

Letter from SCID, dated 2 October 2012

SCID welcomes the Justice Committee's interest in the recommendation in the Dundee Law School Report, *Access in Europe by a bereaved family to information gathered during an investigation into a fatal road collision*, that victims' families should have a legal right of access to investigation documents on completion of the investigation or on conclusion of criminal proceedings. We wish to submit a brief background as to why this research project was commissioned.

Background to research

It has been the experience of families' bereaved by road crashes that there is no formal procedure or legal right to access the investigation documents following a loved one's road death.

In 2009 SCID carried out its own research, through Freedom of Information ("FOI") requests to determine the position regarding access by a bereaved family to police reports in the 38 English and 8 Scottish police forces. It was found that in Scotland, where records were kept by the police, the police forces did not release the police report to the family of a victim – this inability to access the investigation documents into the death of a loved one is in practice what bereaved families have distressingly found and in spite of the Book of Crown Office Regulations stating otherwise.

Also in 2009, SCID carried out research, into bereaved families' right to access the investigation documents, in a small number of countries in Europe. That small study found that in some countries, the police report was automatically provided to the family of a road death victim on the conclusion of the investigation.

In late 2011, SCID approached the Dundee Law School, with a view to commissioning further research to the position of bereaved families in Europe. The Campaign for Freedom of Information in Scotland also had an interest in the research project and added support. Our thanks go to Professor Page, Stuart Cross and Vikki Long at the Dundee Law School for taking on the project and for the comprehensive research carried out. The Dundee Law school report *Access in Europe by a bereaved family to information gathered during an investigation into a fatal road collision* was launched in July 2012 in the Dundee Law School library with support from Jenny Marra MSP.

The facts

In 2010 there were 13,334 road casualties in Scotland:

- 208 people killed in road crashes in 2010.
- 1,964 people were seriously injured in road crashes in 2010.
- 11,162 people were slightly injured in road crashes in 2010.

The World Health Organisation has stated, "Road traffic crashes are one of the world's largest public health and injury prevention problems. The problem is all the more acute because the victims are overwhelmingly healthy prior to their crashes".

A road death is an indiscriminate death, it is a sudden death, it is a violent death and it is a premature death, and where there is culpability the effect on a bereaved family can only be compared with a homicide. ,

Grief is part of the normal human experience – but it is not part of the normal human experience to bury a loved one who has been wrongfully killed by an irresponsible driver.

Grief manifests itself in many ways and the extent of this grief is very much dependant on the relationship with the deceased. For example, parent/s give their love, protection and support, unconditionally and unselfishly to their child/children.

It has been SCID's experience that most families bereaved by road crashes require much more than the progress of their case through the Criminal Justice System; they require knowing how their loved one was killed and have a need to access the information gathered in the course of the investigation.

Grief has been defined by bereavement counsellors as a process or a journey and information is necessary to aid that grieving process. To deny a family the right to access the investigation documents leads to secondary victimisation.

The Government committed itself to The Strategy for Victims in 2000, and there has been on-going progress to improve the rights of victims since that time. Objective 3 of the Strategy stated there should be – greater participation by victims in the criminal justice system. "To improve participation by ensuring that victims have a voice and that the criminal justice system is responsive to their needs." The Lord Advocate Frank Mulholland QC recently publicly stated: "What I want to see is the rights of victims properly recognised and entrenched in the criminal law."

SCID has welcomed the practical steps taken, to date, by Government and Crown Office to improve the rights of victims. The ACPOS Road Death Investigation Manual gives guidelines that assist the investigative challenges surrounding Road Death. Crown Office Book of Regulations also has guidelines in providing information to families bereaved by road crashes. However, guidelines are just that and as such are open to interpretation by individuals.

SCID would ask the Justice Committee to specifically examine how the unique position families bereaved by road crashes can be improved in the area of the right to information. Road deaths are a unique type of death. They are sudden and violent and, unfortunately, all too frequent.

The Scottish Parliament is committed to openness and transparency. The Freedom of Information (Scotland) Act 2002 has made strides in this area also in that "A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority." We all live in an era where we expect information to be readily available.

Procurators fiscal have a unique role in Scotland in that they both investigate all sudden deaths and in appropriate cases prosecute in the public interest. As the COPFS act in the public interest and because of the sub judicea rule, families bereaved by road crashes cannot get answers to the many questions which burn

night and day in their heads. Even at the end of an investigation into a road death or at the end of criminal proceedings there is no formal procedure in place or legal right in Scotland for the provision of the Investigation Documents to the bereaved families. Access to the Investigation Documents by a bereaved family is at the discretion of the PF. Discretion means that decisions are open to interpretation by individuals.

