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Convenor, Justice Committee
The Scottish Parliament
Edinburgh
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Dear Committee,

Fatal Accident Inquiries (FAIs)

Thank you for your letter of 30 October 2019 in which you asked whether it would be possible to identify the number of times where decisions have been made in the last five years not to prosecute individuals involved in prison related FAIs. In my response of 4 December 2019, I advised that I had instructed a review of these FAIs and that I would write to you to advise of the outcome by the end of the calendar year.

The exercise, in fact, took much longer than anticipated. The review required consideration of a significant number of archived files. I am grateful for your patience whilst you awaited this information.

In my initial response, I advised that 246 FAIs were concluded between 1 April 2014 and 31 March 2019. I explained that 25 were discretionary FAIs and that, accordingly, 221 would require to be considered during this exercise. A closer examination of the figures revealed that, during this period, 135 FAIs relating to deaths in custody were concluded. Of those FAIs, 125 related to deaths in prison and ten related to deaths in police custody. The file in each of these cases was examined to seek to ascertain whether or not a decision not to prosecute a witness had been communicated to the witness.

In my response of 21 October 2019, I provided information about the case of Allan Marshall and I explained that in this particular FAI, a decision had been made by Crown Counsel that there would not be a prosecution against the officers in respect of the incident. This was communicated to the officers and to the Sheriff. The communication of the decision ensured that the FAI would have available to it all the relevant evidence, including the evidence of the officers concerned. I explained that, the Crown does not "grant immunity from prosecution" in return for evidence at a FAI. Rather, the Crown makes prosecutorial decisions on the basis of the criteria set out in the Scottish Prosecution Code. A decision that a witness to a FAI will not be subject to prosecution may, as I have explained above, be communicated to the witness, and to the sheriff, with



a view to serving the public interest in securing the fullest evidence before the inquiry. Such decisions are made as and when the issue arises.

The review which has been undertaken has disclosed that in no other mandatory FAI relating to a death in custody concluded in the course of the last five financial years, has a decision been made that a witness to any of these FAIs would not be prosecuted. As such, I can confirm that on only one occasion, the death of Allan Marshall, has a prosecutorial decision been made as regards any individuals involved in a FAI concluded between 1 April 2014- 31 March 2019.

I trust that this information is helpful to the Committee.

RT HON W JAMES WOLFFE QC

LORD ADVOCATE