

A supportive guide to

Fatal Accident Inquiries (FAIs) for NHS staff



This document is a guide to Fatal Accident Inquiries (FAIs) for NHS staff. It explains the process, outlines what happens in court and provides advice on how staff can prepare and debrief.

An FAI is a legal process that seeks to explain the circumstances of a person's death. 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 Crown Office and Procurator Fiscal Service (COPFS).

Taking part in an FAI can be stressful. Staff may find their actions questioned and challenged in an environment that can feel alien and sometimes hostile. Making sure all staff understand what is involved in advance will not only reduce anxiety, but also help staff prepare for, and learn from the experience.

Before the FAI

When a death occurs, and the circumstances appear to give cause for concern, an investigation is undertaken by the Procurator Fiscal (PF). The initial investigation is not an FAI, but it may lead to one.

At the end of the preliminary investigation, the PF will normally send a detailed report of the findings to the Crown Office, where it will be decided 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.

NHS organisations may also 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.

Preparing for an FAI



If it is decided that an FAI is required, the inquiry is taken to court, and witnesses are called to give evidence. 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.



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 – it can be several months or even years. 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 also need to familiarise yourself with the files and records in relation to the incident and consider what decisions were taken, when and why. Any clinical practice records should be lodged with the court; they will have been requested in advance of the case. You will be allowed to refer to these notes, but are not permitted to use any other notes. 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.

Answering questions

The FAI needs to determine five main points:

1

Where and when the death took place

2

The cause or causes of the death

3

The reasonable precautions, if any, that might have avoided the death

4

The defects, if any, in any system of work that contributed to the death

5

Any other facts relevant to the circumstances of the death

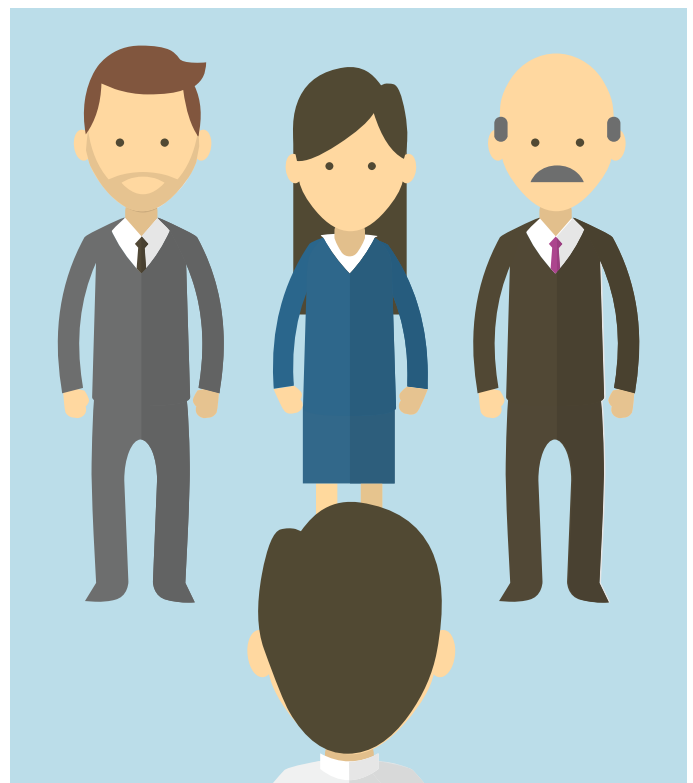
Questioning

You will be expected to give evidence on the five points listed above. The questioning is led by the Procurator Fiscal, 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
- The legal representatives of any individuals who have chosen to be represented in their own right

Listen carefully to the questions 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 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.



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; if you need to sit, you should advise the bar officer who will inform the Sheriff. Be calm, courteous, and honest – and remain objective.

Speak clearly and concisely, focus on the question at hand, and be ready to confirm your evidence from notes taken at the time. Try to keep your answers concise, and avoiding "rambling" – talking for too long after the issue has been sufficiently covered may be considered.

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
- Ask to take a break
- Ask if you can sit down
- 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
- Remain quiet until your case is called
- Be polite and courteous to the Sheriff, other Court users and court officials
- Arrive in good time for your case, you may require to pass through metal detectors/ security when entering the building
- Switch off your mobile phone before entering the courtroom and keep it switched off throughout the proceedings.
- Take support with you

Don't

- React emotionally
- Be arrogant
- Be impatient
- Appear patronising
- Be rude, aggressive or argumentative
- Be too suggestible or allow yourself to be easily led by a line of questioning
- Smoke, eat or drink in court
- Attend the court whilst under the influence of drink or drugs
- Make audio or video recordings or take photographs in the courtroom, unless you have the court's authority to do so
- Eat or drink in the courtroom
- Appear uncertain
- Bring dogs or other pets (other than guide dogs or hearing dogs) into the building
- Bring children under the age of 14 (other than infants in arms) unless they are giving evidence or have the court's prior approval to attend for educational purposes
- Bring unnecessary items or items that could be used as a potential weapon to court as they will be liable to confiscation

Dealing with the media

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.

