
From: [redacted] on behalf of [redacted]
Sent: 12 August 2019 13:37
To: Cabinet Secretary for Justice
Cc: SPS Executive Management Group; Rennick NS (Neil); MacKinnon D (Donna);
Communications Justice; DG Education, Communities & Justice; Minister for
Community Safety
Subject: FAI Determination - Allan Marshall
Attachments: FAI Determination - Allan Marshall.pdf

Good afternoon,

Please find attached a 3 page submission in relation to the recent FAI Determination for Allan Marshall.

Kind regards,

SPS Values

Belief | Respect | Integrity | Openness | Courage | Humility

From: Colin McConnell
Chief Executive, SPS
12 August 2019

Cabinet Secretary for Justice

FATAL ACCIDENT INQUIRY (FAI) DETERMINATION – ALLAN MARSHALL

Purpose

1. To advise you that SPS has received the determination in the above FAI. A copy of the determination, which is 109 pages, can be found at the following link:
<http://www.scotcourts.gov.uk/docs/default-source/cos-general-docs/pdf-docs-for-opinions/2019fai35.pdf?sfvrsn=0>.

Timing

2. Immediate.

Background

3. Allan Marshall, was remanded to HMP Edinburgh on 2 March 2015 having been charged with the following offences, Criminal Justice and Licensing (Scotland) Act 2010 S38 (1) (using threatening or abusive behaviour) and Police and Fire Reform (Scotland) Act 2012 S90 (1)(A) x 2 (assaulting or impeding police). Mr Marshall died on 28 March 2015 at Edinburgh Royal Infirmary. The cause of death was a brain injury due to a cardiac arrest which occurred during physical restraint. The post mortem examination of Allan Marshall's body also found that he had underlying severe coronary artery disease.

FAI

4. As Mr Marshall was in legal custody at HMP Edinburgh at the time he died, his death was subject to a mandatory inquiry under section 2(4)(a) of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016. The FAI was heard over various dates in 2018. Mr Marshall's family was represented at the FAI.

Determination

5. In his determination, Sheriff Liddle identified 7 precautions that he considered could have reasonably been taken, that might realistically have resulted in the death of Marshall being avoided. Sheriff Liddle also identifies 3 defects in the system of working which he has determined contributed to the death of Mr Marshall and makes 13 recommendations about steps he considers might realistically prevent deaths in similar circumstances in the future.
6. SPS has eight weeks to provide a written response to Sheriff Liddle's recommendations. I will provide a further update once officials from my office have had an opportunity to fully consider Sheriff Liddle's recommendations with

Conclusions

7. You are invited to note the above.

12 August 2019

Room
Calton House

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Minister for Community Safety					X

DGECJ
 SPS Executive Management Group
 Neil Rennick, Scottish Government
 Donna MacKinnon, Scottish Government

Communications, Justice

From:
Sent: 24 August 2019 21:00
To: Cabinet Secretary for Justice
Cc: Minister for Community Safety; DG Education, Communities & Justice; Rennick NS (Neil); ; Communications Justice; ; McConnell Colin
Subject: Allan Marshall FAI - CCTV Images [SEC=OFFICIAL-SENSITIVE]
Attachments: Submission Allan Marshall FAI - Sunday Mail.pdf

OFFICIAL-SENSITIVE

OFFICIAL-SENSITIVE:PERSONAL

Good Evening,

Please find attached a 2 page submission for your immediate attention.

Kind Regards

Scottish Prison Service

This email has been received from an external party and has been swept for the presence of computer viruses.

OFFICIAL-SENSITIVE=PERSONAL

From: Colin McConnell
Chief Executive, SPS
24 August 2019

Cabinet Secretary for Justice

ALLAN MARSHALL – FATAL ACCIDENT INQUIRY (FAI) – SUNDAY MAIL

Purpose

1. To inform you that SPS Communications branch have been contacted by the Sunday Mail this afternoon who have advised that they have obtained a copy of the CCTV footage that was used as a production in the Allan Marshall FAI and that they intend publishing stills from the footage. They refuse to disclose who provided them with the copy of the footage.

Timing

2. Immediate.

Background

3. Allan Marshall, was remanded to HMP Edinburgh on 2 March 2015 having been charged with the following offences, Criminal Justice and Licensing (Scotland) Act 2010 S38 (1) (using threatening or abusive behaviour) and Police and Fire Reform (Scotland) Act 2012 S90 (1)(A) x 2 (assaulting or impeding police). Mr Marshall died on 28 March 2015 at Edinburgh Royal Infirmary. The cause of death was a brain injury due to a cardiac arrest which occurred during physical restraint. The post mortem examination of Allan Marshall's body also found that he had underlying severe coronary artery disease.

4. As Mr Marshall was in legal custody at HMP Edinburgh at the time he died, his death was subject to a mandatory inquiry under section 2(4)(a) of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016. The FAI was heard over various dates in 2018. Mr Marshall's family was represented at the FAI.

