

Compass Chambers



Health and Safety Prosecutions
and
Fatal Accident Inquiries
from the Crown Counsel perspective

Gavin Anderson KC

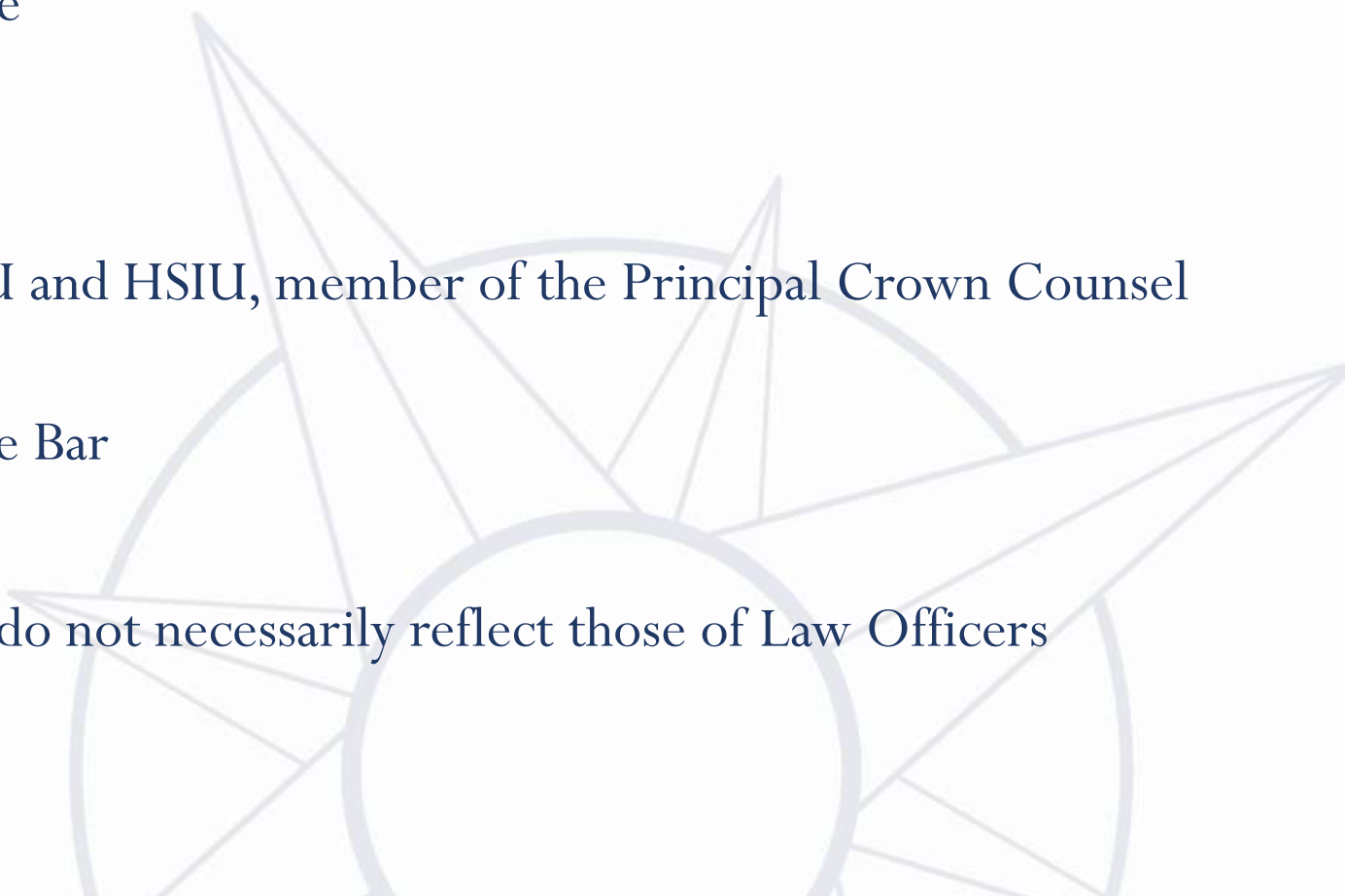
17 November 2023



About me...

