

Justice Committee

Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill

Supplementary written submission from the Crown Office and Procurator Fiscal Service

Evidence relating to deaths of service personnel

During the oral evidence given by the Solicitor General and Stephen McGowan, Procurator Fiscal of Major Crime and Fatalities Investigation on 26 May 2015 the Convener asked if COPFS had held any discretionary Fatal Accident Inquiries for service personnel and an undertaking was given that this would be checked by COPFS. In addition, Christian Allard, MSP, asked that information also be provided to the committee on whether COPFS had been asked to hold a discretionary FAI for service personnel.

I have now had an opportunity to look into this issue.

It has not been possible to find the information you have requested from our database, which is a live operational database not designed for statistical or research purposes, as the specific criteria you have asked about is not recorded. This means that a manual search of all FAI cases would be required. However, members of the Scottish Fatalities Investigation Unit have been able to provide some information from their knowledge and experience in dealing with deaths investigations and conducting FAIs which may be of assistance to the committee.

Firstly, I would like to clarify that the death of an army cadet which was mentioned by Mr Finnie, MSP, as a possible example of such a discretionary FAI would not fall under that category. Although a discretionary FAI was indeed held into that death, the army cadet force is a youth organisation and does not form part of the regular armed forces.

A FAI was held into all the deaths of the 29 people killed in the 1994 RAF chinook crash at Mull of Kintyre and the determination was issued on 26 March 1996. Those killed included police officers and members of the security service who were employed at the time they died and service personnel. The Lord Advocate concluded a FAI was necessary because some of those on board at the time of the crash were engaged in the course of their employment and, while not mandatory in respect of all deaths, the inquiry should relate to all on board.

There have been 2 occasions where COPFS has been asked to hold a FAI into the deaths of service personnel.

The first involved the fatal crash of a Tornado aircraft on 2 July 2009 at Glen Kinglas. The aircraft had been involved in a low level training exercise when it crashed killing the pilot and navigator on board. The service inquiry which was conducted concluded the crash was caused by controlled flight into terrain and did not apportion blame. No FAI was held into the deaths. It is the recollection of those working in SFIU that initially a member of one family had expressed the wish that an FAI be

held with a view to a sheriff recommending certain restrictions and controls be implemented on low-level flying in Scotland. However records available reflect that at the time Crown Counsel issued the instruction that a FAI was not to be held it was understood that there was no longer a wish on the part of bereaved relatives for an FAI to be held as the matter they wished recommendations in connection with would have been outwith the powers of the Sheriff.

The second involved the collision of 2 RAF Tornado aircraft whilst on a routine training exercise over the Moray Firth on 3 July 2012 where the pilots of both aircraft and the rear seat instructor in one aircraft were killed. Crown Counsel instructed that there was to be no Fatal Accident Inquiry into the circumstances of the deaths. Written evidence has already been provided to the committee explaining the legal basis for the decision that these deaths did not fall under the mandatory category for holding a FAI and Crown Counsel considered there was no basis for a discretionary inquiry, there already having been a comprehensive service inquiry.

One of the three families expressed an interest in an FAI being held prior to the decision being taken not to hold such an Inquiry, however, when reasons were provided for the decision these appeared to be understood and accepted. When the decision not to hold a FAI was provided a member of one of the other families expressed surprise at the decision however they did not indicate that there was any matter which they considered could have been subject to the findings of a Sheriff in a FAI, which had not been covered by the information with which they had already been provided.

I hope that you find this information helpful.

Catherine Dyer
Crown Agent & Chief Executive
18 June 2015