

Secretary
Review of Fatal Accident Inquiry Legislation

5 February 2009

Dear Secretary,

REVIEW OF FATAL ACCIDENT INQUIRY LEGISLATION – CONSULTATION

Thank you for providing the Scottish Committee with the opportunity to comment on the above consultation. As a result of Schedule 7 of the Tribunals, Courts and Enforcement Act 2007 the SCAJTC now has a wider remit in reference to access to the Administrative Justice system and in particular for users.

The SCAJTC recently discussed the FAI consultation and formed the view that this consultation fell into the category of Administrative Justice and as such members wished to record the following response.

Section 2

In section 2 the question is raised about the current forum which is in place for FAI's and asks whether a specialist tribunal should be established to consider future cases. The SCJATC takes no firm view on this question. Members considered that so long as the user can easily gain access to the system then they hold no objection to the current forum being maintained. However if as a result of this consultation it is decided to establish a tribunal specifically to deal with FAI's then the SCAJTC would certainly be willing to offer its services to provide advice and expertise on the setting up of the tribunal. Our parent organisation the AJTC has a Framework of Standards and a set of Model Rules for tribunals, which we would certainly make available.

Section 4

The Committee also noted the reference to legal aid at 4.1 and would recommend that the current approach needs to be reviewed by SLAB in order to make the provision of legal aid more accessible to the user. Our understanding is that the availability of legal aid is somewhat unclear and leads to relatives of the deceased being confused about their relationship with the Crown (Procurator Fiscal) and the

PF's role in the FAI. The consultation acknowledges that the current lack of funding would seem to be in breach Article 2 of the ECHR, which surely has to be a factor for consideration in any future recommendations for the FAI system.

I should also point out that the Scottish Committee of the Administrative Justice and Tribunals Council should replace the reference to the Scottish Committee of the Council on Tribunals on page29.

I hope this information is of some help to you.