

The Right Honourable Elish Angiolini QC



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Fergus D. Cochrane
Clerk to the Committee
Public Petitions Committee
Scottish Parliament
Edinburgh
EH99 1SP

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Dear Mr Cochrane,

Criminal Procedure (Legal Assistance Detention and Appeals) (Scotland) Act 2010

Thank you for your letter of 25 January 2011 in which you seek a written response to the specific issues during the discussion on the petition, in particular by Christine Grahame MSP and Bill Butler MSP (around the Criminal Procedure (Legal Assistance Detention and Appeals) (Scotland) Act 2010).

Having considered the terms of the Official Record of the Committee I understand that the Committee wished me to address is the issue raised by Nigel Don MSP namely:

“Do the law officers have a residual power to investigate or reconsider a case in such circumstances? I would not even define the circumstances; we should just ask the Lord Advocate to think about what she might be able to do”.

I understand the Committee to be asking if the Law Officers have a residual power to investigate or reconsider a case where there has been a referral by the Scottish Criminal Cases Review Commission to the Court of Appeal on the basis that a miscarriage of justice may have occurred and it is in the interests of justice to do so, and the appellant subsequently abandons his or her appeal before a judicial determination of the matter. There is no such specific power.

The Crown remains under a duty to review prosecution cases at all stages of criminal proceedings. Any decisions taken by the Crown must be impartial, fair and taken on an independent, objective and professional assessment of the evidence available and ensuring that proceedings are also fair to any accused person.



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In considering any appeal the Crown investigates the grounds of appeal and whether it is appropriate to oppose the appeal or not. In any case which is the subject of appeal proceedings, where the Crown's assessment is that the conviction is sound, and the appellant subsequently abandons the appeal proceedings, then that is an end to the criminal proceedings.

The Committee will be aware that there have been a number of investigations in relation to the tragic destruction of Pan Am flight 103 and the murder of 270 people and these are as follows:

- There was a Fatal Accident Inquiry conducted in Dumfries between October 1990 and February 1991
- The findings of the Air Accident Investigation Branch (AAIB) were published - these set out in detail the cause of the destruction of the plane and make a number of recommendations to improve aviation safety
- There was a criminal trial lasting nine months in a public forum, after which the trial judges released a written judgement to confirm their reasons for convicting the accused
- There has been an appeal in a public forum and again the appeal court released a written judgement to confirm their reasons for upholding that conviction
- After the referral of the case back to the Court of Appeal by the SCCRC the appellant's legal representatives argued two grounds of appeal (relating to the sufficiency of the evidence and the reasonableness of the verdict) before the court in a public forum after which, and before the court could issue its verdict, the appellant took the decision to abandon his appeal, thereby ending the criminal proceedings.

The Crown has defended Mr al-Megrahi's conviction including the appeal proceedings resulting from the SCCRC referral. The decision to discontinue the appeal proceedings was taken by Mr al-Megrahi and his legal team. In light of his abandonment of his appeal, the conviction for the murder of 270 people and the judicial determination of his guilt stand.

The only appropriate forum for the determination of guilt or innocence is the criminal court and the High Court of Justiciary sitting as the Court of Criminal Appeal is the only body with the power (as set out in the Criminal Procedure (Scotland) Act 1995) to quash this conviction. The Supreme Court has this power also on consideration of a devolution issue. Mr al-Megrahi was convicted unanimously by three senior judges following trial and his conviction was upheld unanimously by five judges in the Appeal Court presided over by the Lord Justice General, Scotland's most senior judge.





Both of these courts subjected the evidence to a rigorous examination and concluded that it was proven beyond reasonable doubt that Mr al-Megrahi was responsible, while acting with others, for the bombing of Pan Am flight 103 and the murder of the passengers and crew, and 11 residents of the town of Lockerbie, and that the trial court's verdict did not amount to a miscarriage of justice.

The Committee will be aware that Mr al-Megrahi was charged with and convicted of acting with others who were named in the indictment. The High Court found, explicitly that "the conception, planning and execution of the plot which led to the planting of the explosive device was of Libyan origin." The criminal investigation in respect of others responsible for this crime remains open and the position remains as stated to the Scottish Parliament by my predecessor Lord Boyd of Duncansby on the day following Mr al-Megrahi's conviction in 2001 - at present there is in Scots law insufficient evidence to justify further proceedings at this time. If new evidence about the involvement of others with Mr al-Megrahi in the murder of the 270 victims becomes available we will reassess that position.

I hope that this is helpful

*Yours sincerely,
Elish Angiolini*

ELISH ANGIOLINI

