

# **Guide for the Families of Victims of Road Traffic Collisions.**

## **A Guide to help you Following the Death or Serious Injury of Your Loved One in a Road Traffic Collision.**

### **Introduction**

This guide has been written by Bereaved families in Ireland who have lost a loved one in a road traffic collision, together with those who survived a crash having sustained serious injury themselves. It outlines the steps involved in the professional Garda investigation of serious injury and fatal collisions, and the subsequent post-mortem, inquest and legal proceedings (where applicable), and attempts to offer information and advice to the victim's family.

If you are reading this guide because your loved one has died or has been seriously injured, please accept our heartfelt sorrow. Those of us who have been involved in writing this guide know the absolute devastation and pain which you are experiencing at present. We can only hope that the information contained within this guide which we have learned through our own personal experience and research will help in some small way to ease the burden.

We hope that it may help to enlighten and empower you in dealing with the Garda investigation, and the legal people and other professionals involved in the process following your loved ones death. Do not allow anybody to use your grief or distress as a reason for keeping you away from any legal proceedings regardless of how unimportant these proceedings may appear to them. We strongly recommend that you attend all of them. You may regret at a later stage not having attended and it is often very difficult to get answers to your questions later on. You will learn something from every legal process you attend. You are on a search for answers, truth and justice for your loved one, let nobody deter you in your quest.

It is of the utmost importance that a road death or serious injury is investigated thoroughly. This is essential not just to establish how the unnatural death or serious injury was caused but is also in the interest of fair criminal prosecution and civil compensation settlements. No matter what the circumstances of a road traffic collision there are always lessons that can be learned from a proper and thorough investigation into how and why it happened.

While we have done our best to give you an overview of the Garda investigation and the legal processes which follow a serious collision it cannot replace good, sound and authoritative legal advice. Whilst every effort has been made to ensure the accuracy of the information supplied herein, we cannot be held responsible for any errors or omissions.

## **Investigation of an unnatural death due to a Road traffic Collision –**

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

1. The Coroner's Inquiry also known as the Inquest.
2. The Criminal Case where a charge is directed by the D.P.P.
3. The Civil Case depending on the circumstances.

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

1. 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) and the family should request adequate notice from the Gardai or the Coroner in charge of the Inquest. The Coroner will open the inquest for purposes of issuing a death certificate but will adjourn it if the DPP has indicated to her/him 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. A full inquest will generally not take place subsequently where the facts have already been established in a criminal trial unless there are special reasons to open the inquest by request of the family. It is advisable to keep in touch with the Coroner. In Ireland Coroners operate independently in their own districts. There are no national guidelines and procedural matters may vary considerably. Families are advised to contact the coroner for information on the precise procedure in their district.
2. A criminal case takes place when the Director of Public Prosecutions (DPP), on the basis of the file presented to her/his office by the Gardai, has decided that there is sufficient evidence to charge a driver on suspicion of breaching certain laws in the Road Traffic Act. There will be a solicitor and/or barrister prosecuting on behalf of the State and the defendant (the person arrested on suspicion of breaking the law) will need to have his/her own legal representation. Unfortunately our legal system does not allow the family of the victim to be represented in court. You will merely be an onlooker when you attend.
3. A Civil Case may be taken if the victim's family decides on that. If a victim or the family of a victim claims 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. There is a time limit from the date of death or injury to lodge a civil claim. Your solicitor or The Injuries Board.ie will advise you.

## **The Emergency Response**

When a serious injury or fatal collision occurs, the Gardai, fire brigade and ambulance services respond to the 999/112 call. The local doctor on call may also respond. These calls are logged and copies of these records may be available on request. The local Gardai respond to the call and visits the scene immediately. The District Superintendent or Inspector too will visit the scene in the immediate aftermath of the collision. You are advised to get this Officer's name as soon as possible and make an appointment to see him. If the district officer is unavailable then one from an adjoining district will take charge.

