



## CROWN OFFICE & PROCURATOR FISCAL SERVICE

SCOTLAND'S PROSECUTION SERVICE

### **DECEASED SUSPECTS: COPFS POLICY ON PROSECUTORIAL DECISION- MAKING**

The primary duty of COPFS is to receive reports about crimes from the police and other reporting agencies and then decide what action to take, including whether to prosecute someone and in what forum. COPFS also provides instructions and directions to the police in connection with their investigations. This happens particularly in serious cases, where the police work very closely with the Procurator Fiscal.

Since deceased suspects cannot be prosecuted, COPFS will not make a prosecutorial decision in respect of a suspect who is dead. This includes all cases in which a suspect is dead. It includes cases in which the police report a case to COPFS prior to the suspect's death but where the suspect dies prior to a prosecutorial decision being made.

COPFS will also not make a hypothetical prosecutorial decision. In particular, it will not indicate what the decision would have been had the suspect still been alive.

The extent of police investigation into a deceased suspect is primarily a matter for the police. However, the role played by a deceased suspect will require to be considered by COPFS in the following circumstances and must therefore be investigated:

- Where a suspect who is still alive is alleged to have committed an offence, any evidence which suggests that the offence was actually perpetrated by a person now deceased will be relevant to the assessment of the evidence against the current suspect;
- It may be that a deceased suspect is considered to have been involved in offences along with others on an art and part basis. If so, then anything said by the deceased in furtherance of the common plan can be used in evidence against the others; and,
- Where the evidence of a complainer against a deceased suspect raises concerns about credibility and/or reliability, then this evidence may be relevant to the assessment of the credibility and/or reliability of evidence by the same complainer against other suspects.

In these circumstances, whilst COPFS may undertake a detailed review of the evidence against the deceased suspect, it will not make a prosecutorial decision in respect of the deceased suspect. The purpose of the review in these circumstances is to assess the case against a suspect who is still alive.