

# Information and advice for bereaved families and friends following death on the road in Scotland

For more help and emotional support call our helpline

**0808 8000 401**

or email [helpline@brake.org.uk](mailto:helpline@brake.org.uk)

Go to [www.brake.org.uk/support](http://www.brake.org.uk/support) for this book online

For a children's support book call 0808 8000 401

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## Introduction

This guide aims to help you if someone close to you has been killed in a road crash, or if you are caring for someone bereaved in this way. It has been produced by the charity Brake, with funding from the Scottish Government.

## What to read now

If you have been bereaved in the past few hours or days, turn to the section 'What happens now?' (If you don't feel able to read on right away, ask someone else to read these pages for you.)

The rest of this guide provides information and advice on many other issues you may face at different times. The yellow book in the front inside cover provides advice on coping after such a terrible bereavement. An audio version is also available to listen to at [www.brake.org.uk/support](http://www.brake.org.uk/support).

## Who can help you now

For emotional support, information and practical help from Brake and other agencies now or later, contact the Brake helpline on 0808 8000 401 or [helpline@brake.org.uk](mailto:helpline@brake.org.uk) or turn to the section 'Useful organisations'.

For information about support you can expect from criminal justice agencies, turn to the page opposite page 1.

**If you need extra copies of this guide for others, call the Brake helpline on 0808 8000 401.**

**This guide is also online at [www.brake.org.uk/support](http://www.brake.org.uk/support).**

**The online version contains hyperlinks to the websites referred to in this guide.**

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### Other Brake guides

Brake produces other free guides that may be useful to you, depending on your circumstances:

- *Someone has died in a road crash* (book for children and their carers)
- *Information and advice for bereaved families and friends following death on the road in England and Wales* (if the crash happened in these countries)
- *Information and advice for bereaved families and friends following death on the road in Northern Ireland* (if the crash happened in that country)
- *Information and advice following a serious injury in a road crash* (online only)
- *What happens in an Intensive Care Unit?* (online only)

You can view these guides online at [www.brake.org.uk/support](http://www.brake.org.uk/support) or call the Brake helpline on 0808 8000 401 to request copies to be sent to you.



# Your contacts and notes

## Your right to support from criminal justice agencies

### Your police contact

The police may assign a Family Liaison Officer (FLO) to you. An FLO is a police officer trained to help bereaved people with procedures immediately following the crash and during the police investigation. If you are not assigned an FLO, ask if this is possible. Whether or not your police contact is an FLO, they should be able to help you with immediate things such as seeing a loved one's body and answering, where possible, questions you have about the crash. Your police contact should also be able to keep you informed of the police investigation and any court dates and help you manage any contact with the media (see page 33).

**Best practice procedures for Family Liaison Officers or other officers who are supporting families bereaved by road crashes have been laid down by Police Scotland in its Road Death Investigation Manual. If you want to read this manual, ask your police contact.**

### Victim Information and Advice

At a later stage, your police contact will withdraw from your case and you may be introduced to a Victim Information and Advice (VIA) officer from the Crown Office and Procurator Fiscal Service (COPFS). This will happen if the Procurator Fiscal is investigating the circumstances of the death and the case may result in criminal charges against someone. A VIA officer can update you about the progress of your case and help you contact other support agencies, if this is what you want.

**To find out more about VIA, go to [www.copfs.gov.uk](http://www.copfs.gov.uk).**

### The Victims' Code for Scotland

The Victims' Code for Scotland provides crime victims in Scotland with a guide to their rights. It also signposts victims to sources of further help and support.

The code can be found at [www.mygov.scot/victims-code-for-scotland](http://www.mygov.scot/victims-code-for-scotland).

### Who needs informing about the crash right now?

**The police may not know everyone who should be told right away. There may be relatives or close friends who still need informing because they don't live with you or aren't with you right now. You may choose to do this yourself, or ask your police contact to do it for you. Ask your police contact if you need another copy of this book, or call Brake on 0808 8000 401.**



# Your contacts

You can use the space below and overleaf to record names and telephone numbers of people you may need to talk to over the coming weeks and months.

## Your police contact

Police contact name .....

Station phone number .....

Mobile number .....

Times they can be contacted .....

Email .....

## Police officer in charge of the investigation

(Senior Investigating Officer)

Name .....

Phone .....

Email .....

**Procurator Fiscal** (the public official who investigates all sudden deaths)  
(see page 37)

Name .....

Phone .....

Email .....

**Victim Information and Advice officer** (VIA is part of the Crown Office and Procurator Fiscal Service. It is an information service for nearest relatives in cases which may involve criminal proceedings.) (see page 39)

Name .....

Phone .....

Email .....

## Hospital or mortuary staff

Name .....

Phone .....

Email .....

## Funeral organiser

Name .....

Phone .....

Email .....

## Solicitor helping you with a compensation claim (see page 81)

Name .....

Phone .....

Email .....

## Charities and other organisations helping you (see pages 93-101 for contact details)

Organisation .....

Name .....

Phone .....

Email .....

Website .....

Organisation .....

Name .....

Phone .....

Email .....

Website .....

## Health professionals helping you

(see the enclosed yellow booklet *Coping with grief* for information on how to obtain this help)

Organisation .....

Name .....

Phone .....

Email .....

Website.....

Organisation .....

Name .....

Phone .....

Email .....

Website.....

Organisation .....

Name .....

Phone .....

Email .....

Website.....

## Faith or spiritual leader

Name .....

Phone .....

Email .....

**You may wish to use the blank pages that follow to write down questions you want to ask and information you have been told by these people and others.**

**It's also helpful to keep copies of any letters or documents you receive in a safe place.**



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A series of horizontal dotted lines for writing notes.

A series of horizontal dotted lines for taking notes.

# What happens now?

# What happens now?

## What happens to a loved one's body

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## Organ and tissue donation

You may or may not want to consider donation of organs or tissue from a loved one's body to help others live.

If a loved one died in hospital, medical staff should discuss any possibility for donation with you. If this hasn't happened, and you want to know about any possibility of donation, call the organ donation team on **0300 20 30 40**, or you can ask medical staff to call the service for you. If a loved one died by the roadside, it will not be possible for their organs to be donated but donation of some tissue may still be possible. If you want to find out if this is possible, you may have to alert medical staff yourself. You need to do this within 24 hours, although sometimes up to 48 hours, after the death. For tissue donation, call the Tissues National Referral Centre on **0800 432 0559** or call the tissue services pager on **07623 513987**.

Under Scottish law, if your loved one had made their donation decision known (for example, by informing a relative or close friend, or by joining the NHS Organ Donor Register) and they died in circumstances where they can become a donor, the person caring for your loved one's body should make every effort to fulfil this decision. However, even if a loved one's decision is unknown, donations should be discussed with you. After a road crash, medical staff may need to obtain permission for donation to proceed from the Procurator Fiscal, who investigates all sudden deaths in Scotland (see page 37). This permission is usually given.

Organs or tissue are removed with care and do not delay burial or cremation arrangements. You can still see a loved one's body afterwards if you choose.

## Seeing a loved one's body

After someone dies, their body is taken to a hospital mortuary or a local authority mortuary.

You can decide whether or not to see a loved one's body. To help you make this decision, and if you didn't see a loved one in hospital or at the roadside before their death, you can ask your police contact or medical staff to tell you about injuries to a loved one's body and what their body looks like.

Sometimes, the bodies of people killed in road crashes have few visible injuries because injuries are internal. Sometimes bodies are very badly damaged. If a body is badly damaged, medical staff may cover the most damaged areas with a sheet. You can ask which areas of a body will be covered or uncovered. Sometimes the whole body is very badly damaged. Sometimes a body is a different colour, due to internal bleeding or bruising.

**You may choose to see a loved one's body to say goodbye. Or you may choose to remember someone as they were. The decision is yours. You can take your time to decide. If a loved one's body is in a hospital, there may be a bereavement officer or hospital chaplain who can support you at this time. You can ask if this support is available.**

## Touching a loved one's body

If you decide to see a loved one's body, you may wish to touch their body. If you want to do this, talk to your police contact or medical staff. Sometimes, bodies of people killed in road crashes are very delicate because they are damaged, or bodies should not be touched for reasons to do with a police investigation. If you touch a loved one's body, it may help to remember their body will feel cold.

## Identifying a loved one's body

The police sometimes require a family member to identify a person who has died. If the police ask you to do this, they may ask you to identify your loved one's body or identify them from their belongings. If you do not want to see a loved one's body but you are asked to identify their body, ask the police if there is anyone else who could do this for you. Alternatively, you may be able to identify the body through an internal glass window (at the mortuary), or by photograph or by video recording. In rarer instances, a body is harder to identify due to injuries sustained. In this case, police may ask you to help identify a loved one through dental records or by providing a sample of their DNA (for example, from a hairbrush or toothbrush).

## Post-mortem examination

After someone dies on the road, there is likely to be a post-mortem examination of their body. This is a medical examination to determine the cause of death. It is carried out by a specialist doctor called a pathologist.

A post-mortem examination is carried out on behalf of the Procurator Fiscal (see page 37). The Procurator Fiscal investigates all sudden deaths.

In nearly all cases of death on the road, the Procurator Fiscal decides that a post-mortem examination should include surgically opening and looking inside a body. The body is then closed again. This is called an invasive autopsy. Some people have objections, for faith or other reasons, to an invasive autopsy. If you have objections, or concerns about the way it will be carried out, you should talk to the Procurator Fiscal or your police contact as soon as possible so they can take into account your views. A post-mortem examination may still be required.

Usually a post-mortem examination also includes toxicology tests. This means that the pathologist takes samples of blood and urine, and possibly other samples such as stomach contents, fluid from an eye and pieces of tissue, to find out if they contain any toxic substances, such as alcohol or drugs.

Very rarely, a second post-mortem examination may be carried out, if someone is charged with a crime in connection with the death, or if a criminal investigation is ongoing in relation to the circumstances of the death. This is often called a 'defence post mortem' as it is requested on behalf of the person accused of the crime. If this is necessary, the Procurator Fiscal or your police contact will let you know as soon as possible.

**You should be informed about whether a post-mortem examination will take place. You should be told by the Procurator Fiscal, or by your police contact. For more information about post-mortem examinations and the role of the Procurator Fiscal in investigating deaths, go to [www.copfs.gov.uk/publications/deaths](http://www.copfs.gov.uk/publications/deaths).**

**More information about the Procurator Fiscal is on page 37. Your police contact can tell you how to get in touch with the Procurator Fiscal if you haven't been contacted by them already.**



## Organ or tissue retention

Most post-mortem examinations involve taking small tissue samples, known as 'tissue blocks'. These are less than six millimetres thick and are embedded in wax or resin. From them, very small amounts of tissue, thinner than a hair, are placed on glass slides so they can be examined under a microscope. These slides help confirm the cause of death. Tissue samples retained from the post-mortem examination become part of the dead person's medical record. Taking tissue samples does not disfigure a body.

Rarely, a Procurator Fiscal releases a body for burial or cremation but retains organs or tissue temporarily as part of their on-going investigation. The nearest relative will be informed. You can decide if any retained tissue or organs should be reunited with the body, which may mean you have to delay a burial or cremation until the investigation is over. If you proceed with a burial or cremation, any retained tissue or organs will be disposed of by the pathologist in a respectful way. The Procurator Fiscal (see page 37) should explain these options and discuss what you want to do.

Sometimes medical staff want to keep tissue samples for research, education or training purposes. They can only do this with the authorisation of the person who died (if they were an adult) or their nearest relative.

**The law on organ and tissue retention is explained in the Human Tissue (Scotland) Act 2006. The Procurator Fiscal or the pathologist can provide more information about the law or your case.**

## Delays to a burial or cremation

A burial or cremation can only take place once the Procurator Fiscal has given permission. To find out how long a post-mortem examination will take, or if you have objections to a burial or cremation being delayed, talk to your police contact or the Procurator Fiscal.

## The post-mortem examination report

You are entitled to, and can ask for, a copy of a loved one's post-mortem examination report, usually for free. You may or may not want to see it. The Procurator Fiscal can arrange for it to be sent to your GP who can help explain it. Sometimes, you cannot see it until after an investigation has finished. A pathologist who carried out a post-mortem examination may also be able to meet with you. Usually this happens at the office of the Procurator Fiscal.

**If a loved one died before emergency services reached them, the pathologist may be able to give you information about their death. For example, this could include how fast they lost consciousness.**

## Return of a loved one's personal belongings

The police, hospital officials or mortuary staff may be holding personal belongings of a loved one who has died, such as a bag, mobile phone, clothes or jewellery. You can ask if they are holding any belongings. You may decide that you want to have all, some or none of them returned.

Personal belongings, particularly clothes, are often damaged or blood-stained in crashes. Before deciding if you want certain belongings, you may want to ask about the condition of them.

If you want something returned that has been blood-stained, you can choose whether you want it returning just as it is, or cleaned first. Some people don't want a loved one's clothes cleaned because the clothes may carry the smell of that person. Some clothes are very badly damaged and you may want them cleaned or not returned at all. The police may or may not charge you a fee for any cleaning you want them to do.

If a loved one who has died was in a vehicle, you can ask your police contact to check if any belongings are still in that vehicle (for example, in the boot or glove compartment of a car) and ask for these to be returned to you.

Sometimes belongings are kept temporarily by the police because the police need them as part of their investigation. Once the police investigation and any resulting criminal prosecution are finished, these belongings can be returned if you want them.

**The police and the Crown Office and Procurator Fiscal Service have produced joint guidance on the return of property kept for use as evidence, called 'Victims' Rights – Return of Property'. This guidance can be found on the Publications page at [www.copfs.gov.uk](http://www.copfs.gov.uk).**

**Many people treasure the smell of a loved one who died. You may wish to preserve their smell for a while by storing clothing they recently wore in an odour-free zip-locked bag.**

## Visiting the crash site

If you were not in the crash, you may or may not want to visit the place it happened. If you want to visit, your police contact can tell you the precise location if you do not know it and tell you any dangers such as parking problems, lack of pedestrian access or fast traffic. They may be able to accompany you to ensure your safety and answer questions you may have about the site.

If the crash site is far away and not accessible by public transport, your police contact or someone else may be able to drive you there. You may want them to do this if you do not drive, do not feel able to drive because of the shock, or you can't drive because your vehicle was damaged in the crash.

You may or may not want to leave flowers or something else at the crash site. See page 35 for information on roadside memorials.

## How did a loved one die?

If you were not in the crash yourself, you may or may not want to know the details of how a loved one died. You may want to know about medical treatment given at the roadside or in a hospital, and whether a loved one said anything or was unconscious during this time.

Sometimes it is possible to meet and talk to people who provided help at the crash site, such as a paramedic or a fire officer, or members of the public who provided first aid. If you want to do this, your police contact will be able to find out if this is possible. Alternatively, your police contact may be able to ask these people questions on your behalf.

If a loved one died in hospital, you can ask to talk to doctors or nurses who provided treatment. The Patient Advice and Support Service (PASS) can help you do this. Alternatively, your police contact may be able to find out about treatment given and explain it to you.

