

Crown Office and Procurator Fiscal Service

Crown Office, 25 Chambers Street, Edinburgh, EH1 1LA
Crown Agents Office



Clerk to the Justice Committee
Room T2.60
The Scottish Parliament
Edinburgh
EH99 1SP

Tel: 0131 226 2626
RNID Ttypetalk prefix: 18001

Fax:

Via e-mail: Justice@scottish.parliament.uk

Your ref:
Our ref:

30 October 2015

Dear Convener

I am writing to the committee following the evidence that was given by Crown Office on 26 May 2015, where it was announced that COPFS would be consulting with various stakeholders and organisations with an interest, on the terms of a charter for liaison with bereaved family. On that date an undertaking was given that the committee would be provided with a copy of that charter prior to stage 2 of the Inquiries Into Fatal Accidents and Sudden Deaths etc (Scotland) Bill ("the Bill").

As the committee is aware Crown Office consulted on the draft charter over the summer and called for responses to be submitted by 14 August 2015. The results of that consultation have now been collated and analysed and the Law Officers have approved the terms of the charter which is enclosed for your information. A copy of the approved charter has also been provided today to those consulted. This will therefore be the final version of the charter, subject however to review should there be any fundamental amendments to the Bill which affect the terms of the charter.

Crown Office is currently in the process of formulating an implementation plan and will continue to endeavour to liaise with bereaved families in keeping with the spirit of the charter wherever possible.

Prior to stage 2, I considered it may be helpful for COPFS to clarify some matters that arose at the stage 1 debate.

Public interest

Concerns were raised in the debate regarding the definition given to public interest and that it is too narrowly drawn, such that issues people feel would be of public concern are excluded from an FAI. As the Solicitor General said in evidence to the committee on 26 May 2015 the family interest forms part of the public interest and no decision is made on whether there will be an inquiry without the views of the family having been taken on board. A range of factors will always be taken into account alongside the full facts and circumstances of each death in deciding whether it is in the public interest to

hold a Fatal Accident Inquiry including: the views of the family; whether there is evidence that serious public concern exists; what can be achieved by the holding of an inquiry given the legislative purpose of the inquiry, the issues that can be aired and the scope of the sheriff's determination; and whether there has already been an effective investigation in terms of Article 2 of the European Convention on Human Rights.

An independent and objective assessment of the wider public interest is required so that issues are appropriately considered and focussed; this assessment is carried out by the Lord Advocate as head of investigation of deaths in Scotland.

Lord Cullen gave evidence to the committee that it was his view that the Lord Advocate exercised the discretion whether to hold a FAI responsibly. The Lord Advocate's decision can of course be challenged by judicial review, it is notable that this remedy has only been used sparingly.

Deaths investigations

The Crown Office and Procurator Fiscal service further investigates approximately 5,500 deaths each year, about half the number reported to it. These investigations may include:

- Instructing the police to take statements from witnesses and to submit these to the Procurator Fiscal for consideration;
- Instructing the police to pursue additional lines of enquiry;
- Instructing experts to review certain aspects of the case to establish whether there were any failings;
- Liaising with regulatory authorities who are carrying out their own enquiries into aspects of the death;
- Consideration of the outcome of investigations carried out by regulatory authorities;
- Consideration of any remedial steps taken by relevant bodies/authorities in the interim to ensure that similar deaths will be prevented, having sought further relevant expert opinion.

Of the 5,500 deaths investigations each year, only 50-60 result in a FAI being held. However that does not mean there has not been a full and independent investigation into the deaths where no FAI is held.

In terms of Article 2 of the European Convention of Human Rights the State has certain obligations to undertake an effective investigation. In order for there to be an effective investigation it must be independent, reasonably prompt, open to a sufficient element of public scrutiny and one in which family members must be involved to an appropriate extent. It is not necessary to have a judicially led inquiry into every death for Article 2 to be satisfied. The ultimate safeguard in terms of the convention is the Lord Advocate's discretion to have an inquiry where the death does not fall into one of the mandatory categories. In deciding whether to hold a FAI, consideration will be given by the Lord Advocate to whether there has been an effective investigation in compliance with Article 2 and if an effective investigation has not been achieved in other ways then that discretion would be exercised in favour of there being a FAI.