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. You should always consult your organisation before engaging in any way with the media; there may be a requirement to refer any press inquiries to a dedicated press liaison or communications department.

Biased coverage

Media reports are selective and coverage can be biased. 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.

Harrassment

In rare cases, you may find yourself being pursued and pestered by the press – they may try to contact you at home, through friends or relatives, or generally interfere with your personal life in their search for a story.

If you do not wish to speak with a journalist, inform them of this clearly and politely, and ask them to leave you alone. It is an offence for a journalist to persist when they know the subject does not want to talk to them; if they continue to harass you, you have grounds to make an official complaint.



Criticism

Unfortunately, friends and relations of patients will sometimes speak negatively to the press about their healthcare practitioners. It can be frustrating to hear misleading or inaccurate allegations against you, even if they are clearly presented as opinion. You may be tempted to speak out in your own defence; however, you must not breach doctor-patient confidentiality. Anything you have learned in confidence cannot be shared without the express consent of the patient.

Complaints

If you feel a media story is directly or intentionally misrepresenting the truth, you may have grounds to make a complaint to the Press Complaints Commission. All news organisations in the UK have to adhere to the Editors' Code of Practice. You may wish to familiarise yourself with this if you are anticipating hostile press, as any media outlet judged to have broken the code must print a full retraction.

Support for healthcare staff

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. 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.

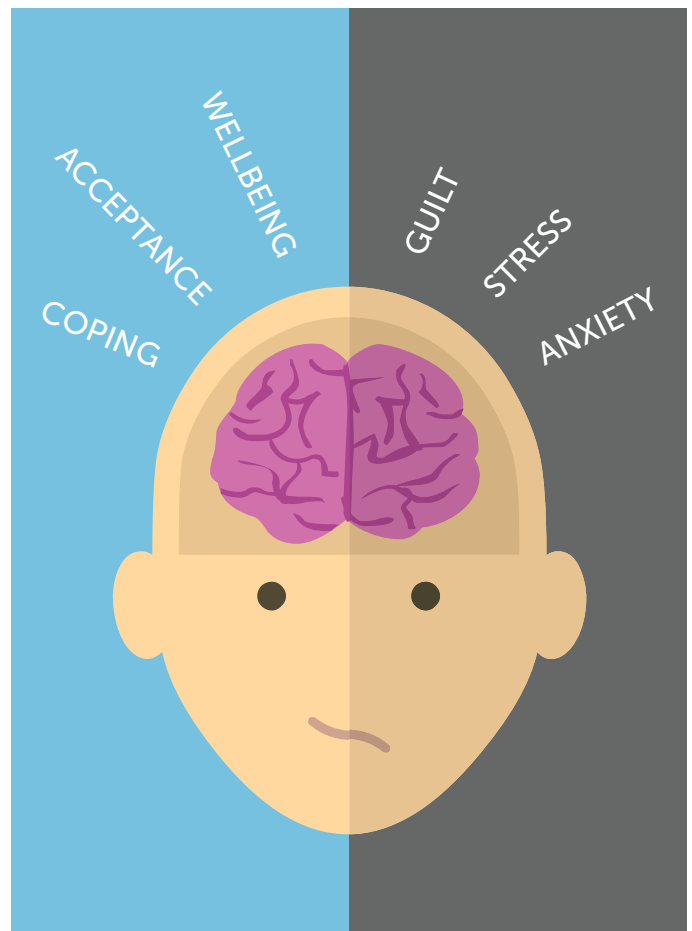
It is quite common for staff that have been exposed to stressful or traumatic incidents to develop a range of reactions and post-trauma symptoms, some of which may be distressing and disabling. Both in the short and longer term, the individual's wellbeing and performance may be severely affected.

An FAI can be one of these traumatic incidents, especially if you are a central figure to the investigation. The nature of the investigation may cause you to feel like you're being blamed, or subject to a witch-hunt. It is important to be aware of the effect this can have on your mental state. Medical staff who are involved in or who come under intense scrutiny may experience feelings of guilt, anxiety and shame. You should remember that FAIs are not held to find fault or place blame with an individual, but to identify and rectify any systematic defects.

You are only human

Healthcare professionals can feel under constant significant pressure and this gives a false expectation of perfection; the general public finds it comforting to view healthcare professionals as infallible, which can create additional pressures and stressors. Being able to acknowledge the enormity or personal impact of these perceptions, pressures or stressors can be hugely beneficial and can help to mitigate some of what, under the circumstances, is understandable and normal anxiety.

