

Compass Chambers



Preparation and Presentation of Fatal Accident Inquiries for Junior Solicitors

Elaine Smith, Advocate



Introduction

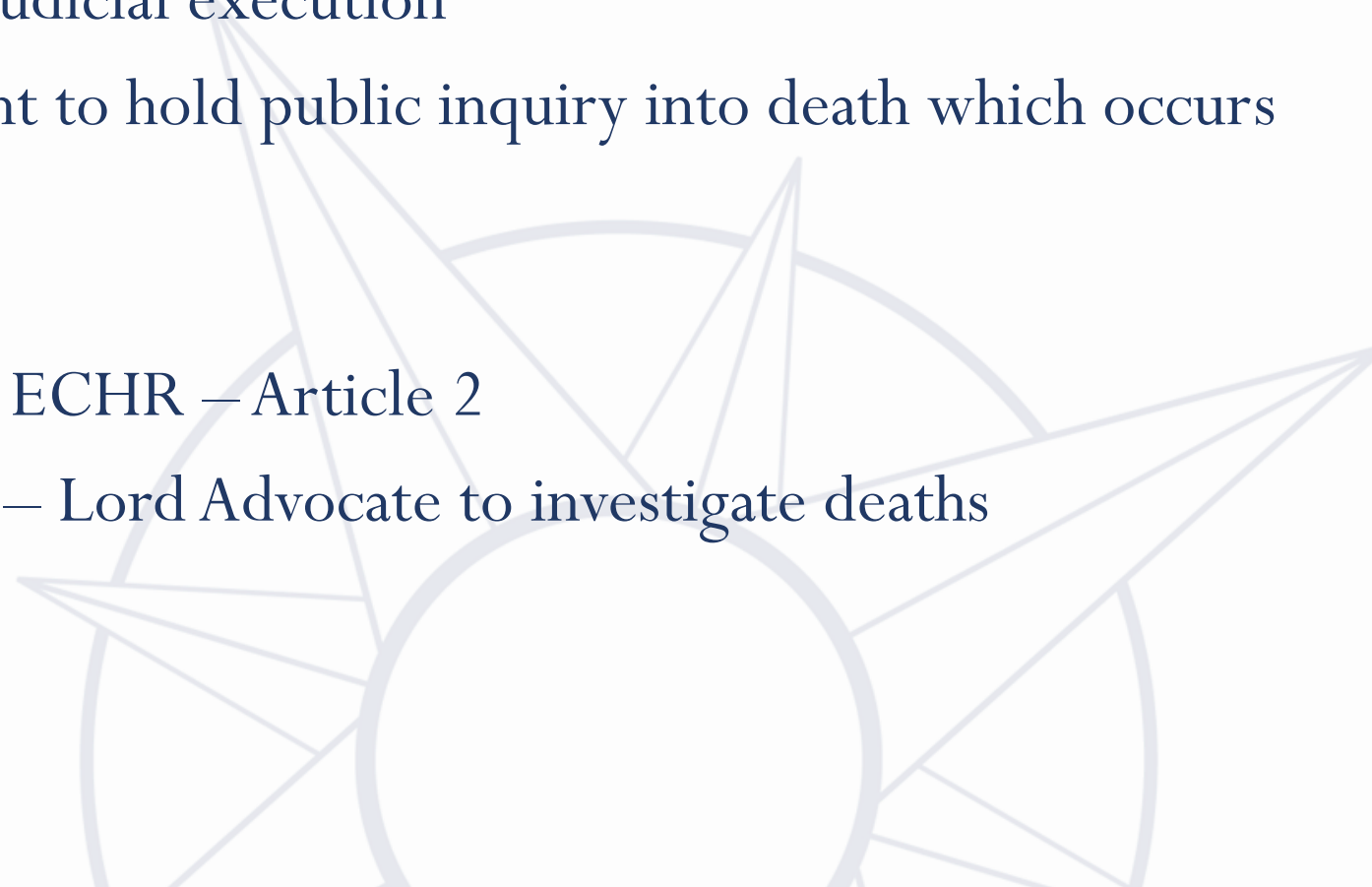
- Background to FAIs
- Statutory development
- Crown's role in FAIs and role of other agencies
- Taking instructions - what do you want?
- Preparing for an FAI
- Evidential hearings
- Determination
- Homework