Deaths of persons subject to compulsory detention by a public authority

Although these deaths are already the subject of investigation by the Procurator Fiscal the Committee might be interested to know that COPFS is in the process of updating and re-issuing its guidance to medical practitioners to make clear that all deaths of persons detained or liable to be detained under the Mental Health (Care and Treatment) (Scotland) Act 2003 or part IV of the Criminal Procedure (Scotland) Act 1995 are reported to the Procurator Fiscal in order to ensure that these deaths are given the appropriate level of independent scrutiny, in accordance with Article 2 of the European Convention on Human Rights.

I hope you find this additional information and provision of the copy charter to be helpful.

Yours sincerely



CATHERINE DYER

Crown Agent

CROWN OFFICE AND PROCURATOR FISCAL SERVICE

CHARTER TO BEREAVED FAMILIES: ACCESS TO INFORMATION AND LIAISON WITH THE PROCURATOR FISCAL

Contents

Introduction	Page 3
Stages of the Investigation:	
The Initial Report	Page 5
The Initial Post Mortem Examination Result	Page 6
The Final Post Mortem Examination Result	Page 7
Further Investigations	Page 8
Criminal Proceedings	Page 10
Fatal Accident Inquiry	Page 11
Conclusion of Court Proceedings	Page 14
Summary of Our Commitments	Page 15
Further Information	Page 17
Complaints and Feedback	Page 18
APPENDIX A – Frequently Asked Questions	Page 19

Introduction

Article 2 of the European Convention of Human Rights provides that:

"Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law."

This means that the State has certain obligations to undertake an effective investigation. In order to be an effective investigation it must be independent, reasonably prompt, open to a sufficient element of public scrutiny and one in which family members must be involved to an appropriate extent. In Scotland, this investigation is undertaken by staff from the Crown Office and Procurator Fiscal Service ([COPFS](#)), under the direction of the [Lord Advocate](#). These members of staff are known as [Procurators Fiscal](#). For more information about who we are, please see 'Appendix A – Frequently Asked Questions.'

It is recognised that the sudden death of a loved one is a traumatic event for most nearest relatives and families. At a time when they may be feeling distressed because of the death, they also have to deal with a variety of new and sometimes bewildering procedures, liaise with official agencies and make important decisions. It is also recognised that where a death is reported to COPFS, this may contribute to the feelings of confusion and distress.

Therefore, the Lord Advocate is committed to carrying out investigations that involve effective engagement with bereaved family and all attempts will be made to answer any questions or concerns. Their views will be taken in to account where possible and they will be kept advised of the progress of the investigation.

This Charter sets out the different stages of the investigation process and confirms what information will be provided to bereaved families and when. In addition, information will be provided at any stage of the investigation upon request. This information will be provided in a manner agreed with the family at the outset of the investigation and may include contact by telephone, letter or at a meeting. Where a personal meeting takes place with the family this will be followed up by COPFS providing the family with a letter containing a short summary of what was discussed at the meeting in order to assist them. Where a family member has additional communication or support needs COPFS will endeavour to meet those needs where possible. Should the family decide at any stage that they wish information to be provided in a different way to what has been agreed COPFS will respect these wishes.

COPFS will normally provide information to a nominated point of contact. However, it is appreciated that family dynamics may mean that it is appropriate

to provide the information to more than one person. COPFS will apply a flexible approach in deciding who is a family member.

This Charter has been created in consultation with the following organisations:

The Scottish Government
Police Scotland
Victim Support Scotland
Mental Welfare Commission for Scotland
Scotland's Campaign against Irresponsible Drivers (SCID)
Scottish Cot Death Trust (SCDT)
People Experiencing Trauma and Loss (PETAL)
Families Against Corporate Killers (FACK)
The Scottish Association for Mental Health (SAMH)

The Investigation

1. THE INITIAL REPORT

The extent of the investigation that is required depends on the facts and circumstances of each death. When a person dies in Scotland, they cannot be buried or cremated until a medical certificate giving the cause of death has been issued. This certificate must be completed by a doctor, and must show the time, place and cause of death. Most sudden and unexplained deaths are reported to the Procurator Fiscal because a doctor is unable to confirm the cause of the death and is therefore unable to issue a death certificate. Other cases may require further investigation in to the circumstances leading up to the death.

