

Response from the Crown Office and Procurator Fiscal Service (COPFS), dated 8 January 2013

Thank you for your invitation to the Crown Office and Procurator Fiscal Service (COPFS) to provide comments to the Justice Committee on the recommendations contained within the report "Access in Europe by a bereaved family to information gathered during an investigation into a fatal road collision". COPFS have carefully considered the terms of the report by Vikki Long and are grateful for the opportunity to provide comments to the Justice Committee. We will listen carefully to any concerns or suggestions that the Justice Committee have.

As you know, the recommendations in the report are:

- The establishment of an independent and transparent multi-disciplinary road collision investigation body carrying out in-depth analysis of each fatal road collision should be considered by the Scottish government as part of its road safety framework;
- 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;
- In the interim, the Road Death Investigation Manual ("RDIM"), COPFS Book of Regulations and the Lord Advocate's Guidelines to Chief Constables should be amended to include a duty to provide the 'Investigation Documents' to the family of a road death victim on completion of the investigation or conclusion of criminal proceedings; and
- Scotland's road safety framework should make provision for the post impact phase of an effective road safety strategy.

The report by Dundee University sought information from a number of bodies, including foreign jurisdictions on the approach taken to requests for information from bereaved nearest relatives in road traffic deaths. No such approach, however, was made to the Crown Office and Procurator Fiscal Service.

Multi-disciplinary road collision investigation body

It might be helpful if I begin by explaining the process which is followed by COPFS and the police in fatal road traffic investigations.

Where a death by driving occurs, an investigation will be carried out by the police and a report submitted to the Procurator Fiscal outlining the circumstances.

The role of the Procurator Fiscal in the investigation of all sudden, suspicious and unexplained deaths, including road traffic fatalities is well established in Scots law. The police frequently carry out investigations into the circumstances of deaths in order to report these to the Procurator Fiscal, even where there is no suggestion of criminality.

Each of the Scottish Police forces has considerable expertise in the investigation of road traffic deaths, including collision investigation. The report by Ms Long suggests

at page 25 that it may not be possible for parties with an actual or perceived interest in the outcome of an investigation to act with total impartiality. Reference is made to an EU paper which stated that the European Union must insist organisations undertaking transport accident investigation are totally independent of the regulatory authority. The police, of course, are such an independent body. All deaths which occur as a result of a road traffic incident will be reported to the Procurator Fiscal who has an obligation to investigate all sudden, suspicious, accidental, unexpected and unexplained deaths, whether or not there is an allegation of criminality. The investigation of the death is then considered and directed by the independent Procurator Fiscal.

In most road traffic fatalities, that direction will be given by the Scottish Fatalities Investigation Unit (SFIU), which is a specialist unit within COPFS, who will investigate the circumstances and prepare a report for the consideration of Crown Counsel. Crown Counsel are the senior, independent lawyers who take decisions on behalf of the Lord Advocate in the most serious cases.

The SFIU was established in August 2010 with the intention of ensuring that all death investigations are carried out to the highest possible standards; that policy and practice in the investigation of deaths is applied consistently and that appropriate and timely decisions are taken in cases involving fatalities. The Unit comprises specialist members of staff who are experienced in the investigation of deaths; closely involved in the development of COPFS policy on the investigation of death and who also provide support to local specialist deaths investigators in Procurator Fiscal offices across the country. This approach ensures consistency of practice across COPFS.

Where criminal proceedings are in contemplation, the report to Crown Counsel will include a recommendation on whether such proceedings should be initiated. The recommendation will be considered, by a senior prosecutor within the Crown Office High Court Division, to independently assess the recommendation before being passed to one of a small number of senior Advocate Deputes who will consider all cases involving criminality arising out of road traffic deaths in Scotland. Having considered the investigations which have been carried out, Crown Counsel will provide an instruction on whether criminal proceedings should be taken or whether a Fatal Accident Inquiry is appropriate in the circumstances. Where Crown Counsel considers that further investigations require to be carried out, they will direct those.

This process ensures that all cases of this nature are fully investigated and independently assessed following the initial police investigation. COPFS consider that the decision making in these cases is of a very high standard due to this system of independent assessment by those with expertise at every stage.

If the circumstances of the death fall into one of the categories of death requiring a mandatory Fatal Accident Inquiry, or where it appears to the Lord Advocate to be expedient in the public interest to hold such an inquiry into the circumstances of the death on the ground that it was sudden, suspicious or unexplained, or has occurred in circumstances such as to give rise to serious public concern, the Procurator Fiscal will make an application to the relevant sheriff for a Fatal Accident Inquiry. At such an inquiry, an independent member of the judiciary will preside over a hearing and

produce a determination which will include the circumstances of the death, the reasonable precautions, if any, whereby the death and any accident resulting in the death might have been avoided, the defects, if any, in any system of working which contributed to the death or any accident resulting in the death and any other facts which are relevant to the circumstances of the death.

