

Compass Chambers



# FATAL ACCIDENT INQUIRIES PITFALLS – Part 2

Kate Bennett, Advocate  
Compass Chambers

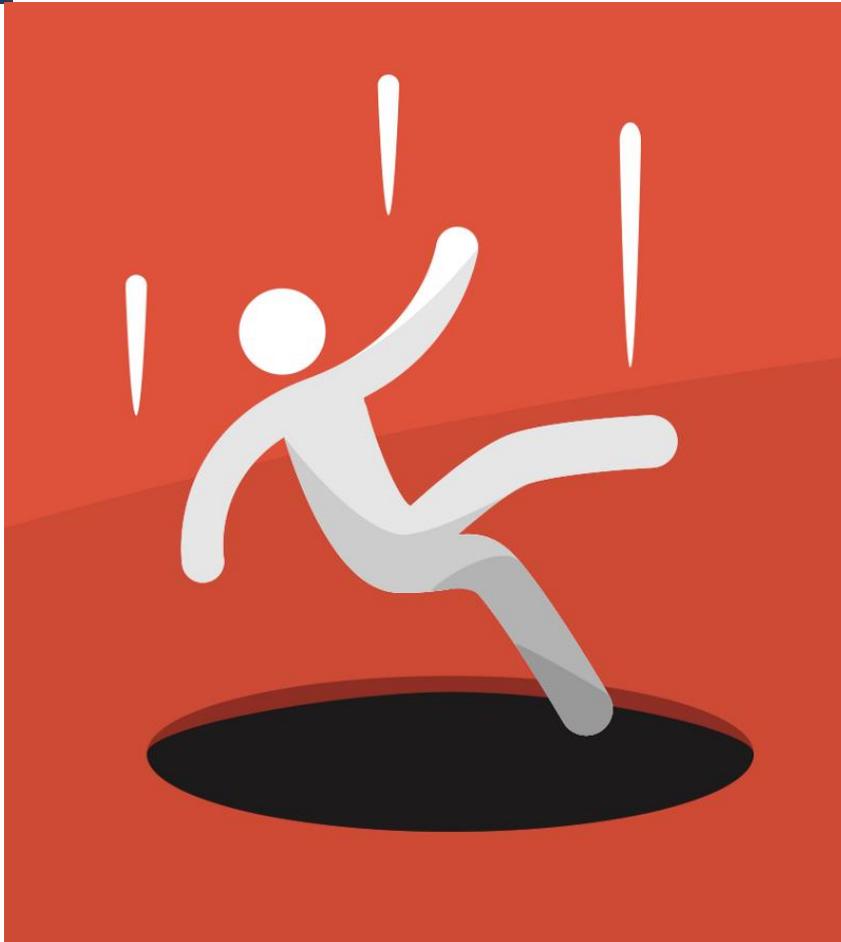
22 November 2024

# Introduction



- Falling into pits – a personal view
- Potential pitfalls
- Things going wrong-Delay
- News

# Agreement of Evidence



Rule 4.11 – DUTY to agree information

Rule 4.10 – Joint Minute of Agreement

4.10 (1) – it is not necessary for the participants to present information to the inquiry concerning –

- (a) a fact agreed by all participants;
- (b) a production, the terms and application of which are agreed by all participants.