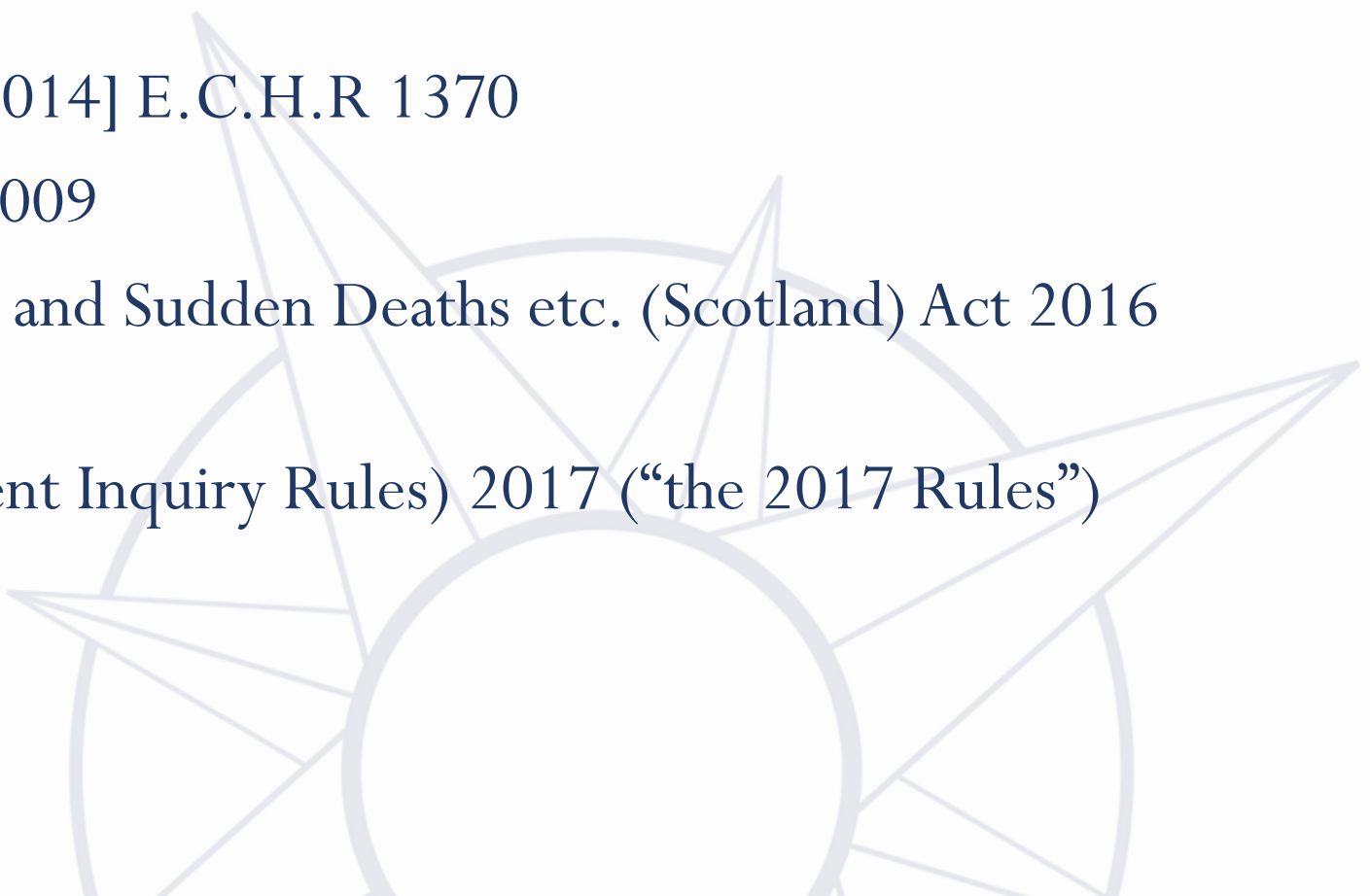
Background to Fatal Accident Inquiries

- Why do we have FAIs?
- 1868 – Public hearing after judicial execution
- 1895 – Statutory requirement to hold public inquiry into death which occurs in employment.
- Sheriff and jury
- Post-WW2, development of ECHR – Article 2
- S48(5) of Scotland Act 1998 – Lord Advocate to investigate deaths





