

RESPONSE FROM GREATER GLASGOW & CLYDE HEALTH BOARD

General question 1.

Should there be any change in the purpose or the features of FAIs?

No

Question 2

Should FAIs be held in some forum other than the Sheriff Court?

Yes

We would suggest some form of tribunal, sitting locally not in the Sheriff Court.

We have suggested this because our staff who may experience an FAI only once in their entire career find the Sheriff Court and current FAIs intimidating and adversarial. They would find a tribunal setting, while of course quite correctly still inquisitorial, a better forum for these proceedings and a better forum to allow them to provide the court with the knowledge that will let it get at the truth.

Question 3

Should specialist Procurators Fiscal handle FAIs?

Yes

We feel that there are enough medical FAIs to create a specialist team of Procurators Fiscal who would only handle these specialist FAIs. This should be a centralised team and we believe that Procurators Fiscal in possession of this specialist body of knowledge would be able to deal better and more efficiently with these cases. We also believe that if there was a team of specialist Procurators Fiscal, communications with both ourselves, relatives and families would be better.

Question 4

Should the scope of the Act be altered as to cover FAIs into the death of a Scot abroad?

No view

Question 5

Should it be possible for FAIs to be held where appropriate into multiple deaths in more than one jurisdiction?

No view

Question 6

Should the deaths which fall within the mandatory category be changed?

Yes

We believe the following deaths should be added:-

1. Children who die in care
2. Patients that die detained under the Mental Health Act

We believe both of these categories should be considered for a mandatory FAI.

Question 7

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

Yes

We believe there are always deaths in some of the mandatory categories which will clearly on initial investigation be due to perfectly explicable causes totally lacking in any suspicious nature. It would be a waste of resources and time to investigate deaths such as this.

Question 8

No view

Question 9

Where the Lord Advocate decides not to hold an FAI should a formal reasoned decision be provided to the relatives of the deceased?

Yes

We believe that relatives have a right to be informed of the reasons behind these decisions. Also, we feel that where relatives are not informed of the decisions, they are more likely to appeal the decision and to feel permanently dissatisfied.

Question 10

Is adequate notice given to interested parties in advance of an application being made?

No

We have experience of FAIs being called up to four years after a death and yet only weeks notice has been given to the Health Board that this is happening. This occasionally leads to delays as one or other party involved in the FAI then finds they do not have sufficient time to prepare. While appreciating the difficulty which Procurators Fiscal find themselves in due to the volume of work, we should have a system with a longer mandatory notice period and would suggest that at least eight weeks is required before the date of the full hearing of the FAI.

Question 11 and 12

No view

Question 13 & 14

No view

Question 15

Should there be relaxation of the conditions under which signed and sworn statements can be used?

Yes

Any system which can allow non-contentious evidence to be given in writing would be welcomed by our staff. Staff find FAIs stressful even when their involvement in the case is non-contentious. They also feel that while in court, they may be cross-examined and are usually most worried about being asked to comment on areas in the case where they had no direct involvement nor have any particular specialist knowledge. Therefore, if it could be agreed that certain parts of evidence are non-contentious, it would be very helpful if the use of signed and sworn statements could be encouraged and extended.

Question 16

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

This is a difficult area, as Health Boards also can experience difficulties finding truly authoritative experts to explain a particular issue to the court. One aspect on which we are agreed, is that retired members of the profession should not be used as experts in these proceedings, as their knowledge very quickly becomes out of date.

Question 17

No view

Question 18

Should the evidence of a witness at an FAI be inadmissible in other judicial proceedings?

Yes

We believe that the court is more likely to encourage free expression of views, and a less defensive attitude from witnesses if it was known that evidence given at an FAI would be inadmissible in other proceedings. This would aid the FAI in getting at the truth and would remove some of the linkage to subsequent court proceedings for damages which may be of concern to witnesses appearing at FAIs.

Section 6 Determinations

Although not covered in the questions, the major issue we and our staff have with determinations is the variation in time taken by Sheriffs to produce determinations. Many Sheriffs are swift in producing their determinations following the end of an FAI, but there are a few who appear to be very slow. This adds to the strain on staff and any further distancing of a determination, possibly with recommendations from an actual incident, is unhelpful to a Health Board which will be looking to correct any failings indicated by the incident.

Question 19

No view

Question 20

Would it be helpful to create an up to date public database of determinations?

Yes

The existence of a database would be helpful to Risk Management in the Health Service. It would make determinations more readily available and allow people to view these and Health Boards to learn nationally from incidents which have occurred in other Boards which may not have received publicity in the media, but may have lessons for the entire Health Service.

Question 21

Should responses to recommendations be monitored?

Yes

The Health Service has long believed that the response to a death or a clinical incident is not complete until action has been taken to minimise the risk of a repetition of any failing and that for FAIS, it would be valuable to have some form of follow-up to ensure that any recommendations have been actioned. This would inevitably have to be done centrally, using either an existing body amongst those who already monitor the Health Service, but obviously FAIs extend far further than health and therefore, the most obvious solution is to set up a central mechanism linked to the Lord Advocate's Office.