**You can also, if you are the nearest relative, get a copy of the medical report prepared by the hospital on treatment given. This can be requested by you or your solicitor (see page 27) and there may be a fee. This report may use medical terms unfamiliar to you, so you may want to ask a hospital doctor or your GP to explain it to you. You may not be able to get full details of treatment until after the Procurator Fiscal's investigations into the death are finished.**

**If you have a concern that a hospital treated your loved one inadequately, you may wish to consult a personal injury solicitor (see page 81). In some cases, a medical negligence claim can be brought.**

## Why did the crash happen?

It is common to want to know straight away what happened and who was involved.

The police will carry out an investigation into the crash and collect evidence on behalf of the Procurator Fiscal (see page 37). If it appears that someone may have committed an offence, criminal charges may then be brought (see page 43).

If a solicitor is working on your behalf to find out if you can claim compensation (see page 27), they will need information from the police (including names of people involved, witness statements, and evidence such as photographs). It is important that your solicitor requests and gets information as soon as possible.

The Crown Office and Procurator Fiscal Service (the agency that brings prosecutions) has guidelines saying information should be released promptly. However, in some cases, for legal reasons, some information may not be released until after an investigation or a prosecution has happened.

**You can ask your police contact or the Procurator Fiscal questions at any time during the police investigation. They may not have much information at first and may not be able to tell you certain things until their investigation is complete, but they will tell you as much as they can.**

**You can read more about what information can be released and when it can be released in the document 'Access to Information Protocol – A Guide for Victims and Witnesses'. This is available at [www.copfs.gov.uk](http://www.copfs.gov.uk).**

## **What happens to a vehicle involved in the crash?**

If a person who died was in a vehicle or on a motorbike or bicycle, it might be taken away for examination by the police along with any other vehicles involved in the crash. The police examine vehicles involved in fatal crashes to find out if they were mechanically defective, and to get more information about what happened in the crash.

Vehicles may be kept until the end of the police investigation and any resulting criminal prosecution. Sometimes the police have to take vehicles apart to find out what happened. Your police contact can tell you where vehicles are being kept and what is happening to a vehicle. If you were not in the crash, you may want to see a vehicle. You can ask your police contact to arrange this. Many vehicles involved in crashes are very badly damaged, although some are not. Ask your police contact to tell you in advance what a vehicle will look like.

The Procurator Fiscal must authorise the release of a vehicle.

**You can pay for an independent examination of a vehicle if you or your solicitor (see page 27) think this is necessary. If you wish to do this, tell your police contact. A list of crash investigators is available from the website [www.itai.org](http://www.itai.org).**

# Practical issues

# Practical issues

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## Registering a death

It is a legal requirement to register any death that occurs in Scotland with an official called a Registrar. A death must be registered within eight days.

A death can be registered with any Registrar in any part of Scotland. Your police contact, a doctor, or funeral director can give you the details of a Registrar so that you can make an appointment. You can also find Registrars in a telephone directory, under 'Registration of Births, Deaths and Marriages'. The Registrar can tell you what documents you need to bring with you when registering a death.

Once a death is registered, the Registrar will give you the following documents, free of charge:

- A Certificate of Registration of Death (Form 14) to give to any funeral director you are using so that the funeral can go ahead.
- A 'Registration or notification of death' form (BD8 form), to complete and use in claiming or adjusting benefits (see page 28). This form is not needed if using the 'Tell us once' service (see page 23).
- A shortened extract of the record of the death, as written in the Register of Deaths, which does not mention details such as the cause of death.

If you wish to, you can pay for a full extract of the record of the death, as written in the Register of Deaths. You will need a full extract to do certain things, such as closing a bank account or letting an insurance company know about the death.

**A booklet, *What to do after a death in Scotland*, provides more information on registering a death. It is available from Registrars or by searching for 'What to do after a death in Scotland' at [www.gov.scot](http://www.gov.scot).**

**Information on registering a death is also available from the National Records of Scotland at [www.nrscotland.gov.uk](http://www.nrscotland.gov.uk).**

## Talking to motor insurers

If a person who died was driving a vehicle then you, or someone on your behalf, needs to tell their motor insurer that they have died. The police can give you basic details that the motor insurer needs, such as the details of another driver. You do not have to tell a motor insurer what happened in the crash. You only need to say that the crash is being investigated by the police (see page 40).

The motor insurer may offer you a solicitor to help you find out if you have a compensation claim. It is up to you whether you choose this solicitor or a different solicitor (see below). See pages 81-91 for important advice on choosing the right solicitor for you.

**Whether or not a person who died was driving a vehicle, you are advised to consult a solicitor of your choice as soon as possible. It may be possible, at no cost to you, to make a significant claim for compensation from the motor insurer of a vehicle that contributed to the crash (see pages 27 and 81).**

**At any stage you may be contacted by the other side's motor insurer, offering you money in settlement for any compensation claim you may have. If this happens, you are strongly advised not to accept this money. Do not sign any forms they send you. A settlement they offer may be lower than the amount that a solicitor could obtain for you.**

## Telling others

There may be people other than relatives and friends who need to be told about a death quite soon. You can choose to tell these people yourself or ask someone to do it for you. These people may include:

- employers. (If you are employed you may be entitled to immediate bereavement leave or be given permission to take your holiday entitlement now; some employers and trade unions also have benevolent funds that provide support to families of employees who have died);

- school, college or nursery (teachers can provide valuable support);
- life insurance and pension companies (the sooner you inform these companies, the sooner you can go ahead with any possible claims from these plans);
- bank or building society;
- mortgage or loan provider;
- landlord;
- housing department or housing association (if a person who died was living in social housing);
- utility providers (for example, gas, electricity and phone) – particularly if a person who died lived alone;
- benefit providers (see page 28);
- HM Revenue and Customs (if a person who died paid tax);
- Passport Office (if a person who died had a passport);
- DVLA (if a person who died had a driving licence);
- social clubs that a person who died attended.

**Most local authorities provide a service where they will pass information about the death to other government organisations on your behalf, so you don't have to inform lots of different people. You can visit your local authority website to see if this is available in your area, or go to [www.gov.uk](http://www.gov.uk) and search for 'Tell us once', or speak to the Registrar.**

## Arranging a burial or cremation

Arrangements for a body to be buried or cremated, and arrangements for any funeral service or gathering in their memory, are usually overseen by a close relative. If you are the person making arrangements, consider any instructions that the person who died left in a will (see page 27) or elsewhere, or told anyone. You may also want to consult other people who were close to the person who died. If the person who died followed a religion, there may be religious practices to follow.

**Making decisions at this time can be hard. You may find it easier to make decisions and share tasks with other close family or friends. People in the same family sometimes have different or strong views on what should be done. Discussing options and making decisions together can help. Alternatively, you may choose to let someone else make decisions.**

**Some people hold more than one memorial event, so everyone gets an opportunity to say goodbye in a way that has meaning to them.**

**You, or someone else responsible for the dead person's estate, are responsible for ensuring the cremation or burial happens, and deciding how. This means that, as long as you choose a legal method, no-one (for example a funeral director) can compel you to do it in a particular way.**

## Using a funeral director

Many people arrange a burial or a cremation with the help of a funeral director. A funeral director's services usually include, among other things, looking after the body prior to burial or cremation, providing you with a choice of coffins, shrouds or urns to buy, liaising with the burial ground or crematorium on your behalf and transporting the body.

If you decide to use a funeral director, and are considering which one to use, you may want to choose one who is a member of an association and follows a code of practice. The following associations provide lists of members:

- National Association of Funeral Directors  
T: 0121 711 1343 W: [www.nafd.org.uk](http://www.nafd.org.uk)
- National Society of Allied and Independent Funeral Directors  
T: 0345 230 6777 or 01279 726 777 W: [www.saif.org.uk](http://www.saif.org.uk)

- The Good Funeral Guide  
T: 07557 684 515 W: [www.goodfuneralguide.co.uk](http://www.goodfuneralguide.co.uk)

Some people choose not to use a funeral director because they want to manage arrangements themselves. Some people choose to use a funeral director only for certain things, such as looking after the body. You can get advice on managing arrangements yourself from the charity the Natural Death Centre. Go to [www.naturaldeath.org.uk](http://www.naturaldeath.org.uk) or call 01962 712 690.

Some people choose not to use a funeral director because arrangements are being managed by a faith leader.

## Burial grounds

Your local authority or funeral director can provide you with lists of local cemeteries and church graveyards. Some burial grounds may already be full. The person in charge of the burial ground can tell you.

There are also an increasing number of woodland and meadow burial grounds. These are run by local authorities, private landowners and wildlife charities and provide a natural setting for burial, while also using the land to grow plants and encourage wildlife. The Natural Death Centre (contact details above) provides a list of these.

## Ashes

If your loved one's body is being cremated, then their ashes can be scattered in a place of your choice or garden of remembrance, buried in a cemetery or graveyard, or kept by you. You will need to get permission from any landowner before making arrangements to scatter or bury ashes.

## Coffins and shrouds

Bodies can be placed in coffins made from a range of materials, including cardboard. The body can alternatively be wrapped in a shroud before being buried or cremated. You can buy coffins and shrouds from a funeral director, over the internet or make your own. There are rules governing the materials that can be used to make coffins and wrap bodies. Your funeral director should be able to give you advice about coffins and shrouds. If you are not using a funeral director, you can get advice from the Natural Death Centre (see above).

The websites [www.yourfuneralchoice.com](http://www.yourfuneralchoice.com) and [beyond.life](http://beyond.life) compare prices and services of funeral directors in your area.

## Paying for a burial or cremation

You may be able to get help paying for all or some of the costs of a burial or cremation if:

- you are on a low income. (Ask your local benefits office as soon as possible whether the government can help you pay. You can also find information on [www.gov.uk](http://www.gov.uk) by searching 'funeral payment');
- the person who died was signed up to a scheme providing payment for funeral costs. This scheme could be part of an employment package, a personal pension plan, or an insurance plan;
- the person who died had paid in advance for their own burial or cremation through a payment plan. Some credit union accounts also make a payment towards funeral costs when the account holder dies. (Some payment plans may only pay for the use of a particular funeral director).

**If you aren't eligible for this help, you should still keep receipts of costs in case you can claim them back later. You may be able to do this if someone is found to have been responsible for a death as part of a claim by you for compensation (see opposite and page 81).**

## Direct funerals or cremations

One option for reducing the cost of a funeral is a burial or cremation without any mourners present. This is sometimes called a 'direct' funeral or cremation. The funeral director makes arrangements with the crematorium or burial site, collects the body, and returns ashes from the crematorium in an urn. Many people who choose this option still have a memorial ceremony, but hold it on a different day, later on.

**The Natural Death Centre can advise you on ways to lower the cost of a burial or cremation and lists funeral directors specialising in direct funerals. Call 01962 712 690 or go to [www.naturaldeath.org.uk](http://www.naturaldeath.org.uk).**

## Hiring a solicitor

Many people bereaved by a road crash benefit from hiring one or more solicitors as soon as possible. The earlier you consult a solicitor, the sooner they can consider your case and the greater the chance they will be able to help you. An initial consultation with a solicitor should be free.

Different solicitors specialise in different areas of law. A personal injury solicitor is the best person to advise you on whether you can claim compensation and pursue any claim for you (see page 81). Sometimes a lot of money can be claimed, so it is important to find out. You may also need advice from a solicitor specialising in wills. Depending on your circumstances, you may also need specialist advice regarding issues around an inquest, a post-mortem examination, a criminal case, or a death that happened abroad.

**It is important to use solicitors experienced in the right areas of law. A solicitor who has helped you before, for example to buy a house, may not be the best solicitor for you now. See pages 81 to 82 for advice on contacting solicitors specialising in road death and personal injury claims, and below for advice on contacting a solicitor specialising in wills.**

## Wills

If you are the next of kin of an adult who has died, or you have been appointed as their representative, you need to find out if they made a will. Copies of wills may be held by a bank or solicitor. They may also be registered publicly with Registers of Scotland. You can call 0800 169 9391 or visit [www.ros.gov.uk](http://www.ros.gov.uk) to find out.

A will appoints a person or people (known as an executor) to administer a dead person's estate (everything they owned). It also gives instructions on how possessions and money should be distributed and may also include instructions about their burial or cremation and any funeral arrangements.

Wills can be complicated. Sometimes there is no will. Whether or not there is a will, a specialist solicitor will be able to give you advice on what you need to do. STEP provides details of solicitors in Scotland who specialise in wills.

Go to [www.step.org](http://www.step.org) or phone 020 3752 3700. Alternatively, you can ask the Law Society of Scotland for details of specialist solicitors (see page 81).

**If you need advice about a will but cannot afford a solicitor, your local law centre can provide a free and independent legal service. To find details of the law centre nearest to you, go to <https://scotland.shelter.org.uk/> and search 'law centres'.**

## Benefits

Some people qualify for benefits after being bereaved. You may be able to claim benefits for all sorts of reasons, for example if a partner has died, or you are bringing up children on a low income.

If a person who died was claiming any benefits or a state retirement pension, or you were receiving benefits for them, you need to let their benefits office know about the death.

To find out if you can claim any benefits, contact your local benefits office as soon as possible. You can also call the bereavement benefits helpline on 0800 731 0469, or visit [www.gov.uk](http://www.gov.uk). You can also contact your local Citizens Advice service for free advice (see page 97). For information on finding your local office, go to [www.cas.org.uk](http://www.cas.org.uk).



## Financial issues

Many people find their bereavement causes financial issues; for example, if a person who died was working and provided income. Some bereaved people struggle to pay bills at this time.

Some bereaved people also find they are managing finances for the first time, because this was a task undertaken by a person who died.

Understanding finances that someone else previously managed can be challenging, particularly at such a difficult time.

The following organisations can give advice.

Charities offering advice:

- StepChange Debt Charity (0800 138 1111 or [www.stepchange.org](http://www.stepchange.org))
- National Debtline (0808 808 4000 or [www.nationaldebtline.org](http://www.nationaldebtline.org))
- Citizens Advice Scotland (0808 800 9060 or [www.citizensadvice.org.uk/scotland/](http://www.citizensadvice.org.uk/scotland/))

Government-established advice service:

- Money Advice Service (0800 138 7777 or [www.moneyadviceservice.org.uk](http://www.moneyadviceservice.org.uk))

**If you are pursuing a claim for compensation, it is sometimes possible to obtain an early partial payment, to help with immediate financial needs. Your solicitor can advise you (see page 81).**

## Stopping unwanted mail

You may find it upsetting to receive junk mail, email or sales calls for someone who has died. One way to reduce the chance of this is to register, for free, with The Bereavement Register. Call 0800 082 1230 or go to [www.thebereavementregister.org.uk](http://www.thebereavementregister.org.uk).

You can also stop unwanted sales calls, mail and faxes by registering for free with the following:

- Telephone Preference Service (0345 070 0707 or [www.tpsonline.org.uk](http://www.tpsonline.org.uk))
- Mailing Preference Service (0207 291 3310 or [www.mpsonline.org.uk](http://www.mpsonline.org.uk))
- Fax Preference Service (0345 0700 702 or [www.fpsonline.org.uk](http://www.fpsonline.org.uk))

You may have to re-register with these services every few years.

**The above services may not stop all unwanted correspondence, but will reduce the chance of it happening.**

## Social media

Communicating with friends, family or colleagues through social media (such as Facebook or Twitter) is an important part of many people's lives. You may find comfort and support through your use of social media at this time.

