

S.C.I.D.

Supporting Victims of Road Crashes

Submission to the Universal Periodic Review of the UK

September 2016

The World Health Organisation¹ has stated, “*Road traffic crashes are one of the world’s largest [public health](#) and [injury prevention](#) problems. The problem is all the more acute because the victims are overwhelmingly healthy prior to their crashes*”.

On behalf of SCID I would like to submit the following information to be considered in the next “stakeholder report” alongside the UK government’s report for Universal Periodic Review (UPR) in 2017. This submission follows on from our previous submission for UK UPR, 2012 and should be read with reference to that document².

The Scottish Campaign against Irresponsible Drivers was formed in 1985 by Wendy Moss as a result of a fatal road crash in which her only son was killed. SCID aims to:

- help and advise victim families of road crashes
- seek to restructure the Law as it applies to Criminal Traffic Offences which have caused death or injury
- deter irresponsible drivers by the imposition of more relevant sanctions
- encourage drivers, through education, to adopt safer standards.

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¹ <http://www.who.int/mediacentre/factsheets/fs358/en/>

² http://lib.ohchr.org/HRBodies/UPR/Documents/Session13/GB/SCID_UPR_GBR_S13_2012_ScottishCampaignAgainstIrresponsibleDrivers.pdf

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Our previous submission sought to highlight Human Rights deficiencies with regards to how the law is applied to road crash victims and their families. Two areas of concern were identified.

- 1. Victims seriously injured by criminal driving offenders denied recognition in law.**
- 2. Victim families bereaved by road crashes and victims injured in road crashes denied access to police reports.**

SCID continues to seek correction of these deficiencies to ensure UK governments Human Rights obligations to crash victims and their families are fully realised.

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1. Victims seriously injured by criminal driving offenders denied recognition in law.

1.1. Basis of previous submission

Serious injury has life changing effects on victims and their families and yet these road crash victims in Scotland, England & Wales are not treated as victims of crime, even when the law has been broken. The Road Traffic Act is a UK Act reserved to Westminster, yet in Northern Ireland there are criminal driving offences which do take into account the consequences of serious injury. Innocent victims seriously injured in road crashes in Scotland and England & Wales have their right to life less well protected than those seriously injured in Northern Ireland.

1.2. Result of previous submission

In the ***Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 United Kingdom of Great Britain and Northern Ireland***

Thirteenth session Geneva, 21 May - 4 June 2012

Paragraph 76 stated

Scottish Campaign against Irresponsible Drivers (SCID) stated that accident victims injured as a consequence of criminal driving were not recognised as victims of crime.

1.3. Post 2012

December 2012 saw the introduction of a new offence of causing serious injury by dangerous driving. While the new charge recognises the consequences of dangerous driving it discriminates against those victims who suffer injury by other criminal driving offences. As the law now stands, innocent victims seriously injured in road crashes in Scotland and England & Wales will have their right to life less well protected than those in Northern Ireland.

In April 2012 a paper by Dr Sally Cunningham (Leicester University)

<https://ira.le.ac.uk/bitstream/2381/10887/5/CrimLRseriousinjurydriving.pdf>

“One can foresee in the near future calls for a new offence of causing serious injury by careless driving, mirroring the offence of causing death by careless driving introduced by the Road Safety Act 2006 in order to narrow the gap in sentencing between careless and dangerous driving in cases resulting in death.

The Crown Prosecution Service (England) supported an increase in penalty for careless driving up to a term of 51 weeks in cases where serious injury was caused. The

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Association of Chief Police Officers (England) thought that serious injuries should have been included within the scope of the new causing death by careless driving offence.”

1.2. Why we think this should be reconsidered.

States should not only refrain from the intentional and unlawful taking of life, but also have a positive obligation to take appropriate steps to safeguard the lives of those within their jurisdiction, in particular by putting in place effective criminal-law provisions backed up by law-enforcement machinery. The first step developing criminal-law provision to safeguard lives should be to recognise the consequence to a victim of a criminal offence.

The degree of serious injury suffered as a result of careless driving can be equal to that suffered as a result of dangerous driving. The degree of suffering, like the offence itself, is indiscriminate. Those seriously injured as a result of careless or dangerous driving suffer as a result of a criminal offence. Currently, those injured as a result of dangerous driving are recognised as victims of an offence where those, equally seriously injured as a result of careless driving are not.

Response from the Scottish Government was to say to victims seriously injured by careless drivers in Scotland is *“a reserved matter for Westminster”*. SCID accepts this as the Road Traffic Act is a UK Act, but the Scottish and UK Governments fail to explain why one part of the UK viz: Northern Ireland recognises the consequences of serious injury in criminal law while the rest of the UK does not?

SCID continue to campaign through the UPR for recognition of the human rights of all victims seriously injured by criminal driving offence.

All those seriously injured as a result of dangerous or care less driving should be recognised equally as victims of a criminal offence.

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2. Victim families bereaved by road crashes and victims injured in road crashes denied access to police reports.

2.1. Basis of previous submission

A road death is an indiscriminate death, it is a sudden death, it is a violent death and it is a premature death, and where there is culpability the effect on a bereaved family can only be compared with a homicide. Part of the grieving process is access to information. Many families in seeking answers to their questions ask for sight of the police reports at the conclusion of an investigation or criminal proceedings, only to be denied. Denying bereaved families the right to access this information leaves a long lasting aggravated grief from which they never recover.

2.2. Result of previous submission

No follow up by UK government concerning this issue.

2.3. Why we think this should be reconsidered.

The European Court of Human Rights has commented that "Article 2 ranks as one of the most **fundamental provisions** in the Convention" The obligations on a State under Article 2 consist of three principal aspects: the duty to refrain from unlawful deprivation of life, the duty to **investigate suspicious deaths**; and in certain circumstances, a positive obligation to take steps to prevent avoidable losses of life.

In the event of a road traffic fatality the state has an investigative obligation under Article 2. European Court of Human Rights has stipulated that there are certain minimum requirements which must be fulfilled in an investigation into a fatality. The following minimum procedural requirements arise (these have been stated and restated in various decisions of the ECHR, see for example *Jordan v United Kingdom* [2003] 37 EHRR 2):

- *the state must act of its own motion;*
- ***there must be a sufficient element of public scrutiny;***
- ***there must be sufficient involvement of the next-of-kin;***
- *the investigation must be independent;*
- *it must be effective; and*
- *it must be reasonably prompt.*

Where item 2 and 3 on this list converge is on the issue access to information. Denying access to information runs counter to the requirement for transparency and the State's obligation to the family of the victim and as such, is a direct contravention of the principle of Article 2.

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Presently, families may request, but are seldom given, access to police reports concerning the death of a loved one. Lack of a statutory provision for access to information gathered as part of an investigation, leaves the issuing of this information at the discretion of the State. Access is seldom granted. Only a statutory provision can guarantee families are informed and included and that there is a proper measure of transparency.

SCID continues to campaign through the UPR for the statutory right of families to access crash reports relating to the death of their loved ones.

At the end of an investigation or at the end of criminal proceedings a family should have the right to access information in the police report if they so wish.

12th September 2016