Interim Orders

5. SPS have instructed _____ to seek interim orders to prevent the CCTV being published tomorrow morning on the basis that:


- As a responsible public authority, SPS considers it essential that the rights of all interested parties, including its employees, are considered and a balancing exercise undertaken prior to any decision being taken on whether to release the CCTV;
- The Article 2 and Article 8 ECHR rights of the individuals in the footage are engaged and would be potentially infringed by the release of the information. It is in our view paramount that those individuals are contacted prior to any decision being taken and given an opportunity to be heard;
- The Prison Officers Association (Scotland) must be given an opportunity to address the court on behalf of its members;
- The rights of other individuals, who are or would be identifiable in the footage, but who did not give evidence and/or were not represented at the Inquiry, must be weighted in the balance.

OFFICIAL-SENSITIVE=PERSONAL

6. The Interim Orders Hearing will take place later this evening and SPS will be represented by Murdo Macleod QC. Mr MacLeod represented SPS in the latter stages of the FAI. I will update you on the outcome of the hearing.

Conclusion and Recommendations

7. You are invited to note the above.



COLIN McCONNELL
Chief Executive, SPS
24 August 2019

Room G24

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Minister for Community Safety					X

DGECJ
Neil Rennick, Scottish Government

Communications Justice

From:
Sent: 25 August 2019 16:59
To: Cabinet Secretary for Justice
Cc: Minister for Community Safety; DG Education, Communities & Justice; Rennick NS (Neil); Communications Justice; ; McConnell Colin;
Subject: RE: Allan Marshall FAI - CCTV Images [SEC=OFFICIAL-SENSITIVE]

OFFICIAL-SENSITIVE

Update from Colin McConnell

As per my submission yesterday , please see below an update from last night hearing and details of my next steps.

Lord Beckett heard submissions from Senior Counsel, Murdo MacLeod representing SPS in regards to the interdict being sought by SPS, to prevent the Sunday Mail from publishing in whole or in part video footage, or stills of the restraint of the late Allan Marshall. By the time that matter was heard, shortly after 12pm, the matter of the still photos being published in the Sunday Mail had become academic as the prints of the paper were by then with the distributors.

Solicitors representing the paper had assured our solicitors that the images printed had been pixelated so that individuals could not be identified. Our Solicitors were not shown copies of the pictures, but this was confirmed in Court, there was therefore at the time no argument to make on that issue. Of continuing concern however was the intention of the paper to publish the CCTV footage, especially since it was felt that the Sheriff's Determination having named the officers involved might enable those officers to be identified from moving video images. Lord Beckett appeared to accept that the footage was in a different category than the still images. Jonathan Mitchell, QC, who appeared for the paper confirmed that it was still the intention of the paper to publish the footage. He advised that his clients were willing to give an undertaking not to publish for 72 hours to enable discussion between the parties.

His Lordship said he would need to be addressed on section 12(3) of the Human Rights Act 1998 if he was to consider restraint in an Art 10 situation. He left the bench for parties to consider.

It was agreed after consideration that it would be preferable to look at authorities in detail and that a postponement would enable that to be done. It would also enable there to be further consideration by the POA as to whether they had continuing concerns and would also wish to make representations. While Counsel for the paper would not give an undertaking without taking specific instructions from the editor that we would be able to view the video in the form that they were proposing to publish, it seems likely that they will allow that to be done on Monday.

Having seen the pictures published this morning, the degree of pixilation is concerning. Staff are potentially identifiable as the back of their heads, identifying marks such as tattoos and uniform types are clearly visible, no attempt has been made to pixelated this information.

Next Steps

- If the video has been pixelated in the same manner as the pictures used this morning in the Sunday Mail, this is a real concern. I am still awaiting confirmation in regards to whether SPS and our solicitor's will be allowed to see the footage that is to be published. In the meantime our solicitors are preparing for court again on Tuesday, at which time we will likely seek an interdict to prevent the publication of the video

footage, particularly if the level of pixilation is to the poor standard used in the photographs, which potentially could lead to staff being identified. Unless you instruct me otherwise.

COLIN McCONNELL
Chief Executive, SPS

From:
Sent: 24 August 2019 21:00
To: CabSecJustice@scotland.gsi.gov.uk
Cc: MinisterCS@scotland.gsi.gov.uk; DGE CJ@scotland.gsi.gov.uk; Neil.Rennick@scotland.gsi.gov.uk; Communications Justice;

McConnell Colin
Subject: Allan Marshall FAI - CCTV Images [SEC=OFFICIAL-SENSITIVE]

OFFICIAL-SENSITIVE

OFFICIAL-SENSITIVE:PERSONAL

Good Evening,

Please find attached a 2 page submission for your immediate attention.

Kind Regards

Scottish Prison Service

This email has been received from an external party and has been swept for the presence of computer viruses.