Statutory Development and Rules

- Fatal Accident and Sudden Deaths Inquiry (Scotland) Act 1976 (“the 1976 Act”)
 - *McDonnell v United Kingdom* [2014] E.C.H.R 1370
 - Cullen Review – Reported 2009
 - Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (“the 2016 Act”)
 - Act of Sederunt (Fatal Accident Inquiry Rules) 2017 (“the 2017 Rules”)
- 



Statutory Development and Rules – *When can FAIs be held?*

MANDATORY:

- S2(1) of 2016 Act:
 - Death of someone in Scotland when acting in course of their employment and occupation
 - Death in custody

BUT

- S3 of 2016 Act:
 - Exception to the mandatory rule where death sufficiently established in prescribed proceedings

DISCRETIONARY:

- S4 of 2016 Act:
 - Death was (i) sudden, suspicious or unexplained; or, (ii) occurred in circumstances giving rise to serious public concern, AND
 - Public interest for inquiry
- Note: Public interest not always aligned with interests of families.
- See Yuill and Bell FAI [2024] FAI 18 at para 21



Statutory development and rules for FAIs

- *Expansion*

- S6 – Death abroad for individual ordinarily resident in Scotland
- S7 – Death abroad of service personnel





Crown's role in FAIs and role of other agencies

- Lord Advocate delegates investigation of deaths to procurators fiscal.
- Medical professionals and Police Scotland can report death to COPFS. Guidance given for reporting: <https://www.copfs.gov.uk/about-copfs/our-role-in-investigating-deaths/#when-we-investigate-deaths>
- COPFS specialist units involved in deaths:
 - HSIU
 - RTFIU
 - CAAPD
 - CDU
 - Homicide
 - SFIU
 - CDIT





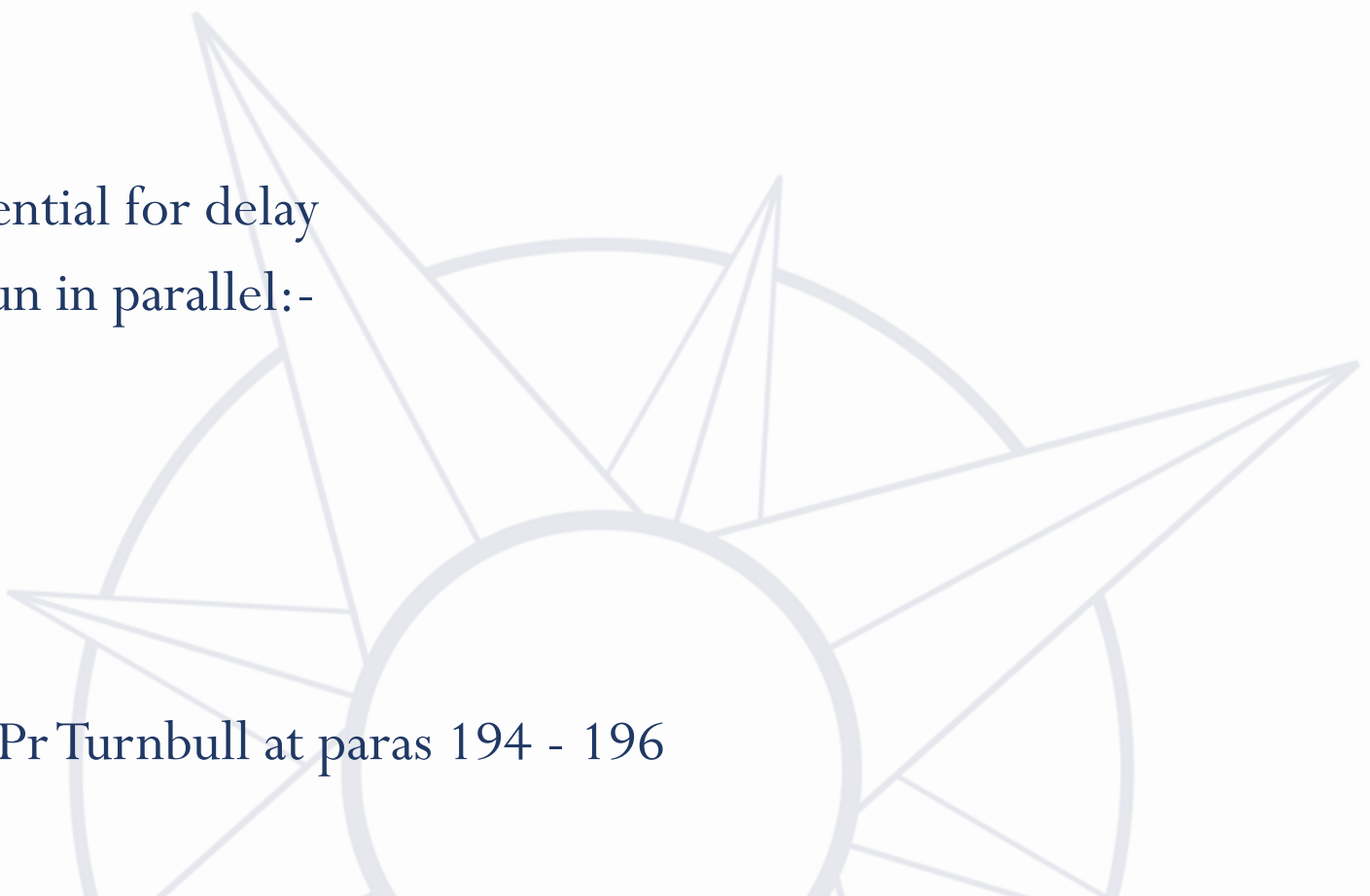
Crown's role in FAIs and role of other agencies - *Investigating agencies*

