

Stuart Todd  
Assistant Clerk to the Public Petitions Committee  
T3.40  
Scottish Parliament  
Edinburgh  
EH99 1SP

BT  
February 2014  
Dear Stuart

Thank you for your letter of 16 January 2014 concerning 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:

- What are your views on what the petition seeks and the issues raised during the discussion at the meeting on 14 January 2014?
- What is your view on the suggestion that inquests similar to the coroner system in England be introduced?

Before answering the questions raised by the Committee, I should perhaps explain the Government's position in relation to the sad death of Colin Marr, which has prompted this Petition. I have every sympathy with Colin's family for the tragic loss of their son. This case has previously been the subject of a Complaint Handling Review by the Police Investigations and Review Commissioner (PIRC) and the PIRC is now reviewing complaints from the Graham family referred to them by Police Scotland.

While I fully appreciate that this is a difficult and trying time for the family, I cannot become involved while reviews are on-going, but would be more than happy to meet with the family once these have concluded.

### Public inquiries

The Petition seeks mandatory public inquiries. It may be helpful to the Committee if I explain the difference between public inquiries and fatal accident inquiries (FAIs). Public inquiries are of the kind held into the shootings at Dunblane Primary School and the Piper Alpha disaster. They are now usually held under the Inquiries Act 2005 at the instigation of UK or

Scottish Government Ministers where particular events have caused, or are capable of causing, public concern, or there is public concern that particular events may have occurred.

Public inquiries in Scotland are relatively rare events, though recent inquiries include those into the ICL Stockline explosion, the fingerprints inquiry and the hepatitis C inquiry. They are high profile judicial inquiries and may have to take place over several months. They are consequently expensive, with costs running into several million pounds. Public inquiries are usually presided over by a judge or recently retired judge, because they are only held in circumstances where there is significant public concern over an event or events.

By comparison, FAIs provide a local inquiry before a sheriff into the circumstances of a death which is sudden or unexplained. The investigation is carried out by the local procurator fiscal in conjunction with the police. The procurator fiscal then presents evidence at the judicial inquiry presided over by a local sheriff.

While all sudden or unexplained deaths are tragic, not all such incidents merit a fatal accident inquiry or indeed a full public inquiry under the 2005 Act. Procurators fiscal have had a long-standing role in the investigation of deaths in Scotland, independent of Government. They investigate over 13,000 sudden, suspicious or unexplained deaths a year. Clearly many of those investigations will result in criminal prosecutions which may obviate the need for an FAI. Only 50-70 FAIs are held per annum.

At present, deaths which occur as a result of an accident in the course of employment, or in legal custody, trigger mandatory FAIs, though the Lord Advocate is permitted to waive the necessity of holding an FAI if he considers that the circumstances of the death have been adequately investigated during criminal proceedings. Otherwise the holding of an FAI is at the discretion of the Lord Advocate if it appears to him to be expedient in the public interest that an inquiry should be held on the ground that the circumstances of the death were sudden, suspicious or unexplained, or has occurred in circumstances which give rise to serious public concern.

FAIs are fact-finding inquiries held in the public interest – they are not intended to establish guilt or blame in the criminal or civil sense. The sheriff will make a determination as to the cause of the death and may make recommendations as to how deaths in similar circumstances may be avoided in the future.

In summary, the Scottish Government does not believe that it would be justifiable, on grounds of cost and because of the existence of the FAI system, to hold a mandatory public inquiry into deaths which the death investigation has concluded were self-inflicted or accidental. Such deaths may be the subject of an FAI if the public interest requires that such an inquiry be held.

### **“Inquests” before fatal accident inquiries**

I understand that the witnesses who gave evidence to the Committee advocate the introduction of a lesser form of inquiry, akin to an inquest in England and Wales, which would be a halfway house to an FAI. It was suggested that this should be on the grounds that this would put the family at the centre of the process, dealing with their needs.

The Committee will be interested to know that, whether or not a fatal accident inquiry is ultimately instructed following a sudden or unexplained death, the nearest relatives are now given the opportunity to be fully engaged in the investigative process by the Crown Office and Procurator Fiscal Service (COPFS). At an early stage, nearest relatives are provided

with a point of contact in the Procurator Fiscal's Office so that they can raise any concerns and issues directly with that person. They are also provided with the opportunity to meet with the procurator fiscal to raise any concerns or issues that they may have regarding the circumstances of the death. Fiscals will explain the process of the investigation and keep the family up to date with progress. This process can sometimes lead to additional investigation being undertaken by the procurator fiscal to address any concerns raised.

Relatives bereaved by homicide, road traffic incidents and in circumstances likely to lead to a mandatory fatal accident inquiry are supported by the COPFS Victim Information and Advice (VIA) service.

VIA staff will provide general information to nearest relatives about the process of deaths investigation and fatal accident inquiry procedures. They will provide case-specific information about the progress of the investigation and inquiry and can facilitate referral to local support agencies.

In relation to the release of documentary evidence, COPFS will release documentation to families on request, but this can only be done after any criminal proceedings have concluded, otherwise there is a danger that a criminal trial may be compromised by evidence being released into the public domain.

Once investigations are concluded, relatives are invited to discuss the findings with the procurator fiscal and, where an FAI is discretionary, their views as to whether there should be an FAI will be explored and taken into account. The families' views cannot be the only determining factor as the public interest is paramount. Bereaved relatives do not always wish the distressing details of the death of a loved one to be aired in public, but the public interest may demand that an inquiry is held.

If families are not satisfied with the outcome of an FAI, then it is open to them to challenge the findings of the FAI by raising a judicial review of the inquiry.

It would therefore seem that the kind of liaison with and assistance to bereaved families which the witnesses advocate already exists in Scotland.

The witnesses to the Committee also suggested that such inquests might take only about four or five days. The average fatal accident inquiry is, however, currently concluded within four to five days.

### **Coroners' inquests**

The Committee has also sought views on the idea that inquests similar to the coroners' system in England might be introduced in Scotland, presumably as an alternative to the system of FAIs.

Although there are a number of apparent similarities between coroners and procurators fiscal, and between fatal accident inquiries and coroners' inquests in the investigation of deaths, there are also some significant differences.

Of these, the most critical difference is that the fiscal investigates deaths, and then leads and comments on evidence at a fatal accident inquiry. The sheriff, however, evaluates the evidence and issues a determination.

A coroner, on the other hand, must investigate and lead evidence and then make a judgement on that evidence, either issuing a verdict himself or assisting a jury to reach one. The coroner must therefore perform a very difficult task in that, having investigated a death and led the evidence, he or she must then detach him or herself sufficiently so as to consider that evidence dispassionately and assess its value.

For this reason the Government is not attracted to the idea that a system of coroners' inquests might be adopted in Scotland. The procurator fiscal investigates deaths in the public interest. The balance between his view of the public interest and the interests of individuals who may be affected by the inquiry is maintained by the sheriff, who will, if appropriate, make recommendations as to how deaths in similar circumstances may be avoided in the future.

In conclusion, the system in Scotland of death investigation by procurators fiscal and of FAIs before sheriffs is well established and would appear to offer greater safeguards in terms of judicial independence than coroners' inquests. The Government is therefore not minded to adopt the system of coroners' inquests.

The Committee may be further interested to know that the Government has given an undertaking to the Justice Committee that legislation will be brought forward within the lifetime of this Parliament to implement the recommendations of Lord Cullen's Review of the Fatal Accident Inquiry Legislation.

**KENNY MACASKILL**