Justice Committee

Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill

Written submission from Families Against Corporate Killers

1. Families Against Corporate Killers (FACK) is an ever-growing group of families, united by the bond of having lost loved ones in work-related incidents. These families have formed a national campaigning network which aims to stop workers and others being killed in preventable incidents and which will direct bereaved families to sources of legal help and emotional support, as well as advocacy and support through investigation and prosecution processes.

2. Families bereaved as a result of unsafe and unhealthy workplaces are angry and frustrated. They feel they have been robbed twice: once of their loved ones in incidents that should have been prevented if employers had simply obeyed the law on workplace health and safety; and secondly of their right to justice.

3. In respect of fatal accident inquiries, there are a number of current failures in the processes which we would like to see remedied, because families who have lost loved ones in work-related incidents want to know as quickly as possibly the how and why of their loved one’s death, and they want to know that lessons are going to be learned to stop others losing their lives or their loved ones in incidents that could and should be prevented.

4. Not all of the families referred to in this evidence have made contact with FACK, but we understand and share their frustrations and concerns and therefore use them for illustrative purposes.

Time limits and timing of FAls

5. Time limits within which an FAI should be convened must be introduced in order to put an end to the years families are currently having to endure waiting for answers. We also believe the practice of holding off on having an FAI until after the criminal proceedings have been concluded needs to be reviewed. Inquests most commonly take place in England and Wales before the criminal proceedings. We would rather an FAI was commenced within months of a death and adjourned to allow the criminal proceedings to take place should that be deemed necessary, than for an FAI to either not take place, or to take place many years after the death. Fourteen-year-old army cadet Kaylee McIntosh died in a drowning incident on 3 August 2007. Within around 6 months of her death, the Marine Accident Investigation Branch had issued an interim report. Such reports state at their outset: “This report is not written with litigation in mind and, pursuant to Regulation 13(9) of the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005, shall be inadmissible in any judicial proceedings whose purpose, or one of whose purposes is to attribute or apportion liability or blame.”

---

1 https://assets.digital.cabinet-office.gov.uk/media/547c701eed915d4c1000006f/RigidRaiderReport.pdf
Were such reports to be issued by the HSE, these could be considered alongside witness testimony at an FAI convened in early course.

6. The death of firefighter Ewan Williamson has been a focus for the media in recent months following the guilty plea by the Fire Service. This comes nearly 6 years after Ewan’s death. The press release issued by COPFS\(^2\) after the conclusion of the criminal proceedings stated “Crown Counsel will consider whether or not it is in the public interest to hold a Fatal Accident Inquiry” into his death.

7. So, families are being asked for their views after the conclusion of criminal proceedings which, as Ewan’s case illustrates, can be very many years on from the death. It is not difficult to understand why their views may be rather different after such a length of time, than they would have been just months after the death. A family will very often end up exhausted by the process. Because all too often families are left to engage in a battle with the justice system, a system which \textit{should} be there to serve them. And just when they are getting to the end of the criminal processes, energies drained, they are being asked to put themselves through more pain to get answers they should have had years ago, and to what end, because any recommendations that could be made are not enforceable, not meaningful. So, little wonder many decide it is not for them.

8. It is the rule, not the exception, for families to have to wait lengthy periods for answers. We would therefore take issue with the assertion in the policy memorandum accompanying the Bill that Lord Cullen’s recommendation in this regard - that FAI’s should be held as promptly as possible after the death - has been implemented. The widows of the three men who died on the Flying Phantom had to wait nearly 7 years for the conclusion of criminal proceedings and for the decision to be taken not to proceed with an FAI\(^3\). The families of those the 16 men who lost their lives in the Super Puma helicopter had to wait nearly 5 years before an FAI was held into their deaths\(^4\).

9. It is utterly unacceptable that families are having to wait so long for answers as to why their loved ones died. The stress of getting through each day without a husband, son, parent, sibling etc by your side is hard enough. Doing that while not knowing how or why they died makes it all the more unbearable.

10. That is not to say that some healing does not take place during the wait for answers. It can. But then any wounds which have begun to heal are ripped open again by finding out new information so long after the event. So, for example, an FAI was held into the death of Dr Graham Meldrum at Allied Bakeries on 12 July 2005\(^5\), a death caused by his head being impaled on the faulty tail-lift of a truck. His partner, friends and family, more than 3 years after his death, had to listen as lawyers argued about which way the blood had been running down his head. The widows of the three men who died on the Flying Phantom had to wait nearly 7 years for the conclusion of criminal proceedings and for the decision to be taken not to proceed with an FAI\(^3\). The families of those the 16 men who lost their lives in the Super Puma helicopter had to wait nearly 5 years before an FAI was held into their deaths\(^4\).