- Investigating agencies — Signatories to work-related deaths protocol:
 - PSoS
 - BTP
 - ORR
 - HSE
 - ONR
 - SFRS
 - MCA





Crown's role in FAIs and role of other agencies - *Investigating agencies*

- But there are more:-
 - Local authorities
 - SEPA
 - PIRC
 - Multi-agency investigations – potential for delay
 - Other investigations which may run in parallel:-
 - HMICS
 - HMIPS
 - MAIB
 - AAIB
 - RAIB
 - See Wade FAI [2023] FAI 13 – Sh Pr Turnbull at paras 194 - 196
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Crown's role in FAIs and role of other agencies – *Experts*

- Pathologist or Forensic pathologist
- Toxicologist
- Neuropathologist
- Scientists at SPA
- Independent experts



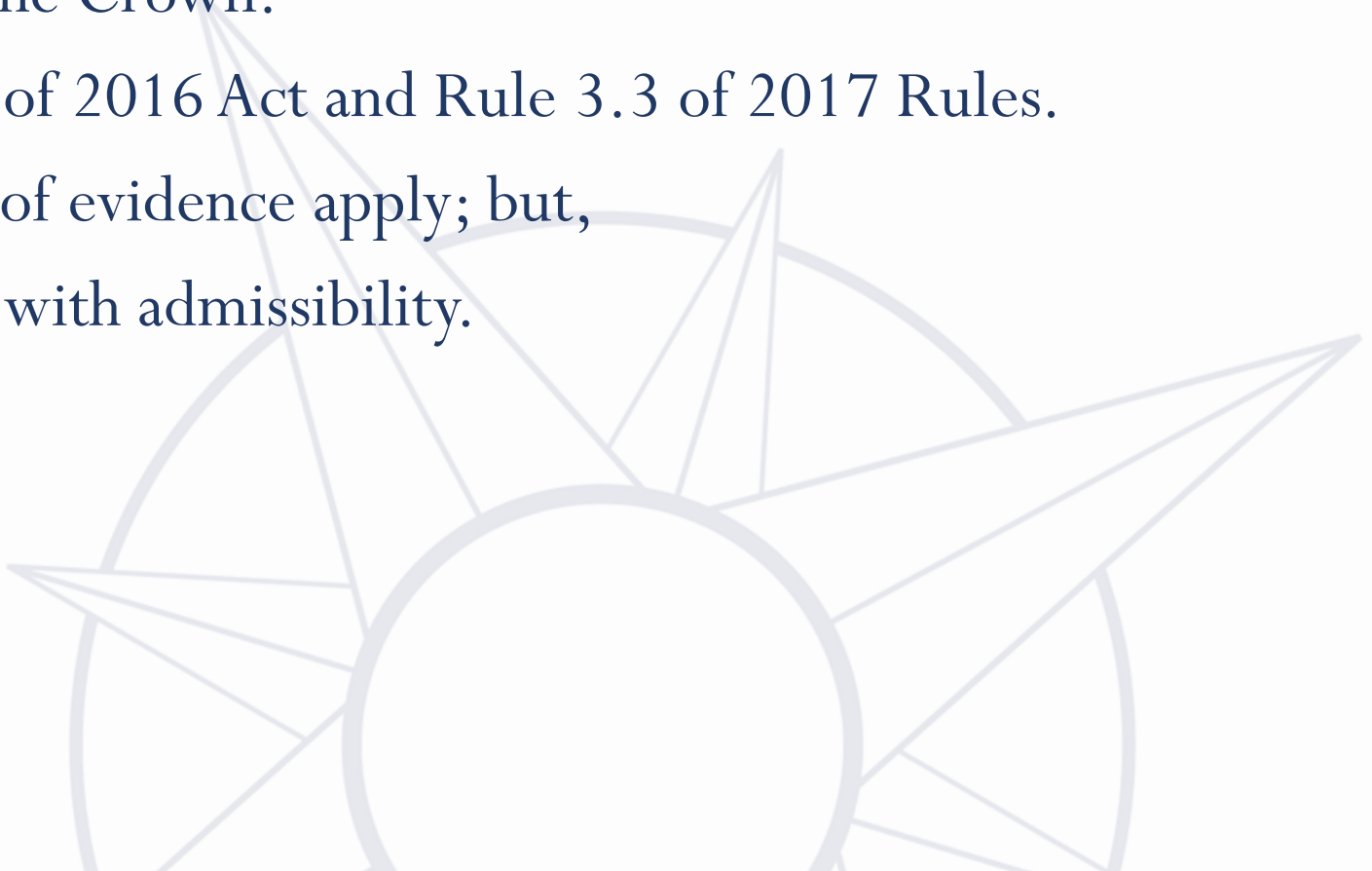


Taking instructions - *what do you want?*

- Understand what your client wants to achieve.
- Can what they want be achieved?
- S1 of 2016 Act:
 - (3) The purpose of an inquiry is to—
 - (a) establish the circumstances of the death, and
 - (b) consider what steps (if any) might be taken to prevent other deaths in similar circumstances.
 - (4) But it is not the purpose of an inquiry to establish civil or criminal liability.
- If fault found, should be recorded – see Yuill and Bell FAI [2024] FAI 18 at para 37 and Barkley and Others FAI (Super Puma) [2014] FAI 5 at para 7
- Proceedings are inquisitorial not adversarial – see para 18 of Explanatory Notes and Rule 2.2(1) of 2017 Rules.



