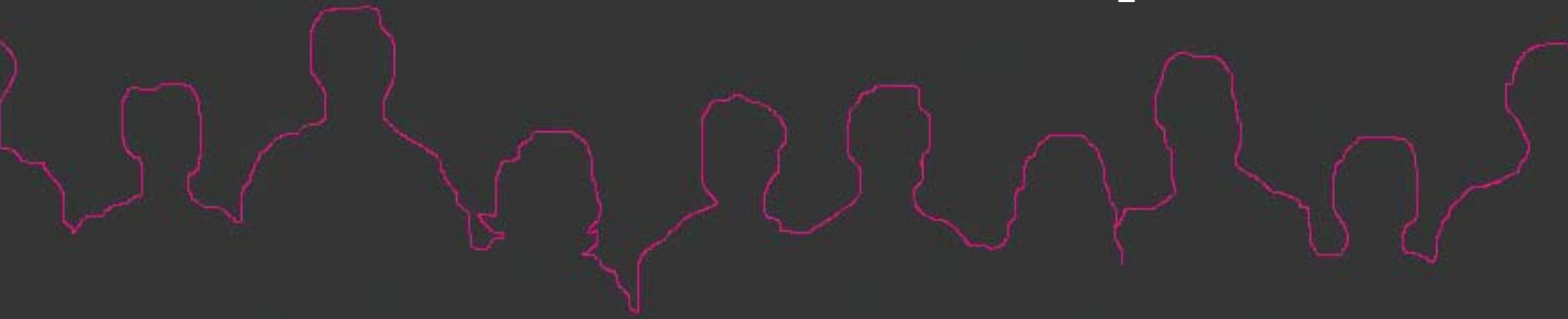


Fatal Accident Inquiries



A Guide for NHS staff

NHS Quality Improvement Scotland (NHS QIS) is committed to equality and diversity. We have assessed this guide for likely impact on the six equality groups defined by age, disability, gender, race, religion/belief and sexual orientation. For a summary of the equality and diversity impact assessment, please see our website at: www.nhshealthquality.org/nhsqis/2018.html. The full report in electronic or paper form is available on request from the NHS QIS Equality and Diversity Officer.

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Fatal Accident Inquiries

A Guide for NHS staff

When NHS Quality Improvement Scotland (NHS QIS) was established in 2003 it was given responsibility for the investigation of and learning from serious service failures. As part of this remit, NHS QIS recognised that fatal accident inquiries (FAIs) provide a unique opportunity to learn from such events.

The Central Legal Office for NHSScotland advises that there are approximately 10–15 FAIs involving NHSScotland per year. Those involved in the process are often too upset to share their experience making it a challenge to share the learning, prevent a recurrence and improve the quality of care provided.

In 2006 NHS QIS established a short life working group to look at the FAI processes in partnership with NHS boards. It was recognised as part of this work that staff had different experiences from such inquiries in terms of support and information given, and therefore the group agreed that providing staff with general information and guidance on the FAI process would be helpful. This has been through consultation with staff previously involved in FAIs to test the accuracy and relevance of the information contained within it.

This booklet aims to support staff who find themselves involved in an FAI.

NHS QIS gratefully acknowledges the work of short life working group and thanks the staff involved in the consultation.

This booklet is a guide to FAIs for NHS staff. It explains the process, what happens in court and provides advice on how staff can prepare and debrief.

Taking part in an FAI can be stressful. Staff can find their actions questioned and challenged in an environment that can feel alien and sometimes hostile. Staff should not feel threatened when their organisation faces an FAI. Making sure all staff understand what is involved will not only help the inquiry establish what happened, but will also help staff prepare and learn from experience.

The guidance in this booklet aims to help give NHS staff confidence when their organisation is involved in an FAI by providing information drawn from previous papers, and reflections of NHS staff who have been involved in FAIs.

What is an FAI?

An FAI is a legal process that seeks to explain why someone died. FAIs are held into deaths that are sudden, suspicious, unexpected, accidental or unexplained or which have occurred in circumstances that may give rise to public concern. The decision to hold an FAI is taken by the Procurator Fiscal (PF) or Crown Counsel.

An FAI does not determine guilt or apportion blame. When a death occurs, and the circumstances appear to give cause for concern, an investigation is undertaken by the PF, as well as an internal review carried out by the NHS organisation.

Internal investigations

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NHS organisations should conduct their own internal review into the circumstances of any death which gives cause for concern. This should be in the form of a significant event analysis or a significant/critical incident review.

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If you have been involved in the patient's care, directly or indirectly, there is an expectation for you to be involved in the internal review.

It is important that your organisation supports you, and your colleagues support each other at what can be a difficult time. This will help promote openness and honesty, and lead to a clear understanding of exactly what happened.