- Called to the Bar 2001; silk 2022
- Regulatory crime/Inquiry practice
- 2021 - Advocate Depute
- 2022 – Senior Advocate Depute
- 2023 – Lead Crown Counsel SFIU and HSIU, member of the Principal Crown Counsel Team
- 2024 – returning to practice at the Bar

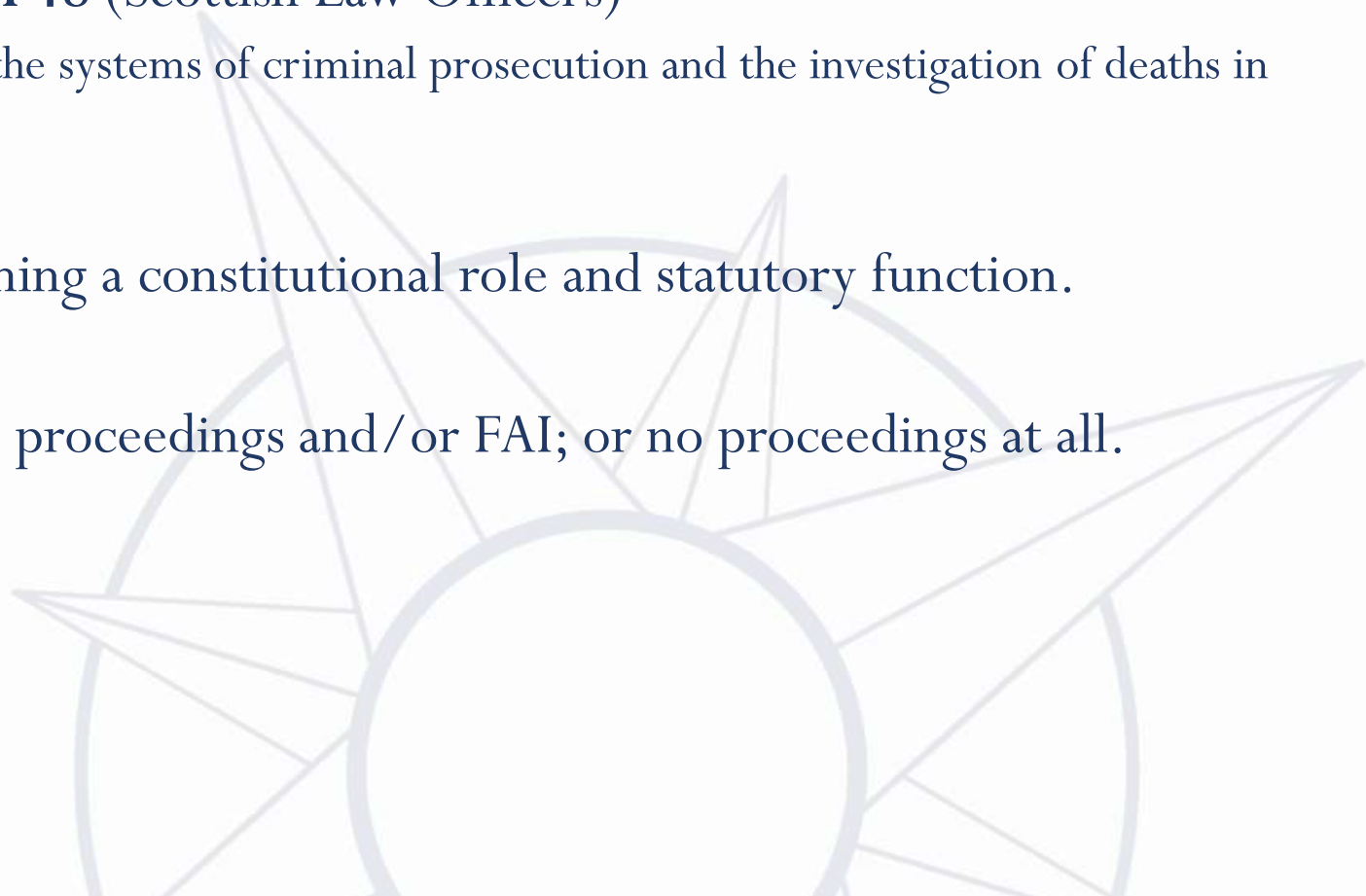
- Views expressed are my own and do not necessarily reflect those of Law Officers





The role of the Lord Advocate

- **Scotland Act 1998, section 48** (Scottish Law Officers)
 - The Lord Advocate is head of the systems of criminal prosecution and the investigation of deaths in Scotland.
- The Lord Advocate is performing a constitutional role and statutory function.
- A death may prompt criminal proceedings and/or FAI; or no proceedings at all.





