

# Fatal Accident Inquiries – Officer and Staff Attendance

National Guidance

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## Introduction/purpose

This guidance document provides an overview of Fatal Accident Inquiry (FAI) processes and offers advice to SPA/support police staff and police officers who may be required to give evidence. It supports the Police Service of Scotland (PSoS) Policy:

Criminal Justice PSoS Policy

The Scottish Courts and Tribunal Service (SCTS) is an independent public body which is responsible for the administration of the courts and tribunals of Scotland, including FAIs. The responsibility for the investigation of any death that requires further explanation rests with Crown Office and Procurator Fiscal Service (COPFS).

This document is not intended to set out FAI procedures but is intended to provide background information, and insight for officers and staff attending an FAI, and to enable line managers to ensure that officers and SPA/police staff are supported throughout these processes.

## Legislation

The Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (The Act) received Royal Assent on 14 January 2016. It repeals the previous legislation and introduces new provisions to govern the system of FAIs in Scotland.

The Act retains the requirement to hold a FAI where a death occurs in Scotland as a result of a work-related accident or where the deceased was in legal custody at the time of their death. Such inquiries are referred to as "Mandatory Inquiries".

Legal custody is defined as being imprisoned or detained in a penal institution, being in police custody, being held in custody on court premises or being detained in service custody premises. The definition of police custody takes its meaning from Section 64 the Criminal Justice (Scotland) Act 2016.

## What is a Fatal Accident Inquiry

A Fatal Accident Inquiry is a public examination of the circumstances of a death in the public interest. FAIs are conducted before a Sheriff, following an investigation by the Procurator Fiscal. The Procurator Fiscal will determine whether there are circumstances that suggest the death may have been caused as a result of a criminal act or omission. The Procurator Fiscal goes through the evidence at the FAI. Other interested parties, including nearest relatives or employers are also entitled to present evidence.

It is important to note that a FAI is a fact-finding exercise carried out in the public interest. Its purpose is not to apportion blame for the death, but to determine:

* Where and when the death took place
* The cause of the death
* Reasonable precautions whereby the death might have been avoided
* The defects, if any, in any system of working that contributed to the death or any accident resulting in the death
* Other facts relevant to the circumstances of the death

Commonly the Sheriff will make a "formal" determination dealing only with

* Where and when the death took place
* The cause of the death

which are the only findings which are mandatory, and they must make. In such cases the determination is sometimes given at the conclusion of the Inquiry. In other cases the Sheriff will reserve their determination and issue it in writing to all interested parties.

The Sheriff has the power to make recommendations as to reasonable precautions, improvements to, or introduction of a system of working, or the taking of any other steps which might realistically prevent other deaths in similar circumstances.

A determination may not be used as evidence in any other judicial proceedings, such as a criminal trial or a civil claim for damages. The Sheriff’s determination should not make any findings of fault or blame against individuals, although it may criticise individuals who were involved directly or indirectly with the deceased.

A FAI does not make findings of any criminal responsibility or civil liability on the part of a named person.

It is important to note that although a determination may not be used as evidence in any other judicial proceedings, an individual’s statement/testimony can be used.

* Criminal proceedings will normally take precedence over any other proceedings, including FAIs.
* The number of FAIs held is extremely low, representing 0.7% of all deaths investigated.
* The average length to start a FAI from date of death is 18 months - 3 years.

Updated Fatal Accident Inquiry Sheriff determinations can be accessed at the Scottish Courts and Tribunals Service Fatal Accident Inquiries website.

## Fatal Accident Inquiry Set Up

A FAI will usually be conducted within a court building. Below gives a general insight as to location, those who may be present and those who may question witnesses.

* In court room
* Sheriff, court officer, clerk
* Solicitors and Advocates representing interested parties
* Public and media
* Family members in the public gallery
* Normally evidence led by the Procurator Fiscal
* Questions from interested party solicitors
* Questions and points to clarify by Sheriff

## Interested Parties

Certain interested parties, including e.g. involved personnel, nearest relatives, employers, or organisations such as Police Scotland may be invited to participate in proceedings. Such parties are also entitled to present evidence.

In cases involving a conflict of interest between Police Scotland/Scottish Police Authority (SPA) and officers, SPA/police staff, independent legal representation is advisable (See Legal Representation).