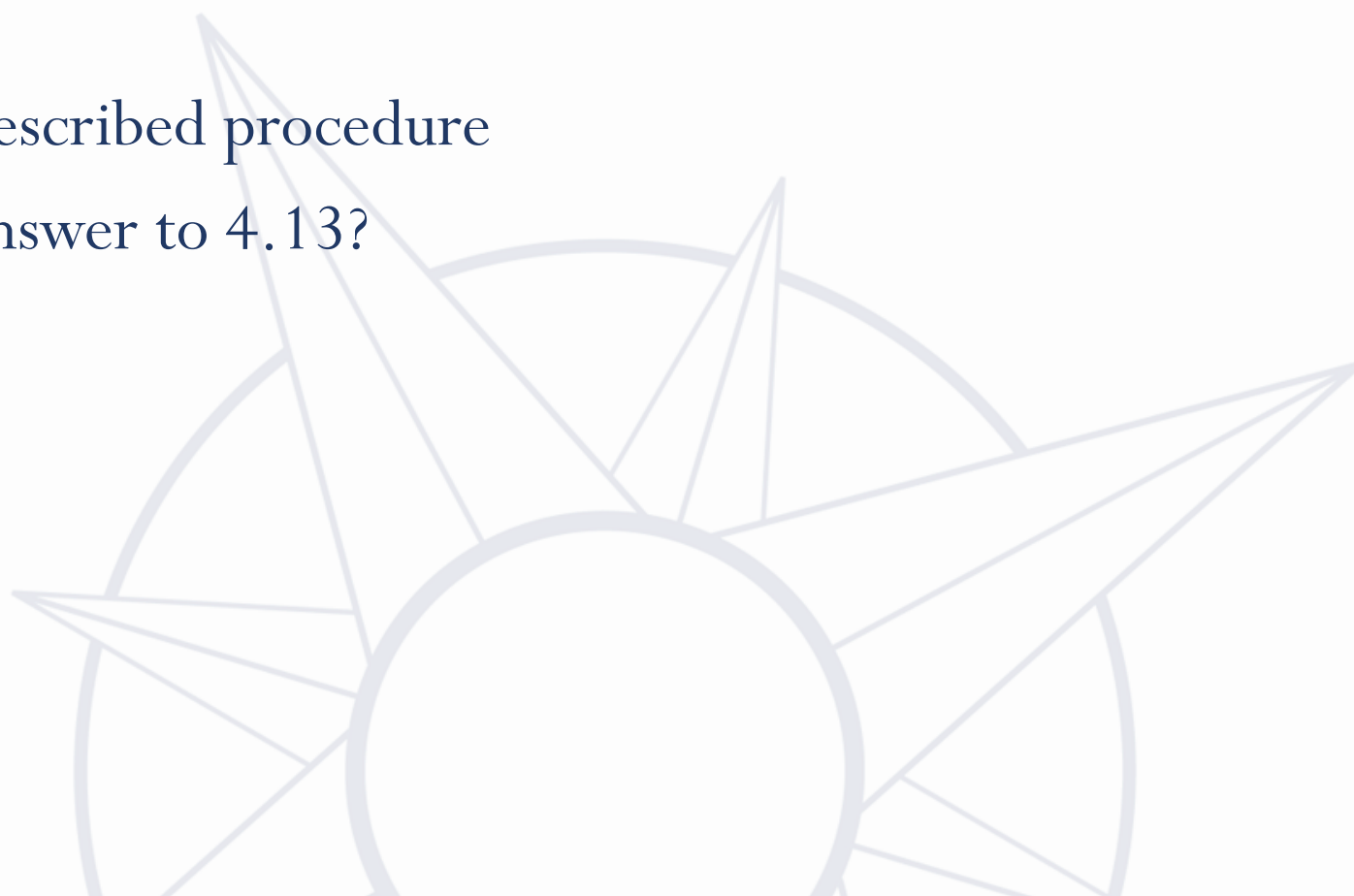
Preparing for an FAI

- Read the 2016 Act and read the 2017 Rules.
 - Participants given notice by the Crown.
 - Details of participants in s17 of 2016 Act and Rule 3.3 of 2017 Rules.
 - S20 of 2016 Act – civil rules of evidence apply; but,
 - Rule 4.1 abolishes any issues with admissibility.
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Preparing for an FAI — *how is evidence admitted?*

