21st September 2015

Dear Convenor,

JFM Petition: PE1370

This letter is a supplement to our submissions of 26th May 2015 and 15th September 2015

Further to Tuesday’s consideration of our Petition we feel we should bring to the committee’s attention recent correspondence we have had with the Lord Advocate which has relevance to the committee’s deliberations.

We wrote to him privately on the 24th August requesting that Counsel appointed to consider any police report resulting from the ongoing police ‘Operation Sandwood’ enquiry into our 9 criminal allegations, ‘should be chosen by a person or body entirely outwith the Crown Office and not connected to it and that this counsel should be entirely independent not only of the Lockerbie enquiry but of the Crown Office.’

We received a response in the attached letter dated 18th September 2015 from David Stewart the Lord Advocate’s Private Secretary.

In it he indicates that the Lord Advocate, ‘has had no involvement in the appointment of counsel undertaking this work’ and ‘the Independent Counsel who is undertaking this work is not under the direction of the Lord Advocate’.

This letter echoes the response you received from the Lord Advocate on 8th May this year that an independent Crown Counsel would be appointed to consider any report emanating from the ongoing police investigation known as ‘Operation Sandwood’. However, there are differences in the terminology used, notably the term 'Independent Counsel' rather than 'independent Crown Counsel'. We also draw your attention to the letter's statement that ‘the Lord Advocate considers it important that any criminal allegations against persons who were representing the Crown are dealt with independently of the Crown.’

Unfortunately neither letter addresses the concerns we intimated to you in our previous submissions and both totally fail to layout the process by which this independence is going to be achieved.
In an effort to ascertain that process we would respectfully request that you ask the Lord Advocate the following questions on our behalf.

• What is the status of the appointed independent Counsel? Is he/she, Crown Counsel, from the Crown Office or an Advocate Counsel with no previous service or association with the Crown Office?

• Who appointed the independent Counsel? If it was not the Crown Office, who was it?

• What are the Terms of Reference under which the independent Crown Counsel/Counsel is working and who created them?

• Under whose ‘direction’ is the independent Crown Counsel/Counsel working?

• Will the independent Crown Counsel/Counsel receive the police report directly from the police/police QC without any intervention or comment by the LA or Crown Office and before those authorities are aware of the report’s contents?

• Will the independent Crown Counsel/Counsel make a totally independent decision on prosecution without any input from the Crown Office?

• Can the Crown Office change any recommendation to prosecute/not to prosecute made by the independent Crown Counsel/Counsel?

• Will the independent Crown Counsel/Counsel recommendations be implemented in full and if not who will make this decision re-implementation?

We believe that answers to these questions are essential if we are to have any faith that a truly independent assessment of the police report will be carried out.

We would also remind you that in our submission of 15th September we stated.

‘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.’

Effectively we believe that as things stand the Lord Advocate has the power to put a totally independent process in place and the Scottish Government has a duty to ensure that this is done and to monitor its effectiveness in the public interest.

JFM apologises for the lateness of this supplement but believes that further enquiry is necessary by the Justice Committee to ensure that a totally independent assessment of the Operation Sandwood report is delivered as apparently promised by the Lord Advocate.

Yours faithfully,

Robert Forrester
Secretary, The Committee of Justice for Megrahi.
On behalf of The Committee of Justice for Megrahi.

Justice for Megrahi

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