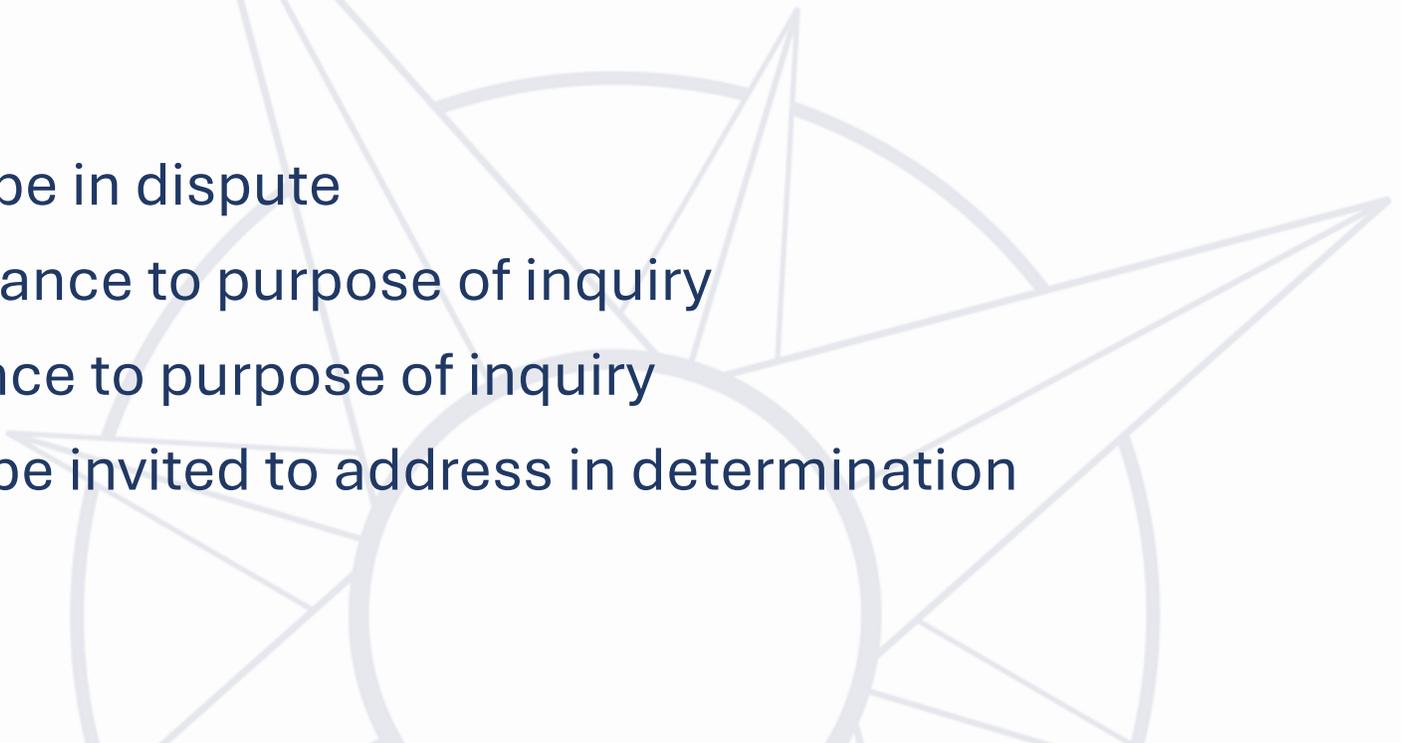


### Rule 3.1 – First Notice

- Must set out (amongst other things) any issues identified by the Procurator Fiscal which it is anticipated the inquiry should address

