

THE REVIEW OF FATAL ACCIDENT INQUIRY LEGISLATION

- IT'S TIME FOR RADICAL CHANGE

Lord Cullen, has been tasked with reviewing the rules and legislation which govern Fatal Accident Inquiries. Thompsons strongly believe that the time has come for a radical overhaul of the rules. This document sets out very briefly an overview of our position.

THOMPSONS BELIEF

The most important role which our Courts must serve in a civilised society is to quickly, properly and effectively investigate deaths, putting the victim's of families at the heart of the process, to ensure that lessons are learned and things improve for everyone.

THOMPSONS OBSERVATIONS FROM OUR EXPERIENCE IN ASSISTING THE FAMILIES OF VICTIMS OF FATAL ACCIDENT

What families need

- The first, and most important thing, that a family need and demand is answers. What happened and why did it happen?
- Without these answers they cannot move on with their lives and the grieving process cannot begin
- They need to know that the death of their loved one served some purpose and that no other family will be touched as they have been by the loss of a loved one
- If appropriate they would wish to see criminal proceedings brought against a wrongdoer

The reality

- In our experience however families are left waiting for far too long after the death of their loved one to see anything happen and what does follow does not meet up with their needs or demands
- It is not uncommon for there to be three years, or longer, before a Fatal Accident Inquiry begins
- Lessons are not learned and things do not improve because the Sheriff's Determination and recommendations are often ignored
- Families feel disenfranchised from the whole process as "bit players" without proper funding

- The fact that the Inquiry is carried out by a Sheriff, rather than a Judge of the Supreme Court, gives the appearance that workplace deaths are not considered as important by the Judicial Process as other matters which are considered by Supreme Court judges

CHANGES NEEDED

- The families of the deceased should be at the heart of the process. Their concerns and questions should be given paramount importance in the investigation and they should be properly funded to have legal representatives to represent their interests.
- The process must begin as quickly as possible. Any conflict with criminal issues can be avoided by the Inquiry Process being adjourned should that be necessary or by the Inquiry only considering certain matters which will not be before the Criminal Courts until the criminal matter is concluded and, at least for the family, to get some answers
- This serves an important double function of meeting the families needs of the matter beginning immediately, and that being seen to be done, but not causing any prejudice to any Criminal Trial
- This is effectively what happens in England with the Coroner's Court process
- The Inquiry must be undertaken by our country's most Senior Judges
- This will send a clear message that society takes workplace deaths as one of it's most important concerns
- Those Senior Judges must have appropriate and necessary power to ensure that the lessons are learned and that changes occur by being able to require, rather than simply recommend, that practices change
- This can be achieved by working with appropriate enforcement agencies (such as the Health & Safety Executive etc) and by being able to bring all of the parties to the Fatal Accident Inquiry back before the Judge at a certain period after his/her Determination (say six months) for the Judge to be satisfied that the changes have been followed through with the Judge having appropriate sanction available to him/her if the changes have not been enacted as he or she has in other Supreme Court actions
- There should also be a clearer ability on the Judge to report to Ministers at both Holyrood and Westminster if it is clear that a change in the law is required