

In the immediate aftermath of a road crash in Scotland

As families bereaved and victims injured in road crashes, SCID has first-hand knowledge of the difficulties in accessing information following a road crash. Finding your way through the complexities of a road crash investigation and possible criminal proceedings at a time when you are most vulnerable is candidly mind boggling.

From **SCID's experience** of almost 30 years we have put together some information from the victims' perspective, which, we hope will be of help at a time when you feel most isolated.

Victim families and victims injured in road crashes search for truth and justice. For families bereaved, there is a need for answers to the many questions which burn night and day in their heads. The information you seek may be very brief or very detailed. The information you seek may be in the immediate aftermath of the crash or it may be months even years later. Answers are necessary to help you deal with consequences of serious injury or the grief following the finality of a road death. To be denied answers results in secondary victimisation.

SCID together with other voluntary groups has fought, and is still fighting long and hard, to give victims of road crashes rights and recognition within the investigative and criminal process. It is fair to say the victims generally have little to no knowledge of the process. It is your right to be treated with dignity and respect and have any concerns addressed. Understanding the process and voicing your concerns can be empowering.

1. What happens immediately following a serious road crash?

The **ambulance, fire and police service** will respond to a 999 call.

The **Fire Service** is the rescue service at a road traffic collision. Their main goal is to rescue casualties whilst preserving the scene as far as the rescue allows.

The emergency calls to the **Ambulance Service** are logged and copies of the following records may be available at your request.

- Time and date of any 999 call
- Time of arrival at the scene of the crash (if they responded)
- Hospital Destination
- A copy of the Patient Care Report

The **local police** may be the first to attend followed by a police **road crash investigation team**. Their prime purpose is to attend the scene immediately and secure and preserve the locus (crash scene). **This initial response is a crucial to the outcome of the investigation.** The police also assist the injured and manage traffic. They establish the identity of the persons involved and contact details of the next of kin. They take brief statements from witnesses¹. The police complete a form, STATS 19, which records the details of a collision date, time, vehicle registration numbers, vehicle, driver, witnesses and road user details, numbers and types of injuries, alcohol testing, weather conditions, contributory factors etc. The primary purpose of the STATS19 form is to supply statistical data to Government Statistical departments and is the basis for policy decisions made by Government in the area of Road Safety.

¹ Full witness statements will be taken at a later date.

2. Crash Investigation

The police road crash investigation team consist of:

- Senior Investigating Officer
- Collision Investigator
- Vehicle Examiner
- Investigating Officers
- A Family Liaison Officer will also be appointed².

The first duty of the team is an initial assessment of the crash. Make the scene safe, preserve life and the scene, identify victims, witnesses and any suspects. Any suspects should be breathalysed, tested for drug use and an eyesight sight test given.

The role of the crash investigation team is then to locate, record, gather, evaluate and interpret any relevant physical or forensic evidence that arises from a collision. The evidence can be varied. Digital photographs are taken at the scene and crash and the surrounding area surveyed using appropriate equipment. From this a detailed computerised scale plan of the scene can be produced³.

In the weeks following the crash a detailed report is prepared by the police including witness statements, post mortem report, toxicology report, a scale plan of the locus together with any calculations carried out as part of the overall investigation file. It **may** be possible to give a range of likely vehicle speeds and this range is likely to be more accurate if more factors are available such as “gouges” or other marks on the road surface tyre marks, debris, etc. Pedestrian projection calculations can be carried out in certain situations if certain factors are present to assist the investigator and these can help in determining a range of likely impact speeds. In some vehicles tacograph records and analysis of air bag on impact may also be a source of determining speed. CCTV, mobile phones records, if available, can also aid the overall investigation as would the use of experts e.g. in crush analysis. This list is not exhaustive.

If you are dissatisfied with any aspect of the police investigation you must make your concerns in the first instance in writing to the senior investigating officer. It is important that you keep copies of all correspondence.

² Your police family liaison officer should give you the Scottish Governments booklet produced by BRAKE - *Information and advice for bereaved families and friends following a death on the road in Scotland*. This booklet provides practical information and more information e.g. on the role of the PF in investigating a road death, the criminal justice system, the involvement of Victim Information and Advice Officer (VIA) - VIA is part of the COPFS. The booklet importantly gives guidelines on when you should expect to meet with the PF. If these guidelines are not met you should contact the PF/ VIA officer to ask for a meeting to update you on the progress of the case.

³ New 3D scanning technology is being brought in to help police investigate crash sites. 20 officers are being trained to use them. These scanners rotate 360 degrees while capturing the scene at a million point per second,. Officers can then view the site as a virtual image on a laptop and view it from any angle.

3. What happens next?

At the end of the police investigation all reports are forwarded to the Crown Office and Procurator Fiscal Service (COPFS). The COPFS are responsible for investigating all sudden and unexplained deaths. Within COPFS, the Scottish Fatalities Investigation Unit (SFIU) is a specialist unit created in 2013. This unit is responsible for investigating all sudden, suspicious, accidental and unexplained deaths⁵. There is a designated SFIU team based across each area of the country, in the North (SFIUNorth), East (SFIUEast) and West (SFIUWest) and a National Office in Glasgow.

