

Finding Your Way

A guide for victims following the death or serious injury of a loved one in a road traffic collision

PARC Road Safety Group 2012

Dedication

This guide is dedicated to all those who have lost their lives and to all whose lives have been devastated by road traffic collisions.

Acknowledgement

We gratefully acknowledge the invaluable contribution of the many agencies and individuals who helped in compiling this guide including the following: Department of Transport; An Garda Síochána; Garda Síochána Ombudsman Commission; The Office of the Director of Public Prosecution (DPP); National Ambulance Service; Mr Noel Brett CEO, Road Safety Authority; Professor Denis A Cusack, Director, Medical Bureau of Road Safety; Dr Brian Farrell, Dublin City and County Coroner; Dr Declan Bedford, Specialist in Public Health Medicine; Mr. Micheal O Dowd BCL, LL.M; Ms. Jenny Craven. A special thanks to Ms Marie Moriarty for her very valuable role as editor of this document. Finally our thanks to Anú Design for designing the guide cover and Mr. John Harold and Colour World Print Ltd.

We are especially thankful to those who raised and / or donated funds making this booklet possible.

A copy of this free guide is available on request from PARC Road Safety Group, PO Box 30, Carndonagh, Inishowen, Co. Donegal. Please include cheque or postal order for €3 to cover P&P.

PARC Road Safety Group

*“Promoting Awareness **R**esponsibility and Care on our Roads”.*



PARC Road Safety Group is a Member of FEVR, the European Federation of Road Traffic Victims, an Organisation with UN consultative status. We are also a signatory to the European Road Safety Charter, ERSC European Federation of Road Traffic Victims.



Disclaimer Notice

The information in this document is intended as a guide only. It does not purport to be, nor should it be relied upon, as legal advice. Whilst every effort has been made to ensure the accuracy of the information in the guide, PARC Road Safety Group cannot be held responsible for any errors or omissions.

(©), PARC Road Safety Group 2012

All rights reserved. No part of this publication may be reproduced, or transmitted in any form or by any means, including recording or photocopying, without the written permission of the copyright holder, application for which should be addressed to The Chairperson, PARC Road Safety Group, P.O. Box.30, Carndonagh, Co Donegal.

Table of Contents

INTRODUCTION	6
INVESTIGATION OF AN UNNATURAL DEATH DUE TO A ROAD TRAFFIC COLLISION - OVERVIEW	7
THE ROAD TRAFFIC COLLISION AND AFTERMATH	8
THE EMERGENCY RESPONSE	8
ROAD FACTORS.....	9
HEARING OF THE TRAGEDY	10
IDENTIFICATION OF THE BODY	10
TESTING FOR ALCOHOL & DRUGS INCLUDING MEDICATIONS	10
POST MORTEM (AUTOPSY)	11
INVESTIGATION PERSONNEL.....	12
FORENSIC COLLISION INVESTIGATORS (FCI)	12
THE SCENES OF CRIME UNIT (SCU).....	13
PUBLIC SERVICE VEHICLE INSPECTORS (PSVI).....	13
AN GARDA SÍOCHÁNA’S CHARTER FOR VICTIMS	14
GARDA FAMILY LIAISON OFFICER (GARDA FLO)	14
DOCUMENTS	16
FULL STATEMENTS	16
GARDA CRIMINAL INVESTIGATION FILE.....	16
CRIMINAL CASE	17
THE CHOICE OF CHARGE - THE ROLE OF THE DIRECTOR OF PUBLIC PROSECUTIONS (DPP).....	17
THE ARREST AND CRIMINAL CASE	18
LEGAL REPRESENTATION.....	18
DEFENCE TEAM.....	19
PROSECUTION TEAM	19
PRE-TRIAL MEETING.....	20
PREPARING YOURSELF FOR ATTENDING COURT	20
VICTIM IMPACT STATEMENT (VIS)	21
APPEALING THE SENTENCE	21
NO PROSECUTION DUE TO INSUFFICIENT EVIDENCE.....	22
ON CONCLUSION OF THE CRIMINAL PROCESS	23
GARDA SÍOCHÁNA OMBUDSMAN COMMISSION (GSOC).....	23
COLLISIONS INVOLVING A MEMBER OF AN GARDA SÍOCHÁNA.....	24

THE CORONER'S COURT	25
THE INQUEST	25
WHAT DETERMINES THE TIMING OF THE INQUEST AND WHETHER OR NOT IT WILL BE A FULL INQUEST HEARING?	26
WHAT TO EXPECT AT THE INQUEST	27
ON CONCLUSION OF THE INQUEST	29
CIVIL CASE	30
PERSONAL INJURY CLAIMS AND TIME LIMITATIONS	30
MOTOR INSURANCE COMPANY	30
UNINSURED VEHICLES	31
LINKS TO FURTHER INFORMATION	33
APPENDIX A	41

Introduction

This guide has been written by members of PARC Road Safety Group who had to find their way when they lost a loved one in a road traffic collision. It is a guide for victims where the driver under suspicion of having caused a fatal or serious injury collision has survived and a criminal prosecution may follow. If you are reading it because a loved one has died or has been seriously injured, please accept our heartfelt sorrow. We know the absolute devastation and pain which you are experiencing.

Here you will find an outline of the steps involved in the professional Garda investigation of fatal and serious injury collisions and the legal proceedings which follow. These include the post mortem, inquest and legal proceedings which can be complex and confusing. You may find it helpful to involve a trusted relative or friend to help by asking them to also read this guide.

You are on a search for answers; truth and justice for your loved one, let nobody stop you in your quest.

It is very important that every road death or injury is investigated thoroughly. This is essential in order to find out how and why the unnatural death / injury happened and to ensure fair criminal prosecutions and compensation settlements and to learn lessons so that lives are saved.

We strongly recommend that you attend all legal proceedings as you may learn something from each one. It can often be difficult to get answers to your questions outside of these proceedings. It is advisable to keep written records of all contacts with the Gardaí, Coroner's Office, Solicitors, DPP's Office etc.

Investigation of an Unnatural Death Due to a Road Traffic Collision - Overview

There are three quite distinct and separate legal processes following the investigation.

