



The Scottish Parliament
Pàrlamaid na h-Alba

Justice Committee

James Wolffe QC
The Lord Advocate
Crown Office and Procurator Fiscal
Service

All correspondence c/o:
Justice Committee Clerks
Room T2.60
The Scottish Parliament
Edinburgh
EH99 1SP

By e-mail

Tel: 0131 348 5195
Textphone: 0800 092 7100
justicecommittee@parliament.scot

30 October 2019

Dear Lord Advocate,

Fatal Accident Inquiries (FAI)

Thank you for your response letter of 21 October to the Committee regarding Fatal Accident Inquiries. This was discussed at yesterday's meeting of the Justice Committee and it was agreed that I should write to you seeking further information.

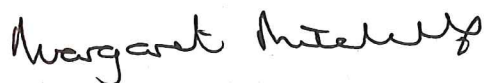
The Committee noted that this response made it clear that "the Crown does not grant immunity from prosecution" and that "a decision that a witness to a FAI will not be subject to prosecution may ... be communicated to a witness, and to the sheriff with a view to serving the public interest in securing the fullest evidence before the inquiry."

Members appreciate it would be problematic to try to establish how many times this had happened per se without reviewing all of the individual cases, in order to give a precise figure for the number of times over the last five years that the Crown Office and Procurator Fiscal Service has made a prosecutorial decision not to prosecute individuals involved in an FAI.

However, members were of the view that it was likely that in terms of FAIs involving a prison death, such decisions would happen relatively infrequently. Consequently, if that is the case, then a decision not to prosecute a witness in these circumstances would be a significant and noteworthy event. The resultant impact of such a decision by Crown Counsel being that there can be no criminal proceedings.

The Committee therefore requests the number of times where decisions have been made in the last 5 years not to prosecute individuals involved in a prison-related FAI. If this is not possible, then would you set out the relative frequency of such a decision taken in these circumstances. Is this a common event or relatively rare? We would appreciate some further reflections from you given the impact such a decision can have on the friends and family of those who have died in custody.

Best wishes,

A handwritten signature in black ink, appearing to read "Margaret Mitchell". The signature is written in a cursive, slightly slanted style.

Margaret Mitchell MSP
Convener, Justice Committee