Who reports deaths or health and safety matters to COPFS?

- Police Scotland
- Health and Safety Executive (HSE)
- Local authorities
- Health boards or individual clinicians
- Other specialist reporting agencies
 - British Transport Police
 - Office of Rail and Road (ORR)
 - Maritime and Coastguard Agency (MCA)
 - Scottish Fire and Rescue Service (SFRS)
 - Police Investigations and Review Commissioner (PIRC)





Who investigates for potential prosecution and/or FAI?

- Lord Advocate has power of direction over police only
 - Cannot compel any other reporting agency, such as HSE, to investigate an incident or any part of an incident.
 - HSE will apply its Enforcement Policy Statement, Enforcement Management Model and Enforcement Guide (Scotland) in deciding whether, and if so to what extent to investigate.
 - Crown can seek to persuade an agency to investigate a matter where it may be disinclined to do so.
 - If Crown deems matter worthy of investigation, where reporting agency declines to investigate, Crown's only option is to instruct police to do so.
 - Can be less than ideal as not specialist investigators



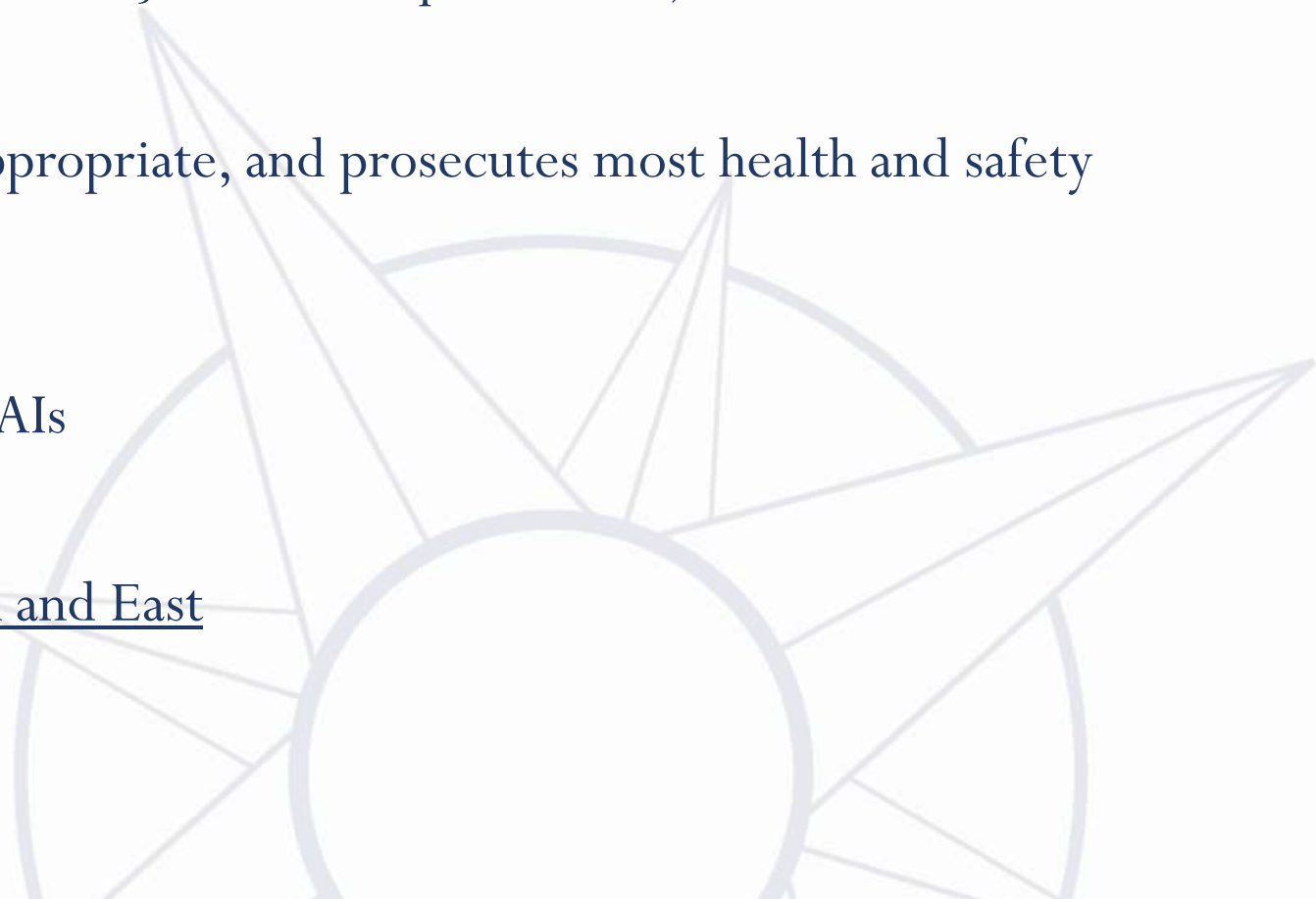
Scottish Fatalities Investigation Unit (SFIU)