Part of the grieving process is access to information. The information bereaved families may want to access can range from very basic information about the investigation into their loved ones death, to very detailed information. Why? Having access to as much information as possible gives a bereaved family understanding, this in turn, aids the grieving process in the weeks, months and years ahead. To deny bereaved families this recognition leaves a long lasting impression from which they never recover.

There have been a great deal of resources in training and time put into developing this traumatic area of road policing and yet a bereaved family in Scotland has no right to receive a copy or even have sight of the police reports following their loved one's road death.

The vast majority of bereaved families are traumatised, vulnerable, law abiding citizens with little to no knowledge of the many investigative documents gathered during the investigation into the road death. The assumption is; if a family does not ask for specific information they do not want it! It has also been the experience of many families bereaved that even when they do ask for specific documents; the request is denied.

The intention in the COPFS Book of Regulations is to disclosure of the Investigation Documents to the family of a road death victim. We understand the difficulties procurators fiscal face in taking decisions on the amount of information they may or may not release. To overcome these difficulties SCID believes that legislation is required to ensure that procurators fiscal proactively inform bereaved families of the documents gathered in the course of the road death investigation. The onus would then be on bereaved family to decide whether they wish to access them or not.

SCID endorses the following observations found and recommendations in the Dundee Law School Report Access in Europe by a bereaved family to information gathered during an investigation into a fatal road collision.

Dundee Law School Report - Access in Europe by a bereaved family to information gathered during an investigation into a fatal road collision:

Observations

1. Scots law is not fulfilling the victim's rights strategy. There is no legal right for the family of a road death victim to obtain the Investigation Documents. Access to the Investigation Documents is at the discretion of the PF. This leads to inconsistencies in service and secondary victimisation.
2. Where access to the Investigation Documents is refused, the only option for the family of a road death victim is to submit a FOI request to the police. FOI requests in these circumstances are seldom successful. FOI requests are not

an appropriate process for a bereaved family to obtain access to the Investigation Documents and FOI laws were not designed for this purpose.

3. Several European countries provide the family of a road death victim with a legal right to access, to a varying degree, the Investigation Documents at varying stages of the proceedings.
4. An independent multi-disciplinary road collision investigation body carrying out in-depth safety investigations of each fatal road collision working alongside the police investigation and publishing the results is recognised as best practice.
5. Scotland is one of the few countries where guidelines and a recognised standard procedure exist for police investigations into fatal road collisions. This is to be commended but it does rely on each police force following the guidelines in a standard fashion.
6. Scotland's road safety framework ignores the vital area of post impact care which is an essential ingredient of an effective road safety strategy.

Recommendations

1. The establishment of an independent multi-disciplinary road collision investigation body carrying out in-depth safety investigations of each fatal road collision should be considered by the Scottish government as part of its road safety strategy.
2. The family of a road death victim should have a legal right to obtain copies of the Investigation Documents on completion of the investigation or on conclusion of criminal proceedings. Such a right should be set out in primary legislation.
3. In the interim, the Road Death Investigation Manual ("RDIM"), Crown Office and Procurator Fiscal Service ("COPFS") Book of Regulations and the Lord Advocate's Guidelines to Chief Constables should be amended to include a duty to provide a copy of the Investigation Documents to the family of a road death victim on completion of the investigation or on conclusion of criminal proceedings.
4. Scotland's road safety framework should make provision for the post impact care phase of an effective road safety strategy.

SCID thanks the Justice Committee for the steps they have taken and are available should further clarification or evidence be required.

Appendix A - brief background on SCID

SCID was founded in 1985 by Wendy Moss following the road death of her son.

SCID's Objectives:

- To help and advise victim families of road crashes.
- To seek to restructure the Law as it applies to Criminal Traffic Offences which have caused Death or Injury.
- To deter irresponsible drivers by the imposition of more relevant sanctions.
- To encourage drivers through education, to adopt safer standards.

A road death is a sudden, violent and premature death. The bereaved are in shock, confused and are thrown into a criminal justice system they know nothing about.

SCID aims to provide practical and emotional support for families bereaved or victims injured by a road crash. Support is given by those who have been bereaved themselves. Support is without limit of time.

SCID campaigns for:

- The implementation of the human rights principles of Fairness, Respect, Equality, Dignity and Autonomy for victims seriously injured and families bereaved by road crashes.
- The right of bereaved families to access the investigative documents compiled following a fatal road crash.
- The recognition in criminal law of victims injured by road crashes.