

MacKenzie A (Andrew)

From: a.lamb@bda.org
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To: Review of Fatal Accident Inquiry Legislation
Subject: Consultation Response

Review of Fatal Accident Inquiry Legislation

RESPONDENT INFORMATION DETAILS

Name: Andrew Lamb
Organisation: British Dental Association
Address: BDA Scotland Forsyth House Lomond
 Court Castle Business Park Stirling
 Scotland
Postcode: FK9 4TU
Email: a.lamb@bda.org
Telephone Number: 01786 433810
Responding as: On behalf of a group or organisation
Individual Permission: Not Supplied
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Group or Organisation: Yes
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Consultation Questions
 Review of Fatal Accident Inquiry Legislation

<i>Question 1: Should there be any change in the purpose or the features of FAIs?</i>	No,
<i>Question 2: Should FAIs be held in some forum other than the sheriff court? If yes, what forum would you suggest?</i>	Yes, Tribunals operating in suitable locations., Removing FAI's from the Sherriff Court setting would help to prevent proceedings becoming inadvertently adversarial. The implication of holding Inquiries in a Sherriff's Court may make the participants act more defensively than they would do in a less formal and more inquisitorial setting. Time would also be freed in the Sherriff's Court for criminal matters and, hopefully, FAIs would be concluded more quickly.

<p>Question 3: Should specialist procurators fiscal handle FAIs? If you answered yes, above, should they be part of a centralised team dedicated to FAIs?</p>	<p>Yes, Specialist Procurator Fiscals would enable expertise to be developed in this area which would hopefully lead to a shortening of proceedings and Determinations being published more quickly. , Yes, Yes a centralised team would enable there to be economies of scale and also shared learning and support with uniform adoption of good practice.</p>
<p>Question 4: Should the scope of the Act be altered so as to cover FAIs into the death of a Scot abroad?</p>	<p>Yes, There should be the potential to extend cover to deaths overseas however this should not be mandatory but discretionary at the discretion of the Lord Advocate.</p>
<p>Question 5: Should it be possible for FAIs to be held, where appropriate, into multiple deaths in more than one jurisdiction?</p>	<p>No comment.</p>
<p>Question 6: Should the deaths which fall within the mandatory category be changed? If you answered yes, that deaths should be added or removed, please explain your answer.</p>	<p>No, no change should be made to the mandatory category,</p>
<p>Question 7: Should the requirement to hold an FAI into a death which falls into the mandatory category be subject to exception?</p>	<p>Yes, In the interests of the public good and good use of resources, the mandatory system should be subject to justified exception.</p>
<p>Question 8: Should other interested parties be able to make representations to the Lord Advocate during the decision making process? If yes, which parties should be able to make representations?</p>	<p>No comment.,</p>
<p>Question 9: Where the Lord Advocate decides not to hold an FAI, should a formal, reasoned decision be provided to relatives of the deceased?</p>	<p>Yes, A written decision that is reasoned would be reasonable for relatives to receive.</p>
<p>Question 10: Is adequate notice given to interested parties in advance of an application being made? If no, please explain your answer and outline what you feel would be adequate notice.</p>	<p>No comment.</p>
<p>Question 11: Is adequate advice, information and support provided to the relatives of the deceased? If no, what improvements could be made?</p>	<p>No comment.</p>
<p>Question 12: Is the current approach to the provision of legal aid to relatives appropriate?</p>	<p>No comment.</p>
<p>Question 13: Should provision for preliminary hearings be made in respect of the whole of Scotland?</p>	<p>Yes, Holding preliminary hearings would ensure the smooth running of an FAI and a timetable to be produced. This would allow</p>

	resources to be used most wisely.
<i>Question 14: Should evidential material be provided to parties in advance of the FAI?</i>	Yes, Since an FAI is inquisitorial and not adversarial then, in our view, an ID Statement agreed by two independent expert witnesses should be considered as acceptable as “Agreed Evidence” and the presence of neither of the witnesses should be required in Court except where the procurator fiscal considers that it would be in the public interest if the means of identification were explained to the Court. The identification itself need not, if agreed, be questioned. We support in principle evidential material being provided for all interested parties in advance of an FAI including “witness-agreed” statements. This process may predispose to a shorter FAI and (possibly) a more sharply focused Determination. This prior provision should not be considered mandatory since, from time to time, the procurator fiscal may consider some evidence to be of a sensitive or very complex nature and not wish to risk such material entering the public domain before the FAI.
<i>Question 15: Should there be relaxation of the conditions under which signed and sworn statements can be used?</i>	Yes, We agree that there should be a relaxation of conditions under which signed and sworn statements can be used. This would reduce the time taken for an inquiry and prevent unnecessary stress on witnesses. We suggest a process of precognition could be used to ascertain the facts of the case, if it was deemed necessary by a procurator fiscal.
<i>Question 16: What can be done to ensure that the most authoritative independent experts are selected to give evidence at FAIs?</i>	Rather than allowing fees to be a factor in determining which independent experts are selected, it would be preferable to work towards a UK wide agreement on witness fees. Other costs such as travel, accommodation, compensation for loss of earnings may on occasion be much greater than the fee and this, in our view, further strengthens the case for utilizing as much agreed evidence as possible. If a central unit for organising FAIs was used, this would facilitate gaining knowledge of the most suitable experts to obtain in particular cases.
<i>Question 17: Is there a place for expert assessors in FAIs? If yes, should more use be made of them?</i>	Yes, Yes, We believe that expert assessors could be used usefully in complex medical cases. They should not replace the need for expert evidence but to facilitate the understanding of the procurator fiscal undertaking the inquiry.

<i>Question 18: Should the evidence of a witness at an FAI be inadmissible in other judicial proceedings?</i>	No comment.
<i>Question 19: Should there be guidance as to matters which should be covered by determinations?</i>	Yes. There should be guidance on the content of determinations to ensure consistency of approach and outcomes.
<i>Question 20: Would it be helpful to create an up to date public database of determinations?</i>	Yes. A public database would be a very useful resource for procurators and researchers. It would also be consistent with the principles of freedom of information.
<i>Question 21: (a) Should responses to recommendations be monitored? If yes, should this be done centrally and by whom? If yes, to whom should any report be made?</i>	Yes, FAIs use public money and expert time. It is important that responses to recommendations are monitored to ensure there is learning and a positive outcome from inquiries.. Yes. . We would like a report to be made to the Scottish Parliament.
<i>Question 22: Should the Lord Advocate be able to apply for a further FAI or the re-opening of an FAI? If yes, should this only be in limited circumstances?</i>	No comment..

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