1. **The Coroner's Inquiry also known as the Inquest.** The Inquest is an inquiry by the Coroner to establish the facts surrounding the unnatural death of a person. It generally takes place about 4-10 months after the death (but can be longer depending on circumstances). The Coroner will open the inquest for purposes of issuing a death certificate but will adjourn it if the DPP has indicated that there will be a criminal charge against a third party. It will proceed to a full hearing where there is to be no criminal prosecution.
2. **The Criminal Case** which may or may not follow. A criminal case takes place when the Director of Public Prosecutions (DPP), based on the file presented to her/his office by the Gardaí, has decided that there is enough evidence to charge a driver on suspicion of breaching laws in the Road Traffic Act.
3. **A Civil Case** may be taken if the victim's family wishes. If a victim or the family of a victim claims personal damages against the driver for loss or injury sustained in a collision, this will be a civil law case. This case does not involve the State in any way.

The same facts are used in each but for different purposes. In each of these legal processes there are different aims, objectives and burdens of proof.

The Road Traffic Collision and Aftermath

The Emergency Response

When a fatal or serious injury collision occurs, the Fire Service, Ambulance Service and Gardaí respond to the 999/112 call. The Fire Service is the main rescue service at a road traffic collision. Their main goal is to rescue the injured while doing no further harm. They make every effort to have the casualties delivered to the hospital within one hour from the time of the collision – the Golden Hour. They make early contact with the HSE in order to plan a rescue strategy. Both the fire and ambulance services draw up a report outlining their post-crash response. The local doctor on call may also respond if requested.

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

- Time and date of any 999 call
- Time of arrival at the scene of the incident (if they responded)
- Hospital Destination
- A copy of the Patient Care Report (edited to de-identify any other party)

Families may ask for these records from the National Ambulance Service (NAS).

The NAS needs clear evidence of the actual relationship between the person asking for these records and the victim of the traffic collision. Any information is made available to only one person, that is, an immediate member of the deceased person's family.

Applications for information should be in writing and requested under the Freedom of Information Act 1997, Section 28(6) Regulations 2009. The request must be accompanied by proof of identity and a notarisation from a solicitor or Peace Commissioner confirming that the applicant is acting on behalf of the victim.

The local Gardaí visit the scene immediately securing and preserving it. They assist the injured and manage traffic. They establish the identity of the persons involved and contact details of the next of kin. They take brief statements from witnesses. The District Officer (Superintendent or Inspector) visits the scene and is assisted and advised by the Forensic Collision Investigation Unit (FCI).

The family should ask for the Superintendent's name and contact details and make an appointment to meet as soon as possible. See Appendix A for possible questions.

Road Factors

Gardaí attending the scene complete a C(T)68 form which includes specific engineering information. A copy is forwarded to the relevant local authority in order for them to examine the scene from an engineering perspective. Shortly after the collision, the Gardaí, in collaboration with the local authority visit the scene to find out if road factors have contributed to the collision and may need to be remedied. Recommendations on engineering solutions, if necessary, are submitted to the Local Authority and to the National Roads Authority. In the vast majority of cases it is the action or omission of a driver, pedestrian or other road user which leads to a death or injury but, according to Garda investigations, in a small percentage of cases, road factors are the primary contributory factor.

The Family may request a copy of the Engineers Report from the local authority where the collision occurred.

Hearing of the Tragedy

Members of the Garda Síochána call to the victims' families to break the news.

Identification of the Body

Formal identification of your loved one by a family member or a person named by the family is required. A Garda, acting for the Coroner, accompanies the identification witness to the hospital. The next of kin is informed of the need for a post mortem as this is necessary in all cases of an unnatural death to establish the medical cause of death. The Gardaí send a file on the circumstances of death to the Coroner.

Important – visit the scene with the Gardaí at the earliest possible time to understand the circumstances which led to the collision. If you are too upset - ask a friend to go for you. It is advisable to engage a solicitor with expertise in road traffic law early on. He /She may advise you about engaging a private Forensic Collision Investigator - who should be accredited - to examine the scene and vehicle/s involved.

Testing for Alcohol and Drugs including Medications

The Road Traffic Act 2011 provides for the mandatory testing for alcohol of drivers involved in collisions where there is death or injury. The investigating Garda must take a preliminary breath test at the scene from all surviving drivers involved, unless such a test would be prejudicial to that driver's health. Where a driver fails such a test he/she is taken to the Garda station for an evidential test to be conducted which will give the exact alcohol level. In circumstances where to take an evidential sample would be prejudicial to the health of the driver, and the driver attends hospital, the Garda shall request a test be carried out by a doctor/nurse. The medical doctor treating

the person may refuse such a test should they decide it would be prejudicial to the health of the person. This legislation does not allow for the testing of an unconscious driver. Note that professional drivers, learner drivers and those who are newly qualified are subject to a lower 20mg drink driving limit. If the Garda forms the opinion that a driver has consumed an intoxicant but he/she passes the alcohol test then a test for drugs may be carried out.

All fatalities are tested for alcohol and drugs including medications as part of the post mortem examination. Samples are sent for testing to the Medical Bureau of Road Safety and the findings recorded in the Toxicology Report. The findings on all drivers as well as the Autopsy report of the deceased person(s) are sent to the Forensic Collision Investigators and included in the Garda File. Copies of the deceased's reports are also sent to the Coroner.

The family may request copies of their loved one's autopsy and toxicology reports from the Coroner in charge of the inquest AFTER all criminal proceedings, if any, are over.

If there are no criminal proceedings the family may request these reports BEFORE the inquest.

Post Mortem (Autopsy)

The Coroner orders a post mortem examination also known as an Autopsy once he/she is informed of an unnatural death. This examination is usually carried out by the hospital pathologist to establish the medical cause of death. Your loved one's body is tested for alcohol and drugs- including medications- as part of the autopsy. In some cases organs may be retained by the hospital for further tests. *The hospital or the Coroner's Office will inform you and the hospital will contact you when the tests are completed.* It may take three to nine months or more for the post mortem report to be ready.

Questions about post mortem reports should be sent to the Coroner's Office and not to the hospital concerned.

Investigation Personnel

Forensic Collision Investigators (FCI)

If there is a death or if there is likely to be one, the District Officer calls for the services of the Forensic Collision Investigation (FCI) Unit. (Members of this unit are City and Guilds and De Montfort University qualified investigators. See "Forensic Collision Investigation" An Garda Síochána Management Journal, April 2010). They are attached to the Traffic Corps in Divisions throughout the country and their role is critical. The FCI unit assists the District Officer in:

- Identifying the full extent of the scene(s)
- Ensuring that the scene is secured and preserved to prevent, as far as possible, the loss of evidence.
- Advising and updating him/her so that informed decisions can be made concerning road closures.
- Recording and evaluating available evidence.
- Ensuring that the scene is photographed and recorded on video.
- Liaising with the District Officer and preparing appropriate reports.