- Deaths involving potential criminality are dealt with by specialist units such as HSIU, RTFIU, CDIT, CDU and Homicide.
- SFIU will investigate all non-criminal deaths
 - Team 1: All initial death investigation work
 - Team 2: Preparation and conduct of FAI
- SFIU will prepare and present most FAIs (e.g. hospital deaths)
- HSIU will prepare and present most workplace death FAIs



HSIU (formerly HSD)

- Oversees investigation of all health and safety related deaths investigations (WRDP, Protocols for air, sea and rail incidents, Major Incident procedures)
- Investigates, reports to CC where appropriate, and prosecutes most health and safety offences
- Conducts health and safety related FAIs
- Split into two teams West and North and East





Crown Council with health and safety role

- Gavin Anderson KC, Lead Crown Counsel for SFIU and HSIU
- Graeme Jessop KC, Senior AD
- Mark Mohammed KC, Senior AD
- David Dickson, Senior AD
- David McLean, Senior AD
- Louise Beattie AD
- Craig Murray AD
- Scott McKenzie AD
- Martin Crawford AD

- There are no specialist FAI ADs





HSIU Prosecutions - what do Crown Counsel do? (1)

- Investigative oversight in allocated cases
 - Locus visit/Multi-agency meetings
 - Advising on investigative strategy (forensics, warranting, status of persons)
- Marking or other CCI in non-allocated cases (HSIU doing themselves)
 - Indictment cases – usually fatalities/severe injury
 - HSIU reports with recommendations – countersigned by PPF
 - Now usually 7-14 day turnaround time for CCI
 - Pragmatic resolution where possible
 - Crown Counsel are generally not involved in summary cases
 - CCI on forum, legal issues or investigative strategy



HSIU Prosecutions - what do Crown Counsel do? (2)

- Conduct High Court cases at first instance
 - Police Service of Scotland; Network Rail
 - Corporate Homicide, culpable homicide
- Conduct High Court or Sheriff Appeal Court cases at appeal (although Senior ADs appear in appeals)
- *Exceptionally*, appear at first instance in the Sheriff Court
 - Cameron House; Edinburgh Trams
- Crown Counsel will not negotiate pleas in individual Sheriff Court cases, unless *exceptionally* such a case is allocated to a specific Advocate Depute or there are other special circumstances.



HSIU— examples of incidents allocated Crown Counsel

- Cameron House fire (Michael Meehan KC, Graeme Jessop KC)
- Police Scotland (M9) (Ashley Edwards KC, Gavin Anderson KC)
- Stonehaven rail crash (Michael Meehan KC, Alex Prentice KC)