It is important not to make comments publicly on websites that could create problems for a police investigation, a criminal trial or a compensation claim. If you wish to discuss such things with people who are close to you, it is safest to do so only through private messaging or email.

There are many websites that encourage people to state their views on public forums (for example, on news websites). These forums often contain a variety of views, some of which may not be sensitively worded nor fair comment. They may contain incorrect information. A driver who has caused a crash may also post things on their own social media accounts that you may find upsetting.

For your well-being, you may choose to avoid sites which could contain insensitive posts or incorrect information, and only visit places on the internet where you feel safe, supported and can trust what you are reading.

**If you feel you are suffering online harassment, for example threats to harm you physically, talk to the police.**

## Your case in the media

Journalists from newspapers, or radio or TV programmes, often want to cover crashes and court cases. You cannot stop the media from reporting on your case or publishing your name and where you are from.

Journalists may publish or broadcast stories about your case without talking to you, or they may phone you, knock on your door or approach you at a court hearing for a comment. They may ask you for a photograph or home video of someone who has died. They may ask to interview you or photograph you.

Different people feel differently about the media. You may feel grateful for media coverage, or dislike it, or feel disappointed that there isn't more media coverage. It is up to you whether you talk to journalists or not. You may decide to talk to journalists to help raise awareness of road safety, or to help find witnesses to the crash. You may find that you prefer to talk to some journalists but not to others. You may decide not to talk to journalists for personal reasons.

If you aren't contacted by journalists but want media coverage, you can contact them. You can ring up, email or write to journalists. Alternatively, your solicitor (see page 27) or the police may be able to help you liaise with journalists (see next page).

**Ask your police contact or your solicitor (see page 27) if there is anything you shouldn't talk about to journalists. If someone is accused of causing a death, it is important not to make comments that could create problems for a police investigation, a criminal trial or a compensation claim.**

## Police help with the media

The police can often help you to manage your relationship with the media, particularly in the first few days after the crash or around any court case.

The police often release their own media statements about crashes and resulting court cases to the media, and will be able to give these to you. Your police contact should be able to pass on to the media any written statement you want to make, any photograph you want to see published or home video you want broadcast. In some cases the police also organise press conferences for bereaved families. This might happen at the end of a court case, or to appeal for witnesses.

## Choosing a photo or home video

When choosing a photo or home video of someone who has died to pass on to the media, you may wish to consider how they would have wanted to be remembered. Your police contact can arrange for a photo to be altered if necessary – for example, taking a loved one’s image from a group photo.

A few families have given the media a photo of a loved one’s dead body, or of them critically ill in hospital before they died. They have done this as part of an appeal for witnesses or to explain to the public the horror of road crashes. You can ask the media to use a photo for a specific purpose and on just one occasion, accompanied by specific words from you, and then ask for the photo not to be used again.

If you would like a photo to be used on just one occasion, you should agree this with the journalist who contacts you, before the photo is used. It is advisable to have a record of this agreement, for example by asking the journalist to email you, or asking the journalist if you can record their verbal agreement on your mobile phone.

You can release a photo to just one journalist or lots of journalists. Your police contact may be able to help.

**You are advised not to give original photos or home videos to the media in case they lose them. Newsrooms can be hectic, messy places. The police should be able to get copies made for you.**

## Being interviewed by a journalist

Being interviewed by a journalist can be hard, particularly if they are a stranger and they want you to talk about how you feel. It can be particularly hard to do interviews that are being broadcast on radio or TV. If you decide to talk to a journalist, it can help to ask in advance what questions they want to ask, and to think what you might want to say. If you are doing an interview at a radio or TV station, you might want to take a friend for support, or, if you would prefer, ask for the interview to be done at your home.

## Making a comment or complaint about the media

If you are unhappy with a journalist's conduct or think that a journalist has published or broadcast something that is incorrect or unfair, you can make a complaint to the relevant publication or TV or radio station.

If you are complaining about a publication, address your complaint to the editor and publisher. If you are complaining about a TV or radio station, address your complaint to the director. Sometimes the media offers to print or broadcast an apology. A newspaper or magazine may offer to print a letter from you.

Journalists are governed by national codes of practice that require them to respect the privacy and feelings of bereaved people.

- The Independent Press Standards Organisation (IPSO) regulates the Editors' Code of Practice, a set of rules that newspapers or magazines who are members of IPSO must follow. To read this code and find advice about dealing with media attention, or complain if you think a journalist has broken this code, go to [www.ipso.co.uk](http://www.ipso.co.uk). IPSO can help with unwanted press attention or harassment concerns and has a 24-hour helpline 07799 903 929.
- The Ofcom Broadcasting Code governs TV and radio journalists. To read this code and make a complaint if you think a journalist has broken this code, go to [www.ofcom.org.uk](http://www.ofcom.org.uk) or call 0300 123 3333.

**Some people bereaved by a road crash wish to campaign for road safety. Pages 93 to 95 give details of organisations that can help you do this.**

## Roadside memorials

Some people bereaved in road crashes wish to place flowers and other things at the place where a loved one has died, in their memory. Some people see this as an important expression of their grief. You may or may not want to do this.

Many local authorities allow small temporary memorials such as flowers and cards. Some local authorities grant permission for small permanent memorials, such as a plaque on a grass verge, or depending on the location, larger memorials such as a bench. However, some local authorities may not allow permanent or large memorials, and some may even restrict the length of time that flowers can be placed at the site of a crash.

If you want to seek permission for a permanent or large roadside memorial, you need to talk to the roads department of the relevant local authority to find out what they allow.

You may want to ask someone else to talk on your behalf to your local authority about roadside memorials. The Brake helpline can do this for you. Your solicitor, police contact, or another support agency may also be able to help.

**If cards or notes are placed by other people, you may want to ask your police contact to retrieve them after a period of time and give them to you.**

## Website memorials

Some people bereaved in road crashes decide to have a website in memory of a person who died, and publish memories, poems, messages, pictures or videos on this website. There are several organisations dedicated to providing this service for you, including ones that are free or low cost. The Brake helpline can put you in touch with these services, call 0808 8000 401.

## If the crash happened abroad

If a loved one died abroad, there may be many added complications, such as different legal procedures or a language barrier. The Brake helpline works with the Foreign & Commonwealth Office (FCO) to provide emotional and practical support to families and friends in the UK of anyone killed in a road crash abroad.

If you have been in touch with the FCO you should have been offered Brake's support. If not, you can contact the helpline on 0808 8000 401 (Monday–Friday, 10am–4pm) or email [helpline@brake.org.uk](mailto:helpline@brake.org.uk). You can also ask for support from FCO Consular staff based at British Embassies, High Commissions and Consulates overseas, and in London in the Consular Directorate of the FCO.

These officials can:

- give you information about burial or cremation in the country in which someone died, or information about transporting the body and personal belongings back to the UK;
- advise you how to register a death in the country where the person died;
- help you transfer money from the UK to pay costs;
- offer basic information about the local police system and legal system, including the availability of any legal aid;
- provide you with details of local lawyers, interpreters and funeral directors.

FCO staff cannot investigate deaths abroad nor give legal advice. If you have concerns about legal issues, a solicitor with experience of dealing with deaths abroad can advise you (see page 27).

If someone dies abroad and you want to arrange a cremation in Scotland, your funeral director will apply for a cremation order from the Scottish Government Health Directorate. If you are not using a funeral director, contact the Scottish Government for further information at [www.gov.scot](http://www.gov.scot) or call 0300 244 4000 (if calling from the UK) or (+44) 131 244 4000 (if calling from abroad).

**Foreign & Commonwealth Office (FCO) guidance called *Support for British nationals abroad*: A guide explains what support is available to family and friends if a loved one died abroad. This guidance is available online at [www.gov.uk/government/publications/support-for-british-nationals-abroad-a-guide](http://www.gov.uk/government/publications/support-for-british-nationals-abroad-a-guide).**

**If the person who died had travel insurance, it is advisable to contact the insurer as soon as possible, in case there is a possibility of a claim.**



# Criminal investigation and charges

# Criminal investigation and charges

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## The Procurator Fiscal

Procurators Fiscal investigate all sudden deaths. They are qualified lawyers and are employed by the Crown Office and Procurator Fiscal Service (COPFS). They are responsible for the following:

- instructing a post-mortem examination (see page 14);
- overseeing the police investigation (see page 40) and then deciding whether or not a criminal prosecution should go ahead, in consultation with senior lawyers called Crown Counsel (see page 43);
- deciding whether a Fatal Accident Inquiry should happen (see page 76).

Once the Procurator Fiscal has considered the police report into a crash (see page 41), they may decide to interview witnesses and carry out further investigations. Once they are satisfied that the circumstances of the death have been fully investigated, they will decide the next step, which may include a criminal prosecution.

## Contact with the Procurator Fiscal

The Procurator Fiscal should contact you no later than 12 weeks after a death is reported to them to tell you the progress of the investigation. When the Procurator Fiscal contact you, they should also offer you a personal meeting, which should take place within the next 14 days. If you do not want a meeting, the Procurator Fiscal will communicate with you in other ways according to your needs and wishes. After that, the Procurator Fiscal will contact you every six weeks about the progress of the investigation. If you want a further meeting, this can be arranged.

The Procurator Fiscal should also continue to liaise with you to keep you informed of any progress and to ensure your views are carefully considered when decisions are being made.

Once a criminal charge or charges have been brought against someone, or a decision has been made to bring no charges, the Procurator Fiscal should contact you again to explain the decision. For information on prosecutions, see page 43.

**You should feel free to contact the Procurator Fiscal or VIA at any time to ask questions or raise concerns you may have during the investigation into the circumstances of the death. Your police contact can tell you how to contact the Procurator Fiscal if you have not heard from them already. You may wish to write their contact details on page 1 of this guide.**

## Victim Information and Advice (VIA)

If criminal charges are being considered by the Procurator Fiscal, and you are the nearest relative of a person who died, a Victim Information and Advice (VIA) officer will be assigned to provide you with information about what is happening.

VIA is a service provided by the Crown Office and Procurator Fiscal Service (COPFS). Your VIA officer has direct access to information about your case. If you have been assigned a police Family Liaison Officer (see opposite page 1) you will normally be introduced to a VIA officer in a meeting. At this time, your FLO will pass responsibility to VIA for giving you information. Your FLO will then withdraw from the case.

If you do not have an FLO, you may be introduced to VIA by another police officer or the Procurator Fiscal.

VIA staff can:

- provide information about the criminal justice system;
- provide information about the progress of your case, including dates of hearings and decisions about bail, verdicts and sentences;
- help you to get in touch with organisations that can offer practical and emotional support, if this is what you want;
- provide additional support, for example if you have to give evidence; and
- arrange for you to visit the court before the trial.

**If you are not introduced to a VIA officer, this may be because someone else (a nearest relative) is receiving help from VIA.**

**To find out if you are also able to receive help from VIA, you can call COPFS on 0300 020 3000. If VIA cannot help you, they can refer you to other support agencies if you wish. For more information on VIA, go to [www.copfs.gov.uk](http://www.copfs.gov.uk).**

## The police investigation

A death on the road is investigated by the police on behalf of the Procurator Fiscal (see page 37). The police have a duty to try to find out what happened by gathering evidence, and then submit this evidence to the Procurator Fiscal. A police investigation can take several months.

If the police decide to stop an investigation and you have not been told why, you can ask your police contact or make a formal request for this information to Police Scotland. There is information on how to do this on [www.copfs.gov.uk](http://www.copfs.gov.uk).

## Giving a statement

The police may take witness statements from a number of different people. If you were involved in the crash, you saw the crash, or you saw vehicles before or after the crash, you may be asked to give a witness statement. If you were not involved in the crash, but knew the movements of a loved one on the day they died, you may be asked to give a statement too. If you give a statement, the police will write down and record what you say.

If you have made a statement, a lawyer, or more than one lawyer, may want to interview you too. This is an essential part of the investigation and helps lawyers understand the evidence you are providing. Your contact details remain confidential - they cannot be given to someone accused of a crime.

It may be possible for a relative or friend to attend an interview with you to offer support. If you want to be accompanied ask if this is possible. If you have particular communication needs you may also be entitled to assistance from an interpreter or intermediary (someone who helps communicate to you questions the police ask, and communicate back your answers).

**If you give a statement, you may or may not be required, at a later date, to give evidence in court. See page 64 for information about giving evidence in court and support to help you do this.**

## Physical evidence

Collision investigation officers, who are specially trained police officers, or employees of other specialist agencies, investigate a crash in order to identify the cause and obtain evidence. These experts may photograph,

measure and video the site of the crash and examine vehicles involved (see page 20). Their findings will be included in a collision investigation report (see below). The police may also examine belongings of people who were involved in the crash, such as mobile phones.

## Medical evidence

Medical evidence may be provided by personnel who tended to a loved one at the scene of the crash or in hospital, and by the pathologist who did the post-mortem examination (see page 14). Medical evidence can include alcohol and drug tests on the drivers involved.

## If the crash involved someone driving for work

If the crash involved someone driving for work, the Health and Safety Executive (HSE) may get involved in the investigation. HSE inspectors aim to identify any failure by an employer to ensure health and safety procedures were in place and followed. The investigation will usually be conducted jointly with the police. The police will be able to tell you if the HSE are involved. The HSE can take enforcement action against an employer. For more information about the HSE go to [www.hse.gov.uk/scotland](http://www.hse.gov.uk/scotland).

A Fatal Accident Inquiry (FAI) will normally be held if the death was the result of an accident that happened in Scotland while the person who died was at work (see page 76).

**Standards for police investigations into fatal road crashes are explained in a police manual called the Road Death Investigation Manual. If you want to read this manual, ask your police contact.**

## The police report

If the police investigation finds any evidence that suggests a crime may have been committed, this evidence is compiled into a report that is sent to the Procurator Fiscal.

This report, which contains all evidence relating to the police investigation, is confidential and you cannot obtain it. However, you are entitled to see a separate police report called a collision investigation report, which explains the physics of what happened in the crash. This report may only be available to you after any

criminal proceedings are finished. If you, or a solicitor you are using (see page 27), wish to get a copy of it, or discuss its contents, ask the Procurator Fiscal.

Before reading a police collision investigation report, you may want to ask your solicitor or the police what it contains. Police collision investigation reports often contain photographs taken at the time of the crash and sometimes detailed interviews with eye witnesses. It will be possible for the police or your solicitor to remove anything you don't wish to see or read.

If you are pursuing a claim for compensation (see page 81), your solicitor will usually obtain an 'abstract' police report on your behalf as soon as possible. This provides only brief details of the crash and who was involved. Your solicitor may ask for an interview with police officers involved in the investigation. Your solicitor may also request extra evidence from the police report. Your solicitor may only be allowed to interview the police and obtain this extra evidence after any criminal proceedings are finished.

## **Precognition interviews**

After the Procurator Fiscal receives the police report, they may decide whether to 'precognosce' (interview) any witnesses as part of the investigation into the death. These interviews help them decide if criminal proceedings should be brought.

If you have evidence relevant to the investigation (for example, if you witnessed the crash or events leading up to it, or after it), you may be asked to attend a precognition interview with the Procurator Fiscal or a lawyer acting on behalf of someone involved in the crash. You should co-operate with any request to attend a precognition. Your contact details remain confidential. They cannot be given to a person who is accused of a crime.