The District Officer or acting District Officer who has responsibility for the collision will attend at the scene and identify the area which he/she feels must be cordoned off for preservation and he must provide personnel in that regard. The Garda Forensic Collision Investigator will also attend the scene as soon as possible after the collision has taken place. He/she provides a forensic scientific examination of the scene. There are very clear guidelines on the required practices with regard to the preservation of the scene. The Superintendent has a senior investigating officer at the scene available to advise him. The investigation team can contain up to ten members of the Gardai. They provide advice and pursue the investigation to its conclusion. In 2007 the Garda Commissioner introduced a formal “Traffic Collision Investigation Policy” which places responsibility with each District Officer for the investigation of all serious collisions in his jurisdiction. This collision policy places an obligation on him or her to visit all collision scenes, establish what is known as a structured investigation team and bring together individuals with the required skills in forensic investigation and technical examination. There is now in existence a very comprehensive document providing guidelines for the Gardai to follow on how to identify the scene, how to secure it and investigate the cause of the collision.

The Gardai will establish the identity of all involved in the collision and the contact details as far as possible of the next of kin. They will take brief statements from surviving drivers where possible and from any witnesses. These people will be interviewed in detail later. The surviving driver(s) may be the last to be asked for a detailed statement. Both the fire and ambulance services draw up a report outlining their post crash response. You may request copies of these reports from the emergency services who attended the scene.

### **Road Factors**

Under the Collision Prevention Programme 2002, shortly after the collision, the Gardai in conjunction with the local authority will visit the scene to establish if road factors have contributed to the collision and may need to be remedied. Recommendations on engineering solutions if necessary are submitted. Families may request a copy of the Engineers Report from the local 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 serious injury and or death but according to Garda investigations, in a percentage of cases road factors are the primary contributory factor.

### **Hearing of the Tragedy**

Members of An Garda Síochána generally call to the family / families of the deceased and injured to break the news. When your loved one has died the Gardai will be asking you for your assistance in identifying him or her. Your loved one will be taken to a hospital. At the hospital you will be informed of the need for a post mortem and you may be advised that organs may be retained for further examination. A post mortem is necessary in all cases where there is sudden death and is required in order to establish the medical cause of death.

Where your loved one has been seriously injured he/she will be taken for emergency treatment. You will be informed of this by the Gardai. You are advised to ask the Gardai to bring you to the scene of the collision at the earliest possible moment so that you may try to

understand the circumstances which led to the collision. If you are too upset to do this yourself it is a good idea to ask a trusted and competent family member or friend to do so.

You are advised also to ask the Gardai to explain how they believe the collision happened and who else was involved. Your solicitor may advise you at an early stage regarding the engagement of a private Forensic Collision Investigator who should be accredited and should examine the scene and the vehicle /s at the earliest possible moment.

### **Identification of the Body**

Formal identification of the deceased person by a family member or a nominated person will be required. A member of An Garda Síochána will act for the coroner in such cases. The Gardai will send a file on the circumstances of death to the Coroner.

### **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 sample 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 may refuse such a test should they decide it would be prejudicial to the health of the person. This latest legislation does not allow for the testing of an unconscious driver. Further legislation to provide for such a test for alcohol it is hoped will be enacted no later than 2012. Note that professional drivers, learner drivers and those who are newly qualified are subject to a lower 20mg drink driving limit so the Garda also needs to establish the type of drivers license held. These are known as "specified drivers".

All fatalities will be tested for alcohol and drugs including medications as part of the post mortem examination. The findings will be reported in the Toxicology Report. With regard to a surviving driver if the Garda formed the opinion that the driver was under the influence of an intoxicant and the driver passed the alcohol tests he/she can then be tested for drugs including medications by a blood or urine sample being sent to the Medical Bureau of Road Safety under the Road Traffic Act 2010. The toxicology reports and the autopsy report will be sent to the forensic collision investigators and will be included in the Garda file. A copy of the deceased's reports will also be sent to the Coroner.

Families can request a copy of the autopsy report from the Coroner in whose district the death occurred, when all criminal proceedings are over. If there are no criminal proceedings these reports can be requested from the Coroner pre inquest.

### **Role of Forensic Collision Investigators (FCI)**

If there is a fatality or likely to be one, the District Officer will call for the services of the Forensic Collision Investigation Unit. These Gardai are trained to a standard of City and

Guilts in the forensic examination of collision scenes. The Forensic Collision Investigation Unit will assist in the investigation once the local Gardai have concluded their initial investigation at the scene. These investigators will remain for as long as it takes for them to carry out a thorough examination of the scene.

