

Response from the University of Dundee, dated 19 March 2013

I refer to your letter dated 28 February 2013. I welcome the opportunity to comment on the correspondence received by the Justice Committee from the Crown Office and Procurator Fiscal Service ("COPFS"), the Association of Chief Police Officers in Scotland ("ACPOS") and the Scottish Government ("the Government") in relation to the report "Access in Europe by a bereaved family to information gathered during an investigation into a fatal road collision" by the University of Dundee dated July 2012 ("the Report").

Response from COPFS

The correspondence received by the Justice Committee from COPFS ("the COPFS Response") sets out the current procedures for road death investigations. Apart from reference to the Scottish Fatalities Investigation Unit ("SFIU"), the procedures set out in the COPFS Response are consistent with those set out in the Report. Those procedures are detailed in the COPFS Book of Regulations ("the Regulations") which are published on the COPFS website.

The COPFS Response states that a road death is taken forward by the SFIU. This statement is inconsistent with the information published on the COPFS website regarding the SFIU. Road deaths, in general, are not handled by the SFIU. The COPFS website states that "The SFIU oversees all death investigations with the exception of those where criminal proceedings are recommended (for example cases of homicide and road traffic deaths)." Homicides and road traffic deaths are reported to the High Court Division at the Crown Office. Road traffic deaths are dealt with in accordance with the Regulations relating to investigations into deaths. The information contained in the Report in relation to the investigation by COPFS into road deaths is taken from the Regulations.

The COPFS Response contends that it is the policy of COPFS to provide information relating to the road death to the bereaved family and to arrange a meeting with the bereaved family and the collision investigator. The Report acknowledges (at page 28) that this is COPFS policy as set out in the Regulations. The Report welcomes the policy of access to information as set out in the Regulations. However, the Report makes it clear that the Regulations are subject to the exercise of discretion by each procurator fiscal ("PF") and so the policy and procedures set out in the Regulations do not necessarily reflect everyday practice in each area. There is no formal data to indicate the frequency and level of the provision of information by PFs when requested by families bereaved by road death. The Report relies on the experiences of SCID and its members (which is extensive) as to what occurs in practice in relation to access to information. SCID has provided a separate response to the Justice Committee in this regard.

The Report makes it clear that an FOI request to the police should be a last resort and that requests to the PF are the correct avenue for bereaved families. The Report acknowledges that information should only be released following conclusion of the investigation where there are no criminal proceedings or conclusion of criminal proceedings where proceedings have been instigated. The recommendation of the Report is not that additional information be provided to bereaved families; it suggests

that the existing Regulations be translated into a legal right in order that access to information does not rely on discretion which is often inconsistently applied.

Response from ACPOS

The response to the Justice Committee from ACPOS ("the ACPOS Response") states that road safety is a priority for police in Scotland. The Report does not dispute that fact. The report states that several research projects carried out on the instructions of the European Commission have recognised that there is a conflict of interest where one investigating body deals with the road death investigation for judicial purposes and also for safety purposes. The police must always consider the issue of blame and whether a prosecution will arise from the collision. This is a correct and essential role in order to preserve evidence and ensure justice. In Scotland, the police are also asked to look beyond blame to road safety improvements following a collision. It is that dual role that can cause a conflict of interests. An independent investigation body does not look at blame; its sole priority is to deal with road safety and improvements that can be made following a fatal collision.

The fact that 8 FOI requests have been made to the police in Scotland in the last 3 years does not indicate the success of the current arrangements. No bereaved family should need to endure the FOI process in order to obtain information that should be made available on request. Many families do not know that they are entitled to the information on request, never mind that they can make an FOI request. Those that are aware of the FOI procedure will find it a difficult, daunting and distressing process to complete at a time when they are at their most vulnerable. The success of the current procedures can only be reflected by the absence of any FOI requests to the police of this nature. It would appear that all parties agree; an FOI request is a last resort.

The Report does not suggest that all information be given to bereaved families at any time it is requested. The recommendation is that bereaved families be given a legal right to obtain the information on request following the conclusion of the investigation or the conclusion of criminal proceedings. Were the Regulations to be followed in every case, that information would already be given to bereaved families on request at specific points in the course of the proceedings. The Report is merely requesting that the right to information be removed from the discretion of the PF and that the policies and procedures set out in the Regulations be entrenched in statute as a legal right.

The ACPOS Response mentions FEVR reports dated 1994 and 1997 and states that many improvements have been made since those reports were published. Those reports are only referred to in the Report in order to highlight the importance of access to information for bereaved families. There is no recent research in this area as those reports highlighted the importance of information and the focus since that time has been to try and improve the quality of the information and the access to that information. The Report acknowledges (at page 28) that many improvements have been made since the 1990s and that is to be commended. Following detailed research, the Report recommends further improvements in this area rather than accepting the status quo. Only by continually seeking to improve all aspects of post

impact care (which includes road safety improvements and access to information and support) will we continue to see a decline in road deaths and serious injuries on our roads in Scotland.

Response from the Government

The response received by the Justice Committee from the Government (“the Government Response”) seems to suggest that the Report is recommending a right to obtain police reports and other information while criminal proceedings are pending. That is not the recommendation contained in the Report. The recommendation is that the information be provided on request following the conclusion of proceedings – as is suggested in the current Regulations.

The Government correspondence makes the assumption that post impact care is a health issue which can be dealt with by having health representatives on the framework board. Post impact care is widely recognised as being an integral part of an effective road safety strategy. It covers not only health issues but also the road death investigation and the support provided, both psychological and practical, to the victims and their families.

General comments

The report by the Clerk to the Justice Committee suggests in several sections that the Report is inaccurate. The factual content of the report was researched thoroughly and information on procedures was obtained from current Regulations published by COPFS. The SFIU is not referred to in the Report due to the fact that COPFS states that it will not be used for fatal road collisions. If SFIU is being utilised in road traffic deaths then there is no public indication of this by COPFS on its website or in its published materials. If there has been a change in policy in relation to the use of SFIU for road deaths then that change has not been made public and is not evident from COPFS materials.

The Report actually supports many of the statements made by COPFS and ACPOS in their responses to the Justice Committee. The Report does not seek to discredit the significant improvements made to road safety and investigations into road deaths. The Report suggests further improvements based on research into current practice in other European countries.

A bereaved family’s right to receive information in relation to a road death is available at present at the discretion of the PF. Surely it is not too big a step to entrench that right in legislation and ensure a consistency for bereaved families so as to avoid the possibility of further grief and victimisation.

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