Their role is to locate, record, gather, evaluate and interpret any relevant physical or forensic evidence that arises from a collision. The evidence can be varied and includes "gouges" or other marks on the road surface, marks left by vehicle tyres, establishing a point or area of impact, the rest position of vehicles in relation to this point of impact, projectiles (including parts of, or entire vehicles, pedestrians or riders thrown from bicycles or motorcycles), and damage caused to vehicles.

FCIs use digital photography and state of the art surveying equipment. Using this equipment they carry out an electronic survey of the entire scene. From this they can produce a detailed computerised scale plan of the scene and so, in most cases there is no need to draw collision scene plans by hand. In the weeks following the completion of the forensic investigation of the scene, a detailed report including the scale plan, crush damage analysis if applicable, and any calculation carried out is then forwarded to the investigating officer as part of the overall investigation file. It is possible for them to generate a 3D (three dimensional) reconstruction of the collision scene. It is also possible to give a range of likely vehicle speeds and this range is likely to be more accurate if more factors are available such as tyre marks, debris, etc. Pedestrian projection calculations can be carried out in certain situations if certain factors are present to assist the investigator and these can help in determining a range of likely impact speeds. The Forensic Collision Investigator's Report contains all the information gathered by the FCI unit, and can be a very lengthy document.

The Scenes of Crime Unit (SCU)

The Scenes of Crime Unit is also called to the scene in the immediate aftermath. These Gardaí take samples such as paint, glass, blood, fibres and clothing for forensic investigation. They take photographs of the scene and look for CCTV and other pre-collision evidence which may help to establish the cause of the collision.

Public Service Vehicle Inspectors (PSVI)

These Gardaí examine the vehicles after they have been removed to a secure compound. This examination comes after the technical/forensic examination and is a test of the road worthiness of the vehicles prior to the collision. Where a commercial vehicle is involved the PSVI examines the tachograph chart(s). A tachograph is a device fitted to a vehicle which automatically records its speed, driving hours and rest

periods. For information on regulations for professional drivers visit the Road Safety Authority website www.rsa.ie and follow the links to “professional drivers”.

The family and/or their independent forensic collision investigator may examine and photograph the damaged vehicle(s) in the secure Garda compound after Gardaí have completed their tests.

An Garda Síochána’s Charter for Victims

An Garda Síochána has given a number of commitments to victims of crime, including the following:

- Informing the victim of the name, telephone number and station of the Investigating Garda.
- Outlining the procedures and ensuring that the victim is kept informed of the process, including whether a suspect is charged or cautioned.
- Providing information on the services available to victims.
- Informing the victim when the accused is in custody or on bail and the conditions attached to the bail.
- Informing the victim of the time, date and location of the court hearing of the charges against the accused.
- Explaining the prosecution process involved and, if the victim is likely to be called as a witness.
- Explaining the circumstances in which a judge may ask for a Victim Impact Statement.

To read the full “An Garda Síochána Victims Charter” visit www.garda.ie and follow the links to Garda Charter for Victims.

Garda Family Liaison Officer (Garda FLO)

Very soon after the fatal collision the Garda Superintendent appoints a Family Liaison Officer (FLO) to the bereaved family. One of the

roles of this investigating officer is to keep the family updated of developments in the investigation and court proceedings. The FLO will also inform the family of suitable support agencies and sources of information. He/she may answer questions about the collision and will keep in contact with you until all court proceedings have been finalised *e.g.* where there is no prosecution and the inquest has been held, or until the prosecution is completed and the inquest has been held.

The FLO will keep a log of all contacts with the family and report back to the Superintendent any relevant information the family offers on the victim or crash circumstances. We encourage families to do the same, keeping a record of all contacts with the FLO and the Superintendent, noting the dates, reason for contact and the information exchanged. Request all key information in writing. If the family is unhappy with the service provided by their FLO they may lodge a complaint to the Garda Ombudsman Commission. If the family has not been assigned an FLO they should contact the Superintendent in charge of the investigation.

Documents

Full Statements

In the weeks after the collision more detailed statements will be taken by the Gardaí. It is advisable for a witness to give their statement in the presence of their solicitor and request a copy.

Garda Criminal Investigation File

Evidence gathered by the local Gardaí at the scene, statements from the investigating Gardaí, Witness statements, FCI Report, SCU Report, PSVI Report, Medical Evidence, Toxicology Report, Autopsy Reports and other evidential material make up the Garda Investigation File. Much of this file forms the Book of Evidence if there is to be a criminal trial.

PARC recommends that the family meet regularly with the Superintendent in charge of the investigation to hear firsthand how it is progressing. This Superintendent forwards the completed Garda Investigation File, together with his/her recommendation as to the charge, to the Director of Public Prosecution (DPP) via the local State Solicitor. The Gardaí also forward a copy of the investigation file to the Coroner.

Criminal Case

The Choice of Charge - the Role of the Director of Public Prosecutions (DPP)

In the Irish legal system a driver is innocent until proven guilty. If the Garda Investigation file sent by the Gardaí to the DPP contains a weight of evidence against a suspect, the DPP, on behalf of the State will direct a prosecution.

You are advised to ask the Superintendent in writing, to be informed of any decision made by the DPP, as soon as that decision is made.

The following are the most serious indictable offences that can be considered in the event that a prosecution is directed; murder, manslaughter, dangerous driving causing death and careless driving causing death (introduced on the 28 October 2011). **There are no time limits for Gardaí to begin a prosecution on any of these offences.** It is very rare to prosecute for murder in a road traffic case. It would be necessary to prove beyond a reasonable doubt that the driver intended to kill the deceased, or at least intended to cause serious harm to the deceased. Manslaughter requires evidence of a high degree of negligence or gross negligence on the part of the driver. These criminal cases begin in the District Court and are sent forward to the Circuit Criminal Court for trial and sentencing if applicable.