The arrival on the scene of Garda Forensic Collision Investigators has made an enormous difference in terms of the level of survey detail which is now gathered at a crash scene. These Gardai now gather forensic evidence at a crash scene in much the same way as they do at a crime scene, with digital photographs and total station surveys. Therefore, the evidence is not lost when the debris is swept away and the road reopened. The Forensic Collision Investigation Report can run to thirty pages or more.

### **The Scenes of Crime Unit (SCU)**

The Scenes of Crime Unit is also called to the scene in the immediate aftermath. These Gardai may take material samples for forensic investigation, 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 members of the Garda Síochána are qualified mechanics. They examine the vehicles at the scene and again once they have been removed to a secure compound. The PSV Inspector will examine the vehicles in an effort to establish their condition prior to the collision. You or your independent forensic collision investigators are entitled to examine and photograph the damaged vehicles in the secure compound where they are stored. The PSVI will examine the Tachograph charts and/or digital evidence taken from a commercial vehicle. The PSVI, FCI and the investigating member will be present when the Tachograph is removed from the vehicle, examined and photographed. The evidence obtained will assist them in determining the speed of the vehicle at the time of impact, the driving hours and rest periods of the driver leading up to the fatal crash. See attached list of questions for Superintendent.

### **Post Mortem**

A Post Mortem will almost always be carried out by the hospital pathologist in the case of all road fatalities to establish the medical cause of death. It is the Coroner who orders the autopsy after he or she is informed of an unnatural death. Your loved one will be tested for alcohol and drugs- including medications- as part of the autopsy. An autopsy may also involve organ retention. *It is practice for the hospital or Coroner's Office to inform you of organ retention.* When tests are completed on the retained organ the hospital will contact you.

If your loved one does not die within the immediate aftermath of a collision, while there will be an autopsy, much information about the injuries sustained will be derived from clinical evidence. A Post Mortem (Autopsy) Report is drawn up which will be given to the Coroner and by the Coroner to the investigating Gardai. Queries relating to postmortem reports should be made to the Coroner's Office and not to the hospital concerned. It can take anything from three to nine months or more for the Post Mortem Report to be ready.

## **Family Liaison Officer**

Very soon after the collision An Garda Síochána will appoint a liaison officer to the Bereaved family known as the Family Liaison Officer (FLO). This officer is specially selected for the job and he/she will keep you informed of the progress of the investigation and where applicable court proceedings. He /she will answer any questions you might have or refer them to the District Officer for answering. Remember that all Gardai are primarily investigating officers and this includes Liaison Officers. Families are advised to seek clarification regarding the progress of the crash investigation and to ask questions of vital importance. See the enclosed checklist for possible questions.

We advise that you keep a log of all contact with the liaison officer and or District Officer, noting the dates, reason for contact, and the information exchanged. We recommend that you request that all key information and decisions are put in writing. Through your Liaison Officer you should request (in writing) adequate notice of the Inquest date by the coroner. The officer will keep the contact with you until the inquest is over (where there is no prosecution) or until the prosecution is over.

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

- (a) to ensure that the victim is kept informed about the progress of the investigation, including whether a suspect is charged or cautioned
- (b) to tell the victim whether the accused is in custody or on bail and the conditions attached to the bail;
- (c) to inform the victim of the time, date and location of the court hearing of the charges against the accused;
- (d) to explain the prosecution process involved and, if the victim is likely to be called as a witness, to provide information as to the help available for victims attending court.
- (e) to explain the circumstances where a judge may ask for a Victim Impact Statement and arrange for its completion;
- (f) to inform the victim of the final outcome of the trial;

## **Full Statements**

Only over the course of the days and weeks after the collision will more detailed statements be taken by the Gardai. It is essential that if you are one of the injured that you have your solicitor with you while giving your own statement. Anyone who gives a statement should obtain a copy. A full statement from the driver under suspicion of causing the collision will not be taken until all other witness statements have been taken. This driver will be cautioned by the Gardai before giving the statement.

## **Garda Criminal Investigation File**

Officers will piece together all of the information from the scene and any subsequent investigations to produce a detailed report of what caused the collision. A Garda file is compiled from the statements of the investigating Gardai, witness statements, evidence gathered from the scene and the period immediately prior to the collision. It will include the Rough Sketch of the scene, Forensic Collision Investigator Report, Scenes of Crime Units Report, The Computer Generated Sketch, coloured photographs, Medical Evidence, Toxicology (Drink and Drugs) and Autopsy Reports. The file is kept in the District Superintendent's office in the area where the collision occurred.

