

SHERIFFDOM OF GRAMPIAN HIGHLAND AND ISLANDS AT ABERDEEN

[2026] FAI 52

ABE-B662-25

NOTE OF REASONS

BY

SHERIFF PRINCIPAL ANDREW MILLER

**UNDER THE INQUIRIES INTO FATAL ACCIDENTS AND SUDDEN DEATHS ETC
(SCOTLAND) ACT 2016**

into the death of

JAMES ALEXANDER ROBERT FORBES

Crown: Mr Burton, PF Depute

Ms Forbes: Mr Wickham, Advocate

Scottish Police Federation, PC Valentine and PC Bayliss: Professor Watson, Solicitor
Advocate

PS Arton: Professor Watson, Solicitor Advocate

Chief Constable: Ms Haggerty

Calum Scott: Mr Rodgers

ABERDEEN, 5 May 2026

Introduction

[1] These proceedings, in which a fatal accident inquiry (FAI) hearing has been assigned for 26, 27, 28 and 29 May, called before me as a continued preliminary hearing by Webex today to consider motions presented by Professor Watson on behalf of the Scottish Police Federation and PCs Valentine and Bayliss to the following effect:

- (i) in terms of rule 4.15 of the Act of Sederunt (Fatal Accident Inquiry Rules) 2017 ('the 2017 rules'), to allow Mr Joe Hanna, a chartered occupational, safety and health professional and head of risk management at Willis Insurance and Risk Management, Belfast, to give evidence in relation to the issues discussed in his reports dated 12 February, 24 March 2026 and 16 April 2026 concerning the extent to which the window from which James Forbes fell complied with applicable health and safety and building regulations, with particular reference

- to the fact that the window was capable of being opened wide enough to permit Mr Forbes to pass through the opening;
- (ii) to include that issue within the scope of the inquiry; and
- (iii) for formal intimation of the inquiry proceedings to Aberdeen City Council as the owners of the block and landlords of the flat of which the window formed part.

[2] Professor Watson also appeared today on behalf of PS Arton in place of Mr Vaughan, who was unable to take part in today's hearing, but who had confirmed his support for the motions and his wish to adopt the submissions lodged by Professor Watson. The motions were opposed by Mr Burton on behalf of the crown and by Mr Wickham on behalf of Ms Forbes, the sister of James Forbes. Both Ms Haggerty on behalf of the chief constable and Mr Rodgers on behalf of Calum Scott adopted a neutral stance with regard to the motions. The court had the benefit of written submissions lodged in advance of the hearing in addition to the further submissions presented during the hearing.

[3] I refused the motions, gave a detailed ex tempore summary of the reasons for that and indicated that I would also issue a written note of those reasons.

Relevant procedural history

[4] At the first preliminary hearing on 7 October 2025, the FAI was fixed for 19, 20, 26 and 27 January 2026. Those dates required to be discharged for reasons unconnected to the subject matter of today's hearing. The proceedings called on 27 January 2026 for new dates to be fixed. It was only then that the line of inquiry concerning the window (which came to be referred to as "the window track") was raised by Professor Watson for the first time.

[5] New dates for the FAI having been fixed for 26, 27, 28 and 29 May, further continued preliminary hearings were assigned to allow Mr Hanna, on the instructions of Professor Watson, to investigate the window track. On 24 February 2026, Professor Watson's unopposed motion to approve a specification of documents in furtherance of this line of

inquiry was granted. As I understand it, Aberdeen City Council has produced some material to Professor Watson in response to that order.

[6] The court now has the benefit of Mr Hanna's updated reports dated 24 March and 16 April 2026, which express Mr Hanna's opinions with regard to risk assessment procedures and risk management measures which may have been appropriate in relation to the window of any "high-rise" residential property, bearing in mind the potential risk of a person falling from such a window.