**Precognitions usually take place in private. It may be possible for a relative or friend to attend a precognition with you to offer support. You will need to get permission from the Procurator Fiscal for this to happen. You are not allowed to be accompanied by another witness and your supporter cannot participate in the interview. You can claim reasonable expenses for attending a precognition.**



## The decision to prosecute or not

The purpose of a criminal prosecution is to find out if a person, or in some cases a company, has broken the law and to punish an offender or offenders. Whether or not a criminal prosecution happens depends on the circumstances of the crash and whether there is enough evidence to support a criminal charge. Sometimes several charges are brought. Sometimes no charges are brought.

The Procurator Fiscal will consider the law, the evidence and whether it is in the public interest for charges to be brought. The crime has to be recognised in Scottish law and there also has to be enough reliable and credible evidence that the crime was committed by someone.

If the Procurator Fiscal thinks a serious charge should be brought against someone, they send a report explaining their recommendation to senior lawyers called Crown Counsel. Crown Counsel will then instruct which charge or charges the accused should face.

**Some charges must be brought within certain time limits. The police or the Procurator Fiscal can advise you.**

## Victims' Right To Review

**If a decision is made by the Procurator Fiscal not to bring charges against someone, you may have the right to request a review of that decision, known as a Victim Right to Review. If you wish to request this, contact the Procurator Fiscal to find out if it is possible and the time frame in which you must do it.**

## Victim statements

If a case is being heard in the High Court or before a sheriff and jury (see page 66), up to four family members may be asked whether or not they want to make a victim statement. This gives them an opportunity, before sentence is imposed, to explain in writing how the crime has affected their lives, physically, emotionally and financially.

If you are eligible to make a victim statement, the Procurator Fiscal should send you a letter that includes a victim statement form and the date that you need to return the form by. If you do not receive a letter and you feel you are eligible to make a victim statement, you can ask the Procurator Fiscal or VIA for more information.

If you make a victim statement and an accused person is found guilty by trial or pleads guilty, your victim statement will become part of the case papers and may be read out in court. You will not have to read out your victim statement in court.

You do not have to make a victim statement. If you choose not to, information about the impact of the crime can still be explained in court.

**More information, including details of who can make a victim statement and what can be included in a statement, is available in a booklet, *Making a victim statement*, available from the Scottish Government website: go to [www.mygov.scot](http://www.mygov.scot) and search for 'make a victim statement'.**

## Charging someone and the possibility of bail

Someone who is being charged with an offence is often called 'the accused'. An accused person will be issued with a document, called a complaint, petition or indictment, that tells them to appear in court to answer the charge. Before their court appearance, an accused person may be remanded in custody (imprisoned) or granted bail (allowed to remain free before their case is heard).

The accused will be granted bail unless the court has good reason to believe they:

- would not attend a court appearance;
- would commit an offence while on bail;
- would interfere with witnesses;
- would obstruct the course of justice.

People on bail are required to:

- turn up, when required, to court hearings;
- comply with the law;
- not interfere with witnesses or obstruct the course of justice;
- make themselves available to the court as and when necessary.

Conditions may be attached to bail, such as limiting where the accused can live, or preventing them coming near you or your home or near someone else. A person on bail can also be electronically tagged. A court may require an accused person to refrain from driving as a condition of bail, but only if it considers that it is necessary to prevent the accused person from committing further offences. Otherwise, an accused person who is on bail and who possesses a valid driving licence will be allowed to continue driving while awaiting trial. If they are convicted of a crime, they may or may not be disqualified from driving as part of their sentence.

The accused person may apply for bail at different stages of the case, even if it has been refused earlier. The accused may appeal against a

decision not to grant bail. If bail is still refused on appeal, the accused can ask for the decision to be reviewed, but only if there is good reason.

If bail is granted, the prosecution can only appeal against the decision in rare circumstances.

**If the accused is granted bail and their behaviour causes you concern, for example you see them driving in a way that you consider dangerous, or if they threaten you, report it immediately to the police, VIA or the Procurator Fiscal.**

**VIA should inform the nearest relative of any bail decision. If the accused is remanded in custody, their court hearing must start within certain time limits. You can get more details from the Procurator Fiscal.**

## Changes to charges

Sometimes, if the accused is charged with a serious offence, the lawyers representing the accused ask the Procurator Fiscal for the charge to be changed to a less serious offence, based on the evidence of the case. This process is called 'plea negotiation' and usually happens before a case goes to trial.

**The Procurator Fiscal may decide to continue charging the accused with the serious offence or may decide to charge the accused with a less serious offence. Their decision is based on the law, the evidence and what is in the public interest.**

## Criminal offences

The following pages explain some of the offences that people can be convicted of following death on the road. Many people find it helpful to know that:

- Maximum penalties are fixed by law and are different for different charges, sometimes significantly. Courts often impose penalties lower than the maximum.
- Some charges mention the death or deaths, but others do not. Sometimes the only charges that can be brought by the Procurator Fiscal do not mention the death or deaths.
- Sometimes a person, or more than one person, is charged with committing more than one offence.

**Brake's helpline on 0808 8000 401 is for anyone who has been bereaved in a road crash, whether you contributed to causing the crash or not.**

## Causing death by dangerous driving

*Section 1 of the Road Traffic Act 1988 (as amended by the Road Traffic Act 1991, section 1)*

The law states that: 'A person who causes the death of another person by driving a mechanically propelled vehicle dangerously on a road or other public place is guilty of an offence.'

The definition of dangerous driving is that:

- a) the way a person drove fell far below what would be expected of a competent and careful driver; and
- b) it would be obvious to a competent and careful driver that driving in that way would be dangerous.

It is also dangerous driving if it would have been obvious to a competent and careful driver that driving a vehicle in its current state (for example, with defective brakes or other defective safety-critical components) would be dangerous.

If a jury decides that an accused person is not guilty of this charge, they may convict them of 'causing death by careless or inconsiderate driving' instead (see next page).

**This offence is usually tried in the High Court but in some circumstances may be heard in a Sheriff Court with a jury. The maximum prison sentence is 14 years at the High Court or five years at a Sheriff Court. Both courts may impose an unlimited fine. Anyone convicted must be disqualified from driving for a minimum period of two years. The offender must take an extended driving test before they can regain their licence.**

## Causing death by careless or inconsiderate driving

*Section 2B of the Road Traffic Act 1988 (as amended by the Road Safety Act 2006, section 20)*

The law states that: 'A person who causes the death of another person by driving a mechanically propelled vehicle on a road or other public place without due care and attention, or without reasonable consideration for other persons using the road or place, is guilty of an offence.'

The law distinguishes between 'dangerous' driving and 'careless or inconsiderate' driving. The definition of careless and inconsiderate driving is that the standard of a person's driving fell below (rather than far below) what would be expected of a careful and competent driver.

**This offence is usually tried before a sheriff and jury in the Sheriff Court. In those circumstances, the maximum penalty is a prison sentence of five years or an unlimited fine, or both. The charge can also be heard by a sheriff, without a jury, in a Sheriff Court. Here, the maximum penalty is a prison sentence of 12 months or a fine of £10,000 or both. The driver must be disqualified for a minimum period of one year and their licence must be endorsed with three to 11 penalty points. The court has discretion to order the offender to re-sit their driving test before regaining their licence.**

## Causing death by careless driving when under the influence of drink or drugs

*Section 3A of the Road Traffic Act 1988 (as amended by the Road Traffic Act 1991, section 3)*

The law states that: 'If a person causes the death of another person by driving a mechanically propelled vehicle on a road or other public place without due care and attention, or without reasonable consideration for other persons using the road or place, and s/he is, at the time when driving, unfit to drive through drink or drugs, or s/he has consumed so much alcohol that the proportion in his/her breath, blood or urine exceeds the prescribed limit, or s/he fails to provide a specimen, s/he is guilty of an offence.'

The offence is committed if the death is caused by careless driving and the driver has more than the legal limit of alcohol or fails to provide a specimen. This means the police do not necessarily have to show a person's driving ability was impaired, only that s/he had more than the permitted amount of alcohol or certain drugs.

**This offence is usually heard in the High Court but in some circumstances may be heard in a Sheriff Court. The maximum prison sentence is 14 years at the High Court or five years at a Sheriff Court. Both courts may impose an unlimited fine instead of, or in addition to, a prison sentence. Anyone convicted must be disqualified from driving for a minimum period of two years and their licence endorsed with three to 11 penalty points. The offender must pass an extended driving test to regain their licence.**



## Causing death by driving: unlicensed or uninsured drivers

*Section 3ZB of the Road Traffic Act 1988 (as inserted by the Road Safety Act 2006, section 21 and amended by the Criminal Justice and Courts Act 2015)*

The law states that: 'A person is guilty of an offence if s/he causes the death of another person by driving a motor vehicle on a road and, at the time when s/he is driving, the circumstances are such that he is committing an offence under –

- (a) section 87(1) of this Act (driving otherwise than in accordance with a licence),  
or
- (c) section 143 of this Act (using a motor vehicle while uninsured or unsecured against third party risks).'

This offence would only be charged where there is evidence that the standard of driving was in some way at fault and contributed more than minimally to the death. If an uninsured/unlicensed driver was involved in a crash caused entirely by somebody else, they would not be prosecuted for causing death by driving.

**An offence under section 3ZB can be heard before a jury in the High Court or the Sheriff Court. In those circumstances, the maximum penalty is a prison sentence of two years or an unlimited fine or both. The charge can also be heard by a sheriff, without a jury, in a Sheriff Court. Here, the maximum penalty is a prison sentence of 12 months or a fine of £10,000 or both. The driver must be disqualified for a minimum period of one year and their licence must be endorsed with between three and 11 penalty points.**

## Causing death by driving: disqualified drivers

*Section 3ZC of the Road Traffic Act 1988 (as inserted by the Criminal Justice and Courts Act 2015 (2015 c. 2))*

The law states that: 'A person is guilty of an offence under this section if he or she –

- (a) causes the death of another person by driving a motor vehicle on a road, and
- (b) at that time, is committing an offence under section 103(1)(b) of this Act (driving while disqualified).'

This offence would only be charged where there is evidence that the standard of driving was in some way at fault and that it is linked to the death.

**An offence under section 3ZC can only be heard before a jury in the High Court or Sheriff Court. The maximum penalty is 10 years' imprisonment, an unlimited fine, or both. The driver must be disqualified for a minimum period of one year and their licence must be endorsed with between three and 11 penalty points.**

## Murder and culpable homicide

### *Common Law*

It is possible to charge someone with murder or culpable homicide if their driving has killed. Murder is committed when there was intention to kill a victim or the accused's conduct was 'wickedly reckless'. A charge of murder may, for example, be brought if someone used a vehicle as a weapon with an intent to kill. Culpable homicide is committed when the accused caused loss of life through wrongful conduct, but there was no intention to kill nor 'wicked recklessness'.

**Murder and culpable homicide charges are heard in a High Court. Murder carries a mandatory sentence of life imprisonment.**

## Corporate manslaughter and corporate homicide

### *Corporate Manslaughter and Corporate Homicide Act 2007*

The law states that: 'An organisation is guilty of an offence if the way in which its activities are managed or organised: (a) causes a person's death, and (b) amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased.'

A 'duty of care' is defined as a duty owed by an organisation to its employees or contractors, a duty owed as the occupier of premises, or other duties described in law that relate to the running of the organisation. An organisation is guilty of a 'gross breach' of a relevant duty of care if its conduct fell far below what would be reasonably expected. For example, if a company failed to ensure a vehicle it was operating had serviced brakes, and the vehicle could not be controlled.

**This charge is heard in the High Court. Any penalty is against the company, not individuals working for the company. The court may impose an unlimited fine. The court may also impose a remedial order (where an organisation must make changes to prevent future breaches of health and safety laws) and a publicity order (where an organisation must publicise the details of its offence).**

## **Killing someone by using a defective vehicle**

If an unsafe vehicle (for example, a vehicle with defective brakes) has been involved in a collision which results in a death, then there are a range of offences that may have been committed by, depending on the case, the driver, the owner or operator of the vehicle if different (for example, the boss of a company running a fleet of vehicles), or anyone else considered responsible.

It may be possible, for example, to charge someone with the offence of causing death by dangerous driving (see page 48), or corporate manslaughter and corporate homicide (see page 53).

Someone may be found to be in breach of Construction and Use Regulations. These impose requirements relating to safety critical components such as brakes, tyres, steering, tachographs (which record driving time of commercial vehicles) and speed limiters (that restrict speed on commercial vehicles).

**Breaches of Construction and Use Regulations are heard in either a Justice of the Peace Court or Sheriff Court. There are a range of maximum fines, the most severe of which is £10,000 in the Sheriff Court and £2,500 in the Justice of the Peace Court (except if a Stipendiary Magistrate is sitting when the maximum is £10,000).**

**If the vehicle was a lorry, bus or coach, then the person in charge of the company that ran the vehicle may be stripped of their licence to operate such vehicles. The official who decides whether or not to do this is called the Traffic Commissioner (see page 99). It may also be possible to disqualify a company boss from running any company.**

## Charges that do not mention death

The following charges do not mention death, but are sometimes brought against a driver who was involved in a fatal crash, or a crash that caused serious injury:

- **Dangerous driving** *Section 2 of the Road Traffic Act 1988 (as amended by the Road Traffic Act 1991, section 1); and*
- **Careless driving** *Section 3 of the Road Traffic Act 1988*

In some cases, there is evidence that a driver was driving dangerously or carelessly before or after the crash, but there is no evidence that this dangerous or careless driving caused the death. In these cases it may only be possible to bring charges of dangerous driving or careless driving, rather than the more serious charges of 'causing death by dangerous driving' or 'causing death by careless or inconsiderate driving'. In cases where there is evidence that a driver was driving dangerously in a crash that caused serious injury, they may be charged with 'Causing serious injury by dangerous driving' (see page 56).

**The offence of dangerous driving can be heard before a jury, usually in a Sheriff Court. In those circumstances, the maximum penalty is two years' imprisonment or an unlimited fine or both. The offence can also be heard by a sheriff without a jury in a Sheriff Court. In this case, the maximum penalty is 12 months' imprisonment or a £10,000 fine or both. The driver must be disqualified from driving for a minimum of one year unless there are special reasons to impose a shorter disqualification or no disqualification. Where no disqualification is imposed, the driver's licence must be endorsed with between three and 11 penalty points. The driver must pass an extended driving test before they can regain a full driving licence.**

**The offence of careless driving is heard in a Sheriff Court without a jury. The maximum penalty is a fine of £5,000. The driver can be disqualified from driving. Their licence must be endorsed with between three and nine penalty points.**

## Causing serious injury by dangerous driving

If your case also involved another person or people receiving serious injuries, a charge may be brought in relation to causing those injuries.

- **Causing serious injury by dangerous driving** *Section 1A of the Road Traffic Act 1988*

The offence of causing serious injury by dangerous driving means that a person is responsible for causing severe physical injury to another person as a result of their dangerous driving. This offence can be heard before a jury, where the maximum penalty is five years' imprisonment or an unlimited fine or both. The charge can also be heard by a sheriff without a jury in a Sheriff Court. In this case, the maximum penalty is 12 months' imprisonment or a £10,000 fine or both. The driver must be disqualified from driving for a minimum of two years unless there are special reasons to impose a shorter disqualification or no disqualification. The driver's licence must be endorsed with between three and 11 penalty points. The driver must pass an extended driving test before they can regain a full driving licence.