The offences of a minor nature (summary) that can be considered include dangerous driving and careless driving. **For these offences there is a time limit of six months from the date of the collision for the Gardaí to begin a prosecution.**

The Arrest and Criminal Case

When the Gardaí are directed by the DPP to begin a prosecution for either dangerous driving causing death or careless driving causing death the suspect is arrested and charged in the District Court. **The accused must be served with The Book of Evidence within 42 days of his/her first appearance in court. However, this time limit may be extended.** There may be many appearances by the defendant in the District Court before a date is set for the trial.

During the arraignment hearing in the Circuit Criminal Court the charge(s) against the defendant are read. He/she pleads either “Guilty” or “Not Guilty” to each of the charges as read.

Where the defendant pleads “guilty” as charged there will be no trial just a sentencing hearing.

When he/she pleads “not guilty” as charged there will be a full trial in the Circuit Criminal Court before judge and jury followed (where applicable) by a sentencing hearing. Witnesses including, any survivors who made statements, will most likely be called to give evidence. The person who identified the body may be called as an identification witness. The judgment is delivered, and the jury dismissed and a date set for the sentencing hearing where applicable.

In certain cases the accused may be acquitted following a trial and this is something families should be prepared for.

Legal Representation

For the trial in the Circuit Criminal Court the legal teams for both the accused and for the People of Ireland (State) consists of a solicitor and a counsel (barrister). The team representing the accused is called the Defence and the State’s team is called the Prosecution. The

victim's family is not entitled to legal representation in the criminal trial.

Defence Team

Where the accused can afford legal costs he/she chooses a solicitor to act on his/her behalf. The solicitor then chooses the counsel. Where the accused is unable to pay for the legal costs of his/her own defence he/she is entitled to a solicitor to represent him/her (Free Legal Aid) in the Court. In the Circuit Criminal Court the Judge decides whether the accused is assigned one or two counsel.

Prosecution Team

For the most serious charges, the prosecution team is made up of a solicitor and junior counsel. In Dublin cases, the solicitor is from the Solicitors' Division of the DPP's office. Outside of Dublin the solicitor is the local State Solicitor, who is a solicitor in private practice who has a contract with the DPP to deal with all prosecution work in his or her area. State Solicitors cannot act for a suspect at the same time as being The State Solicitor. They cannot act in the same case for both prosecution and defence.

In Dublin the junior counsel is chosen by a senior solicitor in the trials section of the Solicitors Division of the DPP's Office. Outside of Dublin there is standing junior counsel who prosecutes in every case in their county. In the Circuit Criminal Court the question of whether or not to engage a senior counsel is decided on by a senior lawyer in the DPP's office and each case is looked at on its own merits.

Pre-trial Meeting

The family is entitled to a meeting with the prosecuting legal team before the trial and any sentencing hearing. The purpose of this meeting is for the family to get to know the prosecution team and for the procedures to be explained to the family. Because of legal reasons the team will not normally go into the merits of the case, except where a plea is being offered to a lesser charge and that needs to be addressed.

The victim is entitled to have his or her views heard and considered. It is important to note that if the DPP has directed summary charges against the defendant together with the indictable (major) charges that it is possible to have the driver arraigned on these offences. Each charge is read separately to the defendant who either pleads 'guilty' or 'not guilty' to each. Charges may include the following: drink driving, no insurance, no tax, no valid driver licence, learner driver unaccompanied by a qualified driver etc.

See Information booklet on "The role of the DPP" available from your FLO or visit www.dppireland.ie and follow links to "Victims and Witnesses". The prosecuting team have certain obligations towards victims. These are described in Chapter 12 of the Guidelines for Prosecutors which is also available on the DPP website.

Preparing Yourself for Attending Court

We advise you to visit the court beforehand so that you are familiar with the surroundings and procedures. If you would like someone to support you in the court contact the voluntary group, Victim Support at Court (VSAC) at: www.vsac.ie. It is possible to reserve seats in both the District and Circuit Criminal Courts by making arrangements with the Courts Office where the case is to take place.

On the day of the trial and/or sentencing hearing bring your solicitor. Ask family and friends for support. Your solicitor will not be allowed to take an active role, however he/she will explain the significance of what is happening.

Victim Impact Statement (VIS)

The VIS describes in writing how the road traffic collision affected the victim's family. It gives the family an opportunity to explain to the court what their loved one was really like and how they are missed. It gives their loved one a voice. It may include other reports from medical personnel.

If a family would like the opportunity to read out their VIS in court under oath they may request this. (The judge will decide). It is important to do this well before the trial or sentencing hearing. They should also ask to be informed about the latest date for submission of the VIS to the Gardaí.

The family should have the VIS completed and given to the Gardaí before the sentencing hearing. It is not a confidential document so Gardaí will pass it on to the prosecution counsel, the offender and the offender's counsel.

The family may wish to give their VIS to their solicitor to review before they submit it to the Gardaí, as the content may have repercussions for an appeal should there be one.

Appealing the Sentence

The prosecution has the power to appeal or seek a review of certain decisions of a trial court. See Chapter 11, Guidelines for Prosecutors

Director of Public Prosecutions follow the link at:
www.dppireland.ie

No Prosecution due to Insufficient Evidence

Families should be aware that although the Superintendent must send an investigation file to the DPP with a recommendation this does not mean that charges will always result... (In some instances, the Gardaí may advise that the crash was the fault of the fatally injured driver but a file must still be prepared and sent to the DPP for direction before proceeding to the Coroner's inquest). Even where the Gardaí are not recommending a prosecution a file must be sent to the DPP.

When the DPP decides not to prosecute in a case the reasons for the decision are sent to the local State Solicitor and to the Superintendent in charge. **Lack of evidence is the most common reason for the DPP's decision not to prosecute.** The DPP may indicate what evidence is needed in order to direct a prosecution.

The family may contact the DPP's Office in writing requesting the reason as to why no prosecution was directed.

The family may request a review of the DPP's decision not to prosecute and to have an internal review of the decision carried out by an Officer at the DPP's Office other than the one who first made the decision not to prosecute

Where the DPP directs "no prosecution" the way is now open for the full inquest hearing to go ahead.

It is important to note that a full inquest cannot take place if there is any likelihood that there will be a criminal prosecution.

