

Justice Committee

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

Written submission from the Forum of Scottish Claims Managers

About the Forum of Scottish Claims Managers

The Forum of Scottish Claims Managers exists as a representative organisation on behalf of its members, working to improve the handling of insurance claims to deliver a better service to claimants, and seeking to promote the interests of the Forum members in civil justice matters covering the handling of insurance claims. The Forum aims to be actively engaged, with all interested parties, in discussions and debate relating to Third Party¹ claims in Scotland including Pre and Post-litigation. A membership list and more information on the Forum are appended below.

General comments

We welcome the policy objective of the Bill to reform and modernise the law governing the holding of fatal accident inquiries in Scotland. We note that Patricia Ferguson MSP has proposed a Members' Bill to reform fatal accident inquiries; we consider that the Scottish Government's proposals, as currently set out in the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill, provide the more workable, flexible and effective reform package.

Mandatory fatal accident inquiries (Sections 2 - 3)

We support the circumstances provided for in the Bill for mandatory fatal accident inquiries and do not believe that alternative approaches should be considered.

Discretionary fatal accident inquiries (Section 4)

We support the circumstances provided for in the Bill for discretionary fatal accident inquiries and do not believe that alternative approaches should be considered.

Inquiries into deaths occurring abroad (Sections 6 - 7)

We support the circumstances provided for in the Bill for inquiries into deaths occurring abroad.

Pre-inquiry procedure (Sections 14 - 17)

We consider that a fatal accident inquiry should not take place where criminal proceedings are being considered or are still underway, as competing investigations would not be in the public interest. We note that this is not explicitly provided for in

¹ 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.

the Bill and whilst we understand that the decision to launch both criminal proceedings and fatal accident inquiries rests with the Lord Advocate, it may be appropriate to have an express provision to this effect within the Bill.

Expenses (Section 24)

We consider that section 24 requires amendment as we are of the view that a Sheriff should retain the power to make an award of expenses against the Crown, where the Inquiry is deemed unnecessary or vexatious by the Sheriff, in line with current legal precedent as outlined in the case of *Global Santa Fe Drilling (North Sea) Limited and others v The Lord Advocate*.²

Calum McPhail
Chairman of the Forum of Scottish Claims Managers
27 April 2015

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

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.

² 2009 CSIH 43. Available to view - <http://www.scotcourts.gov.uk/opinions/2009CSIH43.html>

Membership:

ACE European Group Ltd AIG Europe Ltd Allianz Aviva Direct Aviva Insurance AXA Churchill Direct Line Eagle Star Direct Esure ERS General Accident Halifax Liverpool Victoria More Than NFU Mutual NIG	Pearl Privilege Prudential PSV Claims Bureau Ltd QBE Quotemehappy RSA Travelers Insurance UKI Insurance Zurich Municipal Zurich Insurance Plc Glasgow City Council North Lanarkshire Council Motor Insurers Bureau
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