From: Rennick NS (Neil)
Sent: 27 August 2019 21:40
To: McConnell Colin
Cc: ; MacKinnon D (Donna)
Subject: RE: FM Briefing - Death of Allan Marshall [SEC=OFFICIAL-SENSITIVE:PERSONAL]

Colin

Thank you for looking at this so quickly

Neil

Sent with BlackBerry Work
(www.blackberry.com)

From: McConnell Colin <Colin.McConnell@sps.pnn.gov.uk>
Date: Tuesday, 27 Aug 2019, 9:38 pm
To: Rennick NS (Neil) <Neil.Rennick@gov.scot>
Cc: ; MacKinnon D (Donna)
<Donna.MacKinnon@gov.scot>
Subject: Re: FM Briefing - Death of Allan Marshall [SEC=OFFICIAL-SENSITIVE:PERSONAL]

Neil,
There's a glitch in para 6 ("contact' when should read "conduct") otherwise I think it's good to go.
Colin

Sent from my iPhone

On 27 Aug 2019, at 20:57, "Neil.Rennick@scotland.gsi.gov.uk" <Neil.Rennick@scotland.gsi.gov.uk> wrote:

Colin,

Thank you so much for the material on the Allan Marshall FAI and for turning this around so quickly.

We have tried to draw this together into a note for the Cabinet Secretary to send to the First Minister. I'd be grateful if you could check that we have drawn the material together correctly.

Subject to your comments, we have agreed with Private Office to provide this to both the Cabinet Secretary and Lord Advocate as early as possible in the morning for their consideration before sending to the First Minister.

I'll be on the bus for the next 90 minutes, but happy to speak on the mobile this evening or in the morning.

Neil

X

From:
Sent: 27 August 2019 18:31
To: ; Rennick
NS (Neil) <Neil.Rennick@gov.scot>
Cc: ; McConnell Colin
<colin.mcconnell@sps.pnn.gov.uk>
Subject: RE: FM Briefing - Death of Allan Marshall [SEC=OFFICIAL-SENSITIVE:PERSONAL]
Importance: High

OFFICIAL-SENSITIVE:PERSONAL

Hi

Annex now attached.

From:
Sent: 27 August 2019 18:29
To: ; Rennick NS (Neil) (Neil.Rennick@scotland.gsi.gov.uk)
<Neil.Rennick@scotland.gsi.gov.uk>
Cc:

Subject: FM Briefing - Death of Allan Marshall [SEC=OFFICIAL-SENSITIVE:PERSONAL]
Importance: High

OFFICIAL-SENSITIVE:PERSONAL

Hi

Please find attached some briefing for the FM around the Death of Allan Marshall. Please note the Annex is to follow shortly.

Business Manager – Chief Executive’s Office
Room G23
Calton House
5 Redheughs Rigg
EDINBURGH
EH12 9HW

<image001.jpg> **Helping to build a safer Scotland - Unlocking Potential - Transforming Lives**

SPS Values

Belief | Respect | Integrity | Openness | Courage | Humility

From:
Sent: 27 August 2019 18:24
To: Cabinet Secretary for Justice
Cc: Minister for Community Safety; DG Education, Communities & Justice; SPS Executive Management Group;
Subject: Review of Control and Restraint [SEC=OFFICIAL-SENSITIVE:PERSONAL]
Attachments: Cab Sec Briefing - Control and Restraint.docx

OFFICIAL-SENSITIVE:PERSONAL

Please find attached a 3 page submission for Mr Yousaf's information regarding the above.

Regards

Business Manager – Chief Executive’s Office
Room G23
Calton House
5 Redheughs Rigg
EDINBURGH
EH12 9HW



Helping to build a safer Scotland - Unlocking Potential - Transforming Lives

SPS Values

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From: Colin McConnell
Chief Executive, SPS
27 August 2019

Cabinet Secretary for Justice

REVIEW OF CONTROL AND RESTRAINT

Purpose

1.

Timing

2.

Background

3.

4.

Use of Control and Restraint

5.

6.

7.

Control and Restraint Training

8.

9.

Review of C&R

10.

11.

12.

13.

14.

Allan Marshall FAI Determination

15. A short life working group (SLWG) will continue the review of C&R, addressing the recommendations made in the determination, paying particular attention to learning on: the recognition and understanding of medical conditions which may be triggered or exacerbated by the use of force; decision-making and dynamic risk assessment when deploying use of force in unique environments which frequently present new and complex challenges to best practice methods of de-escalation; and improving staff understanding of the role and responsibilities of the Supervising Officer. As described, overall training assurance and assessment strategies for C&R are already under review.

16. The SPS would welcome the advice and support of Scottish Government in commissioning external assurance for this review process. Within operational resilience training, this would ordinarily include professional expertise from other custodial settings (or has previously been the case with C&R, comparable settings such as secure care), the involvement of discreet subject matter experts in de-escalation, the use of force and maintaining safety in custody, and the oversight of someone with an understanding and appreciation of the complex needs of the prison population in Scotland, and the prison environment itself, such as the Chief Inspector of Prisons.

Next Steps

17.



COLIN McCONNELL
 Chief Executive, SPS
 27 August 2019

Room G24
 Calton House
 Tel:

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Minister for Community Safety					X

DGECJ
 SPS Executive Management Group
 Neil Rennick, Scottish Government
 Donna MacKinnon, Scottish Government

.....

