

Medico-Legal Death Investigation Systems – Scotland

Claire Parks, Peter D Maskell*

Forensic Medicine and Science, University of Glasgow, University Place, Glasgow. G12 8QQ. Scotland

ABSTRACT

Scotland although part of the United Kingdom (UK) has a separate legal system. The death investigation process in Scotland is unique, not only in the UK, but also when compared to many other countries around the World. The uniqueness includes having the requirement of corroborated reports, thorough police investigations before autopsy, the ability to avoid dissection autopsies, a focus on the detection of criminality & negligence and greater privacy for the deceased's family. In this article we expand and describe the process of Death Investigation in Scotland.

Key words: Corroboration; death investigation; procurator fiscal; Scotland; view and grant

Corresponding Author: Peter D Maskell
peter.maskell@glasgow.ac.uk
ORCID iD: <https://orcid.org/0000-0003-3801-9658>

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Scotland is part of the United Kingdom (UK) of Great Britain. Due to historical reasons each country within the UK has different legal systems and traditions. The procedure for the investigation of deaths is different with slightly different emphases in each of the countries of the UK. This article will focus on the death investigation system in Scotland.

Scotland is a country that is situated in the north of the UK and has a population of around 5.5 million people. There are on average around 58,000 deaths per year. When an individual dies, in around 80 % of cases, a certified medical practitioner will issue a death certificate when the cause of death can be identified to the best of their knowledge or belief. However, in around 20% of cases, on average around 12,000 deaths per year, the death will be considered “reportable” and the Procurator Fiscal is required to be notified of the death. The Procurator Fiscal is a lawyer and civil servant appointed by the Lord Advocate. The Lord Advocate being the chief public prosecutor for Scotland and the Head of the Crown Office and Procurator Fiscal Service (COPFS), the organisation that carries out prosecutions in the name of the Lord Advocate. The investigation of deaths in Scotland are carried out by a specialist unit of

the COPFS, the Scottish Fatalities Investigation Unit (SFIU). The SFIU is further split in to 3 areas that cover different parts of the country, SFIU North, SFIU West and SFIU East.

The Procurator Fiscal has a different role in the death investigation process to that of a coroner or medical examiner in other countries around the world. Commonly the role of the coroner or medical examiner is to determine the identity of the deceased and how, when and where they came by their death. In Scotland the Procurator Fiscals main focus in the death investigation process is the detection of criminality and negligence. As previously mentioned, there are certain types and categories of death that are considered “reportable” to the Procurator Fiscal. These are a) unnatural deaths (such as homicide, suicide, drug related deaths and deaths whilst at work), b) natural deaths (natural causes where the cause cannot be initially identified by a medical practitioner, death due to neglect/fault, certain child deaths, deaths under medical care or deaths from notifiable industrial/infectious diseases (such as diseases related to exposure to asbestos at work), c) deaths in legal custody (including police custody and lawful imprisonment).

Once the Procurator Fiscal has been notified of a death, they may take the following actions a) decide a death can be certified with no further action; b) consent to a hospital post-mortem (where death is thought to be natural but more accurate certification of death is required), in this case the family may refuse to give consent for the autopsy to be carried out, unlike in medico-legal autopsies; c) request a police report (in this case the police are acting as investigative agents of the Procurator Fiscal and the investigation will be carried out even if it is suspected that there is no criminality involved in the death). In the cases of a police report, it would usually be expected that the police investigation and subsequent reporting would be

followed by an autopsy; d) a medico-legal autopsy (carried out by a forensic pathologist). Once reported to the Procurator Fiscal the body of a deceased cannot be released for burial or cremation until authorised by the Procurator Fiscal, this is usually after the death certificate has been finalised but may be longer in cases of homicide and in cases where additional investigations are required.