Scope of the inquiry proceedings

[7] I have been able to find little assistance from authorities or textbooks in relation to the proper scope of an FAI, although it is clear from the 2017 rules that the sheriff has very wide powers to manage the proceedings, which appear to me to include a responsibility, should the need arise, to determine the scope of the inquiry.

[8] As noted in the submissions by Mr Wickham, when considering the proper scope of an FAI, it is not the case that "no stone must be left unturned". In that context, MacPhail, *Sheriff Court Practice*, 4th Ed, para 28.16 quotes evidence given to the Scottish Parliament by the Lord President of the day (Lord Gill) in relation to the Bill which became the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016 ("the 2016 Act"), as follows:

"[I]n any inquiry of this nature, effective case management is the key to the whole thing. There has to be effective case management in the preparatory stages, and then, once the inquiry starts, efficient and competent chairmanship is required to ensure that the inquiry addresses the relevant points and that other questions are not gone into. That makes considerable demands of the presiding sheriff but, as long as sheriffs keep it in mind, they should be able to conduct such inquiries expeditiously" (emphasis added).

[9] In common with any other proceedings in the sheriff court, an FAI is a process which is concerned with practical rather than theoretical matters. It appears to me that the factual

background to the death which is under investigation indicates the factual context for the FAI proceedings and is critically important in identifying the proper scope of the FAI. With that in mind, this is not a situation in which Mr Forbes died in circumstances which give rise to public concern but which are unknown and which require to be investigated and established at a wide-ranging FAI. According to productions lodged by the Crown, following the death of James Forbes a man named Lee Charles Smith, apparently the occupant of the 12th floor flat from which Mr Forbes fell, was arrested and subsequently pled guilty in the High Court of Justiciary to the culpable homicide of James Forbes. The indictment (Crown production 21) narrates that, on 14 and 15 January 2024, Smith abducted James Forbes, detained him within the flat against his will by locking him within the flat and assaulted him in a number of ways narrated in the indictment, and goes on to narrate that: "...[and] in order to escape said James Forbes did jump from a window at height and did strike the ground, whereby he was so severely injured that he died there and you did kill him" (emphasis added). As I understand it, none of the participants intends to lead evidence to challenge the factual background which is apparent from the indictment.

[10] There appears to be no suggestion, and no reason to suppose, that Mr Forbes would have fallen from the window of the flat but for the circumstances set out in the indictment and the related information lodged by the Crown. There is every reason to anticipate that the events described in the indictment set out the factual context for Mr Forbes's decision to jump from the window "in order to escape" from the flat, as narrated in the indictment.

[11] As noted in the written submissions lodged by Mr Burton and Mr Wickham, there is no suggestion that Mr Forbes fell from the flat because of the characteristics of the window, as might be the case in a hypothetical situation in which a person leans against a window which gives way because of a structural defect of some kind. I agree with Mr Burton and

Mr Wickham that, on the information available, the window appears to have been the means by which Mr Forbes “escaped” from the flat, resulting in a fatal fall, in the circumstances narrated in the indictment, rather than the condition of the window being in any meaningful sense the cause, or even a cause, of his death.

[12] I understand that it is anticipated that evidence will be led at the FAI hearing that police officers attended the block of flats in question on 15 January 2024 prior to James Forbes’s death in response to reports from members of the public of a person calling for help but that the officers left the area prior to Mr Forbes falling from the flat, after making some enquiries but without locating Mr Forbes. Against that background, since the time of the first notice in these proceedings, the focus has been on “...the police decision making and actions in relation to the initial emergency calls placed by the members of the public, as well as the police action upon attendance at the locus prior to the death of James Forbes.”

The legislative context

[13] Turning to the legislative context for these proceedings, at the most fundamental level, section 1(3) of the 2016 Act states that:

“The purpose of an inquiry is to establish the circumstances of the death, and consider what steps (if any) might be taken to prevent other deaths in similar circumstances” (emphasis added).

