

Crown Office and Procurator Fiscal Service submission of 29 June 2023 PE1911/NN: Review of Human Tissue (Scotland) Act 2006 as it relates to post-mortems

I would like to express my thanks to the Committee for inviting the Lord Advocate and me to give evidence at the hearing on 14 June 2023. At that hearing, during my evidence I offered to provide additional written evidence to the Committee in relation to the following:

- The scope and timescale of the pathology review being undertaken by COPFS
- Whether the COPFS key performance indicator for completion of death investigations is being met and whether we are encountering any pressures affecting our ability to meet that target.

Firstly, however, I would wish to take the opportunity to restate the position that the Lord Advocate is responsible for both the systems of criminal prosecution and investigation of deaths in Scotland. By virtue of the Scotland Act 1998, any decision in those capacities shall be taken independently of any other person, including other Scottish Ministers. The role of the Law Officers is, therefore, to be distinguished from that of other members of the Scottish Government. Procurators Fiscal in the Crown Office and Procurator Fiscal Service (COPFS) investigate deaths in Scotland on behalf of the Lord Advocate and, accordingly, their decisions are taken independently of any other person.

Pathology Review

COPFS is the client and the recipient of forensic pathology services in Scotland to allow and Procurators Fiscal to discharge their deaths investigation duties on behalf of the Lord Advocate. To that end, we have a series of contracts and service level agreements with universities, local authorities, and the NHS for pathology mortuary and toxicology services across Scotland.

The current pathology contract extensions are, in the main, in place until March 2024 and we are currently working with all pathology providers on a service redesign. Specifically, we are working with service providers to

streamline the nature and number of the contracts to ensure resilience and efficiency through negotiations and service co-design.

Our preferred outcome is for the appointment and establishment of a National Pathology and Mortuary Service, preferably under the appropriate leadership from the NHS, to manage the service provision. However, as you will appreciate, COPFS is not in a position to design and implement unilaterally a national service model to deliver an improved and consistent service across Scotland and wider government direction and support will be required.

COPFS rely on pathology providers as the medical experts to determine the nature and extent of the examination that is required to establish a cause of death. COPFS would support any proposals where evidence is provided that a particular approach would fully meet the requirements of our investigation in a timely and cost-effective manner, whilst reducing distress to families from the post-mortem examination process.

Since the Committee Session on 14 June 2023, COPFS has received representations from two pathology providers about the viability of CT scanning in post-mortem examinations. COPFS will therefore seek further information from these pathology providers on the operational aspects of this approach.

COPFS Death Investigation Key Performance Indicators

In relation to deaths which require further investigation, COPFS has a published target to conclude the investigation and advise the next of kin of the outcome within 12 weeks of receipt of the death report in 80% of cases.

The figures for the previous five reporting years are as follows:

Full Year Performance 2018-19: 90%

Full Year Performance 2019-20: 71%

Full Year Performance 2020-21: 59%

Full Year Performance 2021-22: 49%

Full Year Performance 2022-23: 65%

It is accepted that the target has not been met for each of the last four years and there are a number of factors which we would wish to highlight to the Committee.

Firstly, COPFS has seen a significant increase in the number of deaths reported, as illustrated below:

Reporting Year	Deaths Reported
2018-19	10,397
2019-20	10,896
2020-21	15,712
2021-22	15,313
2022-23	14,149

As a consequence, the number of post-mortem examinations requiring to be instructed by COPFS and conducted by pathologists has also risen, as follows:

Financial Year	Post-Mortems
2018-19	5,655
2019-20	5,645
2020-21	6,635
2021-22	7,092
2022-23	7,045

In addition, from early 2019, COPFS experienced delays in the provision of toxicology reports by Glasgow University (which at that time provided forensic toxicology services for most of Scotland). This had a knock-on effect of delaying the provision of pathologists' final reports to COPFS and the conclusion of death investigations as a result. COPFS and Glasgow

University undertook a number of steps to seek to resolve the issue, including the agreement of an Improvement Plan. The success of that plan meant that, from the beginning of 2021, there was no backlog of toxicology reports and all reports from Glasgow University met the turnaround times agreed in the plan.

There will also be other reasons why it is not possible to conclude an investigation within 12 weeks, such as the need to carry out further investigations with a view to determining whether a Fatal Accident Inquiry should be held.