We strongly recommend that you meet with the District Officer in charge of the investigation to hear first-hand how the investigation is progressing.

The completed Garda file, together with the Officer's recommendation as to the charge which he or she nominates, will be forwarded by him to the DPP via the State Solicitor. The Gardai also forward a copy of the investigation file to the Coroner.

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

It is well to remember that in our legal system a driver is innocent until proven guilty. It is the State which takes a criminal case against a driver about whom the Garda have sent a file to the Director of Public Prosecutions (DPP) and criminal matters (which are dependent on a weight of evidence against a suspect contained in that file) are concluded in advance of the conclusion of the Coroner's Inquiry (Inquest). The family of the dead or the seriously injured (injured party) in a collision has no entitlement to legal representation in the criminal proceedings; only the driver under investigation who has been charged with an offence. He or she will have access to the Book of Evidence in order to defend him/her in court. You as a victim will have no access to information except what the Gardai choose to share with you in answer to your questions.

The DPP makes a decision as to the most appropriate charge, if any, to be brought against the suspect. In some cases the DPP rules that there will be no charges brought. If the DPP decides that a driver should be charged you will be informed by the Gardai as to the nature of the charge. The most serious charge is generally "dangerous driving resulting in death" (see Road Traffic Act 1961 Sections 52 and 53) although some drivers have been charged with manslaughter. There is no time limit on the Gardai for serving the very serious charges on a suspect. He or she will be arrested taken, to the District Court and formally charged. You will be informed by the Gardai of this soon afterwards.

## **Time limits for the lesser charges**

For any charge less than "dangerous driving resulting in death" i.e. no insurance the Gardai have 6 months from the date of the incident to commence criminal proceedings. This is an important deadline to watch out for.

## **The Arrest and Criminal Case**

Criminal cases dealt with by the Circuit Criminal Court begin in the District Court and are sent forward to the Circuit Court for trial or sentencing. Where a person is sent forward to the

Circuit Criminal Court for trial the case is heard by judge and jury although a person can change their plea to guilty and dispense with a trial. When the Gardai are instructed by the DPP that one of the serious charges is to be brought the suspect is arrested and charged. The accused must be served with the prepared documents (Book of Evidence) within 42 days of his/her first appearance in court. This time limit may be extended. A date will be set for the trial but not immediately. There may be many appearances by the defendant in the District Court before this happens. The Book of Evidence is made up of the following documents

- A statement of the charges against the accused
- A copy of any sworn information in writing upon which the proceedings are initiated
- A list of the witnesses it is proposed to call at the trial
- A statement of the evidence that is expected to be given by each of them
- A copy of any document containing information which is proposed to be given as evidence viz. (Blood alcohol levels of drivers and victims, Toxicology report of victims, Post Mortem Report or Clinical Evidence, PSV Inspectors Reports etc., a list of exhibits such as CCTV footage, photographs etc.
- Certificates of evidence based on Section 6 (1) Criminal Evidence Act 1992.

In cases where a driver is brought before the courts if you happened to be a survivor of the same collision and have made a witness statement you will most likely be asked to appear as a witness to give evidence. This occurs where the defendant is pleading not guilty to the charge and there will be a full trial. If however the defendant pleads guilty you will not be asked to take the stand to give evidence in relation to the crash, but in either case you may be given the opportunity to give a victim impact statement to the court under oath. In the event of a guilty plea you will not get any detail on how the collision occurred as these details only come to full light when there is a full criminal trial. In this instance it makes it all the more important to obtain all available facts referred to as “The Garda Abstract” from the Gardai as soon as the criminal process is over.

### **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 in [www.dppireland.ie](http://www.dppireland.ie)).

### **Preparing Yourself for the Criminal Case**

The time in court is very stressful whether you are there as a relative or as a witness and you would be well advised to visit the court before hand to familiarize yourself with the surroundings and procedures. While the criminal trial is a contest between the people of Ireland and the accused and not between the victim and the accused; prosecuting solicitor and counsel have certain obligations towards victims. These are set out in Chapter 12 Guidelines for Prosecutors, Director of Public Prosecutions Revised November 2010 Website link below. You can request a meeting with the prosecuting solicitor and counsel prior to the trial. The purpose of this meeting is to explain the pre-trial process to the victim and answer any questions you may have. Evidence however will not be discussed. The victim is entitled to have his or her views heard and considered. The victim should be dealt with in a reassuring and sympathetic manner. Solicitor or counsel should explain the legal processes and procedures and should keep the victim informed. Any complaints should be addressed to the DPP or the Chief Prosecution Solicitor directly.