A conflict of interest may arise between an officer, SPA/police staff and Police Scotland/SPA. Examples of a conflict of interest may include

* Alleged failure to follow procedures/protocols
* Alleged to have committed an act of misconduct

In these circumstances your interests may not fully align with those of Police Scotland and its legal representation, and it is advisable to seek independent legal representation.

A conflict of interest may not be initially evident to the individual officer or SPA/police staff member concerned.

## Post Incident Procedures (PIP) / Trauma Risk Management (TRiM)

Post Incident Procedures (PIP) are designed to balance the State’s legal obligation to independently investigate the Death or Serious Injury (DSI) of a person who has had contact with the Police, with the rights of the staff/officers involved. It is intended to facilitate a supportive, efficient enquiry that is in the interests of all.

PIP is now extended to include incidents involving DSI following Police contact during non-Armed Policing incidents.

The procedures are outlined in the Post Incident Procedures National Guidance, associated Aide Memoire and Death or Serious Injury Following Police Contact (DSI FPC) Policy

TRiM is the model of support used to provide support for officers and staff who are directly involved in potentially traumatic incidents. Post traumatic support for all police officers and members of police staff is hugely important.

You can self-refer for TRiM or you can ask your Line Manager to make a referral on your behalf by completing theTrauma Risk Management (TRiM) Form (076-005) More information is available on the TRiM intranet page.

PIP and TRiM processes take place at the time of an incident but may be reflected upon during a FAI.

If the incident involves a Death in Police Custody, the Health and Safety on-call advisor must be notified as per the current on-call procedures.

## Legal Representation

Although there is no requirement for officers or SPA/police staff to have legal representation when giving evidence at a FAI, it is recommended they consider obtaining legal advice in the first instance.

The role of Police Scotland Legal Services is to engage act on behalf of and provide advice to the Chief Constable (Police Scotland) and not individual officers or SPA/police staff. External firms of solicitors or advocates may be instructed in that regard from time to time. If there is no conflict of interest, then advice may be sought from the representing solicitor.

### Funding Legal Assistance (if required)

#### Scottish Police Federation (SPF)

SPF Legal Advice and Assistance Guidance applies to contributing members. For the avoidance of any doubt, a police officer who does not contribute to the SPF Voluntary Fund cannot access Legal Advice and Assistance.

#### UNITE

Legal Help is available to UNITE members. SPA/police staff should contact their local representative or search UNITE the union website for further information relating to FAI legal representation.

#### UNISON

Legal Help is available to UNISON members. SPA/police staff should contact their local representative or search UNISON Police Staff Scotland Branch Website for further information relating to FAI legal representation.

#### Non-contributing Staff Association (SPF) / Staff

It is entirely the choice of the individual whether they attend a FAI with or without legal representation. They can seek private legal representation or request advice from a Union Representative. Scottish Legal Aid Board may offer advice and assistance.

Police officers/SPF and SPA/police staff may make an application to the Legal Assistance Scheme, which is administered by Professional Standards Department for assistance with a contribution to legal expenses to be paid by Police Scotland as per the Scottish Home and Health Circular 18/1978.

#### Association of Scottish Police Superintendents (ASPS)

ASPS provides legal assistance cover to contributing members of the Association. Information has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002, Section 30, Prejudice to effective conduct of public affairs.

## Fatal Accident Inquiry Preliminary Hearing

The new 2016 Act requires a preliminary hearing to be held before every FAI unless the Sheriff dispenses with the requirement. The preliminary hearing is critical to both the efficient management of FAIs and managing the expectations of the participants.

At a FAI preliminary hearing the Sheriff may seek to be addressed on:

* The nature of the evidence, in general terms, of the witnesses;
* Consider the scope of the inquiry and identify any issues which are in dispute.
* Whether any witness statements will be required.
* The issues that interested parties intended to raise;
* Consider the information likely to be presented at the inquiry and the manner in which it should be presented;
* Whether the executions of service for the interested parties were served;
* Consider whether there are any further persons who the sheriff is satisfied have an interest in the inquiry.
* The status of the witness citations;
* To establish who is to participate in the inquiry and a list of persons whom it is considered might be led as witnesses at the inquiry.
* Note of their relevance to the purpose of the inquiry and make arrangements for any vulnerable witnesses.
* Whether Crown Office and Procurator Fiscal Service (COPFS) intended to examine further an expert witness;
* Establish the state of preparedness of the participants and how any expert witnesses should present information.

