

Fatal Accident Inquiries

Overview

A fatal accident inquiry is a type of court hearing in Scotland which investigates the circumstances of a death. It is conducted by a sheriff, and evidence is led by a Procurator Fiscal who is a solicitor employed by the Crown Office and Procurator Fiscal Service and who acts on the instructions of the Lord Advocate, representing the public interest.

The Lord Advocate has responsibility in Scotland to investigate sudden, suspicious, accidental, and unexplained deaths. For healthcare professionals, such investigations can be expected in relation to:

- suspicious/unexplained deaths
- suspected suicides
- industrial or road traffic deaths
- newborn/SIDS deaths
- medical mishap or anaesthetic deaths
- deaths from notifiable infectious diseases.

This list is not exhaustive. The Procurator Fiscal (acting on the delegated authority of the Lord Advocate) has the right to inquire into any death brought to their attention, if considered appropriate or necessary to do so. There is a general duty on all persons with a medical/nursing background to notify the Procurator Fiscal if a death meets any of the above criteria.

Not every investigation into a sudden or unexplained death will result in a fatal accident inquiry. There are categories of deaths where it is mandatory to hold a fatal accident inquiry, including where the death occurred while the deceased was at work or was in lawful custody. Otherwise, the Lord Advocate will exercise his discretion in deciding whether it is in the public interest for an inquiry to be held, and may hold a fatal accident inquiry where he considers, following investigation, that the death was sudden, suspicious or unexplained, or that it occurred in circumstances giving rise to serious public concern.

The purpose of an FAI

The purpose of a fatal accident inquiry is to establish the circumstances of the death and to consider what steps (if any) might be taken to prevent other deaths in similar circumstances. The purpose is not to establish civil or criminal liability.

Investigation

Gathering information

The first stage of any fatal accident inquiry will be information gathering, in order to investigate the circumstances surrounding an individual's death. The information that is required can be obtained from a number of sources, including the police, family, friends, and members of the public. From a medical perspective, the information most likely to be gathered is the deceased's hospital and GP medical records, and reports from those involved in the care of the deceased.

The procurator fiscal has the [authority](#), under the instruction of the Lord Advocate, to recover and inspect all documents considered necessary for the purpose of a fatal accident inquiry. Occasionally this authority can be further delegated to the police, who may be instructed to recover evidence on behalf of the Procurator Fiscal. This authority does not require approval from the court, so procurator fiscal requests for medical records do not need to be supported by a court order or the written/verbal consent of family members. The GMC guidance on [confidentiality](#) supports this position.

Taking statements

The procurator fiscal also has the authority to call witnesses for precognition - that is, to take a statement. As with the collection of medical records, no court order or other authorisation is required for a procurator fiscal to obtain a statement from relevant witnesses, including clinicians, nurses, and other healthcare professionals. This is different from standard civil court procedure, where there is no power to compel a witness to attend.

One option open to clinicians would be to offer the procurator fiscal a written report on their involvement with the deceased. This can be helpful as it allows consideration of the wording used to ensure a clear report on what can often be complex clinical issues, although the procurator fiscal can insist on a statement.

In requesting to take a precognition, it is necessary for the procurator fiscal to give the witness reasonable notice. Barring a reasonable explanation, relevant witnesses must attend and give the procurator fiscal (or police officer or precognition officer appointed by the procurator fiscal) any information within the witness' knowledge regarding any matter which the procurator fiscal considers relevant to the investigation.

Co-operation required

The [GMC](#) expects clinicians to cooperate with FAIs. A failure to co-operate with the procurator fiscal could leave a healthcare professional vulnerable to criticism, if brought to the attention of the GMC, and could also be subject to further action from the court, including fines and imprisonment.

Preparing for an inquiry

Writing a statement

You may be asked to provide a written statement about your involvement in a patient's care, or the care provided by an organisation or department where you worked.

When writing a statement:

- Bear in mind that producing a good statement at the outset is crucial and can avoid being called to attend an inquest.
- Do not rush, and make sure the statement is detailed and accurate.
- It should be focused on facts relevant to the death, and should be detailed, accurate, objective, and written in full English rather than in note or bullet point form.
- Medical terms should be avoided where possible, or explained.
- Ensure the timeline is easy to follow. Events should generally be presented in chronological order. Ensure that each event is clearly dated (and timed if appropriate), identify who consulted and whether or not this was face to face. It is helpful to highlight the latest date on which the deceased consulted the author of the report and the last date of contact with any clinicians.
- Ensure that you review the medical records when preparing your statement. Concentrate on matters relevant to the death, including in all cases significant past medical history, drug history, history of drug/alcohol use and mental health history.
- Any actions should be linked to an identified individual, and the report should not leave unanswered questions.
- Contact MDDUS for more detailed advice.

Practical tips before you go

- Review your statement and the patient's medical records in advance.
- Make sure you know where you are going and allow plenty of time to get there. 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 you have legal representation, take their advice. You can take a friend or colleague if you need support. It is usual to feel nervous so this can be helpful.
- Dress professionally, perhaps as you would for a job interview.

Giving evidence

- 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.
- You will not be permitted to take any documents into the witness box with you but the medical 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, and possibly other solicitors representing other parties such as the family or other individuals or organisations. It is possible that you may also be asked questions by the Sheriff, who should be addressed as “My Lord” or “My Lady”.
- You must answer questions honestly. This includes responses of “I don’t know” or “I can’t remember”, if this is the truth. You should stick to matters within your own experience and field of expertise, relevant to your knowledge of and involvement in the care of the patient. Once you have answered a question, stop talking and don’t feel obliged to fill a silence.
- The [GMC](#) offers helpful guidance on being a witness of fact at any court attendance.
- The GDC's [Standards for the Dental Team](#) (9.4) requires all registrants to cooperate with any relevant formal or informal inquiry and give full and truthful information. This includes cooperating with the Procurator Fiscal acting to investigate a death.
- You may also wish to review our [Giving evidence](#) advice sheet for further information and the accompanying online course [Acting as a witness](#).
- Once you have finished giving evidence the sheriff will excuse you. You may choose to stay for the rest of the inquiry or leave.

Outcome

Following the hearing of evidence, the Sheriff will be required to make a determination, which will conclude:

- where and when the death (or any accident resulting in the death) occurred;
- the cause of death;
- any precautions which could have reasonably been taken and might realistically have resulted in the death being avoided;
- any defects in the system of working which contributed to the death; and
- any other facts relevant to the circumstances of the death.

The sheriff also 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 with the deceased. Clinicians are required to notify the [GMC](#) of any individual criticism from an official inquiry.

Key points

- Do not delay in seeking advice on any FAI you are asked to attend, especially where there may be criticism of your care. Contact MDDUS on advice@mddus.com
- Preparation is key and can avoid adverse consequences.
- If you are concerned that you may be, or have been, criticised in a fatal accident inquiry then you should contact MDDUS on advice@mddus.com

Further guidance:

- GMC: Acting as a witness
<https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/acting-as-a-witness>
- GDC: Standards for the dental team (9.4)
<https://standards.gdc-uk.org/>
- MDDUS advice library
<https://www.mddus.com/advice-and-support/advice-library/giving-evidence>
- MDDUS online course
<https://www.mddus.com/training-and-cpd/training-for-members/online-courses/acting-as-a-witness>