On the day of the trial bring your solicitor and ask family members and or friends for support. Your solicitor will not be allowed to take an active role as it is the State which takes the prosecution case against the defendant. However he or she will be familiar with the process and will be there to keep an eye on events for you and explain what is happening. The outcome of the criminal case will have a bearing on any civil case should you decide to take one.

### **No Prosecution due to Insufficient Evidence**

Families should be aware that the fact that a file is being prepared for the DPP does not mean that charges will be directed by the DPP. (In some instances, the Gardai may advise that the crash was the fault of the dead driver but the file must still be prepared and sent to the DPP for direction prior to proceeding to the Coroner's inquest). Even where the Gardai are not recommending a prosecution a file must be sent to the DPP. When the DPP decides not to prosecute in a particular case the reasons for the decision are given to the local State Solicitor and the investigating Gardai.

It is extremely distressing for families who believe that their deceased loved one was not responsible for the collision, yet the DPP directs that there will be no prosecution against the surviving driver as has happened in the past. While the DPP is not responsible for the conduct of the investigation he/she is free to indicate what evidence would be required to sustain a prosecution. You can request a review of the decision of the DPP 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. The Director can arrive at a different decision even in the absence of new evidence.

Where the DPP directs that there is to be no prosecution the way is now open for the full inquest hearing to proceed. Once the full inquest goes ahead the opportunity for any prosecution is lost.

### **The Inquest**

The Coroner's Court is presided over by the Coroner who may be a medical doctor or a lawyer (solicitor or barrister). Some are also qualified barristers. 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. You are strongly advised to liaise at an early stage with the Coroner's Office in the district where your loved one died and to request adequate notice of the Inquest date. Your Family Liaison Officer will give you the contact details or they can be got from the Coroners' website, details of which you will find at the end of this booklet. Some Coroners will communicate with the family of the deceased from the start and the inquest into your loved one's death may come up for mention again and again before the inquest date is set. However this may not be the practice in all districts. If you have not been given adequate notice of the date you should contact the Coroner's Office requesting an adjournment. The Coroner's court is not an adversarial one and you should find that all parties are dealt with very fairly and with great compassion.

Pre-inquest disclosure of documents is not automatic but should be requested by the family of the deceased prior to the inquest date. They will not be given to you until after the criminal case if the DPP has indicated to the Coroner that there is likely to be a prosecution.

On request the Coroner may provide bereaved families with copies of documents relevant to the inquest including Draft Depositions (based on witness statements) Medical evidence, The Post Mortem Report, and Toxicology Reports (Drink, Drugs including medications).

The inquest can neither apportion blame nor exonerate, it merely establishes the facts surrounding your loved ones death and issues a death certificate. The purpose of the inquest is to establish when, where and how your loved one died. There are neither victims nor defendants, there are only “properly interested persons”. Your dead relative will be referred to as “the deceased”.

The inquest will be opened and adjourned if a criminal case is likely to follow. A full inquest can only take place once the DPP has indicated that there will be no criminal prosecution. Prior to inquest (or whilst awaiting the postmortem report) the coroner’s office will provide an Interim Certificate of the Fact of Death which may be acceptable to banks, insurance companies and other institutions. 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 concluded.

This Certificate is then sent to the Registrar of Births, Marriages and Deaths where the death is recorded. The resulting death certificate can be used for banking, insurance and legal purposes such as for probate.

Some Coroners - though not all - will enter in the Coroners Certificate that the injuries were sustained in a Road Traffic Collision but others do not. If you consider that it is important for you to have a record of that, there is another Document available at the conclusion of an Inquest called a “Record of Verdict” which you should request from the Coroner.