Communications, Justice

From:
Sent: 28 August 2019 18:10
To: McConnell Colin
Cc: ; Rennick NS (Neil); MacKinnon D (Donna);
Subject: RE: Allan Marshall FAI- Draft Letter to Justice Committee for clearance

Colin- thankyou
The swift turnaround is much appreciated.

T:
E:
 Scottish Government
Riaghaltas na h-Alba
gov.scot

From: McConnell Colin <Colin.McConnell@sps.pnn.gov.uk>
Sent: 28 August 2019 18:02
To:
Cc: Rennick NS (Neil)
<Neil.Rennick@gov.scot>; MacKinnon D (Donna) <Donna.MacKinnon@gov.scot>;
Subject: Re: Allan Marshall FAI- Draft Letter to Justice Committee for clearance

/Neil,
Content with the note.
I am

Colin

Sent from my iPhone

On 28 Aug 2019, at 16:58, ¹

<> wrote:

Colin,

Please find attached a draft letter for the Cabinet Secretary to issue to the Justice Committee this evening in respect of the above.
As ever, grateful for any suggestions and amendments etc.
Kind regards

T:
E:



<Cabinet Secretary for Justice - Letter to Justice Committee- Allan Marshall FAI (002).docx>

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Dh'fhaodadh gum bi teachdaireachd sam bith bho Riaghaltas na h-Alba air a chlàradh neo air a sgrùdadh airson dearbhadh gu bheil an siostam ag obair gu h-èifeachdach neo airson adhbhar laghail eile. Dh'fhaodadh nach eil beachdan anns a' phost-d seo co-ionann ri beachdan Riaghaltas na h-Alba.

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From: McConnell Colin <Colin.McConnell@sps.pnn.gov.uk>
Sent: 29 August 2019 07:42
To: MacKinnon D (Donna) <Donna.MacKinnon@gov.scot>
Cc: <Neil.Rennick@gov.scot>; Johnston P (Paul) <Paul.Johnston@gov.scot>; Rennick NS (Neil) <Neil.Rennick@gov.scot>;
Subject: RE: Immediate - First Minister - FAI [SEC=OFFICIAL-SENSITIVE]

OFFICIAL-SENSITIVE

Donna,
I have spoken with [redacted] this morning. As you know, [redacted] is my Director of Operations and has extensive operational knowledge and experience.
[redacted] is available to accompany the FM (and others) in viewing the video, providing the opportunity for questions to be asked or clarification sought.
Would that be helpful?
SPS will make arrangements as quickly as we can this morning to ensure that the material can be made available for the FM at a time that suits her schedule.
Happy to discuss of course.
Colin

COLIN McCONNELL
Chief Executive



SPS Values

Belief | Respect | Integrity | Openness | Courage | Humility

From: Donna.MacKinnon@scotland.gsi.gov.uk [mailto:Donna.MacKinnon@scotland.gsi.gov.uk]
Sent: 28 August 2019 21:40
To: McConnell Colin <Colin.McConnell@sps.pnn.gov.uk>

Cc: >; Paul.Johnston@scotland.gsi.gov.uk; Neil.Rennick@scotland.gsi.gov.uk
Subject: RE: Immediate - First Minister - FAI

Colin

Thanks - appreciated. I realise SPS had expressed a preference to provide commentary when Ministers viewed the footage which would help to ensure context and accuracy. I doubt we will be able to accommodate but I can of course ask if you would like me to.

I'll be in the office about 8.15am

Thanks

Donna

Sent with BlackBerry Work
(www.blackberry.com)

On 28 Aug 2019, at 21:14, "Donna.MacKinnon@scotland.gsi.gov.uk" <Donna.MacKinnon@scotland.gsi.gov.uk> wrote:

Thanks Colin

Sent with BlackBerry Work
(www.blackberry.com)

From: McConnell Colin <Colin.McConnell@sps.pnn.gov.uk>
Date: Wednesday, 28 Aug 2019, 9:13 pm
To: MacKinnon D (Donna) <Donna.MacKinnon@gov.scot>
Cc: >, Johnston P (Paul) <Paul.Johnston@gov.scot>, Rennick NS (Neil) <Neil.Rennick@gov.scot>
Subject: Re: Immediate - First Minister - FAI

Hi Donna,
Not sure if > has access to e mails this evening so have texted him with your query.
Colin

Sent from my iPhone

On 28 Aug 2019, at 21:01, "Donna.MacKinnon@scotland.gsi.gov.uk" <Donna.MacKinnon@scotland.gsi.gov.uk> wrote:

, Colin,

The First Minister has tonight asked to see all of the CCTV footage tomorrow. I know that there had been technical difficulties in getting it over to the Cabinet Secretary - was that resolved?

Also can you confirm the total length of the footage - was it 90mins?