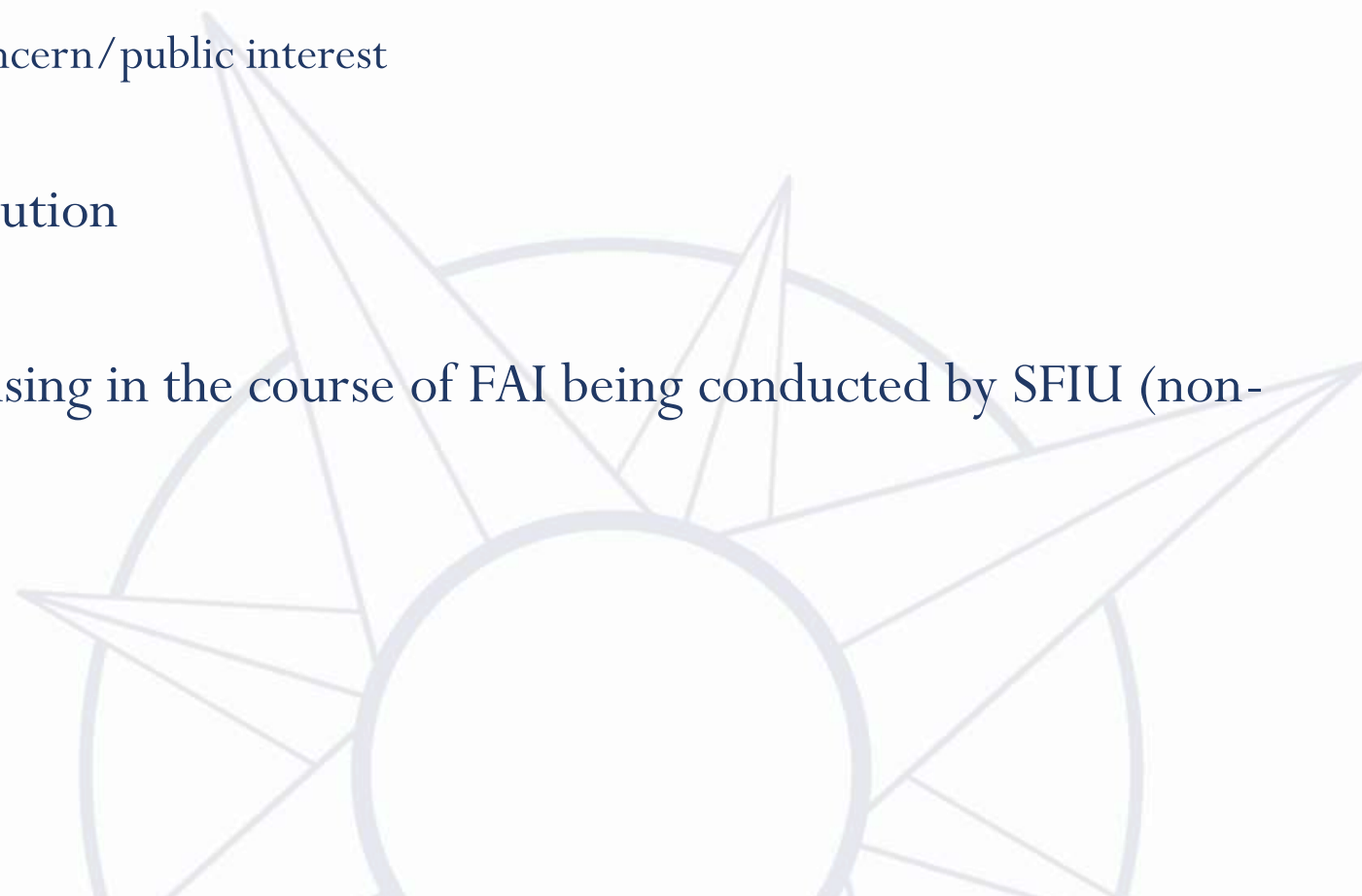
- New County Hotel Perth fire (Gavin Anderson KC)
- Jenners fire (Gavin Anderson KC)
- Perth scrapyard explosion (Graeme Jessop KC)

- Crown Counsel will be allocated in very serious cases often very soon after an incident before the nature of proceedings, if any, is known.



FAIs – what do Crown Counsel do? (1)