[14] As I have indicated, the highly unusual circumstances of Mr Forbes’s death are described in the indictment which has been referred to. The matters on which the court is required to reach a determination at the end of the inquiry, and therefore on which the inquiry proceedings are required to focus, are set out in section 26 of the Act, namely:

- (1) As soon as possible after the conclusion of the evidence and submissions in an inquiry, the sheriff must make a determination setting out –
 - (a) In relation to the death to which the inquiry relates, the sheriff's findings as to the circumstances mentioned in subsection (2), and
 - (b) Such recommendations (if any) as to any of the matters mentioned in subsection (4) as the sheriff considers appropriate.
- (2) The circumstances referred to in subsection (1)(a) are –
 - (a) When and where the death occurred,
 - (b) When and where any accident resulting in the death occurred,
 - (c) The cause or causes of the death,
 - (d) The cause or causes of any accident resulting in the death,
 - (e) Any precautions which –
 - (i) Could reasonably have been taken, and
 - (ii) Had they been taken, might realistically have resulted in the death, or any accident resulting in the death, being avoided,
 - (f) Any defects in any system of working which contributed to the death or any accident resulting in the death,
 - (g) Any other facts which are relevant to the circumstances of the death.
- (3) For the purposes of subsection (2)(e) and (f), it does not matter whether it was foreseeable before the death or accident that the death or accident might occur –
 - (a) If the precautions were not taken, or
 - (b) As the case may be, as a result of the defects.
- (4) The matters referred to in subsection (1)(b) are –
 - (a) The taking of reasonable precautions,
 - (b) The making of improvements to any system of working,
 - (c) The introduction of a system of working,
 - (d) The taking of any other steps,
 which might realistically prevent other deaths in similar circumstances,

[15] A precaution identified in terms of subsection (2)(e) might realistically have prevented a death if there is a real or likely possibility, rather than a remote chance, that it might have done so (MacPhail, paragraph 28.23), and there must be a real or likely possibility that any matters recommended in terms of subsection (4) may prevent other deaths in similar circumstances, rather than a remote chance that a similar death in the future might be prevented (Ibid, paragraph 28.27). It appears to me that these provisions are consistent with the basic requirement already noted in terms of section 1(3), which requires the focus to be on the circumstances of the death to which the inquiry relates.

[16] An important principle which courts are required to have regard to when regulating procedure in an FAI is set out in rule 2.2(2) of the 2017 rules, namely that: “An inquiry is to be progressed expeditiously and efficiently, with as few delays as possible.” Recalling the procedural history of these proceedings, the “window track” was only raised in late January 2026, on a date which would have been during the dates originally assigned for the FAI hearing, had that hearing not been discharged for other reasons. If the window track was permitted to be included within the scope of the inquiry at this stage, the dates assigned for 26 to 29 May would inevitably require to be discharged and there would be further, potentially lengthy, delay whilst the proceedings are intimated to Aberdeen City Council and they prepare their response, which would be likely to involve the review of their general policies in relation to the windows fitted to their high-rise housing stock, rather than simply focusing on the window from which Mr Forbes fell.

Mr Hanna’s reports

[17] Mr Hanna’s most recent report dated 16 April 2026 expresses a number of observations and opinions about the general issue of Aberdeen City Council’s legal duties in relation to the management of what he describes as “fall from window” risk, including a duty to carry out a risk assessment in relation to each property (paragraph 5.3). Mr Hanna notes that there is no specific legal requirement to fit restrictors (devices to restrict the extent to which a window can be opened) but expresses the opinion, based on guidance from sources including the HSE, that the general principles of health and safety law require that a risk assessment be carried out to determine whether restrictors are needed at a particular property (paragraphs 5.3 and 5.8).