I'm on if easier to phone

Donna

Sent with BlackBerry Work

(www.blackberry.com)

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Dh'fhaodadh gum bi teachdaireachd sam bith bho Riaghaltas na h-Alba air a chlàradh neo air a sgrùdadh airson dearbhadh gu bheil an siostam ag obair gu h-èifeachdach neo airson adhbhar laghail eile. Dh'fhaodadh nach eil beachdan anns a' phost-d seo co-ionann ri beachdan Riaghaltas na h-Alba.

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From: McConnell Colin <Colin.McConnell@sps.pnn.gov.uk>
Sent: 29 August 2019 16:49
To:
Cc: ; Rennick NS (Neil);); MacKinnon D (Donna);
Subject: Re: Urgent- Allan Marshall FAI- Justice Committee Letter

I have nothing to add.
Many thanks to the Cab Sec and officials for giving me the opportunity to comment.
Colin

Sent from my iPhone

On 29 Aug 2019, at 16:08, < > wrote:

Dear Colin

Following feedback from the Cabinet Secretary, please find attached a revised copy of the letter to the Justice Committee. Im keen to get this to you for your consideration as soon as possible. Mr Yousaf would like this to issue imminently.

Kind regards

T:
E:



Scottish Government
Riaghaltas na h-Alba
gov.scot

<Cabinet Secretary for Justice - Letter to Justice Committee- Allan Marshall FAI - Cabinet Secretary changes 29 August- FINAL.docx>

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From:
Sent: 29 August 2019 22:09
To: MacKinnon D (Donna) <Donna.MacKinnon@gov.scot>
Subject: Re: Urgent- Allan Marshall FAI- First Person piece - comments

Donna

Discussed with Colin for our part content

Sent from my iPhone

On 29 Aug 2019, at 21:59, "Donna.MacKinnon@scotland.gsi.gov.uk" <Donna.MacKinnon@scotland.gsi.gov.uk> wrote:

Evening and Colin,

As per previous email please find the first person piece attached for comments. Really grateful for you considering this before we sent onto Cabinet Secretary tonight. Also please see questions from the Sunday Mail and proposed answers which Comms received and have to provide - verbatim from the paper. Unfortunately we need an immediate turnaround on these to send up to Cabinet Secretary just now.

Donna

“We are planning on publishing these questions and the answers we receive in Sunday's paper. Hoping you can put them to The First Minister and Justice Secretary.

Questions Humza Yousaf

Justice Secretary

- 1/ Do you regret the decision to pursue an interdict against the Sunday Mail.
- 2/ What was the cost of the failed court action?
- 3/ Had you viewed the video footage before the interdict was sought.
- 4/ Were you aware of the use of a towel in Allan Marshall's restraint - something not mentioned in the FAI determination.

Nicola Sturgeon

First Minister

- 1/ Do you regret the decision to pursue an interdict against the Sunday Mail.
- 2/ Have you viewed the video footage in full, and do you agree the SPS and Scottish Ministers shouldn't have tried to suppress it.

3/ Are you concerned over the decision to offer immunity from prosecution to the prison officers involved.

Donna

From: McConnell Colin <Colin.McConnell@sps.pnn.gov.uk>

Sent: 29 August 2019 21:12

To: MacKinnon D (Donna) <Donna.MacKinnon@gov.scot>

Cc: <Neil.Rennick@gov.scot>; Rennick NS (Neil)

Subject: Re: Urgent- Allan Marshall FAI- First Person piece - comments

Ok Donna.
Colin

Sent from my iPhone

On 29 Aug 2019, at 21:00, "Donna.MacKinnon@scotland.gsi.gov.uk" <Donna.MacKinnon@scotland.gsi.gov.uk> wrote:

Colin,

We will shortly send through the Cabinet Secretary's first person piece for the Sunday Mail for you to comment. My apologies for the urgency and the late hour of contact but we need Cabinet Secretary clearance tonight prior to the First Minister.

Donna

From: McConnell Colin <Colin.McConnell@sps.pnn.gov.uk>

Sent: 29 August 2019 16:49

To:

Cc: <Neil.Rennick@gov.scot>; Rennick NS (Neil)
<Neil.Rennick@gov.scot>;

MacKinnon D (Donna) <Donna.MacKinnon@gov.scot>;

Subject: Re: Urgent- Allan Marshall FAI- Justice Committee Letter

I have nothing to add.

Many thanks to the Cab Sec and officials for giving me the opportunity to comment.
Colin

Sent from my iPhone

On 29 Aug 2019, at 16:08, "

> wrote:

Dear Colin

Following feedback from the Cabinet Secretary, please find attached a revised copy of the letter to the Justice Committee. I'm keen to get this to you for your consideration as soon as possible. Mr Yousaf would like this to issue imminently.

Kind regards

T:

E:



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<Cabinet Secretary for Justice - Letter to Justice Committee-
Allan Marshall FAI - Cabinet Secretary changes 29 August-
FINAL.docx>

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Dh'fhaodadh gum bi teachdaireachd sam bith bho Riaghaltas na h-Alba air a chlàradh neo air a sgrùdadh airson dearbhadh gu bheil an siostam ag obair gu h-èifeachdach neo airson adhbhar laghail eile. Dh'fhaodadh nach eil beachdan anns a' phost-d seo co-ionann ri beachdan Riaghaltas na h-Alba.