In any investigation the police will submit a report to the Procurator Fiscal for consideration. This report should be received as soon as possible after the police are aware of the death. It will contain background information of the deceased, including their medical history, and a summary of the events leading up to the death. On receiving this information the Procurator Fiscal will decide what investigation is necessary, which may include instructing a [post mortem examination](#) to determine the cause of death.

The Procurator Fiscal will also be advised either by the police or by the Doctor involved who the nearest family are and the Procurator Fiscal will provide the family with the necessary information. If at any time during the investigation, further family members are identified, the Procurator Fiscal will also consider providing them with the relevant information. If a Family Liaison Officer has been appointed by the Police, the Procurator Fiscal will communicate with them when appropriate. (For further information on the role of the Family Liaison Officer, please see 'Section 4 – Further Investigations'.)

We will ensure that family are kept informed of the decision to hold a post mortem examination and are provided with information on when this is likely to take place. However, it may be that it is more appropriate that this information is provided to the family by either the police or Doctor, depending on who has already had direct contact with the family at this stage.

OUR COMMITMENT:

We will ensure that bereaved family are informed as to whether or not a post mortem examination is necessary and when this is likely to take place.

2. THE INITIAL POST MORTEM EXAMINATION RESULT

After the post mortem examination, the [medical certificate](#) giving the cause of death will be written by the pathologist and will then be made available to the nearest relative.

In some cases the pathologist may wish to consider the findings of their examination and to receive the results [of blood/tissue/organ analysis](#) or any other tests which were carried out before giving a final cause of death. Where such examinations take place the pathologist may issue a provisional cause of death which will enable the family to proceed with [funeral arrangements](#). Once the results of the examination are received the pathologist may amend the final cause of death.

In a small number of cases it may be necessary for the Procurator Fiscal to keep responsibility for the body for a longer period of time, to allow for further investigations to be carried out into the circumstances to establish, or exclude any possible criminality. This is more likely to happen if the death is thought to be suspicious. In cases of potential murder or homicide it may not be possible to allow release of the body until the defence have had the opportunity of conducting their own post mortem or have confirmed this is not required. If it is necessary to keep responsibility for the body for a longer period of time the family will be advised by the police or the Procurator Fiscal.

OUR COMMITMENT:

We will contact the bereaved family on receiving confirmation of the initial cause of death and confirm that they can now proceed with funeral arrangements.

OUR COMMITMENT:

If we are unable to release a body for burial or cremation following a post mortem examination, we will ensure that this is communicated to the bereaved family as soon as possible and provide reasons for this.

3. THE FINAL POST MORTEM EXAMINATION RESULT

As referred to above, the pathologist may have to consider the results of additional tests before they are able to give a final cause of death. These should normally be completed within twelve weeks, at which point they will issue a [Final Post Mortem Report](#). If this is delayed for any reason, we will ensure that the family are informed about this and told when the final report may be expected. It is recognised that a delay in establishing the final cause of death can be distressing for a family, but it is essential that all the necessary enquiries are completed.

OUR COMMITMENT:

We will contact the bereaved family to inform them if the Final Post Mortem Report is not going to be available within twelve weeks and provide an update on the expected timescales

If the final cause of death is different from that which is written on the original death certificate, the Procurator Fiscal will inform the family of this as soon as possible and answer any questions the family have as a result of this change. The family do not need to take any action in relation to this change – the Procurator Fiscal will thereafter inform the National Records of Scotland, who will in turn advise the local registrar of births, deaths and marriages of the required amendment. The local registrar will be able to advise the family as to how they may obtain a revised death certificate.

OUR COMMITMENT:

We will contact the bereaved family within 14 days of the receipt of the Final Post Mortem Report if there is any change to the cause of death of the deceased and answer any questions the family may have as a result of this change

4. FURTHER INVESTIGATIONS

In the majority of cases reported to the Procurator Fiscal, no further enquiries are required beyond a post mortem examination. This is because there are no suspicious circumstances or no further investigation is required to explain why the death occurred.

However, in some cases the Procurator Fiscal may instruct additional enquiries to be carried out in relation to the circumstances of the death. These enquiries may include:

- instructing the police to take statements from witnesses and to submit these to the Procurator Fiscal for consideration;
- instructing the police to pursue additional lines of enquiry;
- instructing experts to review certain aspects of the case to establish whether there were any failings.