The SFIU was established following an extensive review of this area of our work and brings together dedicated prosecutors, Crown Counsel and deaths investigators from across the country. As a result, we are able to pool the expertise of those with significant experience and skill in this area and consistently provide a service of the highest standards for even the most complex of investigations. The success of our other specialist Units, such as the National Sexual Crimes Unit, the Wildlife and Environmental Crime Unit, the Health and Safety Division and those dealing with serious and organised crime and international cases, pays testimony to the huge potential of specially focused teams of investigators and prosecutors.

In addition, our Learning and Development Division frequently review the COPFS training programme. A Fatal Road Traffic Collision Course, including input from the police Crash Investigation Unit, Crown Counsel, the Lord Advocate and SCID was held at the Scottish Prosecution College to provide specialist training for those preparing and presenting fatal road traffic collision cases. In addition, there is an intensive programme of legal and practical training in the investigation and prosecution of crime and deaths in place for COPFS staff. Road traffic accident reconstruction has also featured in training to Crown Counsel and COPFS regularly attend specialist training events hosted by other agencies.

Provision of information

When any death investigation is carried out by COPFS we will write to the nearest relative to explain the role of the Procurator Fiscal and provide a point of contact for any queries. Once the deaths investigation has concluded a meeting will be offered to the nearest relatives at which the circumstances of the death would be fully explained. Where it is considered helpful, subject to the wishes of the nearest relatives, the reporting officer or accident reconstruction investigator may be invited to attend such a meeting to assist in explaining the circumstances of the death. This is in recognition of the fact that many families do not wish copies of information contained, for example, in expert reports, but do wish for the circumstances surrounding a fatal road traffic collision to be explained to them.

The guidance to COPFS staff in relation to dealing with requests for information from bereaved nearest relatives in fatal road traffic cases is available via our public website at the link provided below. The policy underlines the need for sensitive liaison and recognises that the nature of fatal investigations means that it is appropriate that information and documents which would ordinarily be considered confidential be released to assist bereaved nearest relatives in understanding the circumstances of the death of a loved one. Significant work has been undertaken with the medical profession regarding the provision of information in such cases, including in relation to the provision of distressing material, such as a post mortem reports, via General Practitioners. The guidance also applies to cases in which there are criminal proceedings although, as you will appreciate, consideration must also be

given to when and how information is provided to ensure that no prejudice is caused to any such proceedings. Where criminal proceedings do take place the circumstances surrounding the death will be examined in the course of those proceedings. Information and advice about the progress of the case is also provided by our specialist Victim Information and Advice (VIA) service.

The report would appear to suggest that the COPFS guidance on liaising with nearest relatives and providing them with copies of information on request is rarely complied with in practice but there is a notable absence in the report of any evidence in relation to COPFS to support such an assertion and the experience of those who deal with such cases would suggest it is incorrect.

Such evidence as was provided was of some age and related to requests to police forces made under the Freedom of Information (Scotland) Act 2002 (FOISA). However, where a death has been reported to the Procurator Fiscal, the normal course of action would be for requests for information to be considered by them, rather than referred to the police. In addition, the COPFS guidance makes clear that requests for information from bereaved nearest relatives in fatal road traffic collisions should not be considered under FOISA, but rather in accordance with the considerably wider COPFS policy on providing all appropriate information possible to victims and bereaved relatives.

COPFS recognises that nearest bereaved relatives are entitled to the information about fatal road traffic collisions except where exceptional circumstances exist (such as potential for criminal charges involving such a relative relating to the fatality), and is committed to ensuring that such information is provided in an appropriate and timely manner. Following publication of the report, the Head and Deputy Head of the SFIU and an official from Policy Division met with representatives from SCID to reassure them about our policies and practices and to provide a point of contact should difficulties be encountered in obtaining information. COPFS have carefully considered the terms of the report and will continue to monitor available guidance to ensure that it remains suitably robust, that it is correctly and consistently applied and that it is strengthened where necessary.

I hope that this information assures the Justice Committee that the current practices and procedures carried out by COPFS are designed to ensure appropriate provision of information to relatives in these tragic cases. As explained, there have been recent significant changes to how COPFS deals with the investigation of deaths, which are not reflected in the report, most notably the formation of the SFIU. One of the key roles of the SFIU is ensuring that a consistently high standard of policy and practices is applied to all deaths overseen by the SFIU. The formation of this specialist unit should therefore address any perceived inconsistency in the application of policy and the Head of the SFIU has confirmed that he is very happy to work with SCID to address any issues which they consider require attention in the future.

Supplementary response from COPFS, dated 18 February 2013

COPFS will provide copies of collision investigator's reports, and Post mortem reports when requested unless of course the provision of the report would be

prejudicial to criminal proceedings. Therefore collision investigator reports will not be provided until the conclusion of the criminal proceedings if there is a prosecution.

As outlined in the Crown Agent's letter, we do try and provide the information in an appropriate manner- so we will send the PM report to the GP and ask them to discuss with their patient. However if the relative wishes a copy they will be given this.

Lastly, just to confirm in relation to recommendation 3, the head of the Scottish Fatalities Investigation Unit, David Green, the Head of the West Team of that Unit, Anne Marie Hicks and Paula Black who had the road traffic portfolio in policy division here, met with representatives of SCID, Joyce Beasley and Margaret Dekker last November.