

Justice Committee

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

Written submission from Commander Toby Everitt, Royal Navy (Retired)

I was the President at the Service Inquiry into the accident involving ZD812 and ZD743, the two Royal Air Force Tornados that collided in July 2012 and have been keeping apprised of the events in Scotland pertaining to the accident and any Fatal Accident Inquiry (FAI) that could have been convened regarding the accident. I was informed by Mr Jimmy Jones that he had presented to your committee on the subject of Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill, and also that he had spoken with members of the committee regarding aspects of my inquiry that he felt strongly about.

I left the Royal Navy last year to pursue a different career, and have been in sporadic contact with Mr Jones answering his questions when I was able and when appropriate to do so, and have maintained a courteous relationship. I have read his submission to the committee prior to the meeting on 5th May, and was surprised to be quoted directly as he had not informed me that this was his intent, as unfortunately, he has not conveyed my opinion or findings correctly and I would have not allowed the text to be published had he requested it.

Although the references to my Inquiry seem separate from the submission's main thread of mandated/discretionary Fatal Accident Inquiries, I feel strongly that the record should reflect my personal views on my Inquiry rather than those made on my behalf, and which I presided over agnostic of whether there was to be any additional Inquest. My report was not written for a FAI, it was written for an independent Convening Authority. It could inform and support a subsequent FAI, but as explained at each interview that we conducted, any evidence would need to be re-examined at an Inquiry.

Although several points within the submission misquote me, I do not contest I have been in contact with Mr Jones, and having reviewed correspondence, I feel that he has misunderstood my comments in the statements made within his submission.

Therefore I would like to state:

a. I did not feel bound by the Terms of Reference (TORs), restricting my lines of inquiry. I was given generic themes (which are given to all Inquiries) which could be used as prompts, however the specifics of the inquiry drove the direction of investigation, none of which were restricted by my TORs. I had total freedom to follow lines of inquiry resulting in one of the widest ranging reports that the Military Aviation Authority had seen. This was an internal inquiry which had a remit to highlight any safety concerns and make strong recommendations to ensure, where possible, this could not happen again.

b. I was not prevented from pursuing any lines of inquiry, as I did not have to gain any permissions or authority to investigate themes. I was an independent President who reported to an independent Convening Authority. The

misinterpretation of a Senior Officer attending a court came from a discussion regarding the legal responsibility that a Duty Holder now holds post the Haddon-Cave review. My report does not attribute blame.

c. I stated clearly within my report that I did not feel that the Panel were suitably qualified to fully investigate the Top Level Group of the Ministry of Defence and placed a recommendation on the Secretary of State to investigate further. I do believe, however, that the Panel were suitably qualified to report on the aviation safety aspects of the accident, and I stand by our recommendations.

I hope that I have explained my position regarding my report, the freedoms under which I was allowed to investigate and the expertise of the President and panel under my direction. I apologise for any misunderstanding which has arisen from my correspondence with Mr Jones.

Toby Everitt
15 May 2015