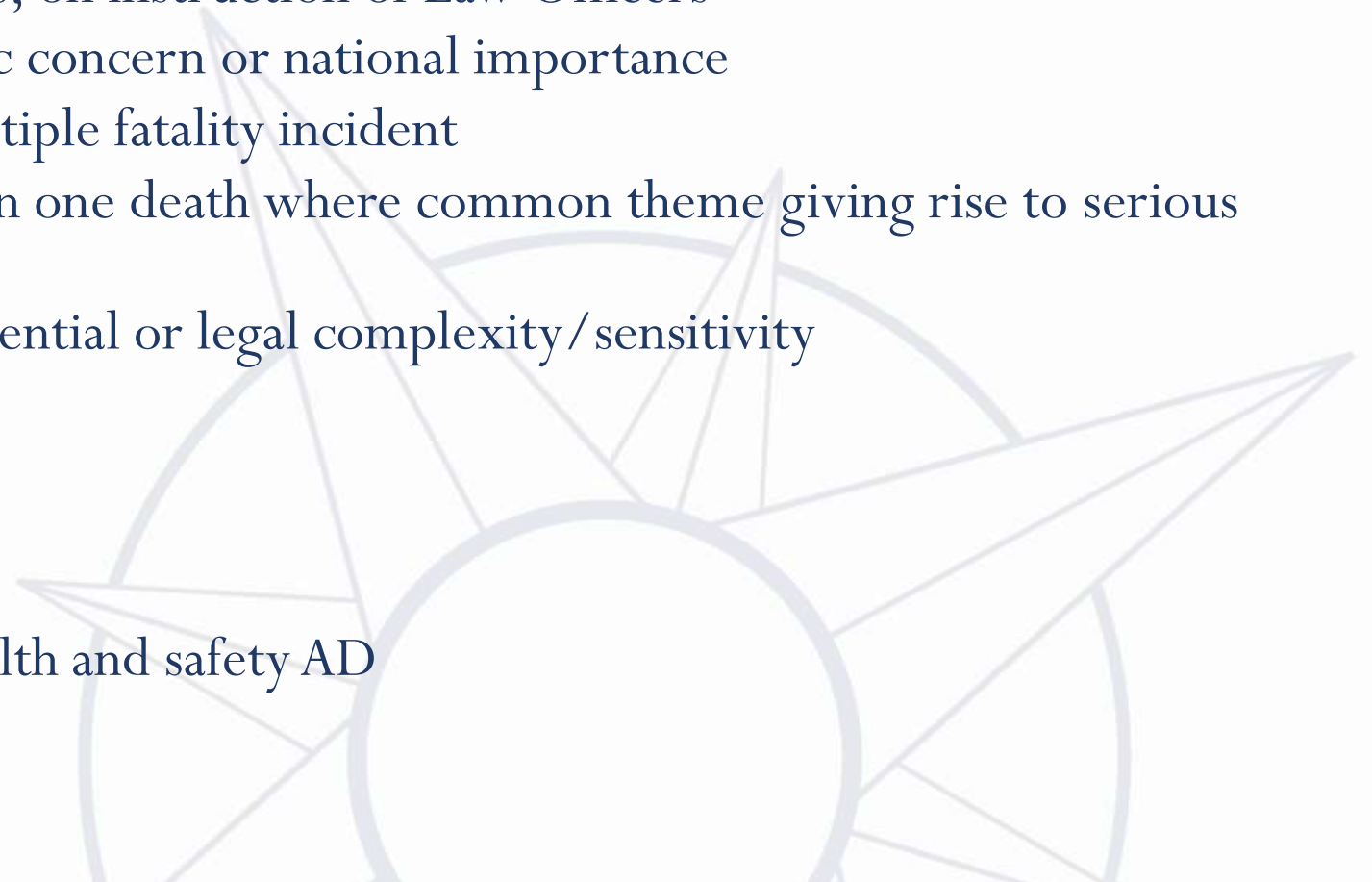
- Marking of discretionary FAIs
 - Discretionary FAI Policy
 - Article 2 ECHR/serious public concern/public interest
- Issuing “waiver” following prosecution
- Provide CCI on difficult issues arising in the course of FAI being conducted by SFIU (non-workplace) or HSIU (workplace)
 - Disclosure of evidence
 - Immunity from prosecution





FAIs – what do Crown Counsel do? (2)

- Conduct the most important FAIs, on instruction of Law Officers
 - Matters of very serious public concern or national importance
 - “Disaster” or high profile multiple fatality incident
 - Conjoined FAI into more than one death where common theme giving rise to serious public concern
 - Inquiries with particular evidential or legal complexity/sensitivity
- Custody Deaths Unit - separate
- Senior AD – not necessarily a health and safety AD