Your psychological and emotional wellbeing may not be taken into account, so you should ensure you have all the support you need before the investigation commences.



Sources of support

Throughout the FAI process, you may need assistance professionally and emotionally. There are different types of support available and it is very important that you have access to these. Don't be afraid to seek appropriate support for yourself.



Colleagues

Our colleagues themselves can provide a significant source of support prior to, during and following an FAI. It is advisable to let them know what you are going through, to alert them to your mental state and potential emotional needs.



Friends and family

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. Discussing the investigation with them will help alleviate feelings of isolation and victimhood, and help you deal with any anxiety you may have.



Legal

You, along with your organisation, are likely to be represented by the NHS Central Legal Office (CLO) – you can choose alternative representation if you wish, although you are not advised to do so unless your interests are separate from those of your organisation. The Medical and Dental Defence Union of Scotland (MDDUS), the Medical Defence Union (MDU) or the Medical Protection Service (MPS) all offer advice and representation to any member involved in an FAI. All registered healthcare professionals are also entitled to information and support through their respective Royal College or Union.



Counselling

Your organisation will offer access to a staff counselling service or Chaplaincy Service. All such services offer an opportunity for staff to talk through their concerns in a safe environment with a trained and respectful listener, and are regarded as an effective method for alleviating stress, anxiety and depression. Your organisation will be happy to signpost you to a local service or to a service in a neighbouring Board area, although they cannot demand that you attend.

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

Valuing & supporting staff

If someone you know is involved in an FAI, you should be sensitive to their need for support. There is no formal expectation for you to act, and the person in question may not feel comfortable initiating a conversation, but studies have shown that healthcare staff involved in an FAI often feel that they are not offered enough support from supervisory staff or colleagues.



Ask how they are coping

Although it seems like common sense, very few people remember to ask this question. Taking the time to check up on a colleague's wellbeing makes them feel valued, at a time when they are likely to be feeling increasingly insecure.



Don't be judgemental

Many health workers do not discuss their mistakes for fear of a perceived "blame culture" within the healthcare profession; it is important to reassure these people that they are not being scapegoated or shamed for their errors.



Share your experiences

If you or anyone else you know has been involved in an FAI or similar situation in the past, you should share this experience. This sends the comforting message that mistakes do happen and people and institutions learn and move on.

Debriefing

Though your organisation may have already carried out its own internal review it may decide, as part of its learning and aftercare of those involved in the FAI, to have some form of debriefing.

A debriefing is a facilitated sharing of the FAI's impact. This offers those involved a safe environment in which to share the emotional effect of their experience and, in light of information produced at the inquiry, may offer suggestions on changes in working practices and procedures.



The bringing together of the members of the health care team involved in the FAI also provides an opportunity for open and respectful communication and a renewal of compassion for one another following the rigors of an FAI. It supports the natural cohesion and resiliency of those involved and emphasises the potential role that group members can play in supporting one another.

Not everyone interviewed prior to an FAI will be called as a witness but they have knowledge of and experience both of the (adverse) event and being a potential witness at the FAI. As a result they should be included in offer of post FAI staff support and collaborative learning.

It is important that all healthcare staff are reassured of continuing support, care and encouragement from their organisation as psychological reactions can occur during and after both the adverse event and the FAI.

The Outcome

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.



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.

Take some time to read the determination. Your employer should support you during this. The findings will be considered in detail by management, specific sectors of the organisation, or by key people involved. If not already done, they will prepare a formal response and action plan to prevent recurrences. This may be requested from your organisation by the Scottish Government.

At a glance

This page contains a checklist of everything you need to be aware of for each stage of the FAI process.



FAI preparation checklist

- Attend court to familiarise yourself with what happens
- Visit the courtroom prior to the hearing to get to know the layout
- Ask someone to support you in court
- Be prepared for media interest in the lead up to the FAI and at the court
- Be 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.)



FAI witness checklist

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



Sources of support

- Don't hesitate to ask for advice or information
- Consult your employer, defence body or union if worried
- Talk to friends and family members – keep them updated
- Listen to any colleagues or loved ones who express concern



Media handling checklist

- Understand that there are likely to be journalists present
- Avoid making any comment to the press
- Ask your organisation to manage the media interest
- Try not to read or listen to any coverage during the FAI
- Seek legal advice if you or your organisation is misrepresented
- Refer to the Editors' Code of Practice before taking any action



After the outcome

- Hold/attend your internal debrief
- Take the time to read through the determination
- Consider and discuss any recommendations
- Prepare a response plan to prevent future accidents

Notes

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