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 traumatized to attend and anyone injured in the crash may not have been given enough time to recover physically or mentally. The Gardai/Coroner is obliged to give the family adequate notice of the inquest in order for you to prepare. If you believe that you have not been given adequate notice request the Coroner to adjourn it and arrange a more suitable date. The Coroner will be in possession of the Post Mortem (Autopsy) Report and Toxicology Report at the time of the inquest.

### **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 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 full death certificate will be issued. The Inquest will be adjourned after evidence is given on identification and the medical cause of death is read. The inquest is resumed and concluded by the Coroner after he receives confirmation from the criminal court registrar that the criminal prosecution has been concluded. There generally will not be a hearing as the facts will have been established and *the families, for the most part, will not be informed of when this is happening.*

It is advisable to contact your Coroner to be informed of the completion of the inquest when the criminal trial is over. Families are generally not informed about the completion of the previously adjourned inquest and are led to believe that nothing happened, so it is important that you establish this for yourself by keeping in touch with the Coroner's office.

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

Where there is no criminal trial due to lack of evidence the inquest is the only opportunity open to the relatives to find out as much as possible, about the circumstances which led to the death of their loved one. 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. It is the only chance to formally question witnesses. There is no opportunity for the family to do so in any criminal proceedings. Families may have legal representation to ask questions on their behalf or may ask questions themselves through the Coroner.

### **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. Every Irish or British citizen in Ireland from the age of 18 (no upper age limit since 1 January 2009) who is on the Register of Dail Electors is eligible for jury service in the Coroner's Court with some exceptions. The Coroner firstly requires the jury to take an oath. He informs all present the purpose of the inquest i.e. to establish the cause of this unnatural death without apportioning blame. The witnesses are required to take an oath and the deposition of each witness is read out to the court before he/she is questioned by the Coroner. The jury and both parties are given opportunity to ask questions and to engage with the witnesses. This questioning of witnesses is very important as it can lead to an adjournment if it points to further evidence being required.

Gardai at the Inquest give evidence of their investigations for the Coroner under the Coroner's Act. A stenographer might be present or the evidence in some cases is recorded but both of these situations are very unusual. The coroner commonly tells the jury which verdicts are lawfully available in a particular case. The most common verdicts are accidental death or death by misadventure. More unusually verdicts are recorded as unlawful death, death by natural causes, or an open verdict. Sometimes the jury also makes recommendations. The Coroner follows this up with a letter to the relevant authorities.

### **Evidence at the inquest typically comes from**

- The witness who identified the deceased
- The last person to see the person alive
- Person who saw the collision or the aftermath or who saw those involved prior to the collision. Someone the family puts forward by application to the Coroner if the Coroner deems that person to have evidence helpful to the court.
- 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 apportions blame. Other Coroners get the depositions from the Gardai. You should ask the Coroner how the depositions are drawn up for his/her court.

- *Skype technology can be used for someone from overseas to provide evidence but only in certain jurisdictions. Enquire as to the feasibility of this in your Coroner's Court if relevant.*

### **At the Inquest**

1. Have all the witnesses attended?
2. If there are serious questions about the evidence presented an adjournment may be sought.

### **On Conclusion of the Criminal Process**

When the criminal process is over you should request The Garda Abstract from the Gardai. This is abstracted from the Garda File and consists of the following documentation:

1. The Garda Abstract Report consists of a two page pre-printed Garda form filled in with details of the collision. See blank copy below.
2. The Rough Garda Sketch of the collision scene should now be accompanied by the Computer Generated Sketch.
3. The witness statements including the Garda statements.
4. Coloured photographs of the scene, of the vehicles at the scene. (Not photocopies of photographs).
5. The PSV Inspector's Report.
6. The Forensic Investigators report.
7. Scenes of Crime Report.

The Garda Abstract is available from the District Officer in charge of the case when all criminal matters have been dealt with or where there are no criminal charges.

The Irish Road Victims' Association is actively campaigning for the abolishment of the Garda charges for this documentation which should also be in the possession of your loved one's and the defendant's insurance companies. In circumstances where no criminal proceedings take place or where a defendant pleads guilty, these documents are the only source of reliably recorded information available to the relatives. Where there has been no criminal prosecution, this information is crucially important for any civil case.