The preliminary hearing is a procedural hearing. The purpose is to adjudicate on the state of preparation of the participants to the inquiry and resolve any outstanding issues prior to the inquiry.

At the conclusion of a preliminary hearing the Sheriff must:

* Fix a date for another preliminary hearing;

Or

* Fix a date for the start of the inquiry.

## Attend a Fatal Accident Inquiry

Police officers and SPA/police staff may be required to provide factual witness evidence in person at court, or virtually by means of Video Conference (VC) at a FAI. The Scottish Fatalities Investigation Unit (SFIU) should provide written notification to all participants on the issues which COPFS intends to raise at the inquiry.

It is understood that not all staff have experienced court proceedings. The witness service can arrange court familiarisation visits. Familiarisation visits can be facilitated by local agreement in consultation with line management.

Should any officer or SPA/police staff feel that they require additional assistance please consult with your line manager and make early contact with court officials at the location of the FAI hearing.

You are entitled to make court officials or any legal representation aware of any disability you might have and any additional needs.

Contact Disability and Carers Association (DACA). Information has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002, Section 30, Prejudice to effective conduct of public affairs.

SCOPE requires to be updated on your receipt of a citation. Please notify your local Resource Deployment Unit to allow attendance at a FAI. Procedures for the citing of officers and SPA/police staff are outlined in the Citations (Police Officers and Staff) National Guidance.

FAIs are held in public and may be attended by the media. If you are not granted anonymity, it is possible that your details could appear in the media. It is important to give no statement to the press before or after the event, even if approached directly. Any staff or officer who is approached by the media should refer them to the National News Desk Team.

For advice and assistance please contact Corporate Communications National News Desk.

Media can doorstep staff and officers if they find out where they live, to try to speak to them. If you are approached, ask the media to contact Corporate Communications National News desk. Officers and SPA/ police staff with personal social media accounts should familiarise themselves with the relevant section of the Information Security Handbook Divisional Guidance.

Further information about media attendance at incidents can be found in the Media Engagement Divisional Guidance, and the Auditors and Social Media Bloggers National Guidance.

If you have any concerns, questions or queries contact your line manager or staff association/trade union.

### Practical considerations

* Ensure you know where and when you are going to a FAI and that you arrive in good time. There are court officials who can guide you to the relevant room and will help with any practical questions. FAIs are heard in a variety of settings, from modern rooms to old courthouses, but all are formal Sheriff Courts.
* If the FAI is to be held virtually, arrive in good time at the nominated location, ensure the VC equipment is operational and the required FAI court link has been received and is connected.
* Arrange your transport in advance and have awareness of parking availability. Support, including a transport plan may be available.
* Have prior knowledge of entitlement to claim travel or other expenses.
* Preparation is vital before attending a FAI. Read over relevant policies, processes, SOPs in place at time of incident. Have an awareness of your own training record.
* If you have previously prepared a report or witness statement, read over it again in detail – your legal adviser or those calling you to give evidence should be able to provide a copy if necessary.
* Make sure you turn off all mobile devices off to avoid unwanted interruptions while in court.
* If you have legal representation, carefully consider their advice. You can take a friend or colleague if you need support. Speak to your Line Manager if you feel you would benefit from a colleague or supervisor support.
* Dress professionally – See section 2, Citations (Police officers and Staff) National Guidance.

## Giving Evidence at a Fatal Accident Inquiry

You must not discuss your evidence / witness statement with colleagues who are to give evidence at the same FAI. This is no different to giving evidence in a criminal court. Consult with your staff association/trade union for further advice/support.

If you are called to give evidence, you are first asked to take the oath or affirm. You will usually be standing in a witness box or seated in a VC room if the FAI is held virtually.

