



Forum of Scottish Claims Managers (FSCM) - Response to the Scottish Civil Justice Council Consultation on the draft Fatal Accident Inquiry rules

<http://www.fscm.org.uk>

Section 1 Who are the Forum of Scottish Claims Managers and who do we represent?

Section 2 Consultation response



About the Forum of Scottish Claims Managers (FSCM)

The Forum exists as a lobbying organisation on behalf of its members and to represent their interests in the handling of insurance claims.

1. The Forum aims to promote improvements to the law to enable consumers easier and quicker access to justice.
2. The forum membership covers a number of major insurers, financial institutions together with claims handling companies and Local Authorities.
3. The individual members of FSCM are all senior professionals being Claims Managers or equivalent within their respective organisations with a wealth of experience in Insurance claims matters.
4. To provide some context of the size and scale of our membership:
 - We directly employ approximately 5,550 people in Scotland, solely in insurance
 - We generate over £1.9 billion annually in respect of insurance premiums collected in Scotland (Personal and Commercial business premiums)
 - Solely on claims, we spend £1.257 billion annually in Scotland
 - Glasgow is the largest insurance centre in the UK, outside London and is seen as core pool of talented resources
5. Insurance companies exist to provide financial protection for consumers and businesses in the event that the unforeseen happens.

It is the Forum's desire to be actively engaged, with all interested parties, in discussions and debate relating to Third Party claims** in Scotland including Pre and Post-litigation.

**** Third Party Claims definition:**

Personal Injury or damage to Property arising out of a party's negligence – be it a personal (Consumer) matter or a Commercial (Business) matter, Road Traffic Accidents and accidents in the Workplace

Further information on the Forum of Scottish Claims Managers (FSCM)

Membership:

Allianz Aviva Direct Aviva Insurance AXA Churchill Chubb DLG Esure ERS First Group Halifax LV Markerstudy More Than	NFU Mutual Privilege Prudential PSV Claims Bureau Ltd QBE RAC Insurance RSA UKI Insurance Zurich Municipal Zurich Insurance Plc Glasgow City Council North Lanarkshire Council Motor Insurers Bureau
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Consultation Questionnaire

Structure and chronology

Consultation Question 1: Do you have any comments about the approach taken to the structure and layout of the rules?

No.

Part 2 – Overview

The inquiry principles

Consultation Question 2: do you have any comment on the content of the inquiry principles?

No. In general we welcome the recognition of the need for speed and efficiency both in the progress to and conduct of the FAI. We also welcome greater shrieval involvement in how the FAI preliminary steps and hearing are to be conducted.

Representation and judicial continuity

Consultation question 3: Do you agree that wherever possible the same sheriff should deal with the inquiry from the point that the procurator fiscal gives notice that an inquiry is to take place, until final determination?

Do you foresee any practical difficulties with this?

Yes. We foresee a potential issue caused by the non-availability of the original Sheriff whether due to being continued or starting a new case. If the original Sheriff is to conduct the preliminary hearings(s) as well as the substantive FAI, we can see this causing delay. Better that a sheriff is retained for the preliminary hearings as he/she will have a grasp of the procedural matters which need to be resolved, but leave the allocation of the FAI hearing itself open.

The inquiry management powers

Consultation question 4: are you content with the approach to the sheriff's inquiry management powers? Are there specific illustrative powers which you think should be included in addition to those already listed?

Yes. We welcome greater shrieval involvement. This must be accompanied by a consistency of approach from all Sheriffs conducting FAIs.

Part 3 – pre-inquiry procedure

The first order and notices

Consultation question 5: Is there any further information which you think would be useful to include in the form of first notice?

No. We point out that the various forms 3.1, 3.3 and 3.4 in Schedule 2 look very similar. Our view is that it should be made clear on each form what it is, not differentiating simply by reference to the section of the Act to which it refers. There should be explanatory notes included with every form.

Consultation question 6: Do you think that imposing a deadline of 14 days within which the sheriff must make the first order is reasonable and practical?

Yes. This promotes certainty for the participants.

Consultation question 7: should we provide a timeframe within which the preliminary hearing and inquiry must start after the first order? If so, what should those timescales be? Do you think that the 28 day timescales provided for in the draft are achievable?

Yes in terms of the provision of a timescale.

With regard to the proposed 28 day time period, this would be sufficient if all participants have been notified and have had time to prepare. We do see participants invited to a FAI at a late stage. We suggest that, in a case in which not all the participants have been notified in time or at all, that 56 days should be the time limit. The Procurator Fiscal will have been able to prepare his or her case over time in the knowledge that the FAI will go ahead whereas other participants might not have that length of time to prepare.

Consultation question 8 – do you have any comments on the duty and timeframe set out in Rule 3.7?

Yes – we agree that a note as envisaged in the rule would be useful. However, participants must have enough time to be able properly to prepare and lodge the note as this is an important document in the context of the FAI. It may be that a participant wants or needs to change what they have written in their note and they should not as a matter of course be precluded from doing so.

Consultation question 9 – are there any other matters you consider should be dealt with at the preliminary hearing?

No. However we make the additional comment that there must be adequate time given for the preliminary hearing. Although the Sheriff has the power to order further preliminary hearings we would hope that such additional hearings would only be held in exceptional circumstances. We would expect all necessary issues should be capable of being addressed at the first preliminary hearing.

Part 4 – evidence

Agreeing evidence

Consultation question 10: are you content with the provisions on agreement of evidence?

Yes. This should serve to shorten the duration of the FAI and assist in reducing the number of matters which are genuinely in dispute.

Consultation question 11: with regard to the lodging of witness statements, what do you think the default position should be? Should the default position be that a witnesses statement should be lodged for every witness who is to give evidence at an inquiry, or should the converse presumption apply?

Yes. Witness statements should be lodged for each witness. This again will serve to promote speed and efficiency within the FAI.

Expert evidence

Consultation question 12: are you content with the provisions on expert witnesses?

Yes. Provided the provisions are used properly, the use of expert witnesses should serve to narrow issues and save time.

Consultation question 13: do you have any comments on how the provisions on single joint experts would work in practice?

Yes – we agree that the use of single joint experts (SJE) would assist in achieving the speed and efficiency sought by the Act and the rules. We refer to section 4.12 of the Act in this regard.

Consultation question 14: do you have any comments on how the provisions on concurrent expert evidence would work in practice?

We agree that concurrent evidence would be useful in certain circumstances. However, we suggest there should be a mechanism whereby experts can revisit the note they have prepared in view of new evidence which has come to light during the course of the FAI.

Part 5 – the inquiry

Consultation question 15: do you agree with the approach to Part 5? If not, please provide comments.

Yes. The Sheriff must be mindful of the need for the FAI to be dealt with efficiently and transparently.

Part 6 – the sheriff's determination

Consultation question 16: do you have any comments or suggestions regarding the sheriff's style determination, Form 6.1?

Yes. Providing flexibility within the determination is built in as suggested.

Schedule 3 – forms

Consultation question 17: do you have any comments on the content of any of the forms?

We reiterate our response to question 5. We believe that each of the forms should be clearly described on its face and there should be explanatory notes to accompany each form.

Schedules 1, 2, 4, 5, 6

Consultation question 18: do you have any comments on the technical provisions contained in schedules 1, 2, 4, 5 or 6?

No

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