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Lord Advocate, Frank Mulholland QC
The Crown Office
25 Chamber Street
Edinburgh
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Dear Lord Advocate

SENTENCING IN THE CASE OF GARY MCCOURT – 3RD MAY 2013

I write to you to express the serious concerns of CTC, the UK national cycling charity, about the recent case at Edinburgh Sheriff Court concerning the conviction of a motorist on a charge of careless driving following a road crash in 2011 in which a cyclist was killed.

On the 3rd of May 2013 Gary McCourt was sentenced to 300 hours community service and a 5 year disqualification by Sheriff James Scott at Edinburgh Sheriff Court for causing the death by careless driving of cyclist, Audrey Fyfe, in August 2011. Mrs Fyfe was the second cyclist McCourt had killed by driving: in 1985 he killed 22 year old George Dalgity and was convicted of causing death by reckless driving, for which he was given a 2 year custodial sentence.

In sentencing McCourt, Sheriff Scott stated that Mrs Fyfe was in no way to blame for the collision but commented that her not wearing a helmet contributed to her death. It is our view that the Sheriff, with no apparent expert evidence to support his comments, was in no position to decide whether a helmet might have made a difference to the outcome of the collision. More importantly though, this fact had no bearing on the case which was a criminal case deciding on whether McCourt's driving at the time of the collision was careless rather than a civil case of negligence where contributory behaviour might have been a factor for consideration. Hence, our view is that the Sheriff had no legal basis for referring to this when delivering his sentencing decision.

We also consider that the Sheriff's sentencing decision is unduly lenient and appeared not to take into account the following points:

- McCourt's previous driving conviction should have been considered as an aggravating factor; and
- McCourt's failure to look out for other road users on the inside of the line of traffic being crossed when turning right, something that is dealt with under Rule 211 of the Highway Code: road users requiring extra care.

Had these points been taken into account, we believe that McCourt's driving behaviour would have been considered at the most serious end of careless driving and the appropriate sentence should have reflected that. We also question why in the first instance, McCourt was charged with the lesser offence of careless driving rather than causing death by dangerous driving.

Mr McCourt will be driving again in 5 years' time and, if he still has not adjusted his driving, he may put more lives at risk. If he kills again will he finally be handed a sentence that will prevent him from endangering more lives? We are of the view that an appeal to the High Court of Justiciary against the sentence is necessary to guard against McCourt killing or maiming more cyclists.

The safety of cyclists and other vulnerable road users' is an important issue and the perceived danger of cycling is the most common reason why many people do not cycle on the roads. As an organisation, we are committed to making the roads safer for cyclists and all other road users, but the proper application and enforcement of the law must go hand in hand with our efforts to improve training, awareness and infrastructure and to encourage those who are fearful of cycling to give it a try. This sentence and the Sheriff's inappropriate comments on helmet use send the wrong message to cyclists as to the seriousness with which the justice system handles bad driving that endangers others.

We look forward to your response on the decision whether to appeal the sentence. We would also like to request a meeting between COPFS, CTC and perhaps other interested parties to discuss COPFS's policies on prosecuting bad drivers. We are now involved in a regular justice review group with the Ministry of Justice, Crown Prosecution Service and Department for Transport in England and Wales and would be keen to initiate similar dialogues in Scotland.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Gordon Seabright', written in a cursive style.

Gordon Seabright
Chief Executive Officer