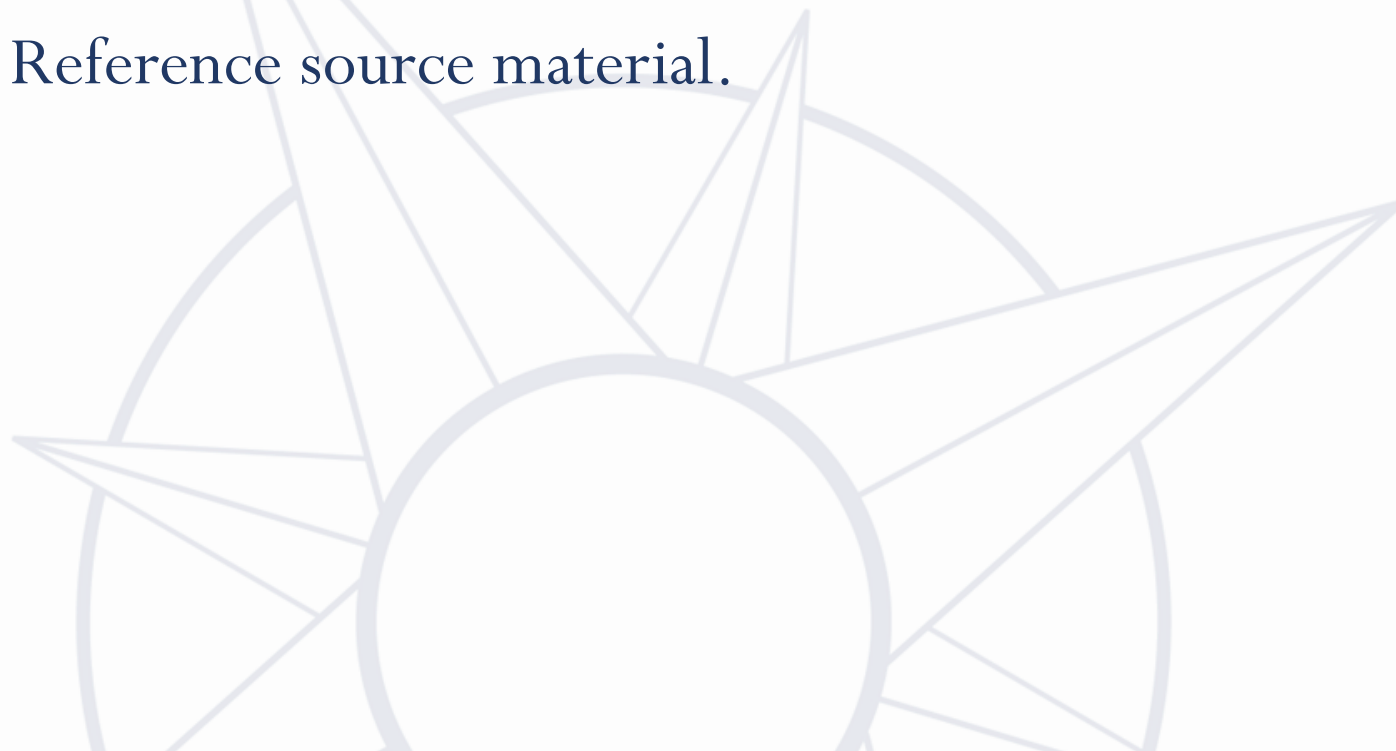
- Rules refer to information and evidence.
- Relevant rules 4.1 – 4.19.
- Rule 4.13 – Statements – prescribed procedure
- Rule 4.2(b) – the practical answer to 4.13?
- Rule 4.10 – JM
- Rule 4.11 – Duty to agree
- Rule 4.12 – Notice to admit





Preparing for an FAI — *Joint Minutes*

- Sheriff not bound by content of the JM.
- Smith FAI [2018] FAI 40 at paras 5-6.
- Allan FAI [2020] FAI 8 at para 14 and 22
- Agree facts not proposition. Reference source material.





Preparing for an FAI – *Do I need to lead evidence?*

- Think about your final submission.
- S26 of 2016 Act sets out what inquiry is to find.
- Rule 3.7 – have to give notice of witnesses and productions along with details of how evidence will further inquiry.
- Rule 4.15 – if you need an expert application required.





Evidential Hearings

- Knowing your papers is key.
- Sheriff can order additional evidence.
- Mexican standoff...