On Conclusion of the Criminal Process

When the criminal process is over the family should ask for a copy of The Garda Abstract Report from the Superintendent. This is abstracted from the Garda File. Reports may include the following documentation: witness statements (including Garda statements), PSV Inspector's Report, sketch of the scene (computer generated and / or rough sketch), coloured photographs of the scene and of the vehicles involved. ¹

Garda Síochána Ombudsman Commission (GSOC)

If you are dissatisfied with the Garda investigation into the collision, you may refer the matter and your complaint to the Garda Síochána Ombudsman Commission (GSOC). There are time limits for making a complaint.

You only have six months to make a complaint from the time you become aware of the matter giving rise to your complaint unless the GSOC consider that “good reasons” exist to allow for the extension of time.

PARC advises you to record any complaint(s) you may have and send it by registered post to the Garda Síochána Ombudsman Commission once you become aware of it.

You do not need to wait for the Garda investigation or criminal matters to be concluded before making such a complaint. In fact, to do so, could result in your complaint being inadmissible. GSOC will

¹ Note: At the time of publishing there is a charge of €40 for each copy of a witness statement and a fee of €60 for a copy of the Garda Abstract form. PARC Road Safety Group is actively campaigning for this documentation to be given to bereaved families by An Garda Síochána free of charge.

contact you in writing with their decision on whether your complaint was deemed admissible in full, in part or inadmissible. If admissible GSOC will send details to you in writing of the name(s) of the officers investigating your complaint and will keep you informed on the progress and results of their investigation(s) *See Garda Síochána Act 2005(as amended)-S.103.*

Collisions Involving a Member of An Garda Síochána

In road traffic collisions involving a Member of the Garda Síochána (whether on or off duty and whether in a Garda vehicle or in their own private motor vehicle), if it appears to local Garda management that the actions of a Member may have resulted in death or serious harm, they are legally obliged to refer the matter to the Garda Ombudsman Commission (S.102 of the Garda Síochána Act 2005). The Garda Ombudsman Commission is an independent organisation with their own investigations staff and they provide for a 24hr / 365 day independent investigation service with all the powers, privileges and immunities of the Gardai (in other words, GSOC investigators have exactly the same powers as the Gardaí for their investigations and there is always a team of GSOC investigators on-call and available for immediate deployment for incidents arising outside normal office hours).

Following initial assessment of the referral by a GSOC Senior Investigating Officer (SIO), GSOC may decide to take the investigative lead in the investigation and will then assume all the responsibilities that would usually be undertaken by the Gardaí. There are no charges applied for the Garda Abstract to bereaved families of victims where a member of the Garda Síochána is involved in a fatal collision.

The Coroner's Court

The Coroner's Court is presided over by the Coroner who may be a medical doctor or a lawyer (solicitor or barrister). In Ireland Coroners operate independently within their own districts. There are no national guidelines and procedures are worked out by the individual Coroners in their own districts. These procedures may be quite different in each district. Families are advised to contact the Coroner directly to get information on the precise procedure in their district.

The Inquest

The Coroner holds an inquest which is a public inquiry into an unnatural death. It is held to establish the identity of the deceased, the date and place of death and the circumstances surrounding the death including the medical cause of death. The inquest can neither apportion blame nor exonerate, it merely establishes the facts surrounding your loved ones death and issues a death certificate.

Some Coroners will communicate with the bereaved family from the start and the inquest into your loved one's death may come up for mention many times before the full inquest date is set. However this may not be the practice in all districts. There should be at least four months between the date of the death and the inquest date. If it is planned too soon after the collision the family may be too traumatised to attend and anyone injured in the crash may not have been given enough time to recover physically or mentally.

Bereaved families are entitled to receive adequate notice of the Inquest date from their Family Liaison Officer (FLO). We encourage the family to liaise early on with the Coroner's Office in the district where their loved one died. Contact the Coroner's Office www.coroners.ie.

If the family has not been given enough notice of the Inquest date they should contact the Coroner's Office to request an adjournment.

Interim Certificate of the Fact of Death

Before the inquest (or while awaiting the post mortem report) the Coroner may provide an Interim Certificate of the Fact of Death which may be acceptable to banks, insurance companies and other institutions.

Full Death Certificate

The death will be registered by means of a Coroner's Certificate when evidence of identification and medical cause of death have been taken when an inquest is opened and adjourned or when the inquest is opened and concluded. This Certificate is then sent to the Registrar of Births, Marriages and Deaths where the death is recorded and may be used for banking, and legal purposes such as probate.

What Determines the Timing of the Inquest and Whether or not it will be a Full Inquest Hearing?

1. When there is likely to be a criminal prosecution

If the DPP directs that there is likely to be a criminal prosecution, ***the inquest will be opened and adjourned*** to allow the criminal prosecution to take place. Evidence will be taken on identification of the deceased and medical cause of death and the death will be registered and a death certificate will be issued. When the inquest is reconvened a full inquest will generally not take place if the facts surrounding the road traffic collision have already been established in a criminal process unless there are special reasons to open the inquest by request of the family. Instead the inquest is usually resumed and concluded by the Coroner after he/she receives confirmation from the court clerk that the criminal prosecution has been dealt with. Some Coroners may include in the Death Certificate

that the injuries were sustained in a Road Traffic Collision but others may not. You may request a “Record of Verdict” from the Coroner.

Pre inquest documents will not be available until after the criminal case if the DPP has directed a prosecution.

2. Where the DPP directs that there will be no Criminal Proceedings.

When the criminal procedures are over the family should keep in touch with the Coroner to have full information on the inquest and procedures.

Where there is no criminal trial a date is set for a full inquest in consultation with the family. If any new evidence should come to light before or during the inquest the family should make the facts known to the Coroner and ask for an adjournment. Families may have legal representation to question witnesses on their behalf or may ask questions through the Coroner.

Documents are not automatically made available to the family before the inquest. The family should request the documents, in writing, from the Coroner, before the full inquest date. On written request the Coroner may provide bereaved families with copies of documents relevant to the inquest including Draft Depositions (based on witness statements) medical evidence, post mortem report, and Toxicology Reports (alcohol and drugs including medications).

What to expect at the Inquest

Under the present law an inquest into a death resulting from a road traffic collision must be held before a jury. The Coroner firstly requires the jury to take an oath and informs all present the purpose of the inquest i.e. to establish the cause of this unnatural death

without apportioning blame. He/she decides which witnesses are called and what evidence can be entered for hearing. Witnesses are required to take an oath and the deposition of each is read out to the court before he/she is questioned by the Coroner. The jury and both parties are given the opportunity to ask questions and to engage with the witnesses. This questioning is very important as it may lead to an adjournment if it points to further evidence being required.