## Failing to stop or report an accident

*Section 170(4) and Section 170(7) of the Road Traffic Act 1988*

A driver involved in a crash causing death, injury or damage must stop and provide their name and address, and the name and address of the owner of the vehicle and the identifying marks of the vehicle. Failure to do so is an offence (often called 'hit and run' in the media). It is an aggravation of the offence if the driver did not stop because they thought they were over the legal alcohol limit.

If for any reason the driver does not give this information at the time of the crash, they must report the crash to a police officer or at a police station within 24 hours. Failure to report a crash is also an offence.

**Offences under this section are usually heard in a Sheriff Court. The maximum sentence for failing to stop and give details is 12 months' imprisonment or a £5,000 fine or both. The driver's licence must be endorsed with between five and 10 penalty points and the court may disqualify them.**

**The penalty for failing to report a crash or provide details of insurance is a £1,000 fine.**

## Taking and driving away

*Section 178 of the Road Traffic Act 1988*

The law states that: 'A person who in Scotland takes and drives away a motor vehicle without having either the consent of the owner of the vehicle or other lawful authority, or knowing that a motor vehicle has been so taken, drives it or allows himself to be carried in or on it without such consent or authority, is guilty of an offence.' This offence is sometimes called 'joyriding' in the media.

**This charge can be heard before the sheriff or before a jury in a Sheriff Court or the High Court. The maximum penalty is a prison sentence of 12 months or a £10,000 fine before the sheriff or 12 months and an unlimited fine, or both, on indictment.**

## Driving otherwise than in accordance with a licence

*Section 87(1) of the Road Traffic Act 1988 (as amended by the Road Traffic Act 1991, section 17)*

A person commits this offence if they drive when they do not hold a driving licence, or if they do not comply with the conditions of their licence.

There may be circumstances where an unlicensed driver is involved in a fatal collision, but it cannot be proved that their actual driving caused the death (for example, where they are driving carefully at a safe speed and another driver collides with them and dies). In these circumstances, they may still be prosecuted for driving without a valid licence.

It is also an offence to cause or permit another person to drive if they do not hold a valid driving licence.

**The maximum sentence is a £1,000 fine. In some circumstances, the driver's licence may be endorsed with between three and six penalty points, or the court may disqualify them.**



## Driving while disqualified

*Section 103(1) of the Road Traffic Act 1988*

If a person drives while disqualified from driving, they commit this offence. A person may also be charged with this offence instead of 'Driving otherwise than in accordance with a licence' (see page 58), if they do not comply with the conditions of a provisional licence gained after a period of disqualification. As with 'Driving otherwise than in accordance with a licence', there may be circumstances where a disqualified driver is involved in a fatal collision, but it cannot be proved that their actual driving caused the death (for example, where they are driving carefully at a safe speed and another driver collides with them and dies). In these circumstances, they may still be prosecuted for driving while disqualified.

**The charge can be heard before a jury in the High Court or Sheriff Court. In those circumstances, the driver can be sentenced to 12 months' imprisonment, or an unlimited fine, or both. The charge can also be heard by a sheriff, without a jury, in a Sheriff Court. Here, the maximum penalty is 12 months' imprisonment, or a £10,000 fine, or both.**

## Driving without insurance

*Section 143(1)(a) of the Road Traffic Act 1988*

If a person drives a vehicle on a road or any other public place without motor insurance, they have committed this offence. As on pages 58 and 59, there may be circumstances where an uninsured driver is involved in a fatal collision, but it cannot be proved that their actual driving caused the death (for example, where they are driving carefully at a safe speed and another driver collides with them and dies). In these circumstances, they may still be prosecuted for driving without insurance.

**The maximum sentence is a £5,000 fine. The driver's licence must be endorsed with between six and eight penalty points and the court may disqualify them.**

## Bringing a private prosecution

It is sometimes possible for a member of the public, rather than the Procurator Fiscal, to prosecute another person for a criminal offence. This is called a private prosecution and very rarely happens. The process is very costly and you cannot claim legal aid. There must be sufficient evidence in law that a crime has been committed. The consent of the Lord Advocate (see page 77) is also required before a private prosecution can take place.

# Court cases

## Court cases

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## Attending court

Most criminal cases and appeals are held in public courtrooms. This means that you can attend, although you don't have to unless you are called as a witness (see page 63). Children under 14 are not allowed in court unless they have been called as a witness. The information below can help you decide if you want to go or not, and help prepare you if you do decide to go.

The Procurator Fiscal or Victim Information and Advice should inform the nearest relative of the dates of any court hearings in writing. If you don't hear anything and you want to know if a court hearing is happening soon, talk to your police or VIA contact.

In certain circumstances, you may also have the right to request information about the progress of the case. Guidance on what information can be obtained, who can make a request, and how to make a request, can be found in the document *Access to Information Protocol - A Guide for Victims and Witnesses*, available at [www.copfs.gov.uk](http://www.copfs.gov.uk).

## Support in court

If you decide to attend a court hearing, it may help to have support. Your police contact may be able to come with you. You can also bring friends and family. The court will try to find places for everyone to sit, although maximum numbers will be restricted by seats available.

You can also access information and support from the two services listed below.

**Victim Information and Advice** (see page 39) can help you understand procedures in court and what happens in your case. An officer from VIA can meet you when you attend court. They won't sit in court with you, but the Witness Service (see below) can provide support throughout a trial. Your VIA officer will aim to be present in court for any plea or verdict, so they can explain it to you afterwards.

**Victim Support Scotland** is a charity, supported by The Scottish Government, providing emotional and practical advice and support to victims and witnesses of crime. This help is free and confidential. Victim Support Scotland's Witness Service provides information and emotional and practical support to victims, witnesses and bereaved relatives attending court. The Witness Service is available in all High Court, Sheriff Court and Justice of the Peace courts. Staff and trained volunteers support you through the process of attending court and, if you are a witness, giving evidence.

They are also able to arrange an accompanied visit to the court before the hearing, so you can familiarise yourself with a court room and court facilities. Many people find this helpful.

**The police or your Victim Information and Advice officer will be able to put you in touch with Victim Support's Witness Service. Alternatively, call the Victim Support Scotland Witness Service helpline on 0345 603 9213 or go to [www.victimsupportscotland.org.uk](http://www.victimsupportscotland.org.uk) to find out more.**

## Seeing the accused or their friends around the courthouse

If you were not in the crash, court may be the first place that you see the accused or any of their friends. Many people find this hard. If the accused is on bail, they will be able to use the public areas of the court, such as any cafe.

It may be possible for you to sit and wait for a court hearing in a quiet room, away from the accused (if they are not remanded in custody) and away from any of their friends. You can ask court staff, or the Witness Service, about this.

## Where you can sit in the courtroom

In the courtroom, you and anyone supporting you, as well as friends of the accused and any journalists, can sit in the public gallery. (If you are a witness, you will not be able to sit in the gallery until you have given evidence.) VIA or the Witness Service may be able to arrange for you to sit in a different part of the gallery to any friends of the accused.

**In court, the person being prosecuted is referred to as 'the accused'. The more formal term 'the panel' is also occasionally used.**

## What you may see and hear, and how you may feel

Evidence is presented in court for the benefit of the justice of the peace, sheriff, judge and/or jury. Sometimes you may not be able to see evidence being discussed (such as diagrams or videos). If you can see evidence, some of it may be particularly upsetting. You may also strongly disagree with one or more things said in court by a lawyer for the accused, or by a witness.

If you think you may get upset and need to leave the courtroom, you can. You are allowed to leave and re-enter a courtroom quietly. While you are in court, you are required to sit quietly and not talk. People who disturb court proceedings can be asked to leave. You should switch off your phone, tablet or other electronic device before you enter the courtroom. You are usually allowed to take notes in court, but sometimes there are legal reasons that prevent this. You should check with court staff before taking notes. You are not allowed to take photos or make sound recordings without the permission of the judge.

## Understanding what is happening in court

When the court has breaks, for example at lunchtime, VIA will aim to answer any of your questions about what is happening in court.

## Courtroom changes and delays

Sometimes a court building has many courtrooms in it. Sometimes the courtroom in which your case will be heard changes. Sometimes, the start time of a hearing is delayed or a hearing is postponed to another day. VIA will aim to keep you up to date with what is happening.

## If you are asked to be a witness in court

In certain cases a person who is bereaved by a road crash may be 'cited' as a witness to give evidence in court (asked to be a witness in court). If you are asked to be a witness, the Procurator Fiscal will give you a letter and booklet called *Being a witness*. You may be eligible for special measures to help you give evidence (see next page). You can download the *Being a witness booklet* from [www.copfs.gov.uk/involved-in-a-case/witnesses](http://www.copfs.gov.uk/involved-in-a-case/witnesses).

## Special measures for witnesses

Being a witness in court is a new experience for most people. As a witness, you may feel vulnerable for reasons to do with the circumstances of the case, the evidence you have to give, or your health or age. You may feel so distressed at the thought of giving evidence that you feel vulnerable.

You can discuss any concerns you have with the person who cited you, or your VIA contact. They can give you information about the court process and support arrangements to help you be better prepared for giving evidence. They can also discuss your circumstances, and they may be able to apply to the court for you to use 'special measures' to help you give evidence.

Special measures are automatically available to anyone under the age of 18 and anyone who is a victim of a sexual offence, human trafficking, domestic abuse or stalking.

Special measures are also sometimes available to:

- adult witnesses who have a mental illness or who find giving evidence stressful; and
- adult witnesses who are at risk of harm as a result of giving evidence.

The standard special measures (which are automatically available to anyone under the age of 18 and anyone who is a victim of a sexual offence, human trafficking, domestic abuse or stalking, and at the discretion of the court for others) are:

- screens, so you cannot see the accused, and they cannot see you directly (although they will be able to see you on a television when you give your evidence);
- a television link to somewhere outside the courtroom so you can give evidence away from the courtroom. You'll only be able to see and hear the person asking you questions and all cameras are controlled by the judge or sheriff; and
- having a supporter to sit with you while you give evidence. This can be someone you know or someone from a support organisation. They can't help you give evidence or influence your evidence in any way. If they are also a witness in the case, they can't support you until they have given evidence.



Further special measures (allowed at the discretion of the court) are:

- using a statement you have already given as your main evidence. This is a video or audio taped interview between you and the police, or a written statement you gave before the trial. It will be played or read out in court and you will be asked questions about what you said;
- using evidence taken by a ‘commissioner’ (a judge or sheriff) appointed by the court. This means giving your evidence in the same way as you would in a trial, but at a different time or place than the actual court case. The evidence you give will be recorded and played at the trial;
- closing the court while you are giving evidence, which means that members of the public will not be allowed in the courtroom. Only certain officials, and those permitted by the court, are allowed to be present.

These special measures may be used on their own or in combination.

The accused can lodge objections to the use of special measures, which the court will have to take into account when considering an application. However, the accused cannot object to the standard special measures that anyone who is under 18, or a victim of a sexual offence, human trafficking, domestic abuse or stalking, is automatically entitled to use.

The person who cited you as a witness or VIA will be able to tell you how special measures might apply to you. They can let you have a booklet that explains these measures in more detail. They can also show you a film about going to court, who you are likely to meet there and what they do, and how the special measures work.

Further information on special measures can be found on the Scottish Government website [www.mygov.scot/being-a-witness/help-and-support](http://www.mygov.scot/being-a-witness/help-and-support).

**If you are required to give evidence in court, advice and support is available from VIA and the Witness Service (see page 61).**

## Preliminary hearings and intermediate diets

Before the main trial goes ahead, a prosecution may start with one or more short hearings that don't usually include witnesses being called. These short hearings have several purposes, including giving the lawyers an opportunity to raise and discuss legal arguments that may affect the case and to discuss the availability of witnesses. The objective of these hearings is to help a trial proceed smoothly without unnecessary delays. These hearings are called a preliminary hearing (in the High Court) or a first diet (in a Sheriff Court under solemn procedure) or an intermediate diet (in a Sheriff or Justice of the Peace Court under summary procedure).

## What happens in a Sheriff Court or the High Court?

Serious criminal charges following a death on the road are heard in a Sheriff Court or the High Court. The most serious charges are heard in the High Court. If an accused person pleads guilty to a charge, the sheriff (in a Sheriff Court) or the judge (in the High Court) passes sentence, or chooses to sentence at a later date.

If an accused person pleads not guilty, then the case will go to trial. High Court trials are heard in front of a jury of 15 members of the public. Sheriff Court trials are sometimes heard in front of a jury.

If a trial is being held in front of a jury (called solemn procedure), and if it takes more than a day, then the trial is likely to occur on consecutive days. If a trial is being heard without a jury (called summary procedure) and it takes more than a day, it may be heard on several days spaced over several weeks. Summary procedures are often held in a Sheriff Court, sometimes before a judge known as a summary sheriff.

The prosecutor presents the evidence against the accused person. In the Sheriff Court, the Procurator Fiscal is the prosecutor. In the High Court, an official known as the Advocate Depute is the prosecutor.

A defence lawyer presents the evidence for the accused person. Both sides may call witnesses to give evidence. Witnesses may include eyewitnesses and expert witnesses such as police crash investigators.

Both sides may present physical evidence, such as photographs or diagrams. The Procurator Fiscal, the defence lawyer, and the sheriff or judge can all question witnesses. The accused person can choose not to give evidence.

After the evidence has been presented, the Procurator Fiscal and the defence lawyer give speeches to sum up the evidence. These speeches are intended to help the jury (or the sheriff if there isn't a jury) decide whether the accused is guilty. If there is a jury, the sheriff or judge will also give a speech on the law to help the jury to reach a decision. For a guilty verdict, there must be at least eight votes for guilty.

To get a guilty verdict, it is up to the Procurator Fiscal to prove the case 'beyond reasonable doubt'.

After the verdict has been decided, the sheriff or judge then decides the sentence, or chooses to sentence at a later date (see page 69). Sometimes a sheriff believes the accused should receive a higher sentence than they are able to impose in a Sheriff Court, and refers the accused to the High Court for sentencing.

## **What happens in a Justice of the Peace Court?**

Less serious criminal charges are heard in Justice of the Peace Courts. In many instances Justice of the Peace Courts are held in buildings that also house a Sheriff Court.

Charges in Justice of the Peace Courts are heard by a Justice of the Peace (a trained member of the public) who sits with a legally-qualified clerk. Procedures in a Justice of the Peace Court are similar to those in a Sheriff Court (see page 66). There is no jury.

If an accused person pleads guilty, the Justice of the Peace decides the sentence. If an accused person pleads not guilty, the case goes to trial and the verdict and sentence (if the verdict is guilty) is decided by the Justice of the Peace.

Justices of the Peace have different sentencing powers to judges and sheriffs. Justices of the Peace can impose fines of up to £2,500 or prison sentences of up to 60 days.

**Victim Information and Advice (see page 39) will be able to explain to you what is likely to happen at a planned hearing, how a case is progressing and the reasons for any delays.**

## **If the accused is under the age of 16**

If a child under the age of 16, or aged 16 or 17 and under the supervision of the Children's Hearings System, is charged with certain offences, they may be considered for prosecution by the Procurator Fiscal. Alternatively, their case may be referred to a Children's Reporter who works for an organisation called the Scottish Children's Reporter Administration.

