

Crown Office and Procurator Fiscal Service

Crown Office, 25 Chambers Street, Edinburgh, EH1 1LA
Policy Unit



Gordon Seabright
Chief Executive Officer
CTC, The National Cycling Charity
Parklands
Railton Road
Guilford
Surrey, GU2 9JX

Tel: 0131 226 2626
RNID Tynetalk prefix: 18001

Fax:

Your ref:
Our ref: R005229

12 June 2013

Dear Mr Seabright

Thank you for your letter dated 10 May 2013 addressed to the Lord Advocate which you hand delivered to Crown Office on 11 May 2013. The Lord Advocate has asked me to respond on his behalf.

I refer to my meeting with you and other representatives of CTC along with Mr Gibson, Head of Appeals Unit at Crown Office, Mr Fyfe, the husband of Mrs Fyfe and Miss Dalgity at Crown Office on 11 May 2013 when you delivered your letter. As you will recall, Mr Gibson and I explained the process for selecting the charge in a case of a death caused by driving and also the appeals procedure.

It may be helpful if I firstly outline what happened in the case. The accused Gary McCourt was convicted after a Jury trial at Edinburgh Sheriff Court of causing the death of Mrs Audrey Fyfe by careless driving on Portobello Road on 9 May 2011 by colliding with her bicycle while she was cycling there. At the sentencing hearing on 3 May the Sheriff sentenced Gary McCourt to 300 Community Payback Order and disqualified him from driving for 5 years and ordered him to re-sit the driving test. The accused already had a conviction for causing the death of a cyclist, George Dalgity by reckless driving in 1986 for which he was sentenced to a period of 1 year imprisonment and was disqualified from driving for 10 years in relation to that offence. The Sheriff was aware of this previous conviction at the time of the sentence.

You have asked why the accused was charged with the offence of causing death by careless driving and not the offence of causing death by dangerous driving. In all cases where there is consideration of criminal proceedings as a result of a road traffic death in Scotland, the case is reported to Crown Office for consideration of the appropriate charges. Crown Counsel are senior lawyers in Crown Office who are responsible for ensuring the correct charge is selected in these cases. When considering the charge, Crown Counsel must apply the definitions of careless and dangerous driving which are laid down in the Road Traffic Act 1988. Dangerous driving is defined as driving which falls far below the standard that would be expected of a competent and careful driver and it would be obvious to a competent careful driver that driving in that way would be dangerous. Careless driving is defined as driving without due care and attention and is driving which falls below what would be expected of a

competent and careful driver. After consideration of the full facts and circumstances in this case, Crown Counsel selected the charge of causing death by careless driving. As Mr Gibson explained at the meeting on 11 May this was the correct charge in the circumstances of the case.

In your correspondence you outline why you consider that the sentence imposed was unduly lenient. The Crown can appeal against a sentence when it is considered to be unduly lenient, which is a high legal test. Crown Counsel, senior lawyers in Crown Office who deal with all such appeals, instructed an appeal against sentence after considering a full report from the prosecutor who was in court at the time of the sentence, which included a note of the reasons the Sheriff gave for selecting the sentence he did. This appeal is in relation to both the Community Payback Order and the length of the disqualification elements of the sentence. This appeal was lodged on the 31 May.

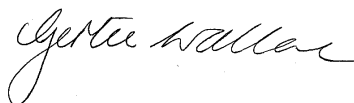
I understand that during the sentencing hearing the Sheriff provided reasons for passing the sentence he did and this included comments about the fact that Mrs Fyffe was not wearing a helmet at the time of the incident. It would not be appropriate for me to comment on the Sheriff's comments especially in circumstances where the Crown has lodged an appeal against the sentence.

As discussed at the meeting on 11 May 2013 I would be happy to meet with you to discuss the issues you raise in your letter. I wish to assure you and your members that the Crown does take road traffic offences against vulnerable road users such as cyclists seriously and this is reflected in guidance provided to prosecutors.

I understand that as a result of the campaign on your website, that COPFS has received over 5,000 e-mails seeking a review of the sentence in this case. I would be very grateful if you would publish this letter on your website in response to those e-mails. I can confirm that COPFS will thereafter provide progress on the appeal via the news release on the COPFS website (<http://www.copfs.gov.uk>) and via Twitter (<https://twitter.com/COPFS>). I confirm that I will also write to you to provide you with updates in relation to the appeal hearing.

I hope this information is helpful.

Yours sincerely



GERTIE WALLACE
Deputy Head of Policy Division