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Dh'fhaodadh gum bi teachdaireachd sam bith bho Riaghaltas na h-Alba air a chlàradh neo air a sgrùdadh airson dearbhadh gu bheil an siostam ag obair gu h-èifeachdach neo airson adhbhar laghail eile. Dh'fhaodadh nach eil beachdan anns a' phost-d seo co-ionann ri beachdan Riaghaltas na h-Alba.

From: on behalf of Cabinet Secretary for Justice
Sent: 30 August 2019 16:54
To: ; Lord Advocate; Cabinet Secretary for Justice
Cc: DG Education, Communities & Justice; Rennick NS (Neil);
McConnell Colin; MacKinnon D
(Donna); ;
,, First Minister; ;
Subject: RE: Urgent- Allan Marshall FAI- Draft letter from Cabinet Secretary for Justice to
Justice Committee
Attachments: Cabinet Secretary for Justice - Letter to Justice Committee- Allan Marshall FAI -
August 2019.pdf

– to note this letter has now issued. Please find signed copy attached for your records.

From:
Sent: 29 August 2019 21:58
To: Lord Advocate <LordAdvocate@gov.scot>; Cabinet Secretary for Justice <CabSecJustice@gov.scot>
Cc: DG Education, Communities & Justice <DGECJ@gov.scot>; Rennick NS (Neil) <Neil.Rennick@gov.scot>;
<colin.mcconnell@sps.pnn.gov.uk>; MacKinnon D (Donna) <Donna.MacKinnon@gov.scot>;
<firstminister@gov.scot>; ; First Minister
<firstminister@gov.scot>;
Subject: RE: Urgent- Allan Marshall FAI- Draft letter from Cabinet Secretary for Justice to Justice Committee

Thanks

– further to the comment below, a revised version of the letter is attached.

T:
E:
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From: > On Behalf Of Lord Advocate
Sent: 29 August 2019 21:32
To: ; Cabinet Secretary for Justice <CabSecJustice@gov.scot>; Lord Advocate
<LordAdvocate@gov.scot>
Cc: DG Education, Communities & Justice <DGECJ@gov.scot>; Rennick NS (Neil) <Neil.Rennick@gov.scot>;

<colin.mcconnell@sps.pnn.gov.uk>; MacKinnon D (Donna) <Donna.MacKinnon@gov.scot>;
<firstminister@gov.scot>;

>; First Minister
<firstminister@gov.scot>;

Subject: RE: Urgent- Allan Marshall FAI- Draft letter from Cabinet Secretary for Justice to Justice Committee

Evening

One minor amendment from in the para which references the Crown (paragraph 5), could you add in at the beginning of the third sentence "The Crown advises that" before "At its conclusion..." (this may require some rejigging slightly for flow). I also note a full stop missing at the end of the second sentence in that paragraph after "...acting independently of Government" - otherwise content.

Kind regards,

From:

Sent: 29 August 2019 19:02

To: Cabinet Secretary for Justice <CabSecJustice@gov.scot>; Lord Advocate <LordAdvocate@gov.scot>

Cc: DG Education, Communities & Justice <DGECJ@gov.scot>; Rennick NS (Neil) <Neil.Rennick@gov.scot>;

>; McConnell Colin
<colin.mcconnell@sps.pnn.gov.uk>; MacKinnon D (Donna) <Donna.MacKinnon@gov.scot>;

>; First Minister
<firstminister@gov.scot>;

Subject: RE: Urgent- Allan Marshall FAI- Draft letter from Cabinet Secretary for Justice to Justice Committee

Revisions (tracked change for ease of ref) as requested are attached.

T:

E:



From:

Sent: 29 August 2019 18:18

To:
<CabSecJustice@gov.scot>

> On Behalf Of Cabinet Secretary for Justice

>; Lord Advocate <LordAdvocate@gov.scot>; Cabinet Secretary for Justice

Cc: DG Education, Communities & Justice <DGECJ@gov.scot>; Rennick NS (Neil) <Neil.Rennick@gov.scot>;

<colin.mcconnell@sps.pnn.gov.uk>; MacKinnon D (Donna) <Donna.MacKinnon@gov.scot>;

<firstminister@gov.scot>; First Minister

Subject: RE: Urgent- Allan Marshall FAI- Draft letter from Cabinet Secretary for Justice to Justice Committee

-
-

Thanks,

From:

Sent: 29 August 2019 17:10

To: Lord Advocate <LordAdvocate@gov.scot>; Cabinet Secretary for Justice <CabSecJustice@gov.scot>

Cc: DG Education, Communities & Justice <DGECJ@gov.scot>; Rennick NS (Neil) <Neil.Rennick@gov.scot>;

<colin.mcconnell@sps.pnn.gov.uk>; MacKinnon D (Donna) <Donna.MacKinnon@gov.scot>;

<firstminister@gov.scot>; First Minister

Subject: Urgent- Allan Marshall FAI- Draft letter from Cabinet Secretary for Justice to Justice Committee

Importance: High

PS/Cabinet Secretary

Please find attached a revised copy of the letter to the Justice Committee. This has been cleared through colleagues in [redacted] and SPS.

