

Information for bereaved family and friends following murder or culpable homicide

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Introduction

If someone close to you has been murdered, or if you are caring for someone who has been bereaved by murder or culpable homicide, then you may find the information in this pack helpful.

If you are in this situation, you are unlikely to know what to expect. This pack gives you information about what happens next, the procedures involved, and how long they might take and why. It has been prepared with the help of people who have been through a similar experience. It includes information about:

- how the police, the Procurator Fiscal (prosecutors) and courts work
- some of the arrangements you may have to make
- the help and support available to you.

The pack covers a lot of topics but you do not have to read everything straight away. The police Family Liaison Officer (FLO) will explain what you need to know now. You can keep the pack and refer to relevant sections when you need to.

The pack aims to give you basic information about the sort of questions you might have at this difficult time. If you find you need more information about certain issues, the pack provides contact details for a range of organisations, including those that can offer you support.

Some of the language used in the pack reflects legal terms that you may not have come across before. They have been included because you may hear them during the investigation or trial. The terms are explained briefly where they come up in the pack and in more detail in section 8.2.

If you have been bereaved within the last few hours, you may find it helpful to read the section “What you need to know now”.

You might also want to:

- keep a note of the names, addresses and phone numbers of the main people you might need to speak to about what is happening (you can do this in section 1.1. The FLO can help you fill in the details)
- write down questions you want to ask or information you have been given (there is space for notes in the next few pages of the pack)
- keep copies of any letters in a safe place.

If you have any questions about anything you read in the pack, ask the FLO, Victim Information and Advice officer or one of the organisations listed in section 1.1. If they cannot give you an answer straight away, they will try and get an answer for you as quickly as they can.

You may also want to have a look at the leaflet “*Coping with grief*” that accompanies this pack.

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Section 1: Important contacts

1.1 Key contacts for keeping in touch

You can use this section to help you keep a note of the names, addresses and phone numbers of the main people you might need to speak to about what is happening.

Police

For advice and information about the progress of the investigation and the legal system in general:

The police Family Liaison Officer (FLO):

Duty hours contact number:

Out-of-hours office contact:

For registering concerns or complaints about the investigation:

The Senior Investigating Officer (SIO):

Postal address and telephone number:

The Procurator Fiscal (PF)

For advice about the criminal prosecution (and the post mortem examination, its outcome and likely timing of release of the body for the funeral):

The Procurator Fiscal:

Telephone number (office hours):

Victim Information and Advice (VIA) service

For information about the progress of the criminal prosecution and the types of support that may be available to you:

Victim Information and Advice (VIA) Officer:

Telephone number (office hours):

Support organisations

For practical help and information and someone to talk to in confidence:

Your local Victim Support Scotland (VSS) service:

Telephone number:

(or the VSS national office on 0131 668 4486, or helplines on 0845 603 9213 or 0845 30 30 900) www.victimsupportscotland.org.uk

For support from others who may have been through similar situations:

Petal (People Experiencing Trauma and Loss):
(for those affected by murder and suicide)

Telephone helpline: 01698 324502

E-mail: info@petalsupport.com

www.petalsupport.com

Other:

Your GP

You may also find it helpful to keep your GP's contact details in this section:

GP:

Telephone:

1.2 The police Family Liaison Officer (FLO)

Who is the FLO?

Very soon after a death you will be introduced to a specially trained police officer known as a Family Liaison Officer (FLO). He or she has received training about the needs of people bereaved in circumstances like yours. FLOs are also experienced investigators.

The FLO will give you a telephone number or numbers where you will be able to contact them, and they will tell you when they will be available. They will work with you throughout the police investigation and may be assisted by other FLOs.

What is the role of the FLO?

The FLO acts as a contact point between you and the Senior Investigating Officer (SIO) who directs all parts of the investigation. The FLO is part of the investigation team and has specific tasks to carry out. They have two main functions:

- to gather all available information from you and other family members about the person who has died and to pass that information on to the SIO and

- to act as a point of contact between you and the SIO, and to keep you updated about developments in the investigation.