* You will not be permitted to take any documents into the witness box with you, but records should be available as productions, and you can ask to be provided with a copy to refer to whilst giving evidence.
* You will be asked questions by the Procurator Fiscal, who normally leads and presents evidence. The role of the Procurator Fiscal at a FAI is to act in the public interest.
* The party who called you (usually the Procurator Fiscal but can include legal representatives from other organisations or deceased’s family) will open the questioning (known as examination-in-chief).
* You may be asked questions by the other interested parties including family members or their representatives and the presiding Sheriff etc. (known as cross-examination).
* The party who called you will then be given a final opportunity to ask any follow up questions arising from the cross-examination.
* Address the Sheriff as “My Lord” or “My Lady.” Address the Procurator Fiscal and legal representatives as “Sir” or “Ma’am.” See section 2, Citations (Police officers and Staff) National Guidance. You must answer questions honestly. Responses may include “I don’t know” or “I can’t remember,” if this is the truth. You should stick to matters within your own experience, relevant to your knowledge of and involvement in.
* Witnesses cannot be compelled to answer any questions which may incriminate them but are encouraged to answer with integrity.
* Take time to consider how best to answer to a question; there is no need to respond immediately. Have some water or take a deep calming breath to compose yourself, before responding. Speak clearly so that you can be heard. Once you have answered a question, stop talking and do not feel obliged to fill a silence.
* You are not there to argue the case for one side or the other. Your role is to provide objective and factually accurate evidence for the court so that a balanced decision can be made on the relevant facts. The evidence provided must be within your sphere of competence.
* Questioning can become heated or could seem hostile, particularly where a family are legally represented and trying to make a particular point. Keep calm and remain professional – do not be tempted to retaliate in any way. The Sheriff will step in if questioning becomes too hostile or deviates from the purpose of the inquest/FAI.
* Once you have finished giving evidence the sheriff will excuse you. You may choose to stay for the rest of the inquiry or leave.

## Subject Matter Advisor

A Subject Matter Advisor (SMA) will usually be requested by the Procurator Fiscal to provide a structured tactical review of the incident, or specific elements of the incident, in relation to the FAI. A SMA is an officer from Police Scotland who is there to give opinion based on their knowledge and experience and to answer questions at a FAI. They will help the court to understand policing processes. The opinion of the SMA may or may not support the evidence provided by witnesses.

Legal representatives of interested parties can request their own expert witnesses.

## Line Managers/Wellbeing

The following section provides guidance to line managers and also makes clear the level of management support available. Staff and officers are actively encouraged to seek out support and guidance.

Line Managers should acknowledge that every individual has unique needs and will react differently before and after a FAI. Effective support can reduce risks associated with the psychological and physiological impacts experienced by those involved in giving evidence at FAIs.

This can be achieved through provision of support, improved communication and recording, defined role responsibilities and clear consistent information.

The FAI process can involve lengthy timescales which could impact on an individual’s psychological wellbeing.

Have an initial wellbeing discussion to establish the needs of the individual. Direct them to the Your Wellbeing Matters intranet page which contains details of sources of support. Consider a referral to the Employee Assistance Programme (EAP).

Peer support can be massively helpful and would be entirely voluntary. Peers can provide constructive supportive advice of their experiences in giving evidence at FAIs.

Determinations from recent FAIs can be accessed on the Scottish Courts and Tribunals Service Fatal Accident Inquiries website.  Criminal Justice Services Division publish learning from recent custody-related FAIs on the CJSD Continuous Improvement Unit intranet page.

Decide in conjunction with the individual whether they should complete an Individual Stress Risk Assessment Questionnaire (Form100-005)

If additional support is identified the individual should be encouraged to consult with the Health & Wellbeing Team and People Direct for support.

Provide continued support and regular updates to the individual, including for officers and staff who are absent from work or on a service break or leave.

The SPF, ASPS (Association of Scottish Police Superintendents), SCPOSA (Scottish Police Chief Officers’ Staff Association) and Trade Unions/Staff Associations maintain an important role in supporting and ensuring the wellbeing of their members.

## Key Contacts

Information has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002, Section 30, Prejudice to effective conduct of public affairs.

People Direct - People Direct Online Portal

Your Wellbeing Matters intranet page

Wellbeing Champions intranet page

Employee Assistance Programme (EAP) intranet page

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## Feedback

All Police Scotland service delivery Policies, Standard Operating Procedures (SOPs) and National Guidance are subject to regular reviews. It is important that user feedback is considered when documents are reviewed.

If any officer / staff member wishes to provide comment, or make suggestions for improvements to this or any associated document, a Service Delivery Policy and Procedure Feedback Form (Form 066-014) should be used.