T:

E:



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From:

Sent: 29 August 2019 10:38

To: Lord Advocate <LordAdvocate@gov.scot>;
Justice <CabSecJustice@gov.scot>;

>; Cabinet Secretary for

Cc: DG Education, Communities & Justice <DGECJ@gov.scot>; Rennick NS (Neil) <Neil.Rennick@gov.scot>;

>; McFarlane J (John) <John.McFarlane@gov.scot>; McConnell Colin
<colin.mccconnell@sps.pnn.gov.uk>; MacKinnon D (Donna) <Donna.MacKinnon@gov.scot>;

Subject: RE: Urgent- Allan Marshall FAI- Draft letter from Cabinet Secretary for Justice to Justice Committee

I've removed four SG comms staff who don't need to be on this copylist. I'm co-ordinating publication of the letter to media after it is cleared and issued to the Committee. thx

----- Updates from SG Justice & Safer Communities @ScotGovJustice -----

From:

> On Behalf Of Lord Advocate

Sent: 29 August 2019 10:34

To: >; Cabinet Secretary for Justice <CabSecJustice@gov.scot>; Lord
Advocate <LordAdvocate@gov.scot>;

Cc: DG Education, Communities & Justice <DGECJ@gov.scot>;

>; Rennick NS (Neil) <Neil.Rennick@gov.scot>;

+>

>; McConnell Colin <colin.mccconnell@sps.pnn.gov.uk>;

>; MacKinnon D (Donna) <Donna.MacKinnon@gov.scot>;

Subject: RE: Urgent- Allan Marshall FAI- Draft letter from Cabinet Secretary for Justice to Justice Committee

Morning all,

To further expand the list, can we include the
COPFS to ensure input our side?

(copied in) from

Kind regards,

From:
Sent: 29 August 2019 10:12
To: Cabinet Secretary for Justice <CabSecJustice@gov.scot>; Lord Advocate <LordAdvocate@gov.scot>;
Cc: DG Education, Communities & Justice <DGECJ@gov.scot>;
<Neil.Rennick@gov.scot>;
<Neil.Rennick@gov.scot>; McConnell Colin <colin.mcconnell@sps.pnn.gov.uk>; Dyet R
<Neil.Rennick@gov.scot>; MacKinnon D (Donna) <Donna.MacKinnon@gov.scot>;

Subject: RE: Urgent- Allan Marshall FAI- Draft letter from Cabinet Secretary for Justice to Justice Committee

Colleagues

Can <Neil.Rennick@gov.scot>, be added to the cc list, please?

From: <Neil.Rennick@gov.scot> On Behalf Of Cabinet Secretary for Justice
Sent: 29 August 2019 10:06
To: Lord Advocate <LordAdvocate@gov.scot>; Cabinet Secretary for Justice <CabSecJustice@gov.scot>;
Cc: DG Education, Communities & Justice <DGECJ@gov.scot>;
<Neil.Rennick@gov.scot>; McFarlane J (John) <John.McFarlane@gov.scot>; McConnell Colin
<colin.mcconnell@sps.pnn.gov.uk>;
<Neil.Rennick@gov.scot>; MacKinnon D (Donna)
<Donna.MacKinnon@gov.scot>;
Subject: RE: Urgent- Allan Marshall FAI- Draft letter from Cabinet Secretary for Justice to Justice Committee
Importance: High

From: <[redacted]> On Behalf Of Lord Advocate
Sent: 28 August 2019 20:40
To: Cabinet Secretary for Justice <CabSecJustice@gov.scot>; Lord Advocate <LordAdvocate@gov.scot>
Cc: DG Education, Communities & Justice <DGECJ@gov.scot>; [redacted];
[redacted]; Rennick NS (Neil) <Neil.Rennick@gov.scot>;
[redacted]; [redacted]; McConnell Colin <colin.mcconnell@sps.pnn.gov.uk>;
[redacted]; MacKinnon D (Donna) <Donna.MacKinnon@gov.scot>;
Subject: RE: Urgent- Allan Marshall FAI- Draft letter from Cabinet Secretary for Justice to Justice Committee

From: Cabinet Secretary for Justice <CabSecJustice@gov.scot>

Sent: 28 August 2019 19:50

To: <>; Lord Advocate <LordAdvocate@gov.scot>

Cc: DG Education, Communities & Justice <DGECJ@gov.scot>;

<>; Rennick NS (Neil) <Neil.Rennick@gov.scot>;

<>; McConnell Colin
<colin.mcconnell@sps.pnn.gov.uk>;

<>; MacKinnon D (Donna)
<Donna.MacKinnon@gov.scot>;

Subject: RE: Urgent- Allan Marshall FAI- Draft letter from Cabinet Secretary for Justice to Justice Committee

Importance: High

All,

Sent with BlackBerry Work (www.blackberry.com)

From:

