

## Crown Office and Procurator Fiscal Service

Crown Office, 25 Chambers Street, Edinburgh, EH1 1LA  
Crown Agent's Office

Peter McGrath  
Clerk to the Justice Committee  
Scottish Parliament  
EH99 1SP

Tel: 0131 243 3399  
RNID Typetalk prefix: 18001

Via e-mail: [justicecommittee@parliament.scot](mailto:justicecommittee@parliament.scot)

17 March 2017

Dear Mr McGrath

### **Public Petitions PE1501 & PE1567**

Thank you for your letter of 9 February 2017, which seeks further information from COPFS and Scottish Government about how military-related deaths are dealt with, and in particular where cross-border issues arise.

As the Committee are aware the Lord Advocate is responsible for the investigation of all sudden, suspicious and unexplained deaths which occur in Scotland. Where a death requires investigation, this is undertaken by Crown Office and Procurator Fiscal Service. If, following the investigation, a Fatal Accident Inquiry (FAI) is to be held, the procurator fiscal makes the appropriate application to the Court, and the progress of the FAI thereafter is in the hands of the Court.

Where a death has occurred in Scotland and the deceased's body is subsequently repatriated to another country within the United Kingdom, it is a matter for the respective Her Majesty's Coroner in accordance with their own system of investigation of deaths to decide if they require to investigate a certain death. COPFS has a close working relationship with HM Coroners and is committed to providing information about the progress of a procurator fiscal's investigation (as appropriately can be disclosed depending on the nature of the investigation) upon request to coroners. There is no legislative mechanism which permits in reverse a Fatal Accident Inquiry to be held in Scotland in relation to a death (military or otherwise) which has occurred elsewhere within the United Kingdom.

In relation to the particular circumstances of the accident in Moray in July 2012 to which Mr Jones and the Committee refer to, I attach at Annex A, a copy of the COPFS release issued to the media on 12 June 2015. This explains in detail the complex and careful investigation which was undertaken following these deaths and the reasons why Crown Counsel, at their discretion, chose not to hold a discretionary Fatal Accident Inquiry.

Mr Jones wrote to the Head of the COPFS Scottish Fatalities Investigation Unit (SFIU) in January 2017 in similar terms to his correspondence with the Committee. This

correspondence had been copied by Mr Jones to Mr Poole, the father of Hywel Poole, one of the three airman killed in this accident. As such COPFS issued a full reply to Mr Jones and were subsequently in correspondence with Mr Poole. Mr Poole by reply advised that he was satisfied with the response he received from COPFS. Mr Poole and his family have never complained to COPFS about the manner in which his son's death was investigated or their communications with COPFS. His family's views on whether a Fatal Accident Inquiry should be held were considered by Crown Counsel along with the views of other families prior to a decision being made.

In September 2012, Section 12 of the Coroners and Justice Act 2009 commenced which made it possible to *hold a fatal accident inquiry into the death of service personnel who are killed abroad (outside of the United Kingdom) in active service. In advance of this legislation, a protocol was agreed by COPFS, the Ministry of Defence, the Ministry of Justice and the Chief Coroner as to how responsibility to investigate an operational death abroad may be transferred from an inquest, which would ordinarily be held in England or Wales to an FAI in Scotland upon return of the body to England or Wales. This will only be considered where the nearest relatives have known links to Scotland and have expressed a wish for a FAI to be held in Scotland.*

*The terms of that protocol require to be amended to reflect amongst other things the commencement later this year of both the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 and the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016. The latter changes the law in Scotland to ensure that in the event of the death of military personnel in Scotland whilst on active service in the future a mandatory FAI will be held.*

I trust this information is of assistance to you and the Committee.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'David Harvie', written in a cursive style.

David Harvie  
Crown Agent

“On 3 July 2012 a collision between two RAF Tornado aircraft occurred over the Moray Firth, which led to the deaths of RAF aircrew Hywel Tomos Poole, Samuel Edward Bailey and Adam Mark Sanders.

“Following this tragic accident Crown Office’s Scottish Fatalities Investigation Unit began an investigation into the deaths. The Director General of the Military Aviation Authority, a senior RAF officer who is independent of the RAF chain of command, instructed a Service Inquiry to investigate the circumstances of the accident.

“The investigation was conducted by the Military Aviation Authority. The Service Inquiry Report was published on 30 June 2014 and is a very detailed document which considers all of the relevant factors in a forensic manner. Furthermore, the Service Inquiry Report considers important matters which would be beyond the remit of any Sheriff presiding over a Fatal Accident Inquiry (FAI).

“The report’s conclusions reveal all of the contributory causes of this accident, including the difficulties in operating with a split squadron (half of the squadron being then based in Cyprus), the lack of procedures to achieve deconfliction at the flight briefing stage, as well as the failures to have a working Secondary Surveillance Radar on the day of the collision. It also exposed the fact that one of the two aircraft did not have a working Radar Homing and Warning Receiver that day.

“The Service Inquiry considers in great detail the repeated failures to introduce a collision avoidance system for Tornado aircraft. It emphasises the need for provision of such a system in current and future aircraft in the RAF fleet.

“All of the Service Inquiry’s recommendations have been accepted by the Ministry of Defence and are in the process of being implemented, including installation of collision warning systems.

“The purpose of a Fatal Accident Inquiry is set out in law to establish the cause of death and ensure that lessons are learned for the future.

“After thorough consideration of the circumstances of the case, Crown Counsel have concluded that all the relevant issues have been comprehensively examined in the course of the Military Aviation Authority report and could not have been better considered in any FAI, which would only duplicate the months of thorough work undertaken by the Military Air Accident Investigation Branch and the Military Aviation Authority in preparing the Service Inquiry. As a result, Crown Counsel have instructed that no FAI is to be held.

Mr David Green, Head of the Scottish Fatalities Investigation Unit, said:

“Crown Counsel carefully weighed up the full circumstances of the case, and concluded that a Fatal Accident Inquiry could not better and would only repeat the highly detailed investigation into the tragedy already conducted by the Military Aviation Authority.

"The Service Inquiry Report which they produced also contains conclusions and recommendations which are more wide ranging than could be expected to be achieved in a Fatal Accident Inquiry.

"The RAF and MOD have accepted the recommendations of the Service Inquiry Report, and the nearest relatives of those who tragically died in this accident have been advised of Crown Counsel's decision."

"The Service Inquiry has been published and can be accessed via the following link":

<https://www.gov.uk/government/publications/service-inquiry-accident-involving-tornado-zd743-and-tornado-zd812-over-moray-firth>.