The FLO will also:

- help you with immediate tasks, such as identifying the body
- keep you informed of progress with the investigation
- with your consent, ensure you are referred to your local victim support service or other voluntary group
- during the police investigation, give you advice and guidance about how the criminal justice system works
- help you to manage any media interest in the case
- help answer any questions you may have and where possible direct you to someone else who can help.

If your family is estranged or separated, the FLO will arrange to notify other people of the death on your behalf. They will also contact other people if their relationship to the person who died means they are entitled to be notified.

Will the FLO be involved throughout proceedings?

The FLO will work with you for a limited time and then hand over the liaison role to those who will prosecute the case. More details of how and when this will be done are given in the next section.

Liaison between the FLO and those who will prosecute any criminal case

From an early stage, the FLO will liaise with the Victim Information and Advice (VIA) service. VIA is part of the Scottish prosecution service, called the Crown Office and Procurator Fiscal Service

(COPFS). The next section gives more information about the VIA service and the arrangements for liaison between the FLO and the VIA officer.

There is space in section 1.1 for you to write down the FLO's telephone number.

1.3 The Victim Information and Advice (VIA) officer

Who is the VIA officer?

The VIA officer is there to update you about the progress on the case and give you general information about the criminal justice system. They can also refer you to organisations that can offer practical and emotional support if that would be helpful.

When your case is referred to the Procurator Fiscal, a VIA officer will provide you with information and advice about what is happening. Because they work for the Procurator Fiscal, they have direct access to information about the case.

What is the role of the VIA officer?

The VIA officer can tell the FLO the outcome of preliminary court proceedings. For example, they will explain if the accused is in custody or has been released on bail.

The FLO will withdraw from the case and pass responsibility to VIA for giving you information. When this happens will depend on the circumstances of the case. It may be after the funeral, after the accused first appears in court, or it may be later if police investigations have not been completed.

A meeting will be held so that you can meet the VIA officer before the FLO withdraws from the case. Until that meeting has taken place, all liaison with you will be through the FLO.

The VIA officer will provide information and advice up to the end of the criminal case, including any appeal. They can also give you information about sources of support after the court case is over (see also [section 7](#)).

To find out more about VIA, call 01389 7395577 or 0844 561 3000 or go to www.crownoffice.gov.uk click on “Are you a victim of crime?”. Unlike police Family Liaison Officers, VIA staff do not work shifts or have out-of-office contact numbers. You can contact VIA during office hours and, if you leave a message outwith these times, they will call you back as soon as possible.

2

Section 2: What you need to know now

The next few pages will tell you things you may want to know straight away.

2.1 Identifying the person who was killed

After someone has died, they are taken to a hospital mortuary or a local authority mortuary.

The next step is a post mortem examination to establish the cause of death. Before the post mortem can take place, the deceased person must be identified by two people who knew them. It is not essential that these are nearest relatives. Identification can sometimes be done using a video link.

If you are not one of the people who identifies the body, you can still choose whether or not to see the person at a later time. You can discuss this with the FLO.

There are times when, because of the injuries sustained by the person, the police cannot positively identify them. In these cases, identification is made by other methods such as dental records, fingerprints and DNA from, for example, a hairbrush or toothbrush. In some cases DNA samples taken from mouth swabs of blood relatives may be required. The FLO will explain the reasons for these and how they are used to identify the victim.

2.2 Seeing the body

Deciding whether to see someone who has died is difficult enough in ordinary circumstances. If they have been killed in a violent way, this may make the decision even more difficult.

You may be worried about how the body will look because of the circumstances of the death. The police may be able to tell you the nature of the injuries but they will not normally be able to discuss them in any detail. Some information may have to be held back so

that it does not affect (prejudice) the prosecution case. The police will tell you if they have to withhold information from you and why. It is important you are aware that this is happening and that more information may come out during the trial.