[18] However, it appears to be accepted by Mr Hanna that contemporaneous photographs of the window from which Mr Forbes fell show that it did have a restrictor fitted (paragraph 5.15). With reference to the restrictor, Mr Hanna comments (paragraph 5.15) that: “It appears the restrictor has been disengaged or damaged enabling the window to be opened beyond 100mm...” (a recommended maximum opening arising from HSE guidance to which Mr Hanna refers).

[19] Mr Hanna’s conclusions with regard to risk assessments and the like involve analysis and interpretation of guidance from multiple sources. He acknowledges that he has not been provided with a risk assessment for the flat from which James Forbes fell (paragraph 5.3). Nor has he seen any “details on [the] specification or design purpose [of the window]” (paragraph 5.10.2). Mr Hanna’s conclusions are qualified by his acknowledgment (paragraph 6.3) that:

“I have not been provided with the property-specific risk assessment, the window specification, the design risk assessment, or any Health and Safety file relating to the 2008 replacement works. Those documents are material to a final view on the detailed adequacy of the original design and management process.”

Further acknowledgement of the fact that Mr Hanna considers the information available to him as a basis for conclusions to be incomplete appears at paragraph 6.15.

[20] As Professor Watson acknowledged during today’s hearing, Mr Hanna’s conclusions are to some extent provisional, given Mr Hanna’s implicit recognition that he is unable to form a final view about the adequacy of any risk management measures applied to the window from which Mr Forbes fell in the absence of further information. Professor Watson submitted however that these gaps could be explored in evidence at the FAI, which may or may not indicate that the characteristics and condition of the window had some causative role in relation to Mr Forbes’s death.

[21] Of greater practical concern is that, whatever may have been Aberdeen City Council's general approach to the provision of window restrictors in high-rise properties prior to the death of Mr Forbes, it appears to be accepted that the characteristics of the window from which Mr Forbes fell were not investigated at the time. This issue was raised for the first time at a comparatively late stage during these proceedings. For that I express or imply no criticism of Professor Watson. However, it is clear that none of the participants will now be in a position to lead evidence about the particular properties and characteristics of the restrictor apparently fitted to that window on the day of Mr Forbes's death including whether, when, by whom and in what circumstances it may have been "disengaged or damaged" (to quote Mr Hanna). I also agree with Mr Burton and Mr Wickham that it is difficult to envisage how any risk assessment carried out by Aberdeen City Council could have anticipated the highly unusual circumstances of Mr Forbes's death, as narrated in the indictment.

Conclusion

[22] In conclusion, I am satisfied that the general context for and scope of these proceedings requires to reflect the highly unusual circumstances of Mr Forbes's death, as described in the documents lodged by the crown relating to the resulting High Court prosecution. Having regard to those circumstances, I have considerable doubt as to whether the properties of the window from which Mr Forbes fell could amount to a relevant matter which ought properly to be brought within the scope of this inquiry. On the information available, any further investigation of that issue would undoubtedly delay the FAI, would be likely to take significant time and would be likely to be significantly hampered by a lack of evidence about the particular characteristics of the window from which Mr Forbes fell,

including whether and if so when, by whom and in what circumstances the restrictor apparently fitted to it was disengaged or damaged in order to allow Mr Forbes to pass through the window. The court is unlikely to be able to reach any meaningful conclusions or make any meaningful recommendations with regard to the window track in the absence of evidence about these matters.

[23] The inclusion of the window track within the scope of the FAI at this stage would divert attention, time and resources away from the circumstances which appear to have resulted in Mr Forbes falling from the window and the police response to reports of a person apparently calling for help prior to Mr Forbes falling from the window, with very limited if any likelihood that it will assist the court to reach conclusions or identify meaningful recommendations to prevent further deaths in circumstances similar to the highly unusual circumstances in which Mr Forbes found himself. Further, Mr Hanna's conclusions, on which the window track rests, essentially remain provisional in the absence of further information.

[24] For all of these reasons, I consider that the window track should not be included within the scope of the FAI. I therefore refuse each of Professor Watson's motions.