The Procurator Fiscal may also require to liaise with other [regulatory authorities](#) or organisations who may be carrying out their own enquiries into certain aspects of the death. These enquiries can sometimes take some time to complete and often a decision cannot be made as to whether there should be any criminal proceedings or whether it is possible that a Fatal Accident Inquiry may need to be held until they are completed.

During this process, the police may appoint a Family Liaison Officer (FLO) to keep the family informed about the progress of the police investigation. A FLO is an experienced police officer who has been specially trained to provide information to bereaved family members. At an appropriate stage in the investigation, this role will be transferred to COPFS staff.

It is appreciated that the family may wish to be kept updated about how these enquiries are progressing and whether it is likely that there will be any criminal proceedings or that a Fatal Accident Inquiry will be held. In these cases the Procurator Fiscal will contact the family no later than twelve weeks after the death has been reported, to inform them of progress made in the investigation and whether additional enquiries need to be undertaken and the expected timescales in relation to these. In some cases where a criminal prosecution may be a possibility, it may be that only very general information can be given at this stage so as not to prejudice any future proceedings. At this stage the family will also be offered the opportunity to attend a meeting with the Procurator Fiscal to discuss this information. This meeting will take place within 14 days unless the family indicate they do not wish a personal meeting in which case we will communicate with the family according to their needs and wishes.

OUR COMMITMENT:

We will contact the bereaved family no later than twelve weeks after the date the death has been reported to inform them of the progress of the investigation. A personal meeting will be offered at this time which will take place within 14 days unless the family indicate they do not wish a personal meeting, in which case we will communicate according to the needs and wishes of the family.

Thereafter, contact will be made every six weeks, to allow the family to be updated on the progress of the investigation and if the family members wish a personal meeting this will be arranged. This will continue throughout the duration of the Procurator Fiscal's investigation. If at any stage during the period of the investigation there is any significant development, contact will be made immediately with the family to advise them, unless this would be likely to prejudice any potential prosecution. The family will also be offered a personal meeting unless they have already indicated they do not wish to attend personal meetings.

OUR COMMITMENT:

Thereafter, we will contact the family every six weeks to advise of the progress of the investigation and if they wish a personal meeting, this will be arranged. This will continue throughout the investigation

OUR COMMITMENT:

At any stage where there is a significant development in the investigation, we will contact the family immediately, unless this would be likely to prejudice any potential prosecution. A personal meeting will be offered unless the family have already indicated they do not wish to attend personal meetings.

5. CRIMINAL PROCEEDINGS

Where there are circumstances surrounding the death which suggest that criminal conduct may have caused or contributed towards the death, the Procurator Fiscal will instruct the Police to investigate the circumstances and consider whether criminal charges should be brought which may lead to a prosecution. Other Regulatory Authorities may also be involved in these investigations. Such investigations can be complex and time consuming which may delay a decision being taken on whether there should be any criminal proceedings.

The final decision on whether or not a person should be prosecuted for causing the death of another rests with senior lawyers employed by COPFS, known as [Crown Counsel](#).

If the Procurator Fiscal is going to ask for Crown Counsel's instructions on whether or not someone should be prosecuted we will ensure that once the decision is made it is communicated to the family in the way they wish to be communicated with, whether this is by telephone, letter or at a meeting. However, where Crown Counsel decide there will be no prosecution a personal meeting should take place unless the family have indicated they do not wish one.

Once Crown Counsel's instructions have been received, the family will be informed of the decision within fourteen days, along with the reasons for that decision.

OUR COMMITMENT:

We will inform the bereaved family within fourteen days of Crown Counsel's decision on whether or not there should be criminal proceedings in relation to the death.

If there is to be a criminal prosecution, [Victim Information and Advice](#) (VIA) will continue to provide updates to the family.

If the family are unhappy about any decision not to prosecute, they have the right to review that decision and should refer to the COPFS Right to Review policy available on the [COPFS website](#).

6. FATAL ACCIDENT INQUIRY

A Fatal Accident Inquiry (FAI) is a type of court hearing which publically inquires into the circumstances of a death. It will be presided over by a Sheriff and will normally be held in the Sheriff Court.

The purpose of an FAI is to establish the following:

- where and when the death occurred;
- the cause of the death;
- any precautions by which the death might have been avoided;
- any defect in systems that caused or contributed to the death; and
- any other facts which are relevant to the circumstances of the death

An FAI cannot make any findings of fault or blame against individuals.