Gardaí give evidence of their investigations during the inquest. A stenographer may be present or the evidence may, in some cases be recorded but both are very unusual outside of Dublin. The Coroner tells the jury which verdicts are lawfully available in a particular case. The most common verdicts are accidental death or death by misadventure. Less common verdicts are recorded as unlawful death or death by natural causes, or an open verdict. The jury may make recommendations which the Coroner follows up with a letter to any authority which may bring about change such as The Road Safety Authority, National Roads Authority, An Garda Síochána and The Minister for Transport.

Evidence at the inquest typically comes from:

- The witness who identified the deceased.
- The last person to see the person alive.
- The person(s) who saw the collision or the aftermath or who saw those involved prior to the collision. This may be someone the family puts forward by application to the Coroner if the Coroner deems that person to have evidence helpful to the court.
- The Ambulance Crew and/ or Doctor attending the scene if any.
- Medical Evidence especially where the deceased survived for a time after the collision.
- Autopsy Report.

- Depositions. Some Coroners want to see the full book of evidence in order to prepare their depositions from the witness statements. A deposition cannot have any content which apportion blame. Other Coroners get the depositions from the Gardaí .You should ask the Coroner how the depositions are drawn up for his/her court.
- Computer Generated Sketch of the collision scene which may be accompanied by the rough Garda sketch.

On Conclusion of the Inquest

Families may request the following documents from the Coroner. The Record of Verdict, the Coroner's Certificate of death and the Inquest File. A statutory fee will be charged for these documents.

If no criminal proceedings take place or if the defendant pleads guilty, these documents are a good source of recorded information available to the family which may be important for any civil case.

Civil Case

Personal Injury Claims and Time Limitations

A personal injury claim must be made within two years of the date of the collision and the process must start with the InjuriesBoard.ie.

The Injuries Board is an independent statutory body set up by the Government to assess how much compensation may be awarded to someone who has been injured, when liability or fault between the parties involved is not disputed. Your solicitor will advise you.

Families may take a civil case even in the event that the DPP decides that there will be no criminal prosecution. The standard of proof in civil actions is the “balance of probabilities”, while in the criminal case it is “beyond a reasonable doubt”.

Motor Insurance Company

Following the death or serious injury of a loved one (driver, passenger, pedestrian or cyclist) in a road traffic collision, we would advise the families to inform all insurance companies involved in the incident. This is not the duty of the Gardaí. Though different insurance companies may have slightly different practices the following is a rough guideline as to how they respond after a serious collision.

The insurance company may gather information about the collision through consultation with the family member, third party / family member through reports compiled by claims investigators / motor assessors / consulting engineers who are appointed by the insurance

company and Garda reports which usually include a PSV Inspector's Report. These reports would normally include circumstances of the collision in as much detail as possible to include the point of impact, if established, photos of the collision scene together with measurements and details of all witnesses. The Data Protection Act restricts the company from providing you with the personal details of any witnesses. Ask the insurance company to keep you informed of all ongoing developments, claims / settlements and any entitlements due on the policy.

Where necessary, a representative of the insurance company, usually a solicitor, will attend an inquest and report back on its findings. This could occur in cases where liability is being disputed or where new evidence could be brought to light. Families are not necessarily informed that a representative will be present. The insurance company will be advised of inquest and trial dates where applicable. They receive a copy of the Garda Abstract Report.

Uninsured Vehicles

Motor Insurers' Bureau of Ireland (MIBI) compensates innocent victims of collisions caused by uninsured and unidentified vehicles (such as in a hit and run). It also deals with claims from parties involved in collisions caused by foreign registered vehicles using Irish roads.

It is of the utmost importance that collisions giving rise to a claim made to the MIBI be reported to An Garda Síochána within 2 days of the event or as soon as the claimant reasonably can.

Section 3.14 of The Department of Transport's Agreement dated 29 January 2009 between the Minister for Transport and the MIBI , (in the document "Motor Insurers' Bureau of Ireland - Compensation of Uninsured Road Accident Victims") gives details of the information

you or your solicitor are required to send to MIBI. 39 Molesworth St., Dublin 2. www.mibi.ie E mail info@mibi.ie, Tel: 01 6769944
In circumstances where the suspect has previous Road Traffic convictions and there is a likelihood that these were not disclosed to his or her insurance company you may contact the Irish Insurance Federation Confidential Hotline – **1890 333 333** *or by phoning* 01-6761820.

We advise you not to accept any monies or interim payment from any third party involved without first consulting your solicitor

Links to Further Information

<p>National Ambulance Service The main purpose of the National Ambulance Service is to respond to emergency 999 calls, getting medical help to patients who have serious or life-threatening injuries as quickly as possible. The best way to access information is through the Operational Support and Resilience Manager National Ambulance Service. In each NAS Area Addresses are as follows:</p> <p>National Ambulance Service, Area Operations North Leinster, Phoenix Hall, St Mary’s Hospital, Phoenix Park, Dublin 20.</p> <p>National Ambulance Service, Area Operations South, Kilcreene Hospital, Kilkenny</p> <p>National Ambulance Service, Area Operations West, St Mary’s Hospital Complex, Castlebar, Co. Mayo.</p> <p>These three areas cover the twenty six counties</p>	<p>www.hse.ie</p> <p>Tel: 01 6201403</p> <p>Tel: 056 7785568</p> <p>Tel: 094 9021698</p>
<p>Road Traffic Accident Handbook. National Directorate for Fire and Emergency Management.</p>	<p>www.environ.ie/en/Publications/LocalGovernment/FireandEmergencyServices/FileDownload.23411.en.pdf</p>
<p>Collision Investigation The Garda guide to the investigation of fatal collisions is outlined in the ‘Garda Code’. This is a confidential document for the benefit of members of An Garda Síochána only and is not available to the general public. You may find the following links helpful.</p>	<p>www.garda.ie/Documents/User/Communique%20April%202010a.pdf</p> <p>“Forensic Collision Investigation”. An Garda Síochána Management Journal April 2010.</p>