In around 70 % of the deaths reported to the Procurator Fiscal a medico-legal autopsy is carried out by a forensic pathologist. In Scotland forensic pathology services are funded by the Scottish Government (via the COPFS) and are found at the Universities of Glasgow (est. 1893, Dundee (est. 1898), Aberdeen (est. 1839) and Edinburgh (est. 1806). In most cases reported to the Procurator Fiscal the Police will have completed a comprehensive report, the exception usually being homicide investigations. This allows the Procurator Fiscal to make informed decisions about the type of autopsy that may need to be carried out. Scotland is unique in that a "View and Grant" autopsy may be carried out. In this case the pathologist, in consultation and agreement with the Procurator Fiscal, may decide that the medical records and the Police investigations allow the cause of death to be determined without dissection of the deceased. In this scenario only a thorough external examination of the body by a forensic pathologist is required rather than dissection. The view and grant procedure does allow limited incisions to be made to allow samples to be taken for toxicological analysis. If on external examination of the deceased the death becomes suspicious then the forensic pathologist can proceed to a full (dissection) autopsy. The variety of cases that may be covered by view and grant autopsies include suicidal hangings, road traffic fatalities (where no criminal prosecution is expected) and unexplained deaths that were witnessed (such as a heart attack at a sporting event). Around 15 % of the deaths that are sent for autopsy by the Procurator Fiscal are completed as "view and grant" investigations. In Scotland due to the option of a view and grant autopsy it is not currently possible to use other non-invasive autopsy techniques such as magnetic resonance imaging (MRI) or computerized tomography (CT) scanning to ascertain the cause of death, techniques that have become more common around the world. If it is decided that a full dissection autopsy is required there are two options in Scotland, that of a "single doctor" or "double doctor" (corroborated) autopsy. In criminal cases in Scotland, it is a legal requirement that all crucial facts are corroborated. This is in place as a legal safeguard to reduce the likelihood of a miscarriage of justice. Double doctor autopsies are carried out when there is an expectation that criminal proceedings will follow the determination of the cause of death. The use of a double doctor autopsy does not stop a defence autopsy being carried out, and there have been some debates in

the field that a defence autopsy would corroborate the pathological facts. The defence autopsy could just be a difference in interpretation of those facts but still a corroboration of pathological findings meaning that corroborated autopsies would not be required. In a double doctor autopsy, both forensic pathologists will be present. Usually, one will perform the dissection and the other will take notes, with both forensic pathologists being equally responsible for the autopsy, neither being considered more senior than the other. Following a double doctor autopsy usually a joint report is prepared and agreed. If the pathologists do not agree on the facts, then separate reports can be completed and submitted to the Procurator Fiscal. This does not commonly occur and is discouraged as this practice would weaken any potential prosecution. However, this may act as another safeguard to potential miscarriages of justice. Another advantage to the corroborated pathology reports is that they allow, and even require, the discussion of findings prior to the production of the final report, reducing the chance of a critical or important finding being missed. In the criminal justice system in Scotland corroborated reports are also required in criminal cases by other professionals such as police officers, forensic toxicologists, and other forensic scientists. Following the completion of the Procurator Fiscal's investigation and the certification of death the Procurator Fiscal has three options for further action. They can 1) take no further action; 2) prepare a criminal prosecution; 3) prepare a fatal accident inquiry (FAI).

In Scotland, unlike in England and Wales there are a limited number of public hearings into deaths. The only public hearings in relation to deaths that occur in Scotland are those that require a FAI. FAIs were first introduced into Scots law by the Fatal Accidents Inquiry Scotland Act (1895) and are now covered by the "Enquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 Act". FAIs are a judicial process overseen by a Sheriff (usually a judge assigned to work in a specific court). This purpose of which is to establish the circumstances of a death and consider what steps may be taken to prevent other deaths or injuries in similar circumstances. Unlike in other legal jurisdictions FAIs are never held with a jury as the trier of facts, only a Sheriff. The role of the FAI is investigative and they do not establish criminal or civil liability. There are around 60 FAIs per year in Scotland and are only required in specific circumstances; a death at work, a death in legal custody or at the direction of the Lord Advocate where it is in public interest. Since 2016 the Lord Advocate can order an FAI in cases where the death of a Scottish resident has occurred outside of Scotland, such as deaths of service personnel or death abroad. In these cases, the Lord Advocate must believe there are additional questions that have not been answered by other inquiries. The evidence, and the calling of witnesses in an FAI is led by the Procurator Fiscal.

