

Fatal Accident Inquiries

Read this guide to understand what a fatal accident inquiry (FAI) is and why they happen, the role of the Procurator Fiscal and Sheriff in the investigation of deaths, along with guidance on when doctors may become involved and their responsibilities.

What is a fatal accident inquiry?

A fatal accident inquiry is a type of court hearing in Scotland which publicly inquires into the circumstances of a death. It is conducted by a Sheriff, and evidence is led by a Procurator Fiscal who is a lawyer 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 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. It is not its purpose 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 (such as appropriate consent) 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 is 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. If you are asked to provide a report or statement for the Fiscal in these circumstances please contact one of the advisory team at MDDUS, who can provide you with guidance on preparing 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.

Inquiry

In the event that you receive a witness citation to attend a fatal accident inquiry you would be required to be available to attend court on the time and date that you are cited. The [GMC](#) offers helpful guidance on being a witness of fact at any court attendance. You may also wish to review our [Giving evidence](#) advice sheet for further information.

While the process is a fact-finding exercise, independent expert medical evidence is often obtained and this can lead to disputes over best practice and potential criticism. In the event that you are cited to attend a fatal accident inquiry as a witness, and particularly if you receive a formal notice from the Procurator Fiscal advising you that a fatal accident inquiry is to be held, we would encourage you to contact MDDUS to discuss the case and to ascertain if separate legal representation may be needed. An individual may be permitted to have a lawyer represent their interests at an Inquiry and lead relevant evidence (such as additional witness evidence, guidance material and/or an independent expert report, for example) where the Sheriff is satisfied that he/she has a sufficient interest in the Inquiry.

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.

If you are concerned that you may be, or have been, criticised in a fatal accident inquiry then you should contact MDDUS.