocate. If an FAI is granted, the Fiscal takes the lead in developing the information to be reviewed. If this did involve serious questions about an investigation, we have the situation that the individual who leads an investigation will lead the review into his/her own investigation, notwithstanding that they are highly unlikely to request an FAI to question their own efforts.

Therefore, do we feel that today we meet the moral intent of Article 2 with regards independence and public scrutiny or does it meet the legal minimum expectations? I think that these may be two very different sets of expectations. I am not for one minute wanting to get into a legal argument but I do ask that we do everything to deliver a moral resolution.

I would also like to offer the opportunity for your Committee to speak to my wife and I regarding the many aspects of our legal system from the perspective of a bereaved family in a suspicious death situation. We have considerable experience of PCCS, PIRC, COPFS, initial handling of the death, dealing with questions, subsequent investigations and an FAI. We believe that because we have had full access to the documents that we are asking for others we can give greater depth of insight than most. We would happily talk of situations and principle but happily not name individuals. It is our sole intent to try and use this petition as a vehicle to improve our system, we in no way intend to use this to have a go at anyone. Like most bereaved families we have spoken to, we want the death of our son and the issues we have faced to be the stimulus for improvement and to help ensure that others don’t have to go through what we have.

I also, think that talking to Tony Whittle, who has provided us with excellent guidance, would be of great benefit. Tony was head of West Yorkshire CID and can talk to the impact on police by releasing the level of information we request. Tony can also talk to his view of how this impacts public and police relationships from a real hands on perspective rather than a theoretical analysis.