When deciding what to do about a child or young person, the Reporter has three options. They can:

- arrange a Children's Hearing, heard in front of three trained volunteers from the community;
- refer the case to the local authority to work with the young person to deal with the offending behaviour; or
- decide not to arrange a Children's Hearing nor refer the case.

**Go to [www.scra.gov.uk](http://www.scra.gov.uk) for more information for victims of youth crime.**

## The verdict

At trial, there are three verdicts open to the judge or jury: guilty, not guilty, and not proven. If the verdict is not guilty or not proven, the accused goes free and cannot usually be tried on the same charge again. However, in certain very serious cases, if important new evidence emerges, it may be possible for a retrial to occur (under the Double Jeopardy (Scotland) Act 2011).

Sometimes an accused person changes their plea to guilty during a trial. Sometimes they plead guilty to a lesser charge.

Sometimes an accused person who is tried for a serious charge is found not guilty of that charge, but guilty of a lesser charge.

## Pleas in mitigation and background reports

Before an accused person is sentenced, their lawyer will advise the judge about any mitigating factors that they think might reduce the sentence, such as an offender's stated remorse or personal circumstances.

The judge may also ask for background information about the offender. This is required if the offender hasn't been to prison before, or is under the age of 21 (this age requirement does not apply for the offence of murder), or is serving a community sentence. Sentencing may be delayed until a later date so this background information can be provided and the judge can give further thought to the sentence.

## Sentencing

Any sentence imposed is decided by the judge, sheriff, summary sheriff or Justice of the Peace, who will take into account the nature and circumstances of the individual offence. The maximum sentence that can be imposed will vary depending on the offence and the type of court it is prosecuted in. To find out the maximum sentence that a court can impose, talk to your VIA officer.

When sentencing, various things may be taken into account, including:

- any 'pleas in mitigation' or the findings of background reports (see above);
- victim statements (see page 44);

- whether the offender pleaded guilty or not. If the offender pleaded guilty, then the sentence can be discounted (reduced). The discount depends on when the offender pleaded guilty, but can be up to a third of the sentence that would have been imposed if the case had gone to trial. A discount can also apply to driving disqualifications and the imposition of penalty points;
- the level of sentences in similar cases in the past. This is called 'case law';
- any applicable sentencing guidelines. More information about sentencing guidelines is available on the Scottish Sentencing Council's website at [www.scottishsentencingcouncil.org.uk](http://www.scottishsentencingcouncil.org.uk);
- whether a warning, community sentence (see below) or fine are appropriate rather than prison.

In exceptional circumstances, when a person is guilty of a charge, the judge can decide to discharge the person. This means no penalty is imposed on more serious cases (indictment) and no conviction is recorded in less serious (summary) cases. This is called an 'absolute discharge'.

**A court will rarely impose the maximum penalty and sometimes imposes a much lower penalty. If you don't understand the basis for a sentencing decision, talk to your VIA officer or the Procurator Fiscal.**

## Community sentences

Sometimes an offender is given a community sentence rather than a prison sentence, meaning they have to serve their sentence in their community. An offender may be given a Community Payback Order which could require them to do one or more different things including:

- up to 300 hours of unpaid work in the community;
- attending a programme to address the underlying causes of their offending;
- paying money (through compensation payments) to those affected by their offence;

- following directions from the court to do, or refrain from doing, specified things; and
- being subject to supervision by a criminal justice social worker.

If the offender has mental health, drug or alcohol abuse problems and was sentenced in a Sheriff Court or High Court, there can also be a requirement that they receive supervised treatment and their progress over time can be reviewed.

An offender may also be given a Restriction of Liberty Order which means they are electronically tagged and required to remain in a named place for a number of hours a day for up to a year. An offender can also be restricted from being in a particular place or places as part of a Restriction of Liberty Order.

**More information about community sentences is available on [www.gov.scot](http://www.gov.scot).**

**Further information on sentencing is available from [www.scottishsentencingcouncil.org.uk](http://www.scottishsentencingcouncil.org.uk).**

## Appeals by an offender

Following a criminal case an offender may appeal against their conviction or sentence or both. If the offender pleaded guilty, they can only appeal against their sentence.

If the offender is in prison when they appeal, they can also apply for bail and in some cases may be released while waiting for the appeal. This is called 'interim liberation'.

Almost all appeals from summary proceedings in a Sheriff Court or Justice of the Peace Court are heard by judges in the Sheriff Appeal Court in Edinburgh. Appeals from solemn proceedings are heard by judges in the High Court in Edinburgh (known as the Court of Criminal Appeal).

Two judges sit to hear an appeal against sentence. Three judges sit to hear an appeal against conviction. If the offender is appealing against their sentence alone, the court may confirm the original sentence or impose a different sentence (which may be higher or lower).

If the offender is disputing their guilt, the court may consider points of law that the offender thinks were not properly considered at the original trial. The court decides whether to uphold or quash the conviction. If the court upholds the conviction, the sentence is not revisited. If the appeal is allowed, the court may acquit the offender, convict them of a lesser charge, or order a retrial.

## Appeals by the prosecution

The prosecution can appeal against a sentence, but only where it considers the sentence to be 'unduly lenient'. If you are unhappy with a sentence passed, tell the Procurator Fiscal as soon as possible. They can tell you whether they plan to lodge an appeal.

The prosecution cannot usually appeal against a 'not guilty' or 'not proven' verdict.

## When can appeals be lodged?

In solemn procedure cases, an accused is required by law to lodge a notice of intention to appeal within two weeks. In summary procedure cases, appeals must be lodged within one week. The High Court has the power to extend these periods.

Appeals against a sentence by the prosecution must be lodged within 28 days.

**If you are the nearest relative, Victim Information and Advice (see page 39) should tell you if there is an appeal. They can tell you if someone is granted bail before an appeal, the date of an appeal, its progress and its outcome. You can attend all appeals and take friends, family or support workers.**



## Will an offender serve their whole sentence in prison?

Offenders are usually released from prison before the end of their sentence. This is called 'automatic early release'. The rest of their sentence is served 'on licence'. An offender on licence is supervised in the community by the probation service.

Some offenders are released earlier under a special scheme called the Home Detention Curfew Scheme. This scheme requires an offender to remain at a particular address during particular hours and wear an electronic tag to monitor their movements.

Some offenders may be released for short periods on temporary licence during their prison sentence. This could be for reasons such as to attend a funeral, have medical treatment, or to prepare them for their return to the community. Offenders must return to prison at the end of a temporary licence.

Offenders sentenced to less than four years in prison are automatically released after serving half their sentence.

Offenders sentenced to four or more years in prison will be considered for discretionary release after serving half their sentence. If the Parole Board for Scotland doesn't grant an application for early release at the first review, their case will be reconsidered every 12 months.

If the Parole Board for Scotland doesn't grant an application for discretionary release, and the offender was sentenced before 1 February 2016, the offender will be released after serving two-thirds of their sentence.

If the Parole Board for Scotland doesn't grant an application for discretionary release, and the offender was sentenced on or after 1 February 2016, the offender will not be released until the final six months of their sentence.

Offenders must be supervised in the community until the end of their sentence. This is called 'being on licence'. If they commit an offence or otherwise breach the terms of their licence, they may be returned to prison.

The Parole Board for Scotland decides whether or not to release an offender on licence, and any licence conditions attached to the release. If the Parole Board for Scotland decides an offender should stay imprisoned, the offender can be considered again for release at a later date.

Before an offender is released, the Parole Board for Scotland must be satisfied that the offender no longer presents an unacceptable risk to public safety.

It considers factors including:

- nature and circumstances of the offence;
- conduct while imprisoned;
- likelihood of committing an offence if released; and
- what the offender intends to do when released.

Offenders who are released on licence are required to comply with certain conditions. These may include living at a certain address, a curfew, a requirement not to make contact with you, and compulsory meetings with their supervising officer. If an offender is released and they break a condition of their release (for example, if they commit another driving offence), they may have to go back to prison. The court can also impose an additional punishment on the offender when sentencing them for the new offence committed while on licence.

## Will an offender serve their whole driving disqualification?

Under certain circumstances, an offender who has been disqualified from driving can apply to the court that imposed the disqualification to have the remaining period of disqualification removed. This process is normally called a 'removal of disqualification' application. An offender can apply to the court for a removal of disqualification after:

- two years, if the disqualification was for more than two but fewer than four years;
- half the disqualification period, if the disqualification was for between four and 10 years;
- five years, if the disqualification was for 10 years or more (including disqualification for life).

The court will take into account the offender's reasons for the application, and consider information from the police about the offender's behaviour since the disqualification was imposed. If the court refuses the application, the offender can reapply after three months.

**The law sets out the minimum period of a driving disqualification but courts can impose longer periods of disqualification, including life bans. Courts may also be required to lengthen an offender's driving disqualification if the offender is spending time in prison.**

**For more information about the Parole Board for Scotland, go to [www.scottishparoleboard.gov.uk](http://www.scottishparoleboard.gov.uk)**

## The Victim Notification Scheme

Up to four close relatives of a person who died can choose whether or not they want to register with the Victim Notification Scheme. This scheme has two parts and you can choose to register for either or both parts.

Part one entitles you to know certain information. You should be told within 48 hours:

- the date of the offender's release;
- if the offender dies before being released;
- if the offender is transferred out of Scotland;
- if the offender is eligible for temporary release (for example, for training programmes or home leave);
- if the offender escapes or absconds (doesn't come back when recalled);
- if the offender returns to prison for a reason connected with your case; and
- if the offender has been granted permission to leave hospital without an escort or supervision.

Part two entitles you to know if an offender is being considered for parole or for release with an electronic tag. You have the right to send written comments to the Parole Board for Scotland if the prisoner is being considered for release on parole; or to the Scottish Prison Service if the prisoner is being considered for release with an electronic tag (Home Detention Curfew) or temporary release. Your thoughts should be taken into account when decisions are being made regarding any conditions imposed on the prisoner's release (for example, if the prisoner must not contact you). You should be informed if the Parole Board for Scotland or the Scottish Prison Service has recommended the release of an offender. You should also be informed if there are any conditions of the release that affect you. If the prisoner is serving a life sentence and being considered for release, you should have the opportunity to make your thoughts known in a meeting with the Parole Board for Scotland.

If you are eligible for the Victim Notification Scheme, the Procurator Fiscal or your VIA contact should get in touch with you and give you an application form to fill out and send to the Scottish Prison Service. You can choose to opt in, or out, of this scheme at any time prior to the prisoner being due for release.

If the offender has been sentenced to less than 18 months in prison, you are only entitled to receive information about the release or escape of the offender. You can write to the Scottish Prison Service and ask them to provide you with this information - go to [www.sps.gov.uk](http://www.sps.gov.uk) for details.

**You can find out more about the Victim Notification Scheme from the Scottish Prison Service on 0131 330 3664 or at [www.sps.gov.uk](http://www.sps.gov.uk). For more information about the scheme, go to [www.mygov.scot](http://www.mygov.scot).**

**Victim Support Scotland can provide support to help you register for the Victim Notification Scheme. For more information, go to [www.victimsupportscotland.org.uk/help-for-victims](http://www.victimsupportscotland.org.uk/help-for-victims).**

**If the offender has a mental disorder, and is being treated in hospital, you may be entitled to receive information about their release through the Compulsion Order and Restriction Order (CORO) Victim Notification Scheme. For more information about this scheme, go to [www.mygov.scot](http://www.mygov.scot).**

## Fatal Accident Inquiries

A Fatal Accident Inquiry (FAI) is a public hearing in front of a sheriff, usually at the Sheriff Court nearest to where the death happened.

### Will an FAI happen in my case?

An FAI can be held following a road death. The purpose of an FAI is to establish the circumstances of a death, and consider what steps might be taken to prevent other deaths in similar circumstances.

An FAI will be held into all deaths where 'the death was the result of an accident which occurred in Scotland, and while the person was acting in the course of their employment or occupation'. An FAI may also be held 'where a death was sudden, suspicious or unexplained, or occurred in circumstances that give rise to serious public concern and where it appears to the Lord Advocate to be in the public interest to hold an inquiry into the circumstances'. This is called a 'discretionary' FAI.

An FAI may be considered if, for example, a death on the road raised particular concerns about public safety, for example, if poor road layout

or road signage contributed to a crash. An FAI will be held if someone died in a crash while working - for example a lorry driver.

**Unlike a criminal trial or a civil case, an FAI's purpose is to determine what caused a death and to prevent further deaths or injuries. It is not to apportion blame, punish, or seek compensation.**

**If criminal proceedings sufficiently established what happened, it may be decided that an FAI is unnecessary.**

## **Who decides if an FAI should be held?**

If the Procurator Fiscal considers that there should be an FAI, they should have a meeting with the nearest relative. If you are invited to a meeting, you may wish to consult a solicitor (see below) to help you plan what you want to say. The Procurator Fiscal will then prepare a report that includes your views on the holding of an FAI.

This report is then sent to senior lawyers called Crown Counsel. Crown Counsel then decide if there should be an FAI or not. The final decision lies with the Lord Advocate. The Lord Advocate is responsible for the investigation of deaths and prosecution of crimes in Scotland.

**Once Crown Counsel has decided whether or not an FAI will be held, the Procurator Fiscal will advise you of this decision within 14 days. If an FAI is going to be held, the Procurator Fiscal will inform you about its timing. If an FAI is not going to be held, a meeting will be offered to explain why, and the reasons put in writing, unless you don't want reasons in writing. (You can change your mind and ask for written reasons later on.)**

**If you are unhappy about the decision to hold, or not hold, an FAI, you can ask for the decision to be reviewed by a senior Crown Counsel not involved in the original decision.**

## **What happens at an FAI?**

Police, expert witnesses and witnesses may be requested to attend and give evidence to an FAI.

The nearest relative is entitled to participate in an FAI by asking witnesses questions, or instructing a solicitor to do this for them. There are solicitors that specialise in representation at FAIs. Call the Law Society of Scotland on 0131 226 7411. Legal aid may be available to fund the cost of representation.

If you are pursuing a claim for money (see page 81) and there is an FAI, the solicitor handling your claim may wish to attend the FAI. Other interested parties can, with the permission of the sheriff, also participate in the FAI and ask questions or be represented.

## **The FAI determination**

At the end of an FAI the sheriff delivers a decision called a determination. The determination can state:

- when and where the death occurred;
- when and where the incident resulting in the death occurred;
- the cause or causes of the death;
- the cause or causes of the incident resulting in the death;
- any precautions that could reasonably have been taken, and, had they been taken, might realistically have prevented the death, or the incident resulting in the death;
- any defects in any system of working which contributed to the death or any incident resulting in the death; and
- any other facts relevant to the circumstances of the death.

The determination may include making recommendations to an individual or group that aim to prevent more deaths happening in the same way. If the individual or group participated in the FAI, they must provide written details of how they will implement the recommendations. If they decide not to follow the recommendations, they must explain why.

## Challenging an FAI determination

In certain cases, bereaved people have challenged FAI determinations through a process called judicial review. If you want to find out if this might be possible, you will need to consult a solicitor specialising in judicial reviews.