If a death has happened as a result of an accident while at work or if the death happened while in legal custody, for example in prison or police custody, a Fatal Accident Inquiry will be held, unless the circumstances of the death have been sufficiently established in the course of a criminal prosecution.

FAIs can be held in other circumstances, at the discretion of the Lord Advocate, if it is thought to be in the public interest to do so. COPFS seeks to hold FAIs as soon as practicable after investigations are complete.

The final decision on whether or not there should be a discretionary FAI or whether the circumstances have been sufficiently established in criminal proceedings so that a FAI is no longer required rests with the Lord Advocate although this decision is taken on the Lord Advocate's behalf by senior lawyers employed by COPFS, known as [Crown Counsel](#). If the Procurator Fiscal is going to ask for Crown Counsel's instructions on whether or not there should be an FAI, the family will be informed of this in advance and will be given an opportunity to say whether they wish a FAI to take place. These views will be taken into account in reaching a decision. It will be established how the family would wish to receive intimation of Crown Counsel's decision, whether this is by telephone, letter or at a meeting.

Once Crown Counsel's instructions have been received, the family will be informed of the decision within fourteen days. If the decision is that an FAI should not be held, a meeting will be offered with the family members to explain the reasons for this decision. These reasons will also be confirmed in writing unless the family have indicated they do not wish to be given written reasons, in which case we will only communicate the decision to the family. The written reasons can be made available to the family if they decide they want access to them at a later date.

Where Crown Counsel decide that a FAI should be held the Procurator Fiscal will explain to the family what happens next and will meet with the family to discuss this process if the family wishes. The Procurator Fiscal will also make an application to the court within two months of that decision being made in order that the FAI will take place as soon as possible.

OUR COMMITMENT:

When a report is to be submitted for Crown Counsel's instructions on whether or not there should be a Fatal Accident Inquiry the family will be given an opportunity to say whether they wish an Inquiry to take place and the family's views will be taken into account in reaching a decision and in how we communicate that decision.

OUR COMMITMENT:

We will inform the bereaved family of Crown Counsel's decision on whether or not there should be a Fatal Accident Inquiry in relation to the death within fourteen days of this decision being made.

OUR COMMITMENT:

If Crown Counsel decide that there should not be a Fatal Accident Inquiry, a meeting will be offered with the family within fourteen days of notifying them of that decision, to explain the reasons. These reasons will also be confirmed in writing unless the family have indicated they do not wish to be provided with these.

OUR COMMITMENT:

Where Crown Counsel decide that a FAI should be held the Procurator Fiscal will explain to the family about what happens next and will meet with the family to discuss this process if the family wishes. The Procurator Fiscal will also make an application to the court within two months of that decision being made in order that the FAI will take place as soon as possible.

If the family are unhappy about the decision made either to hold or not to hold a Fatal Accident Inquiry, they may ask for this decision to be reviewed. This review will be carried out by a senior member of Crown Counsel, who was not involved in the original decision making process.

7. CONCLUSION OF COURT PROCEEDINGS

It is recognised that court proceedings can be confusing and that the family may not always hear or be familiar with the issues that have been discussed during the process. Throughout the procedure, the Procurator Fiscal will do their best to ensure that family members can understand what is happening and will consider asking the Sheriff to make special allowances where necessary. This may include allowing the family to sit closer to the solicitors and witnesses giving evidence, to ensure that they can follow the proceedings.

A meeting will also be offered to the family at the conclusion of any criminal proceedings to explain the outcome and to discuss any issues arising.

OUR COMMITMENT:

We will offer to meet with the bereaved family at the conclusion of any criminal proceedings to explain the outcome and to discuss any issues arising.

A meeting will also be offered to the family after the conclusion of a Fatal Accident Inquiry to discuss the evidence that was heard. A further meeting will also be offered after the Sheriff has issued his [determination](#), to explain this to the family in more detail.

OUR COMMITMENT:

We will offer to meet with the bereaved family at the conclusion of a Fatal Accident Inquiry and again after the determination has been issued, to explain the outcome and discuss any issues arising.

Summary of Our Commitments

THE INITIAL REPORT

- We will ensure that the bereaved family are informed as to whether or not a post mortem examination is necessary and when this is likely to take place.

