

PE1699/H

Crown Office and Procurator Fiscal Service submission of 21 August 2019

I refer to your letter of 29 July 2019 addressed to the Scottish Government.

A number of the Committee's requests for views relate to the responsibilities of the Crown Office and Procurator Fiscal Service (COPFS) in relation to the investigation of deaths and prosecution of crime. COPFS will therefore respond to the Committee's requests relevant to COPFS' roles and responsibilities.

The Petitioner raised a concern that the Consultation Protocol may lead to more homicide victims being classified as "special cases", meaning bodies are not released any sooner than they would have been before the Protocol was published.

I can confirm that the Consultation Protocol has not led to more homicide victims being classified as "special cases". The Crown policy is that a body should be retained for longer than one month from the date of autopsy only in the most exceptional of cases and only for a specific, identified purpose.

The second concern raised by the Petitioner is whether appropriate monitoring has been established to identify any difference in timescales for releasing bodies and the number of post mortems carried out before and after the Protocol was published.

As previously discussed, the introduction of the Forensic Pathologist Consultation Protocol was designed to enable more effective consultation between pathologists instructed by the Crown and Defence, to support a more informed defence decision as to whether a second physical post mortem examination was required and reduce not only the number of required defence examinations but also delays in the return of deceased persons to their families.

Current practice is that the defence are provided with a letter at the earliest opportunity, usually when their client first appears in court, which sets out the results of the Crown post mortem and refers them to the terms of the protocol. The defence are then asked to contact the National Homicide Team to advise if a defence post mortem will be required and the draft Post Mortem report and photographs taken at the Crown Post Mortem are provided to the defence, as soon as they are available, to allow them to consult a pathologist. Proactive efforts are then made to encourage the defence to make a decision, on whether there requires to be a defence post mortem, as soon as possible.

I can confirm that the situation has been closely monitored since the introduction of the protocol in October 2018 and am pleased to advise that there has been a significant reduction in the number of defence post mortems instructed. Whilst there were six defence post mortems instructed in October and early November 2018, shortly after the protocol was introduced, there have been only two defence post mortem examinations instructed between December 2018 and July 2019.

Finally, the Committee requested views in relation to exploring the role of new technology in relation to the holding of post mortems.

COPFS are aware of the impact of the post mortem process and any delay in the return of a loved one to their relatives. COPFS seek to minimise the impact of the post mortem process as far as possible.

Where a non-suspicious death is reported to the Procurator Fiscal and no certificate can be provided by either the deceased's own doctor or if the deceased died in hospital, the relevant hospital doctor, the Procurator Fiscal will decide whether a post mortem examination is required. In deciding whether to instruct a post mortem examination the Procurator Fiscal will seek to confirm the views of the nearest relatives where possible. If there is an objection to a post mortem examination from nearest relatives, careful consideration will be given to whether the examination is essential. The post mortem examination may be limited to a "view and grant" examination which is a non-invasive investigation, sometimes sufficient to enable a cause of death to be certified.

The type of post mortem examination depends on the individual circumstances of the death. COPFS will continue to engage with pathologists on the value that technology, including scanning, may bring to the post mortem examination process. It may be that, with changing techniques, scanning post mortems will become more frequent in the future. It would, of course, be necessary to address not just medical questions but also practical issues concerning the availability of the necessary equipment and skills. However, on the basis of the expert advice received, the usefulness of scanning post mortems is, at present, limited as a substitute for pathological examination in the context of the deaths currently reported to COPFS and the availability of "view and grant" examination as an alternative. COPFS will keep this matter under review in light of advances in medical science.

In relation to suspicious deaths, an invasive post mortem examination will always be required where the body of the deceased has been recovered. The post mortem examination is designed both to establish the cause of death and to ensure that all the available evidence is gathered to assist with any criminal investigation, including identifying those persons responsible for the death and identifying whether or not there is a basis for criminal proceedings.

I trust this information is of assistance.