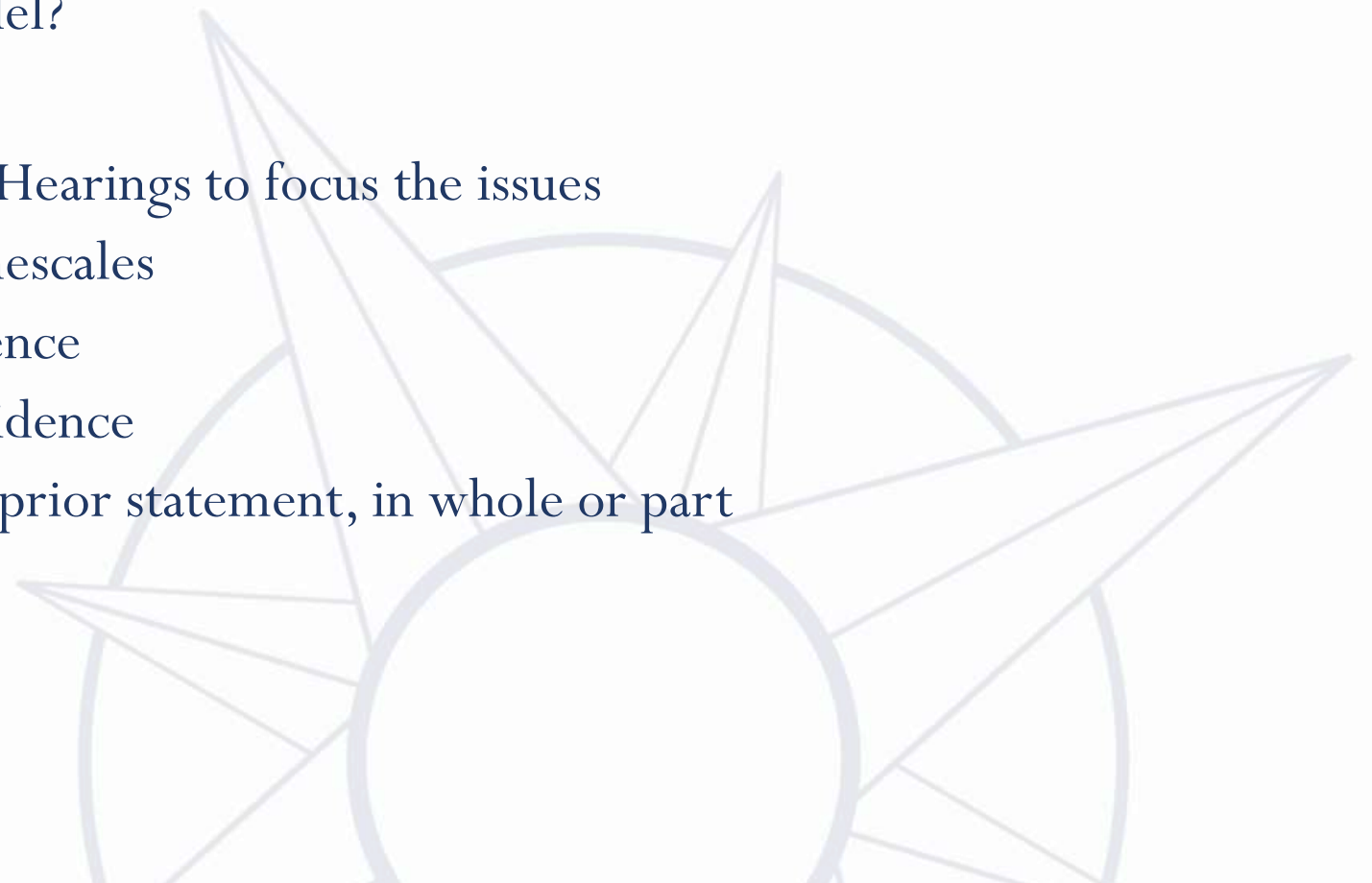
Examples of Crown Council FAIs





Crown Counsel FAIs - our approach

- Following the Public Inquiry model?
 - Proactive use of Preliminary Hearings to focus the issues
 - Proactive management of timescales
 - Extensive agreement of evidence
 - Electronic presentation of evidence
 - Extensive use of evidence by prior statement, in whole or part
- Crown must follow FLC





