

# S.C.I.D.

Supporting Victims of Road Crashes



**Scotland's Campaign against Irresponsible Drivers  
working together with**



**THOMPSONS  
SOLICITORS**  
& SOLICITOR ADVOCATES

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# Victims of Criminal Driving and the Law

The law should serve the victims of crime. The families of victims of fatal road traffic collisions should be protected and have their interests promoted by our legal system. Practically, that is not how it seems to work.

The driver responsible will have a lawyer. The Procurator Fiscal and Crown Office are responsible for investigating the death. Their work and interests ought to be identical to the families of the victim but it all too often never turns out that way.

Families of victims can be left frustrated and disappointed; let down by the legal system.

This guide is intended to give an overview of the rights of families and how best those rights can be advanced with the assistance of SCID in partnership with Thompsons Solicitors.

## The Three Things Every Family Needs

Before you can begin the healing process of losing a loved one to a road traffic collision, you will have three demands of the legal system:

- To get answers and to understand what happened and how it happened
- To ensure justice is done through the criminal process
- To receive just and fair recompense

It can seem like the law not only fails to meet those needs but also puts up positive barriers to prevent them. With the support of SCID, working in partnership with Thompsons Solicitors, there are things that can be done.

## Abstract Police Report

This contains basic information about the incident including the location, road conditions, witnesses and insurance information. It can also indicate whether the matter has been submitted to the Crown Office for prosecution.

## Crash Investigation Report

This is a very detailed report prepared by specialist road traffic officers. Normally containing diagrams, photographs, where possible speed calculations and a detailed account of witness evidence.

## The Data Protection and Sub-judice Problems

Families often find it difficult to receive copies of an abstract police report or crash investigation report. It is often suggested that providing copies is in breach of data protection or contravenes the rules regarding information that can be provided while a criminal investigation is taking place (sub-judice). It is not easy and it is not always possible to achieve but there are arguments that can be made and with the correct legal support those documents can be obtained.

## Fatal Accident Inquiry (FAI)

FAIs are a very important means by which families can get the answers they require. They are often viewed by families as an essential part of the healing process. However, there is not an automatic requirement for an FAI to be held following a road death and the Crown Office (who take the decision upon whether or not one is to be held) are often resistant to families' calls for an FAI.

It is possible to convince the Crown Office to hold an FAI. If they can be convinced that the circumstances raise "serious public concern" or the death can be tied into a work related situation, an FAI may be held. It can, however, be a very difficult task, involving significant amount of engagement, and argument, with the Crown Office. Having the correct legal support is often the distinguishing factor.

## Criminal Charges

A driver who causes a death of another may be charged with causing death by dangerous driving, causing death by careless driving, causing death with no valid driving licence, no insurance or whilst disqualified or lesser charges. In extreme circumstances, a charge of culpable homicide may be brought. Each case will turn on their own facts and the amount of evidence available as to the level of fault on the driver.

The views of the victim's family can and should be taken into account and in that respect the family require a strong advocate on their behalf.

## The Role of the Compensation Process in Obtaining Answers and Justice

It is only right that the family of the victim of a fatal road traffic collision will receive just recompense. The compensation process can, however, serve a wider role than securing financial compensation. The compensation process can be used as a means of forcing the Crown to produce documents (such as the abstract police report and crash investigation report) which the police may often be resistant to producing. It can also provide solicitors representing the family with an important opportunity to engage with the Crown Office in relation to the holding of a Fatal Accident inquiry and discussions around charges which may be brought.

It is possible to have one solicitor dealing with a compensation claim while engaging another to assist in fighting for an FAI and similar concerns. There are, however, benefits to be achieved from a joined up approach of having only one solicitor deal with all aspects. Families should therefore always check and ensure that any solicitor they engage has the skill and knowledge to deal with assisting them in obtaining answers and securing an FAI, if that is what they want.

## SCID Legal Careline

Thompsons Solicitors have launched the SCID Legal Careline to support SCID and the families with whom SCID work and support. All of the operators and solicitors who work with SCID are trained in grief support.

**The SCID Legal Careline is open Monday to Friday from 9am to 8pm on 0800 081 0069.**