External investigations

P R O C E S S

An initial investigation is carried out by the PF. It involves reviewing all relevant paperwork, notes and records; and interviewing individuals with knowledge of the circumstances of the death. This may be carried out by the police or PF staff. During the investigation the PF may engage the services of expert witnesses, who have not been involved in the circumstances of death, to provide expert evidence in relation to:

- the cause(s) of death
- if there were reasonable precautions that could have prevented the death
- any other factors relevant to the circumstances of death.

A D V I C E

If you have been involved in the patient's care you will be asked to give information to the PF. You should:

- review and be familiar with relevant records and case notes
- never destroy, alter or adjust medical records - such action could lead to criminal prosecution
- consider making your own notes of the event, this will help in remembering what happened, when and where. You should record when and where the notes were made

- seek support both from colleagues and family/friends. However in doing so, staff should remember that confidentiality and discretion are necessary.

A d v i c e

You must inform your line manager if you have been approached to give information to the PF or anyone else (there may be interest from the press, or relatives may contact staff directly to obtain information).

You, along with all NHS staff within the organisation, must comply fully with the investigation. Providing detailed information on all the facts at this stage will enable the PF to decide whether an FAI is required.

You will need to make decisions about your legal representation. Your organisation will be represented by a lawyer from the NHS Central Legal Office (CLO). You can also choose to be represented by the CLO or, alternatively, you can choose to be represented as an individual through your professional body or trade union. You may wish to discuss these options with someone you trust before deciding on the more appropriate form of representation.

P R O C E S S

The PF will normally send a detailed report of the findings of the investigation to the Crown Office which decides if an FAI is required. There may be a delay between the end of the investigation and the decision being taken as to whether or not an FAI will take place.

A D V I C E

During this time, you should:

- remain prepared for an FAI which involves keeping all personal notes (a copy of all notes/information should be made as you may not get the originals back)
- keep in contact with and support other staff within the organisation
- maintain contact with legal/union advisors.

If the PF decides that an FAI is required, the matter is taken to court, and witnesses are called to give evidence.

What happens in court?

P r o c e s s

FAIs are held before Sheriffs and generally take place in Sheriff Court buildings. They are conducted in public and the media is allowed to be present and report on proceedings.

A d v i c e

Preparation for court is essential. The gap between the decision to hold an FAI and the date of the inquiry can be a long one. This is time you can use to find out more about FAIs and, perhaps, speak to a colleague who has been involved in one.

You will need to familiarise yourself with the files and records in relation to the incident and consider what decisions were taken, when and why. You should also think about any factors which may have had a bearing on the death and how you will respond to questions about these.

A d v i c e

Other things that are useful in preparing for an FAI include:

- attending court to familiarise yourself with what happens
- visiting the court room prior to the hearing to get to know the layout
- asking someone to support you in court
- being prepared for media interest in the lead up to the FAI and at the court
- being aware that it may take some time before you are called as a witness. (There may be a Witness Service available in court to assist witnesses who have been called to give evidence.)

P r o c e s

An FAI is not a criminal court, and is not intended to cause conflict or hostility, nor apportion blame. However, sometimes the process can become adversarial and witnesses can be examined and cross-examined by different groups of lawyers.

A d v i c e

It can be difficult, in these circumstances, not to feel accused. It is important however to recognise and accept that this is the system that is used to investigate what happened and how so that the Sheriff can make the right determination at the end of the inquiry.

P r o c e s s

A witness will receive a citation to appear at court on a certain date. On the day, you will be met by a bar officer or police officer who will direct you to the witness room. In all courts in Scotland, witnesses remain in the witness room away from the court until they have given evidence. This is to prevent all witnesses being influenced by what might have been said in court by others.

A d v i c e

You will not always be aware who the other witnesses or people in the witness room are, therefore do not discuss the case with anyone while in the witness room.

P r o c e s s

When called to give evidence, a witness must take an oath, or affirm, declaring that they will tell the truth at all times.

A d v i c e

A witness who lies risks being prosecuted for perjury. A witness who attempts to evade replying to questions may be held in contempt of court. Be sure you understand what these terms mean. If a witness is convicted of perjury, or held to be in contempt of court, the court can impose a period of imprisonment on the witness.

Giving evidence

PROCESS

The FAI needs to determine five main points:

- where and when the death took place
- the cause or causes of the death
- the reasonable precautions, if any, that might have avoided the death
- the defects, if any, in any system of work that contributed to the death, and
- any other facts relevant to the circumstances of the death.

You will be expected to give evidence on the five points listed above.

The evidence is led by the PF who represents the public interest.

Questioning follows from:

- a lawyer representing the deceased's family (if they have chosen to appoint legal representatives)
- lawyers representing the NHS/healthcare organisation, and
- the legal representatives of any individuals who have chosen to be represented in their own right.