### Rule 3.7 Note to identify

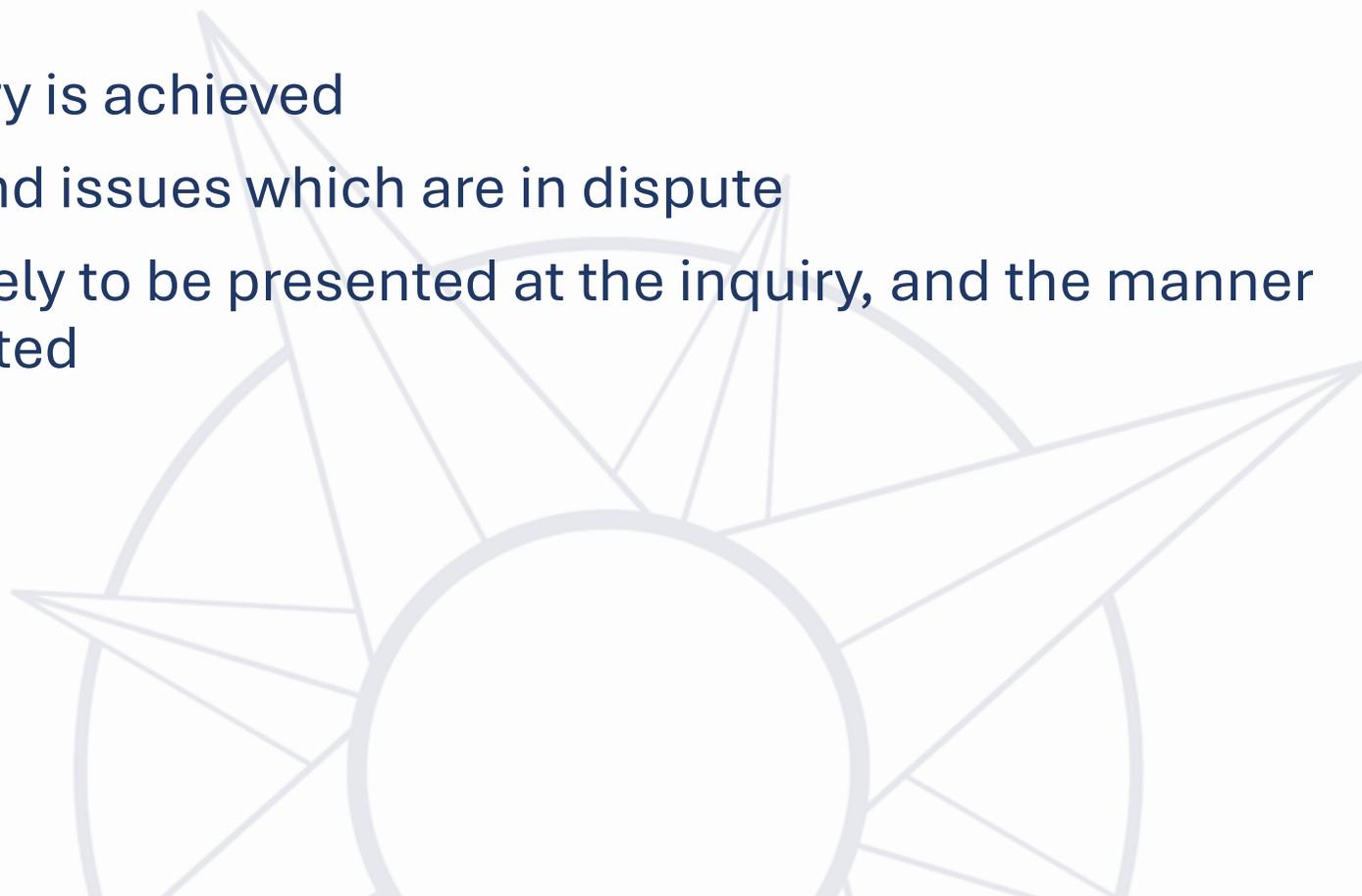
- Matters considered likely to be in dispute
- List of productions and relevance to purpose of inquiry
- List of witnesses and relevance to purpose of inquiry
- Matters which Sheriff might be invited to address in determination