Being worried or nervous about seeing the body is perfectly normal. You may feel that it will not seem real, or you may not want your last memory of the person to be in a coffin or at the mortuary. You may choose to say goodbye or remember someone as they were. If you do decide to see the body, you should expect it to feel cold to the touch. In most cases, you will not be able to touch the body until it is released for burial or cremation.

Seeing the person who was killed can be the first step towards handling grief and helping you face the reality of death. Some people who decide not to see them can find it harder to accept their death.

You may not be able to see them until after a post mortem has been carried out. This is because forensic evidence is often found on the clothes and from the body during the post mortem. This may help to identify and convict a suspect so it is important that the evidence is preserved. The FLO will explain why you can or cannot see the body, and if you can, whether you can touch them or not.

2.3 Telling people about the death

The police will try to inform the nearest relatives about a death as quickly as possible. They may not know everyone who should be contacted, so let them know if there is someone you think they should contact on your behalf, or you may want to contact people yourself.

As indicated in section 1.2, if your family is estranged or separated, the FLO may need to tell other people about the death because of their relationship to the deceased person.

Losing someone in these circumstances is shattering. Organisations which can offer support are listed in [section 7](#) and there is space in section 1.1 for you to keep a note of their contact details.

2.4 Personal possessions and property

Personal possessions

Part of the police investigation will be to gather forensic evidence (the scientific evidence collected from the crime scene, the body of the deceased and from other people). This may mean the police need to take away personal possessions which belonged to the person who was killed. This can include clothes and jewellery. The FLO or VIA officer will tell you the reason for this.

Some of the items may be needed as evidence in a prosecution. They will usually be returned after the trial (or after an appeal, if there is one). It may not always be possible to return everything to you as some items may be contaminated and unsafe. If this is the case, the VIA officer will explain what this means.

You should let the VIA officer know of any items which are particularly precious to you and every effort will be made to return them. The VIA officer will also tell you if any of the property is damaged, or has been altered so that it can be used as evidence. You can then decide whether you want to have that item returned.

If possessions are to be used as evidence in a prosecution, they may not be returned for some time. They will normally be returned

after the trial has finished but, if there is an appeal, their return may be delayed. If no one is charged in relation to the death, the police may need to keep some items – such as clothing worn by the victim – indefinitely.

What if the crime happened in my house?

The police may take possessions from the house if they are relevant to the investigation. They will have to seal the property while evidence is gathered. This may mean you will not be able to get into your home. If this is the case, or it is unreasonable for you to continue to stay in the house, the local authority will help you to find temporary accommodation, if necessary.

The police will take all the evidence they can from your home and let you have access to the property as soon as possible. You may feel you want to clean your home before living in it again, or your home may need to be cleaned before you can live in it again. In some cases the landlord or your household insurers can arrange for the cleaning to be done. You can ask your FLO or a Victim Support volunteer to make enquiries about this for you.

Even if the crime did not happen in the house, in certain circumstances, the police may still have to carry out a forensic examination or a search of the house. They will explain to you why they are having to do this and try to let you know how long it may take.

2.5 The post mortem examination

What is a post mortem examination?

Shortly after the person has died or the death has been discovered there will be a post mortem examination (a medical examination to determine the cause of death).

If you have cultural, religious or other objections to a post mortem being carried out, you should tell the Procurator Fiscal (PF). They will try to respect your wishes, but it may still be necessary to hold a post mortem, in order to prove criminal charges arising from the death.

A post mortem is carried out by two doctors (called pathologists). The Senior Investigating Officer (SIO) and the PF attend the post mortem. This is to ensure that all available evidence is gathered and to get information from the pathologists to help with the criminal investigation.

Possible delay in making funeral arrangements

More than one post mortem examination may take place if more than one person is charged with an offence to do with the death. You may find this distressing and you should be prepared for a delay while this is being organised.

Where no one is arrested quickly, the Procurator Fiscal may have to delay releasing the body for the funeral. This is to preserve evidence until a suspect is arrested and charged.