Much of the documentation is available from the Coroner on request prior to the inquest. These will often include drafts copies of witness statements, sketch map of scene, photographs, Medical Report, Autopsy and Toxicology Reports. We strongly recommend that you request these documents well in advance of the inquest date to prepare yourself. On conclusion of the inquest families may also request these documents from the coroner which will include the Record of Verdict, the Coroner's Certificate and the Inquest File. There will be a statutory fee charged.

### **Personal Injury Claims and Time Limitations**

InjuriesBoard.ie is a statutory body which provides independent assessment of personal injury compensation for victims of Workplace, Motor and Public Liability accidents. This

assessment is provided without the need for the majority of current litigation costs, such as Solicitors, Barristers and Experts' fees, associated with such claims. In exceptional cases legal / expert fees may apply and InjuriesBoard.ie examines each case on its own merits. See website details at the back of this booklet for more information.

The personal injuries board assesses the amount of compensation due to an injured party. They deliver compensation without the legal costs and experts fees that add more than 46% on average to the cost of a claim. They reduce the amount of time it takes to finalise a compensation claim. Under the court system it can take approximately three years to settle a claim. It generally takes nine months to settle a personal injury claim via InjuriesBoard.ie.

A personal injury claim must be made within two years of the date of the collision and must be made initially through the Injuries Board.ie. You should seek legal guidance on this.

If you are undecided as to whether civil proceedings are relevant in your own case, it is worthwhile lodging papers yourself or having a solicitor lodge papers with the InjuriesBoard.ie for you and these can be stamped and re-lodged on a six-monthly basis. By doing this you will avoid a situation where you have become 'statute barred' and unable to proceed with any civil case due to this two year time limit for the issuing of legal proceedings in court being exceeded. In many cases the civil route is the only avenue remaining for families in order to have a court adjudicate on the collision in which their loved one died. You may take a civil case even in the event that the DPP decides that there should be no criminal prosecution. The burden of proof differs in the criminal and civil processes.

### **Garda Ombudsman Commission (GSOC)**

In the event that you are dissatisfied with the Garda investigation into the collision in which your loved one died, you may refer the matter and your complaint to the Garda Síochána Ombudsman Commission (GSOC). Again, there are time constraints placed on you doing this. You have only six months to do so 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. You do not need to wait for the Garda investigation or criminal matters to be concluded before making such a complaint. In fact, to so wait could result in your complaint being inadmissible. IRVA would advise that you record any complaint you may have and send it by registered post to the Garda Ombudsman immediately you become aware of it.

### **Collisions Involving a Member of An-Garda Síochána**

It is also worth noting that in road traffic collisions involving a Member of An 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 An 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 Gardaí (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.

### **Motor Insurance Company**

Following the death or serious injury of your loved one in a road traffic collision, we would advise you to make contact with the motor insurance company through which your loved one was insured. You should ask to be kept fully informed of any ongoing developments, information, claims or settlements.

The Insurance Company will have sent their Agent to the Crash Scene in the immediate aftermath of the collision. This Agent will have met with the Investigating Gardaí at the collision scene, and the Insurance Company will obtain a full report including photos and sketch of the scene, and will be fully informed. At this time, you may also be able to obtain a refund of the premium overpaid on the policy. There may also be Death Benefit or Driver Injury and Hospital Care Benefit included in the policy to which you are entitled. Never accept a payment directly from an insurance company after a collision has occurred unless that payment is approved by your solicitor.

### ***Further Information***

#### **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. However victims might find the following link to the UK Police equivalent of benefit to them.

[http://www.acpos.police.uk/Documents/Policies/RP\\_ACPOS%20RDIM%20\(version%203%203%202008\).pdf](http://www.acpos.police.uk/Documents/Policies/RP_ACPOS%20RDIM%20(version%203%203%202008).pdf).

#### **Inquests**

Contact information for the Coroner for your area may be obtained from your Local Authority, your family doctor, from your Family Liaison Officer in the Gardaí or from

[www.coroners.ie/](http://www.coroners.ie/)

[www.coronerdublincity.ie](http://www.coronerdublincity.ie)

[www.kildare.ie/countycouncil/countycoroner](http://www.kildare.ie/countycouncil/countycoroner)

[www.corkcity.ie/services/recreationamenityemergencyservices/citycoroner/](http://www.corkcity.ie/services/recreationamenityemergencyservices/citycoroner/)

[www.citizensinformation.ie](http://www.citizensinformation.ie)

[www.justice.ie/en/JELR/coronersfulljob.pdf/.../coronersfulljob.pdf](http://www.justice.ie/en/JELR/coronersfulljob.pdf/.../coronersfulljob.pdf)

## **Forensic Engineers**

[www.forensicengineers.ie](http://www.forensicengineers.ie)

## **Personal Injuries**

[www.injuriesboard.ie](http://www.injuriesboard.ie).