## Rule 3.6 – Purpose of Preliminary Hearings

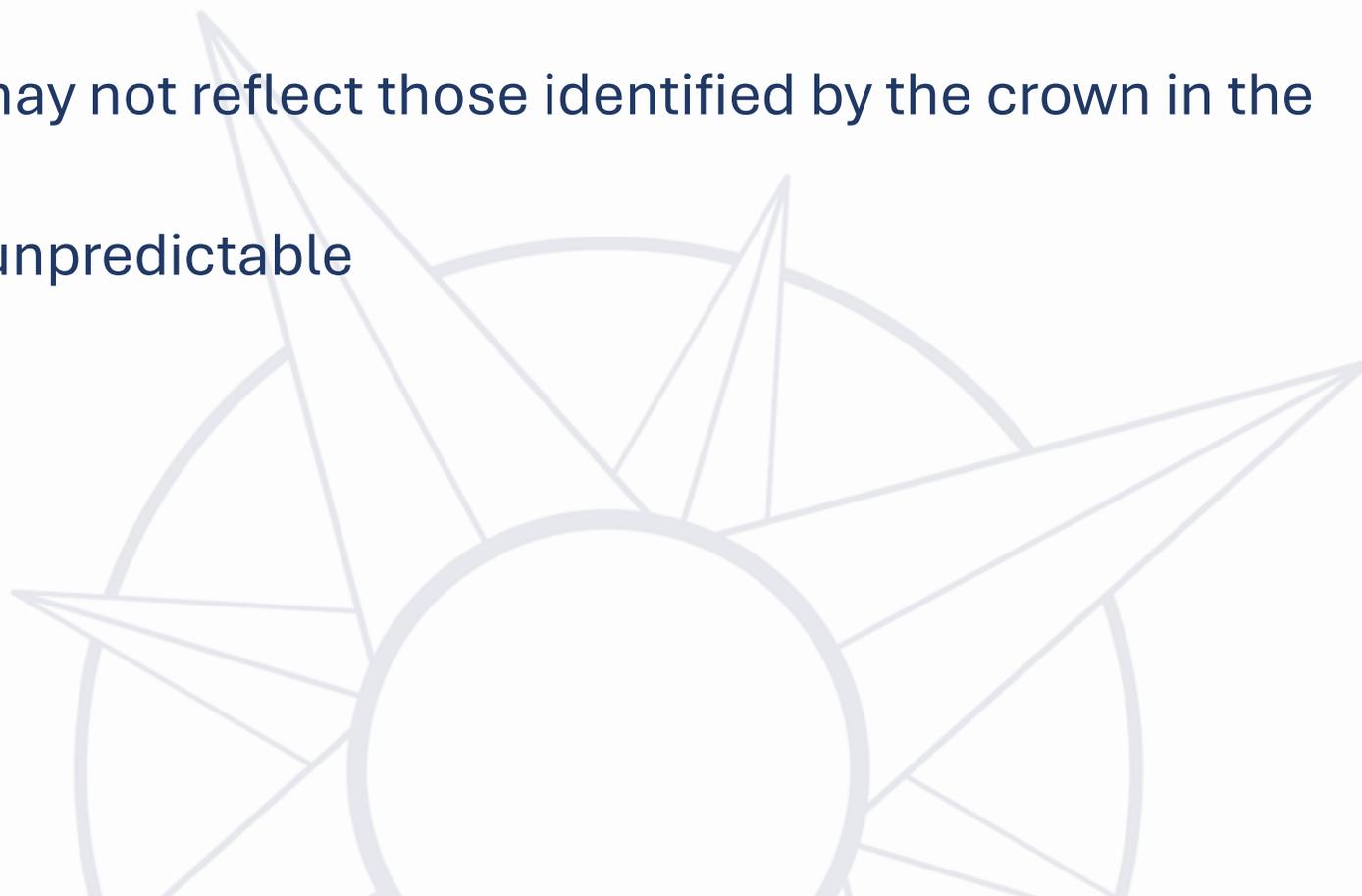
- Ensure the purpose of Inquiry is achieved
- Consider scope of inquiry and issues which are in dispute
- Consider the information likely to be presented at the inquiry, and the manner in which it should be presented





## Lessons learned...

- Issues explored in Inquiry may not reflect those identified by the crown in the First Notice/Rule 3.7 Notes
- FAls of their nature can be unpredictable
- Advise clients with caution
- It's the Sheriff's Inquiry!





# Statements



Lessons learned.....

- Make sure statements conform to formalities required by rules
  - Consider use of affidavit evidence
- 

# Crown Immunity

**THE KINGS  
CAN DO  
NO  
WRONG**





# Representation/Participation





## Thoughts..

- Consider need for separate representation, particularly where you represent a public body/agency/institution
- Consider whether there may be conflict between interests of individual employees and employer
- Consider whether professional reputation may (potentially) be at stake
- Important to advise individuals that they may wish to seek separate advice (union/legal) and request participation in Inquiry