## Having your say about criminal justice

If you have a comment or concern about the criminal justice system, you have a right to be heard and your point of view considered. Speaking up may also help improve criminal justice in the future.

For information on making a comment or complaint about the police, go to [www.pirc.scotland.gov.uk](http://www.pirc.scotland.gov.uk) or call Police Scotland on 101. If you feel that your complaint has not been handled correctly, call 0808 178 5577.

For information on making a comment or complaint about the Procurator Fiscal or a criminal prosecution go to [www.copfs.gov.uk](http://www.copfs.gov.uk) and click on 'comments and complaints' or call 0300 020 3000.

For information on making a comment or complaint about the Scottish Courts and Tribunals Service, go to [www.scotcourts.gov.uk](http://www.scotcourts.gov.uk).

**The Standards of Service for Victims and Witnesses sets out the standards you should expect from the Criminal Justice System with regard to accessing information, receiving support, and participation in proceedings. You can download these standards from [www.sps.gov.uk](http://www.sps.gov.uk), or get a copy from your police or VIA contact, the Procurator Fiscal or your local court.**

**As a victim or witness of crime, you have certain rights. The Victims' Code for Scotland sets out these rights and who to contact for help and advice.**

**You can download this document from [www.mygov.scot/victims-code-for-scotland](http://www.mygov.scot/victims-code-for-scotland) or get a copy from your police or VIA contact or from the Procurator Fiscal. You can call 0131 244 4227 to request it in another language.**

## **If you are not satisfied with a response you receive**

Complaint policies usually explain steps you can take if you are not satisfied with a response. Usually, this includes giving you the chance to have your comments considered by someone else, such as someone more senior.

If you are still not satisfied with another response you receive, a complaint policy may give you further opportunities, such as having your comments considered by a specialist team, or by the boss of the organisation.

There may also be an opportunity to have your comments considered by an independent agency. For example, the Police Investigations and Review Commissioner investigates complaints about the police.

## **Having your say to the government**

Criminal justice organisations are set up and regulated by the government, and are the responsibility of particular government departments and their ministers, elected by you.

If you feel your concerns have not been answered by a criminal justice organisation and you wish to raise your concerns with the government, you have a right to do this.

Any criminal justice organisation can confirm for you which government minister they report to, in which department, and how to contact that minister.

You may choose to contact a minister directly, or through your MP or MSP. You can also contact the Scottish Ombudsman, who is responsible for investigating complaints about government departments. For more information go to [www.spsos.org.uk](http://www.spsos.org.uk).

You may also wish to join one of several organisations campaigning for criminal justice in road death cases. See pages 93 to 95.

### **Seeking help to have your voice heard**

**If you are not sure how to have your voice heard, or you need help preparing what you want to say, call the Brake helpline on 0808 8000 401. Its officers are experienced in helping you to get your thoughts across to the most appropriate people.**



# Can I claim compensation?

# Can I claim compensation?

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## Claiming money for your loss

Many people bereaved by a road crash can claim money from the insurance company of a driver whose actions contributed to the crash. Sometimes very significant amounts can be claimed, although this isn't always possible.

The only way to find out if you should make a claim, and how much that claim might be worth, is to consult a personal injury solicitor as soon as possible. You shouldn't have to pay a solicitor to meet with them and discuss your case and they may be able to visit you at your home.

You can check these things before you arrange a meeting. In many cases, you will also not have to pay for the solicitor's work if they take on your case. It is the job of your solicitor to professionally pursue a claim that has a good chance of success and work to ensure that you are awarded as much as possible.

## Finding a personal injury solicitor

Choose a solicitor who is an expert and experienced in personal injury claims on behalf of people bereaved in road crashes (see page 27).

- The Association of Personal Injury Lawyers (APIL) provides lists of solicitors specialising in personal injury claims of all types, including in Scotland. Go to [www.apil.org.uk](http://www.apil.org.uk) and use the search facility to look for solicitors specialising in road traffic claims or call 0115 943 5400.
- The Motor Accident Solicitors Society (MASS) provides lists of solicitors specialising in fatal and injury motor claims across the UK, including in Scotland. Go to [www.mass.org.uk](http://www.mass.org.uk) or call 0117 925 9604.
- The Law Society of Scotland provides lists of all lawyers in Scotland. Some specialise in claiming compensation. Go to [www.lawscot.org.uk](http://www.lawscot.org.uk) and use the search facility to look for solicitors specialising in personal injury, or call 0131 226 7411.

A solicitor you are considering using should agree to meet with you for free initially. You may wish to meet with more than one solicitor to ensure you are choosing the best one for you.

Here are some questions it is advisable to ask, to help you decide which solicitor to choose:

- Are you a member of APIL and/or MASS?
- Do you think I have a strong claim and are you willing to take on my case?
- What experience do you have in handling similar cases? Can you give me examples and their outcomes?
- How many similar cases have you handled in the past five years?
- What expertise do you have relevant to my case?
- What fees do you charge?
- What arrangements can you put in place for payment of these fees so that compensation I receive is not unduly spent on legal fees, and so that I do not have to pay much, or any, legal costs if I lose? (See page 90 for more information on paying your solicitor.)
- Will you handle my case yourself entirely, or involve colleagues?
- If you plan to involve colleagues, how much will they be involved, and if a lot, can I meet them now?
- How will we communicate during the process? Will you be available to explain things to me and answer my questions regularly through meetings, emails or over the phone?

It is important you sign an agreement with your solicitor that you understand thoroughly and consider fair.

It is also helpful to keep notes of conversations with your solicitor and copies of correspondence so you can keep track of your claim.

**Some people find it difficult to think about financial issues at this time. However, a successful claim for money may help you in many ways.**

## Rogue offers of help

Someone called a claims assessor, a claims handling company or a claims management company (CMC) may offer to pursue your claim for you, often on a 'no win, no fee' basis. They are not personal injury solicitors, and are not qualified or regulated to the standards of solicitors.

You may also be approached by someone representing the motor insurance company of a driver you want to claim from, offering to settle your claim directly and quickly with you, without the need for you to hire a solicitor.

Do not accept these offers of help. If you do, you will not be independently represented by a suitably qualified solicitor, and you may be awarded far less compensation than you are due.

## Can I definitely make a claim?

Claims can only be made by certain people, in certain cases, and for certain things. While many people can make a claim, not everyone is eligible, and not everyone is eligible for the same payments. If the crash was caused by a deliberate act, the award may be paid by another body called the Criminal Injuries Compensation Authority. In all cases, your solicitor can advise you.

## Why don't I get compensation automatically from the State?

If you are struggling financially, you may be able to claim state benefits (see page 28). However, there is no automatic compensation for death on the road. Your solicitor has to pursue a fatal motor claim against someone using civil law, with you as the claimant (also called the 'pursuer').

## Can I make a claim if no-one was charged with a criminal offence?

Civil law is different to criminal law. In some cases it is possible to establish that someone is responsible for a death on the road under civil law even though that person was not charged with, or was found not guilty of, a criminal offence.

To succeed, a fatal motor claim requires someone to be found, 'on the balance of probabilities', to be at least partly responsible (liable) for a death and for the liable person to agree to pay you an amount of money (an award of damages). An award is made after a process of negotiation or a court ruling. Amounts awarded vary from case to case. In criminal law, by comparison, the guilt of an

accused person has to be 'beyond reasonable doubt' to secure a conviction, which requires a higher level of proof.

## **Do not delay**

**Do not delay consulting solicitors. If you have a good chance of compensation, the solicitor you choose will want to work on your case as soon as possible. It can take time to compile evidence to support your case, and the earlier you hire a solicitor, the sooner compensation can be awarded. Most claims must be submitted within three years, although sometimes claims must be made within two years. If the crash happened abroad, time limits for claims may be shorter, and can be one year or less.**

## **Who pays an award?**

Awards are usually paid by a liable person's motor insurance company, not by the person themselves. If a liable person was uninsured, or is untraceable, then the award is usually paid by a body called the Motor Insurers' Bureau (MIB). You can find out more about the MIB from its website [www.mib.org.uk](http://www.mib.org.uk). You will still need a solicitor.

## **Types of fatal motor claim**

Many people who were financially reliant on a person who died can claim for the loss of that support. Your solicitor can give you more details about each of these types, and may advise you to make one, several or none of these claims. All claims depend on liability being established. Whether you can claim or not is dependent on your relationship to the person who died. Your solicitor can advise you.

### **1 Loss of support claims**

In certain circumstances, people who were financially reliant on a person who has died can claim for the loss of that support. This is called a loss of support claim. The amount that can be claimed is not fixed. It depends on the amount of support provided by the person who has died.

A loss of support claim often includes a claim for loss of income. This amount will be worked out according to how much the person who has died earned, how long they would have continued earning if they had not died and other factors. A support claim can also be made for loss of income from a pension of someone who has died.

If you are making a 'loss of support' claim for yourself, or on behalf of others such as a child, your solicitor will help you consider all losses and help work out how much to claim in total. Evidence including employment records and household bills may be required to prove loss of support claims.

## 2 **Service claims**

A service claim may include a claim for loss of services provided by the person who has died, including childcare, DIY, or other domestic jobs. It can also include services provided for a loved one if they survived the crash for a period prior to death, such as nursing or care services at home.

## 3 **'Loss of society' claims**

A payment can often be made for your bereavement. This is called a 'loss of society' claim. The claim aims to provide some level of compensation for the following: distress and anxiety over a loved one's suffering prior to their death; grief and sorrow over a loved one's death; and the loss of a loved one's 'society and guidance' due to their death. The amount that can be claimed depends on the nature of your relationship with a person who died and other factors, including the age of a person who died. Many relatives of someone who has died can claim. Your solicitor can advise you.

## 4 **The suffering of someone who has died**

If someone died after suffering a period of pain, then it may be possible to claim money in compensation for that suffering. The amount that can be claimed is based on the amount of time that the person suffered and the extent of the pain.

## 5 **Funeral expenses**

The cost of the funeral, or most of the cost, can be claimed from a liable party.

## 6 **Claims for children aged under 16**

Money can be claimed on behalf of a child or children under the age of 16. An adult will normally pursue the claim on their behalf. This adult is usually a parent or guardian. The court may appoint someone independent to act on the child's behalf.

## 7 **Claims for injuries**

If you, or anyone close to you, was injured in the crash, it is important to find out if you can make a claim for those injuries and losses resulting from injuries. Your solicitor will advise you.

# **Fatal motor claim procedures**

## **Starting a claim**

You and your solicitor will decide whether you should claim, what claim(s) to submit and how much to claim. Your solicitor will normally write to the motor insurer for the person you are making a claim against (known as the other side). Once the other side has acknowledged receipt of this letter, they have a period of time to investigate and say whether or not they accept they are liable and should pay you money.

## **Negotiating your claim**

If the other side admits liability and agrees to pay you money, it may make an offer, or several offers, which are lower than the amount your solicitor thinks you are due and has asked for. For example, if you are pursuing a loss of support claim, the other side may use information in medical and employment records of the person who has died to argue your claim is too high.

Most claims in which liability is admitted are settled through negotiation, without the need to go to court. You can refuse or accept any offer made. Your solicitor will advise you whether an offer is reasonable.



## **Court proceedings**

If you are not offered an acceptable award through negotiation, or if liability is not admitted, your solicitor may start legal action (civil proceedings) against the other side. Depending on the case, your solicitor will usually issue a summons in the Court of Session, but may issue a writ in Specialist Personal Injury Court or a local Sheriff Court. Most claims must be raised in court within three years, although sometimes claims must be made within two years. Proceedings may be raised sooner to ensure any award is made as soon as possible.

If your solicitor has issued a summons or a writ against the other side, it does not necessarily mean your case will proceed to a full court hearing where witnesses give evidence. Your solicitor will continue to try to negotiate a settlement with the other side. In some cases an interim payment (or part payment) is made by the other side prior to a final payment. The vast majority of court actions are settled without the need for any hearing of evidence.

## **Tenders (formal offers made during court action)**

A formal offer called a tender may be made by the other side. If you reject a tender and then later negotiate or are awarded a settlement which is the same or less than the amount tendered, you will be liable for the legal fees of both sides from the date of the tender. If the final settlement is higher, the other side will probably have to pay most, if not all, of your legal fees.

Tenders should be very carefully considered. There are many reasons why it may be better to negotiate a settlement out of court. Success in court cannot be guaranteed and you cannot pre-determine the decision of a sheriff or jury. Also, your case may take a long time to be heard in court.

Sometimes, the other side will make an acceptable offer just before a case is due to be heard in court.

## Going to court

If a negotiated settlement cannot be reached, your case will be decided in court. Your claim will usually be dealt with in the Court of Session or the Specialist Personal Injury Court. Both courts are in Edinburgh. Your solicitor may or may not try to have your case heard in front of a jury rather than a judge or sheriff sitting alone. Sometimes a case is dealt with in a local Sheriff Court. Your solicitor will advise you.

**Knowing that solicitors and insurance companies are negotiating over the value of your loss can be distressing, particularly if your case takes a long time to be resolved. Ask your solicitor to keep you updated on a regular basis about how your case is progressing.**

## Talking to your solicitor

Your solicitor should be able to explain what is happening in straightforward terms and be available to talk to you regularly, over the phone or in meetings. They should be happy to answer any of your questions.

It is a good idea to keep notes of conversations with your solicitor and copies of correspondence so you can keep track of your claim. You can keep a note of your solicitor's name and phone number on page 2 of this book.

Ensure you know who is handling your case. Sometimes several people in a solicitor's office may work on your case.

## Complaining about, or changing, your solicitor

If, at any stage, you are unhappy with the service you are getting from your solicitor, you can ask to speak to the partner in the practice responsible for looking after clients, often called the 'client relations manager'.

If you remain dissatisfied, it may be possible to change solicitor. The organisations listed on page 81 will be able to give you advice about alternatives.

The Law Society of Scotland gives information about making a complaint against a solicitor on its website at [www.lawscot.org.uk](http://www.lawscot.org.uk).

**If you have a serious complaint about a personal injury solicitor in Scotland, you can make a formal complaint to The Scottish Legal Complaints Commission by completing a form. Contact them on 0131 201 2130 or go to [www.scottishlegalcomplaints.org.uk](http://www.scottishlegalcomplaints.org.uk).**

## **Paying your solicitor**

If you are awarded money, the other side will usually have to pay most, or all, of your legal fees.

The other side will usually pay for any other costs your solicitor has incurred, as long as these costs were reasonable. These costs, such as the cost of medical reports, are called 'disbursements' or 'outlays'. In some cases, the other side may not have to pay these costs. Your solicitor can advise you.

If your claim is unsuccessful, you may be liable for your legal costs and those of the other side. Your solicitor should help you to take out a legal expenses insurance policy that covers you against this risk. However, there are a number of ways to pay for any legal costs you incur that do not require you to be able, personally, to afford to pay very much money.

### **Speculative fee agreements or damages-based agreements (no win, no fee)**

Many solicitors offer a speculative fee agreement (SFA) or damages-based agreement (DBA), sometimes known as a 'no win, no fee' arrangement.

Under these arrangements, you don't pay any money to your solicitor up front. If your claim is successful, your solicitor may or may not charge you a 'success fee', in addition to their costs being paid by the other side. Before starting your claim, you should agree with your solicitor, in writing, the size of the success fee they can charge if your claim succeeds. Under a SFA, a success fee can be up to the same amount again as your solicitor's legal costs. Under a DBA, a success fee is assessed as an agreed percentage of the damages awarded.