Crown Counsel FAIs - venue





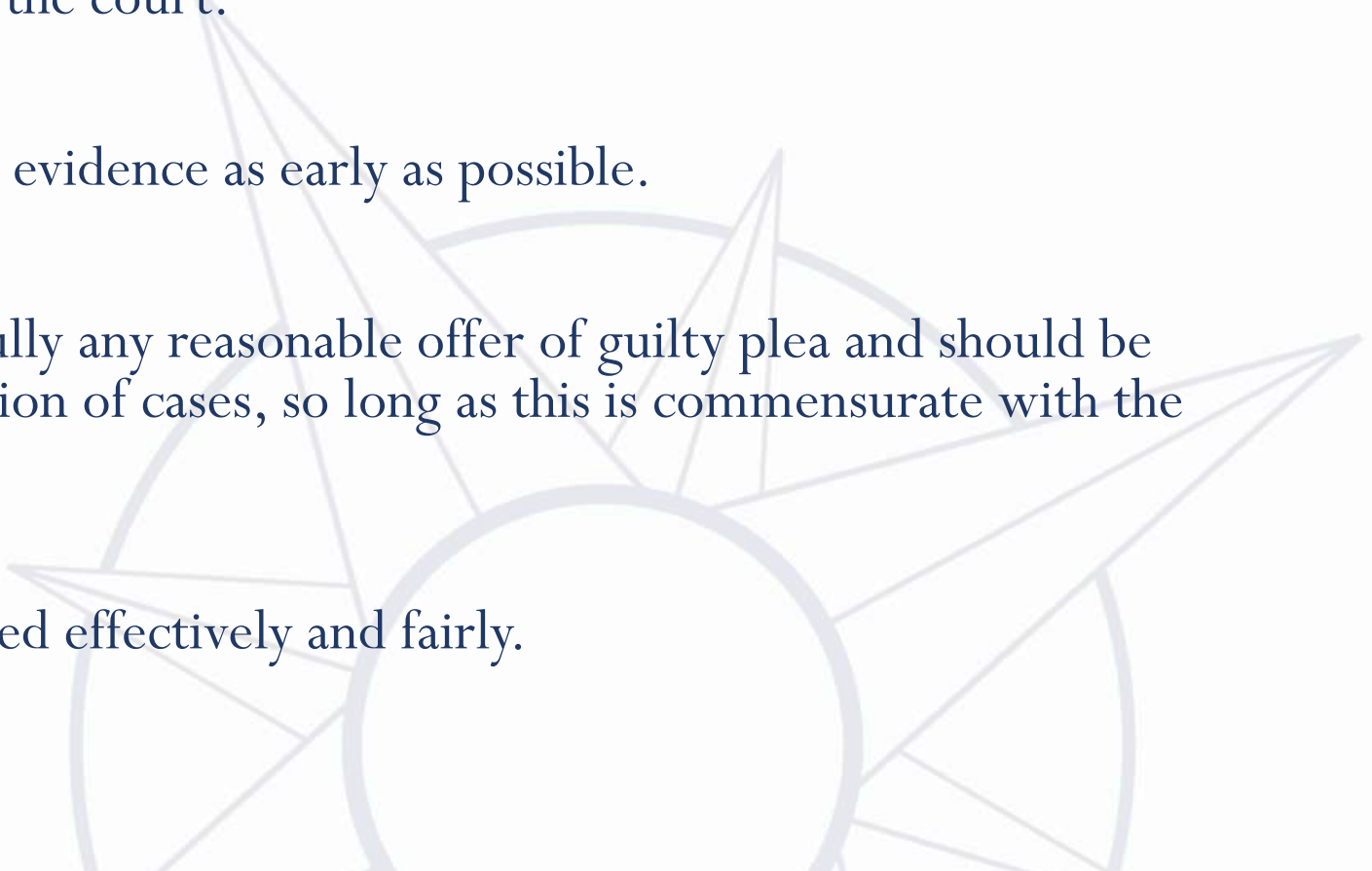
A few requests from me....

- ALWAYS quote the PF Ref No.
 - Death Report will have a territorial PF Ref No. (ED2300xxxx) which if becomes an HSIU case will change to an HSIU Ref No. (HS2300xxxx)
- Section 76 pleas
 - Let us know as soon as you think a case should be capable of resolution, even if you do not yet have disclosure.
 - HSIU can seek expedited reporting from HSE or other agencies
 - HSIU must submit section 76 report to Crown Counsel unless letter appears so restricted or conditional that they are of opinion that the offer of plea will be refused.



And a few aims from me...

- Crown aims to make decisions reasonably, proportionately, expeditiously and in the public interest commensurate with complexity, available resource and legal obligations not only to accused, but NOK, witnesses and the court.
- Crown will always aim to disclose evidence as early as possible.
- Crown will always consider carefully any reasonable offer of guilty plea and should be willing to agree pragmatic resolution of cases, so long as this is commensurate with the public interest.
- Trials and appeals will be conducted effectively and fairly.





Over to you....

- Any questions?



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