

Consultation Questionnaire

This questionnaire document accompanies the consultation paper and is intended for you to record your responses to the questions raised within the paper. The questions which appear in the consultation paper are presented in full below and are numbered and are ordered as they appear in the consultation paper.

You should read through the consultation paper and then record your answer to each question in the space provided. Please answer as many questions as you wish; you do not need to answer all of the questions if you do not wish to do so.

Additional pages are also provided at the end of the document in case further space is required for your response to any of the questions.

Please send this completed consultation questionnaire and your respondent information form (see the information on “handling your response” in the consultation paper) to:

Andrew.Mackenzie@FAIreview.org

or

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If you have any queries please contact Andrew Mackenzie on 0131 225 5972.

The consultation document can also be viewed online at
<http://www.scotland.gov.uk/FAIreview>.

Questions

Section 1- Introduction

There are no questions within this section of the consultation paper

Section 2- General

The questions from section 2 of the consultation paper are presented below.

1. Should there be any change in the purpose or the features of FAIs? (Please tick one box)

Yes

No

If yes, please outline the changes that you think should be introduced.

The purpose of an FAI should be to learn lessons and prevent deaths based on wider analysis rather than one off events. In particular deaths in infancy and in care homes that result from complex causes are of a challenging nature for investigators.

Criteria for involving police services in FAIs should also be determined. Child and adult protection issues must be taken into account.

2. Should FAIs be held in some forum other than the sheriff court? (Please tick one box)

Yes

No

If yes, what forum would you suggest?

Why have you suggested this forum?

3. Should specialist procurators fiscal handle FAIs? (Please tick one box)

Yes

No

Please explain your answer.

If you answered yes, above, should they be part of a centralised team dedicated to FAIs? (Please tick one box)

Yes

No

Please explain your answer.

4. Should the scope of the Act be altered so as to cover FAIs into the death of a Scot abroad? (Please tick one box)

Yes

No

Please explain your answer.

The location of the death is too limiting a criterion for conducting an FAI. Where a person normally resident in a particular sheriffdom dies abroad, there may be a strong desire on the part of the family to see an independent enquiry carried out especially if the procedures in that country are less well defined than in Scotland. This may apply to any person normally resident in Scotland, not just 'Scots', if they are a UK citizen (or even an EU citizen living and working in Scotland)?

5. Should it be possible for FAIs to be held, where appropriate, into multiple deaths in more than one jurisdiction? (Please tick one box)

Yes

No

Please explain your answer.

Multiple deaths arising from a single cause should be subject to an FAI if appropriate, albeit the deaths occur in multiple jurisdictions. As in 4. above the locus of the death should not be the defining criterion, rather the location of the greatest public interest should also factor.

Section 3- The decision that an FAI should be held

The questions from section 3 of the consultation paper are presented below.

6. Should the deaths which fall within the mandatory category be changed? (Please tick one box)

Yes, certain deaths should be added

Yes, certain deaths should be removed

Yes, both additions and removals should be made

No, no change should be made to the mandatory category

If you answered yes, that deaths should be added or removed, please explain your answer.

Deaths in residential care establishments for children where the local authority has custody and care.
Sudden unexplained death following routine surgery; or in residential care homes for the elderly; or of infants where natural causes cannot be determined.

7. Should the requirement to hold an FAI into a death which falls into the mandatory category be subject to exception?

(Please tick one box)

Yes

No

Please explain your answer.

Death by natural causes, not connected directly with the circumstances of their detention or following an accident; and not giving rise to serious public concern.

8. Should other interested parties be able to make representations to the Lord Advocate during the decision making process? (Please tick one box)

Yes

No

If yes, which parties should be able to make representations?

Relatives, or other interested parties, should have a right of appeal, or the right to a reasoned decision why the FAI was not held. This should include close friends or unmarried partners.

Please explain why you feel that these parties should be able to make representations.

This is to ensure transparency and accountability in the process, and that a person who dies without living relatives is not unfairly disadvantaged by the legislation.

9. Where the Lord Advocate decides not to hold an FAI, should a formal, reasoned decision be provided to relatives of the deceased? (Please tick one box)

Yes

No

Please explain your answer.