Determination

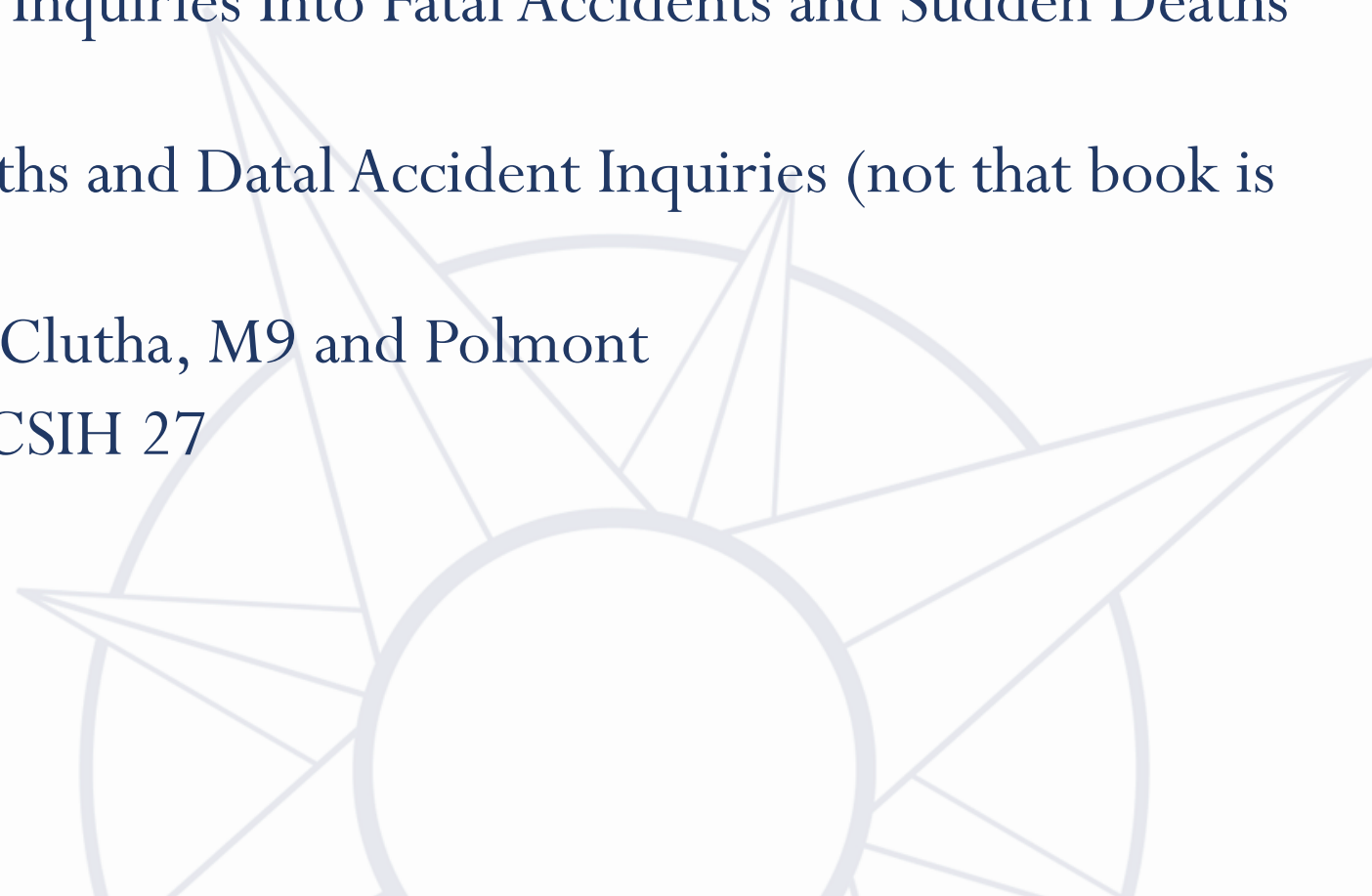
- S26 2016 Act – Determination required as soon as possible after the conclusion of evidence and submissions.
- Different language between 1976 Act and 2016 Act
- *Duncan, Petitioner* [2025] CSIH 27.
- Criticism - no way of enforcing recommendations.





Homework...

- Greens Annotated Acts – Inquiries Into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016
- Carmichael: Sudden Deaths and Datal Accident Inquiries (not that book is slight old)
- Introductory blurb from Clutha, M9 and Polmont
- *Duncan, Petitioner* [2025] CSIH 27





Questions...



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