Sent: 28 Aug 2019 18:17

To: Lord Advocate <LordAdvocate@gov.scot>; Cabinet Secretary for Justice <CabSecJustice@gov.scot>

Cc: "DG Education, Communities & Justice" <DGECJ@gov.scot>;

<>; "Rennick NS
(Neil)" <Neil.Rennick@gov.scot>;

<>; McConnell Colin
<colin.mcconnell@sps.pnn.gov.uk>;

<>; "MacKinnon D (Donna)" <Donna.MacKinnon@gov.scot>;

Subject: Urgent- Allan Marshall FAI- Draft letter from Cabinet Secretary for Justice to Justice Committee

PS/Lord Advocate

PS/Cabinet Secretary for Justice

Allan Marshall FAI- letter to Justice Committee

Subject to the Lord Advocate and Cabinet Secretary's clearance- please find attached a letter to issue to the Justice Committee this evening in respect of the above. We have cleared the contents of the letter with Colin McConnell.

Her Majesty's Chief Inspector of Prisons is aware that the Cabinet Secretary intends on formally writing to her this week regarding this matter.

T:

E:



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Cabinet Secretary for Justice
Humza Yousaf MSP



T: 0300 244 4000
E: scottish.ministers@gov.scot

Margaret Mitchell, MSP
Convenor
Justice Committee
Scottish Parliament
Edinburgh

30 August 2019

Dear Margaret,

Following the recent publication of the Fatal Accident Inquiry (FAI) determination into the death in custody of Allan Marshall in March 2015 at HMP Edinburgh, this letter updates Members on actions taken in response.

Firstly, I would like to express my sympathy and condolences to the family of Allan Marshall. I understand SPS are meeting with Mr Marshall's family early next week.

I believe firmly in a Justice system that is rooted in compassion and that protects the Human Rights of all that pass through it, be they victims, witnesses, perpetrators or those accused of crime. However, it is concerning to note the Sheriff's determination concludes that, in this tragic incident, there were defects in the system that contributed to the outcome.

When tragic incidents do occur it is essential that appropriate actions are taken in response. Mr Marshall had been remanded in custody at HMP Edinburgh on 2 March 2015, having been charged with using threatening or abusive behaviour and assaulting or impeding the police. Mr Marshall died on 28 March 2015 at Edinburgh Royal Infirmary. The cause of death was a brain injury due to cardiac arrest which occurred during physical restraint. The post mortem also found that he had underlying severe coronary artery disease. During the incident, 5 prison officers were also injured and required hospital treatment.

The Crown Office has confirmed that there was a criminal investigation following this incident. As you will be aware, decisions about who is prosecuted and who is not are taken by the Lord Advocate who is constitutionally accountable, acting independently of Government.

The Crown advises that, at its conclusion and having considered the evidence, Crown Counsel determined that there would be no criminal proceedings. For any death in custody, where there have been no criminal proceedings, an FAI is mandatory. The FAI commenced in November 2018 and proceedings took place over 25 days. In his determination, Sheriff Liddle makes 13 recommendations about steps he considers might realistically prevent

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www.gov.scot



deaths in similar circumstances in the future. In line with provisions within the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016, SPS are rightly reflecting on the recommendations in detail and will provide a full response to all the recommendations within 8 weeks.

SPS has confirmed that in the immediate period following Mr Marshall's death a number of learning points and specific actions were identified and implemented, including additional training for staff.

SPS has also confirmed that, following the FAI determination, relevant actions are being taken or are under review relevant to all of Sheriff Liddle's recommendations, in particular with reference to control and restraint. Control and Restraint (C&R) Training is routinely undertaken by SPS frontline staff. Following the FAI determination, the SPS has established a working group to address the recommendations made in the determination, paying particular attention to the recognition and understanding of medical conditions which may be triggered or exacerbated by the use of restraint. SPS will seek additional external expert advice as part of this review.

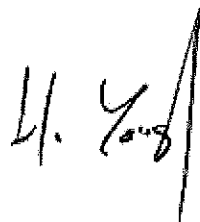
SPS has also acknowledged the need for external assurance of this review process. Therefore, I have advised Her Majesty's Chief Inspector of Prisons today that I will write to her formally this week asking her to undertake external assurance of the SPS's review of C&R training and actions following from the FAI recommendations, in conjunction with relevant independent experts, as required.

SPS has also advised me, that they have sought a copy of transcripts of all evidence given during the FAI proceedings to consider whether any further actions are required in light of the FAI process, in relation to those involved in the original incident.

Having met prison officers across the prison estate I know, and I am sure Members of the Justice Committee will agree, that Scotland's prison officers do an excellent job in increasingly challenging environments.

Let me again express my condolences to Allan Marshall's family. Any death in our care is a tragedy and I am determined that our justice system continues to learn and improve so we can avoid such tragedies from happening again in the future

I trust this information is helpful and I am happy to update Committee Members in due course.



HUMZA YOUSAF

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Copy to:

Colin McConnell, Scottish Prison Service

Wendy Sinclair-Gieben Her Majesty's Chief Inspector of Prisons

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