THE INITIAL POST MORTEM EXAMINATION RESULT

- We will contact the bereaved family on receiving confirmation of the initial cause of death and confirm that they can now proceed with funeral arrangements.
- If we are unable to release a body for burial or cremation following a post mortem examination, we will ensure that this is communicated to the bereaved family as soon as possible and provide reasons for this.

THE FINAL POST MORTEM EXAMINATION RESULT

- We will contact the bereaved family to inform them if the Final Post Mortem Report is not going to be available within twelve weeks and provide an update on the expected timescales
- We will contact the bereaved family within fourteen days of the receipt of the Final Post Mortem Report if there is any change to the cause of death of the deceased and answer any questions the family may have as a result of this change

FURTHER INVESTIGATIONS

- We will contact the bereaved family no later than twelve weeks after the date the death has been reported to inform them of the progress of the investigation. A personal meeting will be offered at this time which will take place within fourteen days unless the family indicate they do not wish a personal meeting, in which case we will communicate according to the needs and wishes of the family.
- Thereafter, we will contact the family every six weeks to advise of the progress of the investigation and if they wish a personal meeting, this will be arranged. This will continue throughout the investigation.
- At any stage where there is a significant development in the investigation, we will contact the family immediately, unless this would be likely to prejudice any potential prosecution. A personal meeting will be offered unless the family have already indicated they do not wish to attend personal meetings.

CRIMINAL PROCEEDINGS

- We will inform the bereaved family within fourteen days of Crown Counsel's decision on whether or not there should be criminal proceedings in relation to the death.

FATAL ACCIDENT INQUIRY

- We will inform the bereaved family when a report is to be submitted for Crown Counsel's instructions on whether or not there should be a Fatal Accident Inquiry and will take into account their views in reaching a decision and in how we communicate that decision.
- We will inform the bereaved family of Crown Counsel's decision on whether or not there should be a Fatal Accident Inquiry in relation to the death within fourteen days of this decision being made.
- If Crown Counsel decide that there should not be a Fatal Accident Inquiry, a meeting will be offered with the family within fourteen days of notifying them of that decision, to explain the reasons for this decision. These reasons will also be confirmed in writing unless the family have indicated they do not wish to be provided with these.
- Where Crown Counsel decide that a FAI should be held the Procurator Fiscal will explain to the family about what happens next and will meet with the family to discuss this process if the family wishes. The Procurator Fiscal will also make an application to the court within two months of that decision being made in order that the FAI will take place as soon as possible.

CONCLUSION OF COURT PROCEEDINGS

- We will offer to meet with the bereaved family at the conclusion of any criminal proceedings to explain the outcome and to discuss any issues arising
- We will offer to meet with the bereaved family at the conclusion of a Fatal Accident Inquiry and again after the determination has been issued, to explain the outcome and to discuss any issues arising

Further Information

The Crown Office and Procurator Fiscal Service has produced a leaflet, 'Information for Bereaved Relatives: The Role of the Procurator Fiscal in the Investigation of Deaths'. This explains in more detail who we are and why we are responsible for the investigation of deaths in Scotland. This leaflet is available on the COPFS website - www.copfs.gov.uk/investigating-deaths/our-role-in-investigating-deaths

If someone close to you has been murdered or killed as a result of culpable homicide, you may find it helpful to read the information contained within the Scottish Government publication: "[Information for bereaved family and friends following murder or culpable homicide](#)." If your loved one is believed to have died in these circumstances, a copy of this publication should be given to you by your Police Family Liaison Officer at the beginning of the police investigation.

For further information about the location of a court where a Fatal Accident Inquiry or criminal prosecution may be held, please see the Scottish Courts Website - <http://www.scotcourts.gov.uk/>

Complaints and Feedback

There are various ways to get in touch with COPFS. You can contact us in person at your local Procurator Fiscal's office, by telephoning our National Enquiry Point on 01389 739 557, or in writing by emailing us at RIU@copfs.gsi.gov.uk or by writing to Response and Information Unit, Crown Office, 25 Chambers Street, Edinburgh, EH1 1LA.

For further information about the COPFS Complaints and Feedback procedure, please see:

<http://www.copfs.gov.uk/faq/responseandinformationunit>

APPENDIX A – FREQUENTLY ASKED QUESTIONS

Q: What is the role of the Crown Office and Procurator Fiscal Service in the investigation of a death?