<p>Road Accident Investigation for Road Engineers (World Road Association, PIARC)</p>	<p>www.who.int/entity/roadsafety/news/piarc_manual.pdf</p>
<p>Road Death Investigation Manual, Association of Chief Police Officers England, Wales and Northern Ireland (ACPO), 2007 (The training of the Garda Forensic Collision Investigators is accredited by ACPO in the UK)</p>	<p>www.itai.org/docs/RDIM.pdf</p>
<p>Garda Family Liaison Officer Follow the links to “An Garda Síochána Victims Charter”.</p>	<p>www.garda.ie</p>
<p>Coroner Contact Details For Coroner’s details contact the Local Authority, family doctor, Garda Liaison Officer or www.coroners.ie and follow the links.</p>	<p>www.coroners.ie</p>
<p>Post Mortems and Organ Retention HSE Standards and Recommended Practises for Post Mortem Examinations Services, March 2012.</p>	<p>http://www.hse.ie/eng/about/Who/qualityandpatientsafety/PME_services/PM_services_docs/QPSDD0071.pdf</p>
<p>Forensic Engineers They undertake evidential engineering investigations privately and act as Expert Witnesses in the courts. For list of members contact: Association of Consulting Engineers, The Mews, Montague Court, 7-11 Montague St., Dublin 2.</p>	<p>www.forensicengineers.ie Tel: 01 4757722</p>
<p>Personal Injuries Contact your solicitor or the Injuries Board or write to Injuries Board, PO Box 8, Clonakilty, Co Cork.</p>	<p>www.injuriesboard.ie Lo-Call 1890 829121 Email: enquiries@injuriesboard.ie</p>

<p>Director of Public Prosecution (DPP) For booklets such as “Going to Court as a Witness” and “The Role of the DPP” or information on the Irish Criminal Justice System, Contact: Director of Public Prosecutions (DPP), Office of the Director of Public Prosecutions, Infirmary Road, Dublin 7.</p>	<p>www.dppireland.ie Tel: 01 8588500</p>
<p>Court Service For information on the courts in Ireland contact: Head Office, the Court Service, 15-24 Phoenix St North, Smithfield, Dublin 7.for details of all Dublin and Provincial court services.</p>	<p>www.courts.ie Tel: 01 8886000</p>
<p>V-SAC A voluntary service providing court accompaniment for victims and witness when they attend court. Victim Support at Court, Aras Ui Dhalaigh, Four Courts, Dublin 7.</p>	<p>www.vsac.ie Tel: 01-8726785 or 087 2885521 Email: info@vsac.ie</p>
<p>Prisoner Release Information If you wish to be informed about prisoner release write to Victim Liaison Officer, Irish Prison Service Headquarters, IDA Business Park, Ballinalee Road, Longford. www.garda.ie and follow links to “Information for Victims of Crime.</p>	<p>www.garda.ie Tel: (043)3335100 Email: vlo@irishprisons.ie</p>
<p>Road Traffic Acts Ireland For Road Traffic Acts visit</p>	<p>www.irishstatutebooks.ie</p>
<p>The Garda Síochána Act 2005 Visit website and follow the link to “Legislation” for Garda Síochána Act 2005.</p>	<p>www.gardaombudsman.ie</p>
<p>The Garda Síochána Inspectorate Roads Policing Review and Recommendations November 2008.</p>	<p>www.garda.ie/documents/user/roadspolicingreviewandrecommendations.pdf</p>

<p>The Garda Síochána Ombudsman Commission (GSOC) is an independent statutory body established under the Garda Síochána Act 2005. 150 Abbey Street Upper, Dublin 1. The Ombudsman Commission, under the Act, is required and empowered to:</p> <ul style="list-style-type: none"> • Directly and independently investigate complaints against members of the Garda Síochána; • Investigate any matter, even where no complaint has been made, where it appears that a Garda may have committed an offence or behaved in a way that would justify disciplinary proceedings; • Investigate any practice, policy or procedure of the Garda Síochána with a view to reducing the incidence of related complaints. 	<p>www.gardaombudsman.ie</p> <p>LoCall: 1890 600 800</p> <p>Tel: 01 8716727</p>
<p>Medical Bureau of Road Safety (MBRS) The Medical Bureau of Road Safety is responsible for the chemical testing of alcohol and drugs including medications in driving in Ireland.</p>	<p>www.mbrs.ie</p>
<p>Road Safety Authority (RSA) The aim of the Road Safety Authority is to save lives and prevent injuries by reducing the number and severity of collisions on the road. The RSA website is a very comprehensive source of information regarding driving in Ireland. Contact: The Road Safety Authority, Moy Valley Business Park, Primrose Hill, Ballina, Co. Mayo.</p>	<p>www.rsa.ie</p> <p>Lo-Call: 1890 40 60 40</p>

Personal Help for Families	
<p>Crime Victims Helpline A very valuable resource for all those affected by road traffic collisions whether a crime or not. It is first and foremost a listening service where trained volunteers can give reassurance and support. Where a serious road traffic crime is involved they can link you into a wide range of support services and help you to understand the Criminal Justice System.</p>	<p>Tel: 1850 211407</p> <p>Email: info@crimevictimshelpline.ie</p>
<p>Support After Homicide Group A national voluntary organisation which provides emotional support and practical information to people whose lives have been affected by violent crime</p>	<p>www.supportafterhomicide.ie</p> <p>Tel: 087 9837322</p>
<p>Irish Tourist Assistance Service This is a specialist service offering immediate support and assistance to tourists who are victimised while visiting Ireland. The Service is free and confidential. ITAS, 6-7 Hanover St. East, Dublin 2</p>	<p>www.itas.ie</p> <p>Tel: 1890 365 700 or 01-661 0562</p> <p>Email: info@itas.ie</p>
<p>Citizens Information Board The Citizens information Board provides easy access to information and advice by telephone, by E-mail, from their website or by calling into their local office. It is a wonderful resource of very important information on your rights and entitlements and on public services in Ireland. All calls within Ireland are charged at local rates:</p>	<p>www.citizensinformation.ie</p> <p>Tel: 076 1074000</p>
<p>Samaritans Contact Samaritans any time for confidential support</p>	<p>www.samaritans.org</p> <p>Tel: 1850 60 90 90</p>

