

**Scottish Public Services Ombudsman response
to the Scottish Government's consultation
on Proposals to Reform Fatal Accident Inquiries legislation**

Background and context

The Scottish Public Services Ombudsman (SPSO) is the independent body that investigates complaints from members of the public about devolved public services in Scotland. Our interest in this consultation comes directly from our experience of complaints. The Crown Office and Procurator Fiscal Service (COPFS) are under our jurisdiction. We also receive complaints about the National Health Service, the Scottish Prison Service and local authorities. We receive complaints from the families of people who have died who are concerned about the care their loved one received. At times, we receive complaints about situations where we know the Procurator Fiscal is considering or has been asked to consider a Fatal Accident Inquiry. In this response, I do not comment on aspects relating to the legal process but hope that I can provide some information based on our experience to assist in improving the service received by the public.

Dealing with Delay

We have had concerns when significant delays by COPFS in the process of making a decision have led to issues for families who are waiting for answers to their questions. We note the actions taken by COPFS and the suggestions to further improve this situation. One of the key problems we have had is that it has been extremely difficult to clarify even a potential timescale. While, as an investigatory organisation, we understand that this can be difficult, we publish key performance indicators and can give our customers a general indication of the time an investigation may take. Introducing this need not entail legislative change, and good communication about the cause and also the likely extent of a delay can greatly help people manage the stress that such, at times inevitable, delay brings. It will also assist agencies such as ourselves who also have a role to play to make decisions about our own involvement. At present, we are likely to investigate if we become aware there will be a significant delay in the COPFS investigation and/or decision to ensure that the person is not unduly waiting for an answer to their questions.

Communication and signposting

We welcome the decision of the Scottish Government that the practice of COPFS in providing reasons when it is decided not to undertake a Fatal Accident Inquiry (FAI) should be placed in statute. The training provided to Victim Information and Advice officers in dealing with the bereaved is also welcome. It is not clear to us that this was provided to all officers dealing with the bereaved and, while it would not be appropriate to make this mandatory for all COPFS staff, we hope that the training was made available to staff who felt this would be helpful, particularly to those responsible for communicating with families as part of the Scottish Fatalities Investigation Unit.

The consultation makes the point that the FAI is not intended to respond directly to the concerns of individual family members. The consultation also points to the role of the Mental Welfare Commission and the Health and Safety Executive who may also have an involvement. No mention is made of other organisations including ourselves and the Care Inspectorate, who may also become involved at the direct request of family members.

We find that one of the difficulties faced by people who are trying to work out how best to pursue either their own concerns or simply to understand what is happening about the death of a loved one, is the number of options and agencies involved. There are often very good reasons why there are multiple routes and agencies. However, this can be bewildering at a time when a person is also dealing with a bereavement. We find that people can become

very disappointed when they feel their concerns have not been looked at, even though the organisation or process they have been engaged with did not in fact have that role. It is not clear that the importance of clarity in signposting to others when appropriate was picked up in the previous consultation. Again, clear signposting need not entail legislation, but this is something I believe that COPFS should be encouraged to ensure they can do effectively, given the complexity that families often face after a bereavement.

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