A d v i c e

Listen carefully to the questions you are asked and take time to consider your response. Do not feel pressured to give a “yes” or “no” response and be ready to explain your view. If you can’t remember the date of an event or don’t know the answer to a question, say so – don’t try to guess. If a question has multiple parts, break down your answer. If you are unsure of the question, ask for it to be repeated.

P r o c e s

Generally you will be questioned on who you are, your qualifications and experience, and your place of work before going in to the circumstances surrounding the death. Evidence is normally given standing up but if you need to sit you should advise the bar officer who will inform the Sheriff.

A d v i c e

Be calm, courteous and honest. Remain objective, and do not get personal. Speak clearly and concisely, and be ready to confirm your evidence from notes taken at the time.

If your role is a central one, be prepared for a lengthy session in the witness box which may last several hours. There are certain legal questioning strategies that it is best to be aware of.

A d v i c e

Take advice from the CLO or your own legal advisor on how to deal with these techniques:

- challenge – the lawyer challenges your expertise, method, interpretation or reasoning
- reversal – you are asked to consider the case from an opposing view
- hypothetical situation – you are asked to give an opinion on a hypothetical situation
- ring fencing – you are asked to agree with a series of seemingly non-contentious propositions before being challenged on a key issue in the case
- curve ball – an unexpected question that causes uncertainty and may undermine evidence you have given earlier.

In giving evidence, you need to be clear about what it is you want to say and what you want the court to hear. As a witness you will provide the court with information and questions will be asked in order to assist the Sheriff in making an appropriate recommendation.

What are key things to remember in giving evidence?

Do:

- prepare in advance
- be fully familiar with the issues in the case
- give detailed and relevant answers
- be alert and astute to the atmosphere in the court
- be clear in what you say
- be ready and willing to expand and explain your answers if requested
- be ready and willing to see the argument in opposing views but be firm and clear about your own evidence
- be prepared for delays
- be aware this is a formal proceeding and dress appropriately
- try to remain calm
- try to avoid appearing defensive
- stick to the facts – don't make assumptions about what other people did or did not do
- try to avoid jargon, medical or hospital language that others may not understand.

Try not to:

- react emotionally
- be arrogant
- be impatient
- appear patronising
- be aggressive or rude
- be argumentative
- be too suggestible
- appear uncertain.

Where can I get support?

Process

While giving evidence at an FAI, you may need assistance professionally and emotionally. There are different types of support available and it is important that you have access to these.

Advice

If you are worried about any part of the proceedings, or just need more information you should contact your employer, defence body or union.

It is also important to remember that support can be found within your own network of friends and family. They are likely to be concerned about what you are going through, and keeping them informed of the progress of the FAI will help address their concerns as well as your own.

Will what I say appear in the media?

P r o c e s

The media can be present at FAIs and report on what is said. In some cases, the media will have already reported on the circumstances of the death and may have been involved in calling for an FAI to be held. However, not all FAIs attract media interest and the presence of the media will depend on the particular circumstances of the death.

Media reports are selective and coverage can be biased.

A d v i c e

Be prepared to see journalists at the doors of the court and for them to be present in court. Media interest should be managed by your organisation, and it is best to avoid being drawn into making comment at any time to journalists about the circumstances of the FAI.

It is best to avoid reading or listening to media reports if possible, as it can be stressful and frustrating. Media reporting may even result in you feeling you are being blamed unfairly for circumstances relating to the death. If this happens, you should seek support and advice from your employer, your defence body or union, as well as family and friends. If you consider the coverage to be inaccurate and biased, you can consider making a complaint to the Press Complaints Commission (www.pcc.org.uk).

Once all the evidence has been taken, the Sheriff closes the inquiry to consider his or her determination. The Sheriff will make a formal finding in relation to the death, and the cause. The Sheriff may, in addition make a finding in relation to whether there were any reasonable precautions that might have prevented the death, any defects in the system of work that contributed to the death and any other facts relevant to the circumstances of the death. The Sheriff may make recommendations in relation to his or her findings. It could be some months before the Sheriff's written determination is produced.

In the meantime, your organisation may decide to have some form of debriefing. This allows all those involved to reflect on the evidence and may produce suggestions on changes in working practices and procedures in the light of information produced at the inquiry.

A copy of the Sheriff's written determination is usually given to the main parties involved in the inquiry, including the deceased's family, in advance of being made public. This is a courtesy to help those involved consider the findings and prepare any reaction, such as statements to the media.

A d v i c e

Take some time to read the determination. Your employer should support you doing this. The findings will be considered in detail by management, specific sectors of the organisation, or by key people involved. They will prepare a formal response and action plan to prevent recurrences. This may be requested from your organisation by the Scottish Executive.