Post mortem report

The post mortem report gives details of the medical examination and will, in the majority of cases, give the cause of death.

There may be additional laboratory tests carried out to assist in identifying the cause of death. It can take some time for the results of these to become available.

If the post mortem means that it is necessary to remove organs or tissue, the FLO will be able to tell you or discuss any concerns you have. You can ask for the organs or tissue back to arrange to have them buried or cremated, or you can ask the hospital or mortuary to cremate them for you. You should discuss any concerns you have about any of these issues with the FLO or VIA officer.

Where the deceased had expressed a wish to donate organs or tissue for the purposes of transplantation, every effort will be made to try to make this possible. If the cause of death is suspicious however, donation may not always be possible. This is because forensic examination may be required to ensure the best possible evidence. If donation is to proceed in these circumstances the approval of the Procurator Fiscal will be needed.

If you have any questions, you may find it useful to write these down in advance and to make notes of your discussion. It can be hard to remember things during times of stress. You can use the space at the front of this pack for notes.

2.6 Funeral arrangements

When can the funeral take place?

The funeral can take place once the Procurator Fiscal (PF) has given permission to release the body for burial. If you want to have a cremation, tell the Family Liaison Officer as soon as possible because this will require special permission from the PF. If all the accused have been identified and charged and the defence indicate their investigation is complete, the PF can authorise cremation.

In cases of murder and culpable homicide, the funeral may take place some time after the death. This may be linked to the post mortem or collection of evidence. Some religions say that a funeral must happen as soon as possible. If this is the case, you should let the FLO know. The PF will try to respect your wishes but this may not always be possible.

Arranging a funeral

If you are arranging a funeral, you may have many decisions to make – for example, where to hold it, whether to have a burial or a cremation, what should be said at the funeral, who should be invited, whether to ask for flowers or donations, whether or not to have a memorial. A funeral director, your minister or faith leader will be able to discuss the options with you.

You will need to consider if any instructions were left in a will (see section 6.6). You may also want to consider the wishes of others close to the deceased person.

Paying for a funeral

If the deceased person was in work, a death-in-service payment may be available, or the employer may have a benevolent fund which can help. Sometimes an occupational or personal pension scheme will provide a lump sum towards funeral costs. Find out whether the person who died was a member of a cremation society or had a pre-paid funeral plan or an insurance policy to cover the cost of the funeral.

Funerals can be expensive. If you are on a low income, the Government may help with some of the costs of the funeral. A Funeral Payment is available for people with a low income or who are claiming benefits. This can be paid up to 3 months after a funeral has taken place. Contact the DWP Bereavement Service. They can check if you qualify for a Funeral Payment, and can take your claim over the phone.

- Phone 0845 606 0265 then:
- Select the option “if you are calling to tell us about someone who has died, or check what help may be available following a bereavement”.

Your local Citizens Advice Bureau may also be able to help answer any questions (the number is in the telephone directory).

Help from the Criminal Injuries Compensation Scheme

You may be eligible to claim the cost of reasonable funeral expenses from the Criminal Injuries Compensation Scheme (CICS). This will be paid to the person paying for the funeral, even if they are not eligible to claim compensation under the terms of the scheme. Account will be taken of your or your loved one’s religious and cultural backgrounds.

Further details on the scheme can be found at section 6.3. Victim Support Scotland may be able to assist you with your CICS claim. They can be contacted on 0131 668 4486 (national office) or 0845 603 9213 and 0845 30 30 900 (helplines).

Announcing the death

You may want to put an announcement about the death in the national or local newspapers, giving details of the funeral. The newspaper will advise you how to do this or you can ask your funeral director to arrange things. For security reasons, you may decide not to include your address.

A funeral director can help you consider options, organise the funeral and manage the paperwork. If you decide to use one, you will find the names of local funeral directors in your local telephone directory.

The National Association of Funeral Directors (www.nafd.org.uk or 0845 230 1343) can provide details of funeral directors throughout the UK who comply with quality codes of practice.