It is very important that every road death or injury is investigated thoroughly. A thorough investigation by the police and the COPFS is essential:

- To find out how and why the death / injury happened
- To ensure fair criminal prosecutions
- To facilitate compensation settlements

During the investigative/criminal process, access to information is very limited.

We strongly recommend that you attend all meetings with the procurator fiscal with your solicitor present⁶. Again it is advisable to keep written records of all meetings and correspondence together with contact names and details.

4. What information can families request?

Bereaved families, can request, if they wish:

- The Police Collision Investigators Report
- Post Mortem Report
- Any additional reports arising out of the post mortem process i.e. toxicology, neuropathology, etc.
- Any other expert reports the Crown obtain in relation to the crash. In relation to particular specialist experts, sometimes they insist that they are provided only for COPFS use and that if it is to be further disseminated they will only do that on receipt of a fee. There may also be a complication with these in that experts on occasion decline to allow the report to be passed to other parties and in these circumstances COPFS are not able to provide these.

These reports are not usually disclosed until the end of the investigative process or any criminal proceedings. If criminal proceedings are taken then the reports and documents are not released until the conclusion of those proceedings - all to protect the integrity of the criminal case.

If the decision is that there are to be no criminal proceedings then the reports should become available at that point.

It has been the experience of SCID that post mortem reports can be requested before the investigation has been completed. This report, on request, can be sent to the family's general practitioner. Also a plan of the locus i.e. crash site can be made available to view at a meeting with the PF.

⁵ The role of the Procurator Fiscal in the investigating of deaths <http://www.copfs.gov.uk/publications/deaths> The procurator fiscal acts in the "public interest". Your solicitor cannot represent you at any criminal proceedings but can represent you in a Civil Action or a Fatal Accident Inquiry. Having your solicitor present at meetings with the PF is twofold; your solicitor will take notes so you will be able to recount accurately what was said at the meetings and your solicitor will be in a better position to advise on further action (Civil Action or Fatal Accident Inquiry)

⁶ It is important that you choose a solicitor with expertise in this field. Your solicitor by being involved at an early stage can aid the civil (compensation) process. SCID works closely with Thompsons Solicitors & Solicitor Advocates. Any first visit to a solicitor is free. Before employing any solicitor we strongly recommend you have an interview with 2/3 solicitors as it is important that you feel comfortable with your choice. Those solicitors who advertise "No win no Fee" check what percentage their fee will be on winning any compensation.

5. At the end of the investigative process.

Following the police and COPFS investigation a **Criminal Case** may or may not follow. All case papers are forwarded to Crown Counsel for consideration. However prior to this you can make your views on a possible charge known to the PF⁷. There must be sufficient evidence to take a criminal case to court.

Victims right to review a decision not to prosecute

Crown Office have issued the following statement; "As a victim of crime in Scotland, you, have the right to a review of a decision by us not to prosecute, made on or after 1 July 2015. You should if possible apply for a review within one month of the date you are informed of our decision not to prosecute. Generally you would be told of the review decision within 20 working days."

Victims Right to Review:

Further information and application form can be found at;

<http://www.crownoffice.gov.uk/publications/victims-and-witnesses> together with the Lord Advocate's Rules: *Review of a Decision Not to Prosecute*

6. Further information;

Victim Personal Statement (VPS)

In criminal cases, bereaved close relatives have a right to explain how the crime has affected them individually⁸. A VPS can be made at any time prior to the sentencing of the offender.

A Civil Case may be taken if the victim's family wishes. If a victim or the family of a victim claims personal damages against the driver for loss or injury sustained in a collision, this will be a civil law case. A Civil Action must be started within 3 years of the crash. You should discuss the possibility of a Civil Action with your chosen solicitor who will explain what it entails. A Civil action is independent of any criminal proceedings or no proceedings cases.

A Fatal Accident Inquiry (FAI) is mandatory if a road user is killed in the course of his/her employment; all others are at the discretion of the Lord Advocate. Your views on an FAI should be sought by the PF. Some families have sought a discretionary FAI to get recognition of their loved one, to hear the facts and to ensure lessons are learned to prevent a similar occurrence in the future. For the first time in the whole investigative process you can be represented at an FAI by your solicitor (or you can represent yourself) - some families have found it helpful to their grief to have their unanswered questions addressed in this Inquiry.

An FAI has to be funded by the family but Legal Aid is available in certain circumstances. Your chosen solicitor will advise.

SCID legal Careline: http://www.scid.org.uk/Legal_Careline/legal_careline.html

Crown Office and Prosecution Service: <http://www.copfs.gov.uk/investigating-deaths/our-role-in-investigating-deaths>

⁷ More information on possible criminal charges can be found in the BRAKE booklet.

⁸ Making a Victim Personal Statement https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/264625/victims-vps-guidance.pdf