You should consider how the recommendations impact on your own practice and professional development, and make any changes in line with the organisation you work for.

A checklist for witnesses taking part in an FAI

- 1 Be prepared and fully familiar with the circumstances.
- 2 Be aware of what is expected.
- 3 Seek support and advice whenever you need it.
- 4 Remain calm in court.
- 5 Be factual, accurate and truthful.
- 6 Be clear in what you want to say and how to say it.
- 7 Be professional at all times.

Term	Definition
bar officer	A court usher. They escort witnesses to and from the witness room and the court.
Central Legal Office (CLO)	The CLO provides NHSScotland with legal advice and assistance on every area of law relevant to the health service - litigation, commercial contracts and commercial property.
citation	A formal order of the court requiring you to attend the court on a specified date and time.
civil case	Matters concerning private or corporate rights – not prosecutions.
contempt of court	<p>This is a finding that is made by a judge and may be held where there is</p> <ul style="list-style-type: none"> • disobedience or wilful disregard to the judicial process, • by providing misleading or evasive answers to questions, or • by refusing to obey a Sheriff or court order.
Criminal Court	A Criminal Court is any court that hears criminal cases. These are; District Courts, Sheriff Courts, High Court, Court of Criminal Appeal.
criminal proceeding	This refers to the legal process for prosecuting individuals or businesses.

Term	Definition
Crown Office	The Crown Office is the lead of the Crown Office and Procurator Fiscal Service and provides an independent public prosecution service, investigates sudden and suspicious deaths, and handles complaints against the police in Scotland.
determination	The decision of the Sheriff, setting out the facts which he or she considers relevant and his or her recommendations. A determination is normally issued several weeks after the conclusion of the proceedings.
evidence	Evidence is the verbal or written material which has been placed before the Court. It can also be electronic matter, photographs, physical objects, etc.
examination and cross examination	<p>Examination in chief: to test by questioning in order to determine facts on how an event occurred. In an FAI, this will be undertaken by the procurator fiscal.</p> <p>Cross examination: the opportunity for other parties represented at the inquiry, to test or clarify evidence given by a witness during the examination in chief.</p>
perjury	Deliberately lying or giving false or misleading testimony or evidence under oath when in a court of law.

Term	Definition
Procurator Fiscal (PF)	<p>Carries out functions broadly equivalent to the Crown Prosecutor in England. ·</p> <p>The Procurator Fiscal is responsible for determining all causes of sudden or suspicious deaths within their jurisdictions. They are also responsible for the conduct of FAIs.</p>
Sheriff	<p>In Scotland, a Sheriff is a judge and sits in the Sheriff Court. The Sheriff is legally qualified, in comparison with a lay Justice of the Peace who preside over the first-tier of District Courts in Scotland.</p>
witness	<p>One who is called to testify before a court of law on what they have seen/heard, or in the case of an expert witness, one who has a specialist knowledge or skill in the matters under consideration.</p>
witness room	<p>Waiting area for witnesses during a trial. A witness will wait here until they are called into the court to give evidence. This is to prevent their testimony being “influenced” by what might have been said by others, who have given evidence or who may be bystanders.</p>

Deaths reportable to the Procurator Fiscal

It is the duty of the appropriate PF to enquire into all sudden, suspicious, accidental, unexpected and unexplained deaths and in particular:

- all deaths resulting from an accident in the course of employment or occupation
- deaths while in legal custody
- deaths from circumstances such as give rise to serious public concern.

However the PF may enquire into any death brought to his notice if he thinks it necessary to do so.

The following deaths are reportable to the PF:

- 1 any uncertified death
- 2 caused by an accident arising out of the use of a vehicle, including aircraft, ship or train
- 3 while a person is at work
- 4 as a result of poisoning in the course of work or from industrial disease
- 5 due to poisoning
- 6 appears to be suicide
- 7 appears to be due to medical mishap
- 8 resulting from an accident
- 9 following abortion or attempted abortion
- 10 when circumstances indicate fault or neglect on part of another person
- 11 when deceased was in legal custody
- 12 when body of newborn baby is found
- 13 any death not in a house where deceased's residence is unknown

- 14 drowning
- 15 death of a child from suffocation including overlaying
- 16 sudden infant death syndrome
- 17 food poisoning or infectious disease
- 18 death by burning or scalding, or as a result of fire or explosion
- 19 death of a foster child
- 20 death of a child in the care of a local authority
- 21 death of a child on a local authority "At Risk" register
- 22 any drug related death
- 23 where there is a complaint from the next of kin that the medical treatment may have contributed to the death
- 24 death in GP's surgery, health centre, etc
- 25 death due to violent, suspicious or unexplained cause.

Press Complaints Commission

www.pcc.org.uk

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