The Crown Office and Procurator Fiscal Service (COPFS) is responsible for the investigation of any death that requires a further explanation. This includes any sudden, unexpected or unexplained death and any death that may be the result of homicide or other criminal conduct. In other parts of the United Kingdom the Coroner may investigate such deaths.

Q: What is the role of the Lord Advocate?

The Lord Advocate is the head of the Crown Office and Procurator Fiscal Service and leads the investigation of deaths. The Lord Advocate acts independently in this role and is committed to the effective, impartial and prompt investigation of deaths and to engaging with the family of a deceased person during this process.

Q: Who is the Procurator Fiscal and why have they contacted me regarding the death of my relative?

Procurators Fiscal are qualified lawyers who are employed by COPFS and who act on the instructions of the Lord Advocate.

Q: Who are Crown Counsel?

Crown Counsel are senior lawyers based at Crown Office who make decisions in serious cases and also advise Procurators Fiscal on complex or sensitive issues.

Q: What is the Scottish Fatalities Investigation Unit?

The Scottish Fatalities Investigation Unit (SFIU) is a specialist unit within COPFS, staffed by dedicated and specially trained Procurators Fiscal. There is a designated SFIU team based across each area of the country, in the North, East and West. The Procurators Fiscal must ensure that all appropriate enquiries are carried out in relation to a death reported to them within their area and that all relevant issues are fully explored.

Q: Who are Victim Information and Advice?

VIA (Victim Information and Advice) operates as part of COPFS, providing a dedicated service to certain victims, witnesses and bereaved family. Its principal aims are to provide information about key aspects of the criminal justice system

in general, keep service users informed about the progress of the case that affects them in particular and advise on and facilitate contact with other agencies, who can provide practical and emotional support as required.

The service is designed to support and guide victims, witnesses and bereaved family through the criminal justice process and to attempt to increase their understanding of, and satisfaction with that experience. However, all service users are encouraged by VIA staff to make their own informed choices about the information they wish to receive and the level of support, if any, they require.

Q: What is the Health and Safety Division?

The Health and Safety Division (HSD) is part of COPFS and they lead the investigation and prosecution of all potential cases under the Corporate Manslaughter and Corporate Homicide Act 2007 and all health and safety cases across Scotland. They provide advice, support and direction to investigators from Police Scotland, the Health and Safety Executive (HSE), Local Authorities and other regulatory agencies from the very earliest stages of an investigation.

Q: What role do regulatory authorities have in investigating deaths and which ones would COPFS be involved in liaising with?

Many regulatory authorities exist covering a wide range of areas. Some have a specific duty by law to investigate matters of safety or standards of care which may result in them having a role in investigating aspects of a death that has occurred. A list is provided below of some of the regulatory authorities and other organisations that COPFS may liaise with. Much will depend on the facts and circumstances of the particular death and there may be other authorities that are not mentioned here.

List of regulatory authorities and other organisations:

[Health and Safety Executive \(HSE\)](#)
[Air Accident Investigation Branch \(AAIB\)](#)
[Rail Accident Investigation Branch \(RAIB\)](#)
[Marine Accident Investigation Branch \(MAIB\)](#)
[Marine and Coastguard Agency \(MCA\)](#)
[Civil Aviation Authority \(CAA\)](#)
[Office of Rail and Road \(ORR\)](#)
[Military Aviation Authority \(MAA\)](#)
[Office for Nuclear Regulation \(ONR\)](#)
Local Authorities
[Scottish Prison Service \(SPS\)](#)
[Mental Welfare Commission for Scotland \(MWCS\)](#)
[Healthcare Improvement Scotland \(HIS\)](#)

Q: Why is a Post Mortem Examination being held?

A post mortem examination (also known as an 'autopsy') may be carried out to help establish the cause of a sudden, unexplained or suspicious death. The examination is carried out at a mortuary by qualified pathologists, who are doctors who specialise in determining causes of deaths. This should take place as soon as possible after the report of a death to the Procurator Fiscal. It is a matter for the Procurator Fiscal as to whether or not a post mortem examination is required and the consent of family members is not required. However, the Procurator Fiscal will take in to account the views of the family where these are known. Unfortunately it is not always possible to comply with these wishes and a post mortem examination will sometimes still be required, for instance where the circumstances appear to be suspicious or where there has been a sudden and unexpected death of an infant. So far as possible, cultural and religious traditions and sensitivities are also respected.