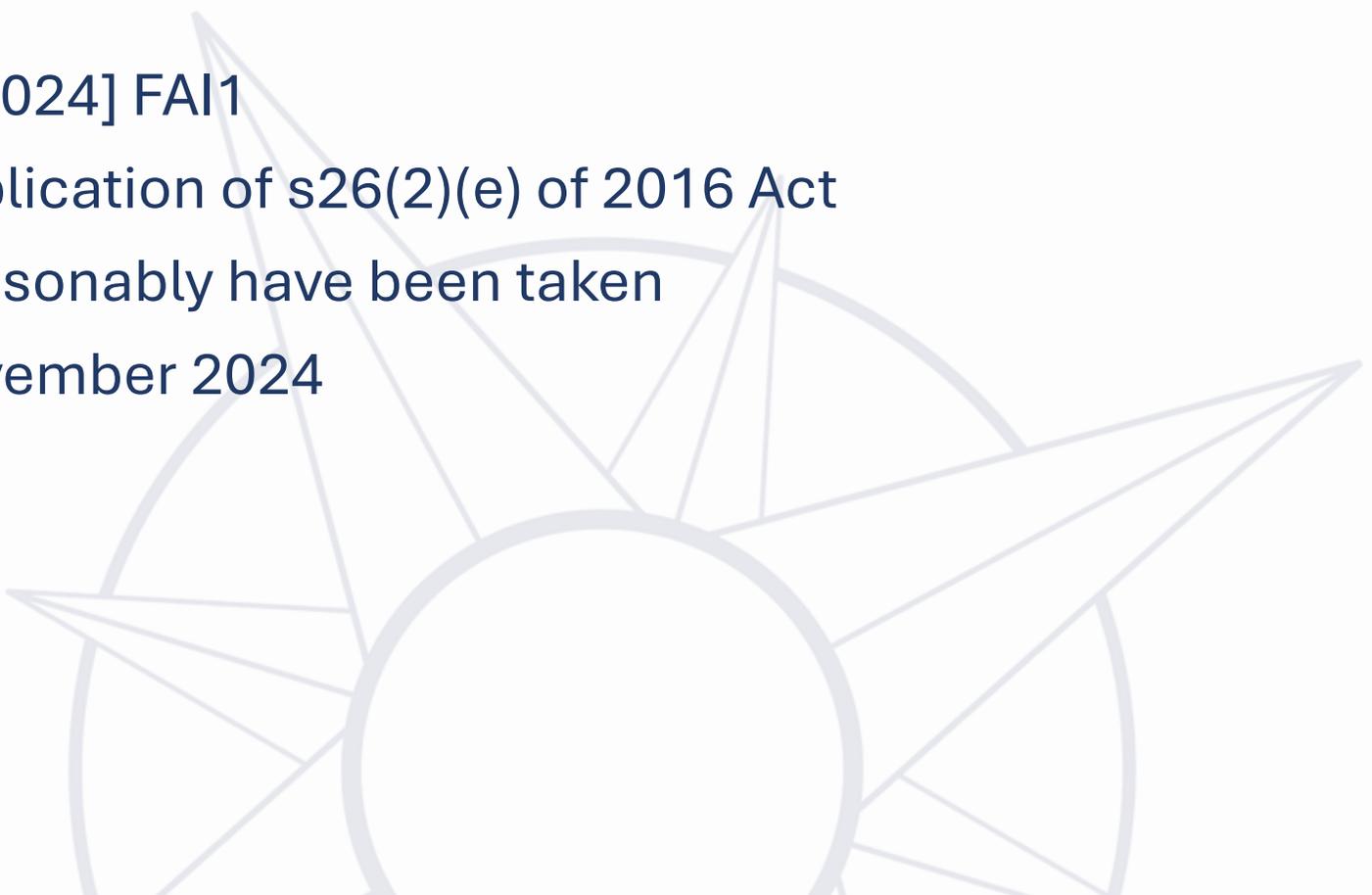
# Things going wrong -Delay





# News!

Judicial Review pending ..

- FAI Jessi-Jean MacLennan [2024] FAI1
  - Proper construction and application of s26(2)(e) of 2016 Act
  - Precautions which could reasonably have been taken
  - Hearing on 31 Oct and 1 November 2024
  - Lady Haldane
  - At avizandum
- 

# Compass Chambers



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