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Subject: Consultation Response

Review of Fatal Accident Inquiry Legislation

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Consultation Questions
Review of Fatal Accident Inquiry Legislation

Question 1: Should there be any change in the purpose or the features of FAIs?

Yes, The Scottish Ambulance Service fully supports the broad purpose and features of a FAI. However we believe that there needs, in medical cases, to be greater clarity and guidance to the sheriff making the determination on what constitutes, reasonable precautions whereby the death or any accident resulting in death might have been avoided. In medical cases interpretation could result in all cases being found to have failed this test. No clinical intervention, by its nature is without risk therefore by either not performing an intervention or for the sake of intellectual argument, carrying out the intervention earlier,

	may result in a different outcome.
<i>Question 2: Should FAIs be held in some forum other than the sheriff court? If yes, what forum would you suggest?</i>	Yes, The experience of The Scottish Ambulance Service and its participation in two fatal accident inquiries the Scottish Ambulance Service favours the move to a tribunal. , A tribunal setting may be less formal and would reduce the anxiety and perceived adversarial environment experienced in a court setting we believe that a tribunal setting, with less "formality" would make it easier for witnesses to give clear and concise evidence and support the rigorous exploration of all aspects surrounding a case.
<i>Question 3: Should specialist procurators fiscal handle FAIs? If you answered yes, above, should they be part of a centralised team dedicated to FAIs?</i>	Yes, Particularly in medical cases and specifically those where there is increased complexity there would be benefits to all parties that specialist procurator fiscals who could over time build up a degree of knowledge expertise and more importantly understanding would benefit the whole process. , Yes, To build this knowledge and expertise in a Scottish setting we feel it would be necessary for a centralised team to handle specific medical cases to allow them the exposure to build and maintain their skills base.
<i>Question 4: Should the scope of the Act be altered so as to cover FAIs into the death of a Scot abroad?</i>	The Scottish Ambulance Service has no comment in this area
<i>Question 5: Should it be possible for FAIs to be held, where appropriate, into multiple deaths in more than one jurisdiction?</i>	The Scottish Ambulance Service has no comment in this area
<i>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.</i>	Yes, certain deaths should be removed, Rather than removing a group of deaths we believe there needs to be more robust guidance into incidents involving errors of judgement and one of medical errors being not in themselves sufficient justification for a discretionary fatal accident inquiry we believe that the use of specialist procurators fiscal to deal with medical cases would provide greater consistency in this regard
<i>Question 7: Should the requirement to hold an FAI into a death which falls into the mandatory category be subject to exception?</i>	No,
<i>Question 8: Should other interested parties be able to make representations to the Lord Advocate during the decision making process?</i>	Yes, In medical cases it may be entirely appropriate and support safe and effective decision making for, for example a health board, to be able to make representation

<i>If yes, which parties should be able to make representations?</i>	particularly in cases where it feels that there has been lack of understanding or interpretation by a procurator fiscal.,
<i>Question 9: Where the Lord Advocate decides not to hold an FAI, should a formal, reasoned decision be provided to relatives of the deceased?</i>	Yes, In medical cases this may help to bring closure to relatives.
<i>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.</i>	Yes,
<i>Question 11: Is adequate advice, information and support provided to the relatives of the deceased? If no, what improvements could be made?</i>	Yes,
<i>Question 12: Is the current approach to the provision of legal aid to relatives appropriate?</i>	The Scottish Ambulance Service has no comment on this area
<i>Question 13: Should provision for preliminary hearings be made in respect of the whole of Scotland?</i>	Yes, The Scottish Ambulance Service is supportive of the provision of preliminary hearings our experience has been that a preliminary hearing has made the conduct of the inquiry more efficient and effective this served to reduce the stress and distress on relatives.
<i>Question 14: Should evidential material be provided to parties in advance of the FAI?</i>	Yes, In medical cases there are clear advantages to evidence being provided in advance of an inquiry. It is also important that the evidence is provided allowing a reasonable time for consideration and reflection before the inquiry commences.
<i>Question 15: Should there be relaxation of the conditions under which signed and sworn statements can be used?</i>	Yes, In medical cases there may well be a good argument that in more cases written statements could satisfy the requirements of the inquiry and potentially reduce the length of hearings.
<i>Question 16: What can be done to ensure that the most authoritative independent experts are selected to give evidence at FAIs?</i>	The Scottish Ambulance Service recognises that in the medical cases it is of vital importance that any expert witness is indeed an expert on the matters being discussed. Unfortunately, this is not always the case. Perhaps by seeking the views of the Chief Medical Officer for Scotland as an independent source of advice the provision of true subject experts make be more forthcoming.
<i>Question 17: Is there a place for expert</i>	Yes, Yes, Specifically in medical cases and particularly those of increased complexity assessors can support the process it is important

<i>assessors in FAIs? If yes, should more use be made of them?</i>	to emphasis and specify the role of an assessor to provide understanding but not to interpret or prefer a personal opinion.
<i>Question 18: Should the evidence of a witness at an FAI be inadmissible in other judicial proceedings?</i>	Yes, The Scottish Ambulance Service supports fatal accident inquiries being regarded as a stand-alone process and the determination that evidence in this setting is inadmissible in other judicial proceedings should support the inquiries ability to find out the truth and reach a full understanding of the circumstances surrounding a death.
<i>Question 19: Should there be guidance as to matters which should be covered by determinations?</i>	Yes, The Scottish Ambulance Service believes there needs to be greater guidance on determinations to improve their constituency, particularly in medical FAI's and specifically to the interpretation of what constitutes "a death might have been avoided if"
<i>Question 20: Would it be helpful to create an up to date public database of determinations?</i>	Yes,
<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, The Scottish Ambulance Service believes that there needs to be a process in place whereby a response to a recommendation can be submitted and followed up. There also requires to be constituency in how this would be taken forward it is our view that this should be regarded as a supportive process. Perhaps, in the case of medical FAI's this could fall to the Scottish government health directorate who have overall responsibility for the NHS in Scotland.,
<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>	The Scottish Ambulance Service has no comment on this area, The Scottish Ambulance Service has no comment on this area

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