Q. I have been told that an organ has been removed from my relative's body – why is this necessary?

In a very small number of cases, it is necessary to remove an organ so that more detailed examination can take place. This examination may take several weeks. The procurator fiscal will contact you to explain the options open to you. Often when an organ has been removed for examination it is reunited with the body before the body is released and only very small samples akin to a medical biopsy are retained. If an organ or sample has been retained, you will be asked to decide how you want this to be treated when the tests are completed.

Q: When can I get the death certificate?

If a post-mortem examination is held, the death certificate will be issued by the pathologist. The funeral can take place after the death certificate is issued. There may be local variations throughout the country as to how family members obtain the death certificate. In some areas the Police will collect the certificate and deliver it to the nearest relative. In others, the funeral director may collect it. In some areas you may have to go to the mortuary to collect it in person.

Q: When can the funeral take place?

In Scotland, a funeral cannot take place until the death certificate has been issued and the Procurator Fiscal has given permission for the deceased's body to be released for burial or cremation. The timings in relation to this will depend

on the nature of any further investigations to be carried out and may be delayed where there is the potential for a criminal prosecution. In some rare circumstances, where a criminal investigation is ongoing, the Procurator Fiscal may only be able to authorise the body for burial and not cremation.

It is understood that some religions say that a funeral must happen as soon as possible. The Procurator Fiscal will try to respect these wishes, but this may not always be possible.

Q: Can I get a copy of the final Post Mortem Report?

The Final Post Mortem Report is prepared by the pathologist and details the findings of their examination. This may be provided to family members upon request, although it should be noted that this is a clinical report and that the contents may be distressing. The only exception where the Procurator Fiscal would not give this requested material would be where such a disclosure could prejudice any criminal proceedings against an accused person in connection with the death, which are either pending or ongoing. Following the conclusion of any criminal proceedings however, any such requested information will be provided to the family.

Q: Where will any meeting with the Procurator Fiscal take place?

Any meeting between bereaved family members and the Procurator Fiscal will normally take place at an office of the Scottish Fatalities Investigation Unit in either the West, East or North of Scotland. These are situated within the Procurator Fiscal's Office in Glasgow, Edinburgh, Dundee, Aberdeen or Inverness. However, if it is not possible for family members to attend at these offices, other arrangements can be made for the meeting to take place at a number of alternative Procurator Fiscal's Offices throughout the country. Family members may be able to claim reasonable travel expenses and loss of earnings in relation to attending these meetings.

Q: Should I obtain independent legal advice?

COPFS represents the public interest, which includes consideration of the interests of bereaved family members. However, in some circumstances the family may wish to consider obtaining independent legal advice in relation to matters out with the scope of the COPFS investigation or in relation to any potential Fatal Accident Inquiry. An initial consultation with a solicitor is usually provided free of charge. Alternatively, the Citizen's Advice Bureau may be able to provide assistance.

Q: What is the 'determination' in an FAI?

At the end of an FAI, the Sheriff will make a determination. This determination will set out:

- where and when the death occurred;
- the cause of the death;
- any precautions by which the death might have been avoided;
- any defect in systems that caused or contributed to the death; and
- any other facts which are relevant to the circumstances of the death

The Sheriff may make recommendations in the determination on changes that could be made to avoid similar deaths occurring in the future. These recommendations are not legally binding however.

Q: Where can I obtain additional support?

A number of organisations can provide bereaved families with additional support following the death of a loved one:

- [The Scottish Cot Death Trust \(SCDT\)](#)
- [The Scottish Association for Mental Health \(SAMH\)](#)
- [Cruse Bereavement Care Scotland](#)
- [People Experiencing Trauma and Loss \(PETAL\)](#)
- [Families Against Corporate Killers \(FACK\)](#)
- [Families Affected by Drug and Alcohol Use \(SFAD\)](#)
- [SUDEP – Epilepsy Action](#)
- [Winston's Wish – Childhood Bereavement](#)
- [Survivors of Bereavement by Suicide](#)
- [Victim Support Scotland \(VSS\)](#)
- [Scotland's Campaign Against Irresponsible Drivers \(SCID\)](#)
- [Interfaith Scotland](#)
- [Scottish Council of Jewish Communities \(SCoJeC\)](#)
- [Muslim Council of Scotland](#)
- [Age Scotland](#)