

## Justice Committee

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

#### Written submission from Victim Support Scotland

Victim Support Scotland is the lead voluntary organisation in Scotland helping people affected by crime. We provide emotional support, practical help and essential information to victims, witnesses and others affected by crime in every Scottish local authority area, and in every Sheriff and High Court in the land. The service is free, confidential and is provided by volunteers. Victim Support Scotland welcomes the opportunity to provide our views to the Committee on the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill.

#### Mandatory and discretionary FAIs

Victim Support Scotland supports the introduction of this Bill. In our opinion, all those bereaved by a sudden death will have similar questions regarding how the death occurred and why. In order to provide the answers necessary to facilitate recovery for families of the deceased, suitable processes should be developed irrespective of the circumstances in which a fatal accident has occurred; this may be through the criminal justice system or civil processes such as a Fatal Accident Inquiry (FAI). It is hoped that the ability of the Lord Advocate to hold a discretionary FAI should be sufficient to cover circumstances in which it is not mandatory to hold an FAI but where one should nevertheless be held.

Most crucially, family members should be provided with the opportunity to express their views on the holding of an FAI into the death of their loved one, and such views should be taken into account by the Crown Office and Procurator Fiscal Service when considering whether to hold a discretionary FAI. Although consultation with the family of the deceased is not provided for on the face of the Bill, VSS is reassured by the statement within the policy memorandum that, "Once death investigations are concluded, relatives are invited to discuss the findings with the procurator fiscal and, where an FAI is discretionary, their views as to whether there should be an FAI will be explored and taken into account."<sup>1</sup>

Where it has been decided that an inquiry will not be held, the reasons for this should be provided to the family of the deceased. We note that the practice of COPFS has been to inform the bereaved family of a decision not to hold an FAI, either in face to face meetings or in writing<sup>2</sup>, and particularly hope that this practice continues, allowing the families an opportunity to meet with a representative of COPFS to discuss the decision in person.

---

<sup>1</sup> Inquiries into Fatal Accidents and Sudden Deaths etc.(Scotland) Bill Policy Memorandum, p.10  
[http://www.scottish.parliament.uk/S4\\_Bills/Fatal%20Accidents%20\(Scotland\)%20Bill/b63s4-introd-pm.pdf](http://www.scottish.parliament.uk/S4_Bills/Fatal%20Accidents%20(Scotland)%20Bill/b63s4-introd-pm.pdf)

<sup>2</sup> Inquiries into Fatal Accidents and Sudden Deaths etc.(Scotland) Bill Policy Memorandum, p.25  
[http://www.scottish.parliament.uk/S4\\_Bills/Fatal%20Accidents%20\(Scotland\)%20Bill/b63s4-introd-pm.pdf](http://www.scottish.parliament.uk/S4_Bills/Fatal%20Accidents%20(Scotland)%20Bill/b63s4-introd-pm.pdf)

Although the policy memorandum recognises that, “It can be the case that different parts of a family may have different views”, the possible variance in the needs and degree of engagement within a family does not seem to be reflected in section 8 of the Bill, which provides only for the spouse/partner or nearest known relative to be provided with written information on the reasons for a decision not to hold an inquiry, on request. VSS believes that such an approach could make it difficult for those who wish a more detailed, reasoned decision to be provided to them, as they would be forced to ask a particular person within the family to make the request; this may cause additional strain, whether on relationships within the family or on the specified person his or herself, who may not feel able to do this. It is the view of Victim Support Scotland that prescribed relatives of the deceased should be able to request written reasons for the decision not to hold an FAI, similar to the approach used within the Victims and Witnesses (Scotland) Act 2014<sup>3</sup>. Irrespective of who is eligible to make a request for written information, the relevant individual(s) should be made aware of their right to do so.

In general, it is fundamental that the family of the deceased is regularly kept up-to-date on the progress of the investigation and application, and support should be made available for them before, during and after an inquiry is held. Information and guidance must be given on the procedures involved so that the entire process is understood and the strain on the family is reduced to a minimum. It is important that the families involved are given enough time to digest the information provided to them, and to prepare for the next stage of the process.

We note the Lord Advocate’s ability to exercise discretion in holding an inquiry (within a mandatory category) if satisfied that the circumstances of the death have been sufficiently established during the course of other proceedings. We welcome this provision, as it is our view that an additional and unnecessary hearing would not be in the best interests of the family of the deceased and/or potential witnesses, as this may delay their recovery and deny them closure at an earliest possible stage.

### **FAIs into deaths abroad**

Victim Support Scotland acknowledges that many practical jurisdictional problems may arise if FAIs are to be held into the death of Scots abroad, for instance regarding obtaining evidence and witness statements. However, it would still be useful to have the legal framework and ability to improve cross-border information sharing within the area of FAIs. The bereaved family will experience similar shock and devastation regardless of where the death occurs. Relatives of the deceased will want to have the circumstances around the death investigated, irrespective of where it happened, so we welcome the extended scope of FAIs within this area. Information regarding the range and capacity of the inquiry, including any practical problems which may occur in respect to cross-border cooperation, should be given to relatives and families engaging in FAIs

---

<sup>3</sup> Section 6(2)(b) of the Victims and Witnesses (Scotland) Act 2014 provides that prescribed relatives (defined by order) of deceased victims are able to apply for information on the progress of the case. <http://www.legislation.gov.uk/asp/2014/1/section/6>

to ensure that they have realistic expectations of what results will come from the inquiry process.

### **Pre-inquiry procedure**

Victim Support Scotland believes the pre-inquiry procedures within the Bill to be reasonable, noting that they are intended to reduce delays. We support any measure that will speed up the FAI process, such as preliminary hearings and the agreement of facts before an inquiry, so long as it takes into consideration the needs of the family of the deceased and other witnesses involved. The sooner an inquiry is held, the faster bereaved relatives and friends can begin their recovery process. In addition to making the process more efficient, we believe that preliminary hearings will provide an early opportunity to assess whether there will be vulnerable witnesses involved, and therefore ensure support is provided for them.

We feel that it is reasonable that the sheriff should be able to transfer a case to a different sheriffdom if this is felt appropriate. In making this decision, the sheriff should consider the wishes and circumstances of the family of the deceased and other witnesses to the inquiry in relation to travel time and other practical arrangements.

### **Practical implications of the Bill**

Expanding the categories for which an FAI is mandatory may result in an increase in the number of witnesses and bereaved friends and relatives who may require support through the process. Going to court to give evidence can be very confusing and traumatic for family members and other individuals close to the deceased, many of whom would greatly benefit from accessing support services throughout this demanding process.

Victim Support Scotland's court based Witness Service provides practical information and emotional support to anyone being called as a witness in Scottish Sheriff and High Courts. Although Victim Support Scotland does not advertise our services to participants in FAI proceedings, our Witness Service does on occasion provide limited services to this group of witnesses if they are encountered upon during the Witness Service's routine work. However, without a proper referral arrangement, the Witness Service cannot plan and provide any targeted support to this group of service users. In preparation of giving witness statements, many witnesses find it helpful to visit the court in a 'familiarisation visit'. If a referral mechanism was put in place to inform the Witness Service of any witness called to participate in an FAI, familiarisation visits could also be offered to this group.

Furthermore, Victim Support Scotland's community based Victim Service, located in each local authority area in Scotland, provides practical and emotional support and information to people affected by crime, including families bereaved by murder. They understand the reactions and implications of losing a family member and are in a good position to be able to expand their services to include family members taking part in an

FAI. Victim Support Scotland's current funding does not include service provision to families taking part in FAIs, so if our remit should be extended, resource implications must be addressed.