## **Director of Public Prosecutions (DPP)**

[www.dppireland.ie](http://www.dppireland.ie)

[http://www.dppireland.ie/filestore/documents/GUIDELINES - Revised NOV 2010\\_eng.pdf](http://www.dppireland.ie/filestore/documents/GUIDELINES - Revised NOV 2010_eng.pdf)

[www.courts.ie](http://www.courts.ie)

## **Road Traffic Acts Ireland and Garda Síochána Ombudsman's Act**

[www.irishstatutebooks.ie](http://www.irishstatutebooks.ie)

## **Garda Síochána**

[www.garda.ie](http://www.garda.ie)

[www.gardaombudsman.ie](http://www.gardaombudsman.ie)

## **Medical Bureau of Road Safety**

[www.mbrs.ie](http://www.mbrs.ie)

## **Financial Assistance Following a Bereavement**

The following payments, which are once-off and made to families in the immediate aftermath of sudden deaths, may be available to you to assist you with unexpected expenses.

### **1. Assistance with funeral costs**

- Urgent needs payments
- Rent or Mortgage interest Supplements
- Short-or long- term social welfare payment

Please contact your local Community Welfare Officer in the HSE to enquire about your eligibility for these payments.

There is also a free booklet entitled "Information for those affected by bereavement" which can be downloaded at the following link:

[www.citizensinformationboard.ie/publications/providers/booklets/](http://www.citizensinformationboard.ie/publications/providers/booklets/)

It is also available from your local Welfare office or from your nearest Citizen Information Centre.

## 2. Bereavement Grant

Bereavement Grant is a once-off payment which is made in respect of deaths that occur on or after 2 February 1999. Your eligibility for this grant is usually based on PRSI contributions. This grant is not related to your ability to pay for the funeral.

BG1 Form can be obtained from your local Social Welfare office or can be downloaded on: <http://www.welfare.ie/EN/Forms/Documents/bg1.pdf>

The completed BG1 form must be sent within 12 months of the date of the death to:

Social Welfare Services Office

Government Buildings

Ballinalee Road Longford, Co. Longford

Tel : (01) 704 3000 Low call : 1890 92 77 70

## Citizens Information Board

The Citizens information Board provides easy access to information and advice by telephone and e-mail. This service provides very important information on your rights and entitlements and on state and other social services.

All calls within Ireland are charged at local rates:

Low Call number: 1890 777 121

International number: 00353 1 605 90 00 Fax: 00353 1605 90 99

Email: [info@ciboard.ie](mailto:info@ciboard.ie)

The service is available from Monday to Friday, [9.00am](#) to 9.00 pm

## Useful Links

[www.samaritans.org](http://www.samaritans.org) The Samaritans Tel. 1850 60 90 90

[www.barnardos.ie](http://www.barnardos.ie) Barnardos Tel.(01) 473 2110

[www.iapc.ie](http://www.iapc.ie) The Irish Association of Counselling and Psychotherapy Tel. 00 353 1 2723427

[www.advic.ie](http://www.advic.ie)

[www.anamcara.ie](http://www.anamcara.ie)

[www.briireland.ie](http://www.briireland.ie)

[www.braininjury.ie](http://www.braininjury.ie)

[www.headway.ie](http://www.headway.ie)

[www.crimevictimshelpline.ie](http://www.crimevictimshelpline.ie)



Irish Road Victims Association

**IRVA is a Member of FEVR, the European Federation of Road Traffic Victims. IRVA is a Member of the Global Alliance of NGOs for Road Safety and is a Member of that Alliance's Victims' Committee. IRVA is a founding Member of the Victims' Rights Alliance. IRVA is a signatory to the European Road Safety Charter, ERSC. Contact us via our website: - [www.irva.ie](http://www.irva.ie) Email: - [irva@eircom.net](mailto:irva@eircom.net) Phone: - +353 86 8634194 or +353 86 3581634**