

## Briefing for the Public Petitions Committee

**Petition Number:** [PE01745](#)

**Main Petitioner:** James Jones

**Subject:** Statutory right to request a Fatal Accident Inquiry

Calls on the Parliament to urge the Scottish Government to ensure that families have a statutory right to request a Fatal Accident Inquiry

### Background

#### Fatal Accident Inquiries

Fatal Accident Inquiries (FAIs) are held to establish the circumstances surrounding certain deaths. They are presided over by sheriffs. The sheriff may make recommendations aimed at preventing future deaths in similar circumstances.

Around 50 to 60 FAIs are held each year.

**Mandatory FAIs** must usually be held where someone dies in legal custody, or in an accident related to their work.

A **discretionary FAI** can also be held where a death is sudden, suspicious, unexplained or gives rise to serious public concern. The Lord Advocate has discretion to hold an FAI in these circumstances where he decides it is “expedient in the public interest”.

The Lord Advocate also has discretion not to hold an FAI (even a mandatory FAI) if the circumstances of the death have been adequately established in related criminal proceedings.

#### The role of the Lord Advocate

The **Lord Advocate** plays an important role in the FAI process. He is the most senior law officer for the Scottish Government. He advises the Scottish Government in civil and criminal legal matters. He is also responsible for the prosecution of crime and the investigation of deaths in Scotland.

The Lord Advocate is supported in his role by the Crown Office and Procurator Fiscal Service (COPFS). Procurators fiscal lead evidence at FAIs

on behalf of the Lord Advocate. Decisions to be made by the Lord Advocate are often delegated to COPFS staff.

### Judicial review

FAI legislation contains no formal right of appeal against a decision by the Lord Advocate in relation to an FAI. However, it is notionally possible to challenge a decision using a legal process called judicial review.

Judicial review looks at the procedural aspects of the decision-making process rather than at the merits of the case. The main grounds for successfully challenging a decision at judicial review are:

- unlawfulness (where the decision went beyond the legal powers of the body or person in question);
- where the procedure used was unfair; or
- where the decision was irrational.

### Reform of the law

During the passage of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016, concerns were raised about the ability of bereaved families to challenge decisions by the Lord Advocate where they did not agree with them.

Representatives from the Scottish Government and COPFS agreed that families should be involved in the FAI process. However, they stressed that FAIs are ultimately held in the public interest rather than to benefit those who have been bereaved.

The 2016 Act, as passed, settled on an ability for the nearest relative of the deceased to request written reasons for the Lord Advocate's decision not to hold an FAI. This, it was argued, was to help families understand a decision, and to be in a better position to consider whether judicial review was appropriate.

The 2016 Act also created a legal requirement for COPFS to publish a [Family Liaison Charter](#). This sets out the information family members can expect to receive from COPFS staff investigating a death.

The Family Liaison Charter contains a commitment to internally review a decision in relation to holding an FAI at the request of the deceased's family. The review will be carried out by a senior member of staff not involved in the original decision.

### Statutory right to request an FAI

The petitioner specifically refers to comments from the Law Society of Scotland, made during parliamentary scrutiny of the 2016 Act. These highlight its views on the idea that family members could have the right to seek an FAI.

The right proposed does not appear to be absolute – instead, a sheriff would decide whether the request should proceed.

In the Law Society's view, this would be workable. However, additional FAIs would have resource implications for those involved in them, as well as for the court system.

### Recent controversy

There has been [recent controversy over long delays](#) in decisions from the Lord Advocate about whether or not an FAI will be held.

### **Scottish Government Action**

The Scottish Government asked Lord Cullen to conduct a review of FAI legislation. The review reported in 2009. Most of its recommendations were taken forward in the Inquiries into Fatal Accidents and Sudden Deaths (Scotland) Act 2016.

During parliamentary scrutiny of this legislation, the Scottish Government expressed reluctance to see the number of FAIs rise significantly.

### **Scottish Parliament Action**

Patricia Ferguson MSP also put forward a member's bill to reform the law on FAIs. This bill was considered by the Session 4 Justice Committee alongside the Scottish Government's proposals.

The result was considerable debate over how the FAI system should be structured, with a particular focus on the rights of bereaved relatives. The discussion around rights in relation to the decision to hold an FAI is highlighted above.

The Scottish Parliament has also considered a number of petitions raising concerns about the FAI process. These include:

- PE 1567 (27 April 2015) – calling for changes to the way unascertained deaths, suicides and fatal accidents were dealt with.
- PE 1501 (13 December 2013) – calling for mandatory inquiry into deaths which were considered to be self-inflicted or accidental.
- PE 1280 (5 September 2009) – calling for FAIs to be held when someone from Scotland dies abroad.
- PE 841 (21 April 2005) – calling for the then 1976 FAI Act to require mandatory FAIs for deaths caused by careless driving.
- PE 767 (14 September 2004) – calling for a review of the effectiveness of the then 1976 FAI Act.

- PE 324 (11 December 2000) – calling for an FAI to be held into a particular death, and for a right of appeal against the Lord Advocate’s decision not to hold an FAI.

The Scottish Parliament also [debated the issue of Fatal Accident Inquiries on 27 March 2008](#), when the Scottish Government announced its intention to ask Lord Cullen to review the law.

### **Action by other bodies**

The Inspectorate of Prosecution in Scotland has carried out research into the reasons for delays in the process of deciding whether to hold an FAI:

- [Thematic Review of Fatal Accident Inquiries](#) (2016)
- [Fatal Accident Inquiries: follow up review](#) (2019)

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17 September 2019

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