However, like in coroner's inquests (as it is known in other legal jurisdictions around the world) other interested parties (such as the family or employer) can also be represented and ask questions of the witnesses that have been called.

In the 80% of cases that are not covered by the Procurator Fiscal there is an additional layer of auditing of the causes of deaths on death certificates. Research had found that there was a lack of quality and accuracy in the cause of death given on death certificates. For this reason, the Death Certification Review Service (DCRS) was setup in 2015 to review the cause of death in approximately 12% of randomly selected deaths that were not reported to the Procurator Fiscal. The death certification can also be reviewed by the DCRS at the request of the family. The aim of DCRS is to ensure the death is recorded accurately. In 2020 around 20 % of randomly selected cases were considered "not in order" and required changes (this may be the correction of an administrative error (such as a spelling mistake) or a clinical error (such as an incorrect cause of death or a cause of death that is too vague).

The death investigation process in Scotland is unique not only in the UK but also to many other places around the World. The uniqueness includes having the requirement of a corroborated report, thorough investigations before autopsy, the ability to avoid dissection autopsies, a focus on the detection of criminality & negligence and greater privacy for the deceased's family. No countries death investigation system is perfect, but knowledge of the other systems of death investigations around the world allows the chance for reflection and potential improvement.

REFERENCES

1. Crown Office & Procurator Fiscal Service. *Our role in investigating deaths*. Available from: <https://www.copfs.gov.uk/about-copfs/our-role-in-investigating-deaths/> [Accessed 4th September 2022].
2. Crown Office & Procurator Fiscal Service. *Reporting deaths to the Procurator Fiscal: Information and Guidance for Medical Practitioners (May 2019 version)*. Available from: <https://www.copfs.gov.uk/images/Documents/Publications/Reporting%20Deaths%20to%20the%20Procurator%20Fiscal/Reporting%20Deaths%20to%20the%20Procurator%20Fiscal%20-%20Info%20for%20Medical%20Practitioners%20May%2019.pdf> [Accessed 6th March 2022].
3. Davison AM, McFarlane JH, Clark JC. Differences in forensic pathology practice between Scotland and England. *Medicine, Science and the Law*. 1998 Oct;38(4): 283-8. <https://doi.org/10.1177/002580249803800403>
4. Healthcare Improvement Scotland. *Death Certification Review Service*. Available from: https://www.healthcareimprovementscotland.org/our_work/governance_and_assurance/death_certification.aspx [Accessed 6th March 2022].
5. Healthcare Improvement Scotland. *Death Certification Review Service Annual Report:2019-20*. Available from: https://www.healthcareimprovementscotland.org/our_work/governance_and_assurance/death_certification/dcrs_annual_report_2019-2020.aspx [Accessed 6th March 2022].
6. Legislation.gov.uk. *Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016*. Available from: <https://www.legislation.gov.uk/asp/2016/2/contents/enacted> [Accessed 6th March 2022].
7. Pounder DJ. Law and forensic medicine in Scotland. *American Journal of Forensic Medicine and Pathology*. 1993 Dec;14(4): 340-9. <https://doi.org/10.1097/00000433-199312000-00014>.
8. Pounder D, Jones M, Peschel H. How can we reduce the number of coroner autopsies? Lessons from Scotland and the Dundee initiative. *Journal of the Royal Society of Medicine*. 2011 Jan;104(1): 19-24. <https://doi.org/10.1258/jrsm.2010.100207>.