Justice Committee

Inquiries into Fatal Accidents and Sudden Death etc (Scotland) Bill

Written submission from the Association of Personal Injury Lawyers

The Association of Personal Injury Lawyers (APIL) was formed by pursuers’ lawyers to represent the interests of personal injury victims. APIL is a not-for-profit organisation with 24 years’ history of working to help injured people gain the access to justice they need. APIL currently has around 4,000 members, 181 of whom are in Scotland. Membership comprises solicitors, advocates, legal executives and academics whose interest in personal injury work is predominantly on behalf of pursuers.

The aims of the Association of Personal Injury Lawyers (APIL) are:

- to promote full and just compensation for all types of personal injury;
- to promote and develop expertise in the practice of personal injury law;
- to promote wider redress for personal injury in the legal system;
- to campaign for improvements in personal injury law;
- to promote safety and alert the public to hazards wherever they arise; and
- to provide a communication network for members

Introduction

1. APIL welcomes the opportunity to respond to the call for evidence on the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill from the Justice Committee of the Scottish Parliament. APIL has previously responded to the review of fatal accident inquiry legislation led by the Rt Hon Lord Cullen of Whitekirk KT, the consultation on the Members’ Bill proposed by Patricia Ferguson MSP, and the recent Scottish Government consultation on the reform of fatal accident inquiries legislation.

2. While there have been some attempts by the Crown Office and Procurator Fiscal Service (COPFS) to address the delays in holding FAIs (through judicial education, and providing reasons for delays, for example) the state of the fatal accidents inquiry system is still deeply unsatisfactory.

Mandatory FAIs

3. Under clause two of the Bill, FAIs will be mandatory if someone dies in Scotland as a result of an accident at work, if they died while in legal custody, or if they were a child and died while being kept or detained in secure accommodation. We welcome these mandatory FAIs, which should hopefully ensure that answers are provided to bereaved families.

4. There have been previous suggestions from others that a FAI should be mandatory in every disease case. While we do not support this, as there would be limited value in holding repeated FAIs on the same subject matter, we think there
should be some flexibility in holding FAIs in certain disease cases. It would be expected that a FAI into mesothelioma contracted while working in dockyards, for example, would almost certainly reveal the same answers as to similar FAIs, but it may well be worth holding a FAI into a death caused by mesothelioma which was contracted while in a school, or from working in a shop.

5. While we welcome the mandatory FAIs which have been included within the Bill, the Bill does not go far enough. The 2008 consultation paper published as part of Lord Cullen’s review of fatal accident legislation notes that “other countries provide for mandatory inquests into deaths of people detained under compulsory mental health powers; unresolved homicides; deaths from anesthesia; deaths of unidentified people; deaths in care (including children in care and patients in alcohol and drug assessment or treatment centers); and apparent suicides”\(^1\).

6. We do not agree that FAIs should be mandatory in all the above cases, but FAIs should be mandatory in the deaths of people detained under compulsory mental health powers, deaths from anesthesia, and deaths in care. In general, deaths occurring in any situation where the state or an agent of the state was in a position of care and/or control over the deceased should be subject to a mandatory FAI.

**FAIs into deaths abroad**

7. We welcome the inclusion of clauses six and seven into the Bill, which cover inquiries into deaths occurring abroad. We have concerns, however, with the criteria included in clause six as to why a FAI might not be held into a death occurring abroad. The criteria could be used as loopholes, providing the Lord Advocate with justifications for not carrying out a FAI, where it may in fact be worthwhile doing so. The Lord Advocate may decide there is no need for an investigation because the circumstances of the death have been ‘sufficiently established’ in the course of an investigation in relation to the death. This should not be, by itself, a justification for a FAI in Scotland to be completely ruled out. Instead, the investigation which took place abroad could form part of the evidence for the FAI. This would ensure that answers are obtained for the bereaved family, lessons are learned and future accidents are prevented.

**Pre-inquiry procedures**

8. We support any proposals which will make FAIs quicker and more efficient, and we agree that preliminary hearings should be held to help speed up FAIs. Preliminary hearings will enable administrative and practical matters to be dealt with, and allow the sheriff to focus purely on the circumstances of the death at the FAI, which will be carried out with effectiveness, fairness and the minimum of delay. If a preliminary hearing is held, the issues can be identified in advance, and the actual FAI can then focus on the pertinent issues and will be much shorter and to the point. This will reduce delays and be much easier for the bereaved family to cope with.

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\(^1\) Review of Fatal Accident Inquiry Legislation, a consultation paper. November 2008, page 11 paragraph 3.8
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