\(^{4}\) http://www.scotland-judiciary.org.uk/10/1244/Fatal-Accident-Inquiry---Super-Puma-Helicopter-Crash

\(^{5}\) https://www.scotcourts.gov.uk/opinions/meldrum.html
up to Graham’s death about faulty tail lifts on the company’s lorries. Opportunities to perhaps have prevented Graham’s death, being disclosed 3 and a half years after his death, and acting like body blows.

**Witness testimony**

11. There is also a very real issue with the quality of witness testimony so long after the event. The families of the 9 people who died in the ICL Stockline explosion – which occurred on 11 May 2004 - waited more than 4 years for a public inquiry into their loved ones’ deaths to begin, and a further year for the final inquiry report to be published\(^6\). In the lead up to the inquiry, some expressed the opinion that one key problem they could foresee was the fact that survivors didn’t want to be involved. Many were back at work and didn’t want to talk.

12. In other circumstances families have spoken of witnesses saying one thing in the immediate aftermath of the incident which led to the death, then, years on during FAI, inquest or court proceedings, their recollection has either changed, or is so hazy as to be worth very little. This might be because they truly don’t remember because of the passage of time. It may also be because they have been promoted within the same company and don’t want to be seen rocking the boat. Or it may be that they were dismissed after the incident in question and having subsequently found it difficult to find work, they don’t want to be seen raising their head above the parapet again.

13. Often, where a “mandatory” FAI does not take place, it is because it is said that the full facts and circumstances have been explored in criminal proceedings. Yet, in those criminal proceedings, there has often been no trial as the employer has pled guilty. We therefore question how the full facts and circumstances can have been explored when witnesses have not been heard from.

**Learning lessons and making enforceable recommendations**

14. The policy memorandum issued alongside the Bill states that “of the 50-60 inquiries held every year, very few ever come to the attention of the Government, Parliament of the media.” This in itself is surely indicative of the fact that lessons are not being learned from the current system.

15. Expediency is again an issue in ensuring lessons are learned. Brian French, a father of five, and Colin Ferguson were killed when their Land Rover was crushed by a 100 tonne truck at Pennyvenie open cast mine on 26 February 2007\(^7\). Other than a standard letter received a month later, Brian and Colin’s families received no information from the procurator fiscal until more than 15 months after the deaths of their loved ones. This came only after they wrote to the then Lord Advocate to tell her they had been very patient, and they thought some might say too patient because in the months they waited for news about a prosecution, Jim Griffin (a father of three) was crushed between 2 dumper trucks at Pennyvenie. The FAI into the deaths of Brian and Colin didn’t take place until more than 4 years after their deaths.


\(^7\) [https://www.scotcourts.gov.uk/opinions/2011FAI32.html](https://www.scotcourts.gov.uk/opinions/2011FAI32.html)
It is painful to suggest, but perhaps if it had been held sooner, Jim’s death could have been avoided.

16. Two years after the death of Michael Adamson in an electrical incident, his sister read about Barry Martin, electrocuted at work in 2003. Barry’s employer had failed to ensure power switches were safely isolated to prevent their inadvertent reconnection. The judge described the 4 years it took to get that case to court as a “matter of regret”. Michael’s sister puts it more strongly than that, because her brother died because of that exact same failure, as did 6 other electricians between 2004 and 2006. Barry Martin’s death did not take place in Scotland. But if it had, and if an FAI had taken place swiftly, with binding recommendations made to electrical contractors, Michael’s death (and others) may very well have been avoided. The public interest would therefore be served by ensuring binding recommendations can be made (preferably by specialist sheriffs).

Fatal incident inquiries

17. Far too often a work-related death is described as an “accident waiting to happen”. We dispute whether an accident waiting to happen can truly be described as an accident. We would therefore advocate a change of focus away from “accident” to “incident”.

Conclusion

18. A family who loses a loved one in a work-related incident needs to know that the death has not been for nothing. There is a fundamental need to know that some good is going to come from the death. We would urge you to put that at the heart of your deliberations on the Bill.

Families Against Corporate Killers
30 April 2015

---

8 [http://news.bbc.co.uk/1/hi/england/sex/6647121.stm](http://news.bbc.co.uk/1/hi/england/sex/6647121.stm)