One important advantage of a SFA or DBA is that you are protected against having to pay the other side's costs if your claim fails.

**Under a speculative fee or damages-based agreement it should not be necessary for your solicitor to charge you any money as the case proceeds, nor expect you to carry any risk if your case fails. If your solicitor proposes this, you may wish to consult a different solicitor.**

## Paying upfront

Some people choose to pay their solicitor as they go along. You may be able to do this if:

- you can afford to pay a solicitor;
- you are insured for legal expenses. It is worth checking the details of motor and house insurance policies and membership of bodies such as trade unions, although sometimes these policies don't provide enough cover. Your solicitor can advise you.

## Legal aid

If you have disposable income below a certain level, you may qualify for legal aid. Legal aid is help towards the costs of legal advice and representation provided by a solicitor and is paid for out of public funds.

Legal aid may be free or you may have to pay a contribution towards the costs of your case. Legal aid does not cover your opponent's legal costs.

Should you lose your case, you may be ordered by the court to pay some or all of your opponent's costs. You may be able to apply to the court to have this sum reduced. In such instances, you should seek the assistance of your solicitor. To find out more about legal aid or to obtain help in finding a solicitor who is registered to provide a legal aid service to you, contact the Scottish Legal Aid Board's helpline on 0131 226 7061 or go to [www.slab.org.uk](http://www.slab.org.uk).



# Useful organisations





## Useful organisations

For additional local organisations call the Brake helpline (see below) or talk to your Family Liaison Officer or VIA.

### Charities for road crash victims:

#### Brake

Brake supports and helps people bereaved and injured by road crashes and campaigns for road safety. The charity's national freephone helpline is a quality accredited service that provides emotional and practical support, information, and access to local face-to-face support services, legal help and people who have suffered a similar bereavement. Its helpline officers can also speak on your behalf to officials to ensure your voice is heard, and help you access services available to you. Brake coordinates Road Safety Week, and runs road safety education programmes in schools, communities and companies. The charity also encourages government to improve road safety legislation and enforcement.

The charity provides many volunteering opportunities for bereaved families. Helpline 0808 8000 401 (Mon-Fri 10am-4pm) or [helpline@brake.org.uk](mailto:helpline@brake.org.uk)  
To donate, join, or volunteer visit [www.brake.org.uk](http://www.brake.org.uk) or call 01484 559909

#### RoadPeace

RoadPeace provides support and information to people bereaved or seriously injured by a road crash. They offer practical support with post-crash guidance reports and informative briefing papers; emotional support through a helpline and their befriender scheme (coordinated by staff with volunteers who have been affected by road death or injury); and advocacy assistance to support evidence-based campaigns for the improvement of post-crash responses.

The charity coordinates remembrance activities, including Remember Me roadside plaques, and provides the bereaved and seriously injured with access to a network of peer support. RoadPeace promotes road danger reduction and updates to the justice system to make the legal standards and sentences after a crash fit for purpose. The charity supports active travel opportunities that give greater consideration to vulnerable road users and the environment.

Helpline 0845 4500 355 (Mon-Fri 9am-5pm) or [helpline@roadpeace.org](mailto:helpline@roadpeace.org)  
Office 020 7733 1603 or [info@roadpeace.org](mailto:info@roadpeace.org)  
[www.roadpeace.org](http://www.roadpeace.org)

## **SCARD (Support and Care after Road Death and Injury) working with CADD (Campaign Against Drinking and Driving)**

Two charities working together to provide emotional and practical support to those who have lost a loved one, or been injured or affected by drunk or reckless driving. SCARD offers a helpline staffed by volunteers 365 days a year and access to free, face-to-face counselling sessions and legal advice. It also provides information on coroners and inquests, criminal and civil law, appeals and private prosecutions and can offer road safety education workshops for schools and organisations. With its sister charity CADD, SCARD offers road safety education and awareness-building workshops to groups and individuals, including anti-drink-drive workshops. SCARD holds an annual Oakleaf memorial service to remember road crash victims.

Helpline 0345 123 5542 (7 days a week, 9am-9pm including bank holidays)

Office enquiries 01484 723649 / 01924 562252 or [info@scard.org.uk](mailto:info@scard.org.uk)  
[www.scard.org.uk](http://www.scard.org.uk)

## **SCID (Scotland's Campaign against Irresponsible Drivers)**

SCID campaigns for tougher road traffic law and the rights of road crash victims. SCID offers ongoing phone and face-to-face emotional support and advice for bereaved families of fatal road crashes in Scotland to guide them through the civil and criminal justice systems. This support is provided by volunteers, subject to availability.

[www.scid.org.uk](http://www.scid.org.uk)

## Other organisations campaigning for road safety:

### **BUSK**

Works to improve the safety of children and young people travelling by bus, coach, taxi and car. Offers support and guidance for parents about safety issues, legislation and the hiring of transport. Produces educational material for schools and co-ordinates School Transport Safety Week. Can put bereaved families in touch with other bereaved families. Call 01633 274944 or email [enquiries@busk-uk.co.uk](mailto:enquiries@busk-uk.co.uk)  
[www.busk-uk.co.uk](http://www.busk-uk.co.uk)

### **RoSPA (Royal Society for the Prevention of Accidents)**

RoSPA's road safety department raises awareness about the causes of road crashes and promotes measures to help prevent them. This charity does not provide support services for road crash victims. Call 0121 248 2000 or email [help@rospa.com](mailto:help@rospa.com)  
[www.rospa.com](http://www.rospa.com)

## Organisations supporting people bereaved by any cause:

### **Cruse Bereavement Care Scotland**

Call 0845 600 2227 or go to [www.crusescotland.org.uk](http://www.crusescotland.org.uk)  
For children and young people go to [www.hopeagain.org.uk](http://www.hopeagain.org.uk)

### **The Samaritans**

The Samaritans operates a 24 hour helpline for anyone in need  
Call 116 123 or go to [www.samaritans.org](http://www.samaritans.org)

## If your partner has died:

### **WAY (Widowed and Young)**

[www.widowedandyoung.org.uk](http://www.widowedandyoung.org.uk)

## **If a child or a child's relative has died:**

### **Child Bereavement UK**

Call 0800 028 8840 or go to [www.childbereavementuk.org](http://www.childbereavementuk.org)

### **The Child Death Helpline**

Call 0800 282 986 or 0808 800 6019 or go to [www.childdeathhelpline.org.uk](http://www.childdeathhelpline.org.uk)

### **The Compassionate Friends**

Call 0345 123 2304 or go to [www.tcf.org.uk](http://www.tcf.org.uk)

### **Care for the Family**

Call 029 2081 0800 or go to [www.careforthefamily.org.uk](http://www.careforthefamily.org.uk)

### **Winston's Wish**

Call 08088 020 021 or go to [www.winstonswish.org.uk](http://www.winstonswish.org.uk)

## **Organisations campaigning for sustainable transport:**

### **Campaign for Better Transport**

Promotes sustainable and public transport.  
[www.bettertransport.org.uk](http://www.bettertransport.org.uk)

### **Living Streets**

Promotes safety and accessibility for pedestrians.  
[www.livingstreets.org.uk](http://www.livingstreets.org.uk)

### **Sustrans**

Develops paths for walkers and cyclists.  
[www.sustrans.org.uk](http://www.sustrans.org.uk)

## Citizens Advice Scotland

If you need any other contacts your local Citizens Advice service may be able to help. It can provide access to free, impartial and confidential advice, including on financial and legal matters. For your nearest office, you can look in your phone book or contact Citizens Advice Scotland on 0808 800 9060 or visit [www.cas.org.uk](http://www.cas.org.uk).

## Government bodies with responsibility for criminal justice in Scotland:

### The Scottish Government

In Scotland, the Cabinet Secretary for Justice is responsible for the Scottish Criminal Justice System, including matters concerning victims of crime, and for some aspects of traffic policing including administration of speed cameras and the Driver Improvement Scheme.

Call 0300 244 4000 or email [ceu@gov.scot](mailto:ceu@gov.scot)  
[www.gov.scot](http://www.gov.scot) or [www.mygov.scot](http://www.mygov.scot)

### Police Scotland

Has a road policing business area that has some responsibility for determining policing policy. Other policies are determined by the Chief Constable.

Call 101 or fill in the contact form on the Police Scotland website  
[www.scotland.police.uk](http://www.scotland.police.uk)

### The Crown Office and Procurator Fiscal Service (COPFS)

COPFS is responsible for the prosecution of crime in Scotland, the investigation of sudden or suspicious deaths and complaints against the police.

Call 0300 020 3000 or email [EnquiryPoint@copfs.gsi.gov.uk](mailto:EnquiryPoint@copfs.gsi.gov.uk)  
[www.copfs.gov.uk](http://www.copfs.gov.uk)

## Scottish Courts and Tribunals Service

The Scottish Courts and Tribunals Service is responsible for providing the staff, buildings and technology to support Scotland's courts and tribunals, the work of the independent judiciary, the courts' Rules Councils, the Office of the Public Guardian and the Accountant of the Court. In April 2010 it was established by the Judiciary and Courts (Scotland) Act 2008 as an independent body, governed by a corporate board and chaired by the Lord President, the most senior judge in Scotland.

Call 0131 444 3455 or email [csenquiries@scotcourts.gov.uk](mailto:csenquiries@scotcourts.gov.uk)  
[www.scotcourts.gov.uk](http://www.scotcourts.gov.uk)

## Scottish Prison Service

The Scottish Prison Service is an agency of the Scottish Government responsible for prisons.

Call 0131 330 3500 or email [gaolinfo@sps.pnn.gov.uk](mailto:gaolinfo@sps.pnn.gov.uk)  
[www.sps.gov.uk](http://www.sps.gov.uk)

## Parole Board for Scotland

The Parole Board for Scotland makes decisions about early prisoner release.

Call 0131 244 8373  
[www.scottishparoleboard.gov.uk](http://www.scottishparoleboard.gov.uk)

## Scottish legal contacts listed elsewhere in this pack:

**Criminal Justice System:** Turn to page 78 for details of who to contact if you have comments about the criminal justice system.

**Personal Injury Solicitors:** Turn to page 81 for details of organisations listing personal injury solicitors.

## **Government bodies with responsibility for road safety in Scotland:**

### **The Scottish Government Transport Directorate**

The Cabinet Secretary for Transport, Infrastructure and Connectivity is responsible for road safety policy in Scotland.

Call 0300 244 4000 or email [scottish.ministers@gov.scot](mailto:scottish.ministers@gov.scot)

### **Local highway engineers and road safety officers**

Local authorities are responsible for improving road safety on local roads.

They employ highways engineers, who are responsible for local speed limits, traffic calming, pedestrian crossings and other aspects of road design. Local road safety officers are responsible for local road safety education and publicity. They may be employed by local authorities or by police forces. For contact details, contact your local authority.

### **Transport Scotland**

Transport Scotland is responsible for trunk road safety.

Call 0141 272 7100 or email [info@transport.gov.scot](mailto:info@transport.gov.scot)

[www.transport.gov.scot](http://www.transport.gov.scot)

### **Road Safety Scotland**

Road Safety Scotland is funded by the Scottish Government to produce road safety education resources and run road safety publicity campaigns in Scotland, working with local authorities and police.

Call 0131 244 6133 or fill in the contact form on the Road Safety Scotland website.

[www.road-safety.org.uk](http://www.road-safety.org.uk)

### **Traffic Commissioner for Scotland**

The Traffic Commissioner is an appointed official with responsibility for licensing companies to operate lorries, buses and coaches. The Traffic Commissioner has the power to issue and take away an operator's licence.

Call 0300 123 9000

## UK-wide Government departments:

### The Home Office

The Home Office is responsible for reviewing UK charges and penalties for traffic offences (many of which, although not all, apply in Scotland). Call 020 7035 4848 or email [public.enquiries@homeoffice.gsi.gov.uk](mailto:public.enquiries@homeoffice.gsi.gov.uk)  
[www.gov.uk/homeoffice](http://www.gov.uk/homeoffice)

### The Department for Transport

The Department for Transport is responsible for many areas of road safety policy, ranging from setting the drink drive limit to road safety TV campaigns. The Department for Transport also commissions research on road safety topics.  
Call 0300 330 3000  
[www.gov.uk/dft](http://www.gov.uk/dft)

### Driver and Vehicle Licensing Agency

The DVLA promotes road safety and general law enforcement by licensing and maintaining registers of drivers and vehicles, and collecting vehicle excise duty (tax). [www.gov.uk/dvla](http://www.gov.uk/dvla)

### Driver and Vehicle Standards Agency

The DVSA sets standards for driving and ensures drivers, vehicle operators and MOT garages follow roadworthiness standards. It also provides a range of licensing, testing, education and enforcement services.  
[www.gov.uk/dvsa](http://www.gov.uk/dvsa)



## Your political representatives:

### Your local councillor

If you are worried about a particular local traffic problem your local councillor may be able to help. You can find out their contact details by phoning your local council.

### Your Member of the Scottish Parliament (MSP)

Your MSP's job is to represent your interests in the Scottish Parliament. You may want to write to or meet him/her to discuss any aspect of your case which you think s/he could act upon. You can find out the name of your MSP by calling 0131 348 5000 or by going to [www.parliament.scot](http://www.parliament.scot) and typing in your postcode.

You can write to your MSP at the Scottish Parliament, Edinburgh EH99 1SP.

### Your Member of Parliament (MP)

Your MP's job is to represent your interests in Parliament. You may want to write to or meet them to discuss any aspect of your case which you think they could act upon. You can find out the name of your MP by going to [www.parliament.uk/mps-lords-and-offices/mps](http://www.parliament.uk/mps-lords-and-offices/mps) or calling Parliament on 020 7219 4272. You can write to your MP at the House of Commons, London, SW1A 0AA.



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APIL (The Association of Personal Injury Lawyers)	Parole Board for Scotland
Citizens Advice Scotland (CAS)	Police Scotland
Crown Office and Procurator Fiscal Service (COPFS)	SACRO
Digby Brown Solicitors	Scottish Courts and Tribunals Service
The Foreign and Commonwealth Office	Scottish Donation and Transplant Group
Independent Press Standards Organisation (IPSO)	The Scottish Government Health Department
Motor Accident Solicitors Society (MASS)	The Scottish Government Justice Department
National Association of Funeral Directors	Scottish Justices Association
National Records of Scotland	Scottish Prison Service
The Natural Death Centre	Scottish Sentencing Council
NHS Blood and Transplant	Victim Support Scotland

Brake is committed to continuous improvement. Any comments on this guide's content are welcomed and can be sent to **Brake, PO Box 548, Huddersfield HD1 2XZ** or e-mailed to **[brake@brake.org.uk](mailto:brake@brake.org.uk)**

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**Brake helpline 0808 8000 401**

**[helpline@brake.org.uk/support](mailto:helpline@brake.org.uk/support)**

**Go to [www.brake.org.uk](http://www.brake.org.uk) for this pack online.**

**For a children's support book call 0808 8000 401.**

Brake, PO Box 548, Huddersfield HD1 2XZ  
Administrative enquiries: 01484 559909

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