

An Update on Fatal Accident Inquiries

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The challenges

- The client's interests
- Findings and recommendations
- Expectations throughout the inquiry

First principles

- The circumstances of the death
- Prevention of similar deaths
- An inquisitorial process
- Civil and criminal liability outside the statutory purpose

2016 Act, section 1(3)–(4) FAI Rules, rule 2.2

Statutory framework

- Formal findings about the death and accident
- Precautions and defects in systems
- Other relevant facts
- Recommendations for future prevention

2016 Act, section 26(2)–(5)

Preparation and participation

- Early advice on participation
- Scope and disputed issues
- The preliminary hearing
- The sheriff's management powers

FAI Rules, rules 2.6 and 3.6–3.8

Agreement of evidence

- Agreement on undisputed facts
- The significance of what remains disputed
- The sheriff may require further evidence

2016 Act, sections 18 and 20(2) FAI Rules, rules 4.10–4.12

Expert evidence

- Expertise directed to the statutory questions
- Reasonable care and reasonable precautions
- Availability and potential effect

FAI Rules, rules 4.15–4.19 Duncan, [19]–[29] and [48]–[64]

Large scale inquiries

- Specialist investigation reports
- Norfolk: the English coronial approach
- The sheriff's statutory task
- The need for further evidence

Norfolk [2016] EWHC 2279 (Admin), [49], [56]–[57] Carmont, [22], [43]

Duncan v Lord Advocate

- A child's death and a proposed referral
- More than one reasonable clinical option
- Judicial review of the precaution finding
- The Inner House upheld the finding

[2025] CSIH 27 2026 SC 30

Reasonable precautions

- A precaution which could reasonably have been taken
- A realistic possibility of avoiding the death or accident
- Evidence for both limbs
- A finding is mandatory when the criteria are met

2016 Act, section 26(2)(e) Duncan, [51]–[53]

Professional judgment

- More than one reasonable course
- The same statutory test across professions
- Myles, Bellfield, Sutherland and Leo Lamont

Duncan, [54]–[63]

Hindsight and evidence

- Retrospective examination and future learning
- Foreseeability under section 26(3)
- Evidence of availability and potential effect

2016 Act, section 26(3) Duncan, [51]–[53], [60]–[64]

Riverboarding at Stanley Weir

- Kayden Walker, aged 12
- River Tay at Stanley, July 2019
- Separation from his board and underwater entrapment
- Precaution: bypass the weir by the riverbank

Kayden Walker and Ruaridh Stevenson [2026] FAI 55, finding 5(i)

Precautions in practice

- The particular hazard at the weir
- The composition and experience of the group
- A practicable alternative route
- Precision in proposed findings

Kayden Walker and Ruaridh Stevenson, [115]–[123]

Carmont derailment

- 12 August 2020: three deaths
- Modern train lifeguard: the second limb failed
- Later improvements informed recommendations

[2026] FAI 59, [1]–[4], [334]–[337], [384]–[386]

Recommendations

- Future prevention
- The significance of later improvements
- Addressed participants: eight weeks from receipt
- The duty to respond and implementation

2016 Act, sections 26(4)–(5) and 28



Client expectations

- The legal character of a finding
- The impact of a published determination
- Realistic advice throughout and after the inquiry

2016 Act, sections 1(4), 26(6) and 28 Duncan, [48]–[53]

Focus for the future

- Early advice on scope and participation
- Evidence directed to the statutory questions
- Realistic advice on findings and recommendations



Questions

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