Presuming a family is in favour of holding an FAI, the Lord Advocate should provide an explanation for the decision in the interests of fairness and transparency.

Section 4- Holding an FAI

The questions from section 4 of the consultation paper are presented below.

10. Is adequate notice given to interested parties in advance of an application being made? (Please tick one box)

Yes

No

If no, please explain your answer and outline what you feel would be adequate notice.

The biggest issue for the police and families is the time lapse between the death, the decision to hold an FAI and the actual holding. This can be years long, an unacceptable delay. A minimum time frame should be set, or "as soon as is reasonably practicable", and COPFS held to account for unreasonable delays. Delays in the release of the deceased for burial also causes considerable distress to relatives, in one case 6 months delay.

11. Is adequate advice, information and support provided to the relatives of the deceased? (Please tick one box)

Yes

No

If no, what improvements could be made?

A family liaison service should be made available by COPPS.

12. Is the current approach to the provision of legal aid to relatives appropriate? (Please tick one box)

Yes

No

Please explain your answer.

Section 5: Evidence and procedure

The questions from section 5 of the consultation paper are presented below.

13. Should provision for preliminary hearings be made in respect of the whole of Scotland? (Please tick one box)

Yes

No

Please explain your answer.

This would give all parties an opportunity to represent their positions and could be held at a far earlier stage than an FAI. It may even preclude the need to hold an FAI as evidence can be considered earlier.

14. Should evidential material be provided to parties in advance of the FAI? (Please tick one box)

Yes

No

Please explain your answer.

Written evidence is a clearer and non-confrontational way of analysing the facts, and is in the interests of fairness and transparency. Witnesses should still be prepared to present their evidence in person.
Disclosure is an issue that requires clarity in any review of guidelines, i.e. early disclosure of exculpatory evidence.

15. Should there be relaxation of the conditions under which signed and sworn statements can be used? (Please tick one box)

Yes

No

Please explain your answer.

See 14 above.

16. What can be done to ensure that the most authoritative independent experts are selected to give evidence at FAIs?

A national database of accredited and suitably qualified experts should be available. Any expert that has been consulted, regardless of the position they have taken, and whether or not their evidence was considered usable, should be disclosed to the other party. This should be balanced against whatever favourable evidence is obtained from any single expert.

17. Is there a place for expert assessors in FAIs? (Please tick one box)

Yes

No

If yes, should more use be made of them? (Please tick one box)

Yes

No

Please explain your answer.

Explanations of a technical nature are not to be confused with evidence, but should exist to clarify the facts objectively, and therefore assist in the understanding of evidence.

18. Should the evidence of a witness at an FAI be inadmissible in other judicial proceedings? (Please tick one box)

Yes

No

Please explain your answer.

If the process and findings of an FAI have credibility within our legal system, there is no reason why the evidence and findings of that process should not be admissible in either a subsequent criminal or civil proceeding.

Section 6- Determinations

The questions from section 6 of the consultation paper are presented below.

19. Should there be guidance as to matters which should be covered by determinations? (Please tick one box)

Yes

No

Please explain your answer.

20. Would it be helpful to create an up to date public database of determinations? (Please tick one box)

Yes

No

Please explain your answer.

This would assist in establishing national standards and perhaps provide clarity in future determinations, learning points and improvements, both in preventing deaths and in the FTA process itself.

21. Should responses to recommendations be monitored? (Please tick one box)

Yes

No

Please explain your answer.

This would assist in greater accountability and transparency in the process, and provide areas of learning and improvement.

If yes, should this be done centrally and by whom?

Yes

No

A central body reporting to government.

If yes, to whom should any report be made?

Scottish parliament

22. Should the Lord Advocate be able to apply for a further FAI or the re-opening of an FAI? (Please tick one box)

Yes

No

If no, why not?

If yes, should this only be in limited circumstances? (Please tick one box)

Yes

No

Please explain your answer.

If new compelling evidence becomes available that could change the original determination.

End of questions

Additional space for responses

If using these pages, please ensure that you give the number of the question that your response refers to.