<p>The Irish Association of Counselling and Psychotherapy To find an accredited counsellor or Psychotherapist consult your family doctor or contact the Irish Association of Counselling and Psychotherapy</p>	<p>www.iapc.ie Tel: 01 2723427</p>
<p>Barnardos A Bereavement Counselling service for children and young people who have lost someone close to them such as a parent or a sibling</p>	<p>www.barnardos.ie Tel: 01 4732110</p>
<p>ADVIC - Advocacy for Victims of Homicide Ireland ADVIC campaigns for greater rights for victims of homicide, their families and friends. Their booklet entitled “A Guide to the Victim Impact Statement Following a Homicide Conviction”, though written to help the families of homicide victims is also very relevant to the victims of Road Traffic Crime. Contact: ADVIC, PO Box 10106, Swords, Co. Dublin</p>	<p>www.advic.ie www.advic.ie/Booklet.pdf Tel: 086 1272156 Email: info@advic.ie</p>
<p>Anam Cara A support group for parents grieving the loss of a child. Contact: Anamcara, HCL House, Second Avenue, Cookstown Industrial Estate, Tallaght, Dublin 24.</p>	<p>www.anamcara.ie 01-4045378 Email: info@anamcara.ie</p>
<p>Headway This organisation helps people who have brain injury to rebuild their skills to achieve the best quality of life that they can. They also provide support to families who have been affected by brain injury.</p>	<p>www.headway.ie Tel: 1890 200 278</p>

<p>Bri Bri is a charitable organisation that provides support, information and advocacy to people with brain injuries and also to their families and carers. BRI Ireland c/o National Rehabilitation Hospital, Rochestown Avenue, Dún Laoghaire, Co.Dublin</p>	<p>www.briireland.ie Tel: 01 2355501 Email: info@briireland.ie</p>
<p>National Rehabilitation Hospital The National Rehabilitation Hospital (NRH) provides comprehensive inpatient and outpatient services to patients who, as a result of an accident, illness or injury, have acquired a physical or cognitive disability and who require specialist medical rehabilitation. National Rehabilitation Hospital Rochestown Avenue, Dún Laoghaire, Co. Dublin.</p>	<p>www.nrh.ie Tel. 01 2355000 E mail: enquiries@nrh.ie</p>
<p>The Rehab Group The Rehab Group provides training, employment, health and social care to people with disabilities, including those with physical injury and acquired brain injury. Communications and Public Affairs Team, Rehab Group, Beach Road, Sandymount, Dublin 4.</p>	<p>www.rehab.ie Tel: 01 2057200 Email : info@rehab.ie</p>
<p>ABI Ireland Acquired Brain Injury Ireland [formerly The Peter Bradley Foundation] is a provider of flexible and tailor-made services for people with an Acquired Brain Injury (ABI). National Office, 43 Northumberland Road, Dún Laoghaire, Co. Dublin.</p>	<p>www.abiireland.ie Tel: 01 2804164</p>
<p>Spinal Injuries, Ireland</p>	<p>www.spinalinjuries.ie Tel: 01806 4255 Email: info@spinalinjuries.ie</p>

<p>The Irish Wheelchair Association (IWA) The Irish Wheelchair Association provides service to people with limited mobility in Ireland. Among the many services they provide is access to the Disabled Parking Permit Scheme. IWA, Áras Chúchulainn, Blackheath Drive, Clontarf, Dublin 3</p>	<p>www.iwa.ie</p> <p>Tel: 01 8186 400</p> <p>Email: info@iwa.ie</p>
<p>A website with practical information to help people following bereavement. A booklet published by Citizens Information “Information for those affected by bereavement” is available for downloading on this website. It contains general information on what to do immediately after a death and the taxation, legal and financial issues that may arise, including social welfare payments.</p>	<p>www.rip.ie</p>
<p>Financial Assistance Following Bereavement Your local citizen’s information office is an excellent resource on financial, taxation, legal and social welfare issues following a death.</p>	<p>www.Citizensinformation.ie . Follow the links to Death Related Benefits.</p>
<p>Welfare Officer with the HSE The welfare officer in your area can be contacted through your local HSE Health Centre.</p>	<p>www.hse.ie and follow the links to local health offices.</p>
<p>Bereavement Grant One of a number of social welfare payments to which you may be entitled. The BG1 Form can be obtained from your local Social Welfare office or can be downloaded. The completed form must be sent within 12 months of the date of the death to: Bereavement Grant Section, Social Welfare Services Office, Government Buildings, Ballinalee Road, Longford.</p>	<p>www.welfare.ie.</p> <p>Tel: 043 45211 or 01 704 3000</p> <p>LoCall: 1890 92 77 70</p>

Appendix A

Checklist of questions for meeting with the Superintendent

- Name, station and telephone number of the Investigating Garda and the PULSE incident number.
- Driver's name and Motor Insurance Company details.
- Was the scene sealed off and preserved?
- Did the driver have a valid driver's license? Type?
- Was the driver/s tested for alcohol and drugs? If so what was the result of the tests?
- Was the driver's mobile phone checked for calls made or received by him/her at the time of collision?
- Where are the vehicles involved and when can they be inspected?
- Did the Garda Forensic Collision Unit and the Scenes of Crime Unit attend the collision scene?
- Did a doctor attend to your loved one? Ask for details.
- Coroner's name and contact details.
- Ask for constant updates on the investigation and to be kept informed in writing when and if the Gardaí charge or caution a suspect.
- Ask to be informed in writing about the Crime Victims Helpline and other services available to victims including Garda Family Liaison Officer.

When a suspect is due to appear in court:

- Is the suspect being held in prison or on bail and are there any conditions attached to the bail.
- Ask to be informed of the time, date and location of all the court appearances by the suspect including the trial and sentencing dates.
- Ask to have the prosecution process explained to you and, if you are likely to be called as a witness.
- Ask what facilities and supports are in the court for victims and witnesses.
- Ask for all information about preparing a Victim Impact Statement, the deadline for submission of that statement.
- Ask to be told of the final result of the criminal trial.
- If you are a tourist ask to be given the contact details of the Irish Tourist Assistance Service.

IMPORTANT

Ask in writing to be informed immediately about the following:

- *The preliminary and/or full inquest dates.*
- *When the DPP has made a decision about a charge and the nature of that charge.*
- *When the suspect is served with the charge.*
- *Any and all court appearances by the suspect in connection with the collision.*
- *Date for submitting a victim impact statement.*
The criminal trial date and sentencing date (if applicable)

“Courage isn’t having
the strength to go on –
it is going on when you
don’t have strength”



www.parcroadsafety.ie

Cover design by Anú Design (www.anu-design.ie)

Printed by Colour World Print Ltd