2.7 Coping with the media

Co-operating with the media

Newspaper, magazine, television and radio journalists may be interested in the death and any court case that follows. They may telephone you, knock on your door or approach you at a court hearing. They may broadcast or publish your name and address.

Talking to journalists and hearing about a loved one in the media may be distressing. Most journalists will understand if you say you

do not want to talk to them. Or you might decide that it would be helpful for journalists to cover the case, for example to make an appeal for information.

You might want to choose a particular family member to speak to the media on your behalf, especially if there is an appeal to the public for information. The Senior Investigating Officer will manage the release of information to the media, to try to get the best possible help from the public to aid the investigation.

On the other hand, you may not be happy to co-operate with the media, and you may find their interest in you, or the person who has been killed, intrusive or distressing. If you do, you should tell the FLO who may be able to handle questions for you.

Journalists may ask for a photograph of the person. You may want to consider how they would want to be seen or remembered. The FLO can arrange for an existing photograph to be altered if necessary – for example, taking an image from a group photo.

What you can and can't say

If you do decide to speak to journalists, you may find it helps to prepare what you want to say in advance. This might take the form of a short statement which you can give out, read or have read for you (for example, by the police or, if you have one, your solicitor). The FLO will help you with this.

If someone is being blamed for the death, it is important that you do not make any public comment about them which might be harmful to a court case. The police or your solicitor will be able to give you advice to ensure you do not say something by accident which may cause problems for the investigation and prosecution.

What can I do if I am unhappy with media reporting or intrusions?

If you are concerned about the way the media is behaving or reporting events, tell the police or your solicitor. They may not be able to stop what is happening, but they may be able to take steps to reduce it or give you advice on how to try to cope with it.

If you are unhappy with a journalist's conduct or think that they have published or broadcast something that is incorrect or unfair, you can make a complaint to the relevant newspaper, TV or radio station. To do this, you can write to the editor or publisher of a newspaper, or the director of a TV or radio station. Sometimes the media offer to print or broadcast an apology. A newspaper or magazine may offer to print a letter from you if you consider this to be appropriate.

The Press Complaints Commission (PCC) can help with physical harassment by the media. The PCC's **emergency** 24-hour advice service, designed to offer round-the-clock help, is 07659 152656. The PCC will contact the editor concerned and deal with your complaint urgently, aiming to stop any harassment that is occurring. It may also be able to communicate your concerns across the industry via a general "desist" message, which should alleviate the problem. The PCC's guidance on harassment can be read here – http://www.pcc.org.uk/code/advice_for_complainants.html?article=Mzg2Mw.

Journalists are also governed by national codes of practice that require them to respect the privacy and feelings of bereaved people:

- The PCC is an independent body which administers the system of self-regulation for newspapers and magazines (and their website). The PCC deals with complaints, framed within the

terms of the Editors' Code of Practice, about the editorial content of newspapers and magazines. More information is available at www.pcc.org.uk or telephone 020 7831 0022 (text phone 020 7831 0123). The PCC has published specific guidance which sets out how the PCC can help members of the public cope with media attention following the death of a relative or a friend – http://www.pcc.org.uk/code/advice_for_complainants.html?article=NzE5OA

The PCC can also assist individuals by representing their interests to editors in advance of an article about them being published. There is no need to make a formal complaint to use this service. Please contact the PCC direct if you are concerned about any material about you that is yet to be published.

- The Office of Communications (Ofcom) regulates what is broadcast on TV and radio. If you believe that a programme has treated you unfairly or has invaded your privacy either in the making of it and/or its broadcast, then you can make a complaint to Ofcom. A complaint form is available at www.ofcom.org.uk/complain/ or you can ask Ofcom to send a copy of the form to you. This should be done as soon as possible after the broadcast of the programme. You can find out more at www.ofcom.org.uk or by telephoning 0300 123 3333 or 020 7981 3040 (textphone 020 7981 3043).

3

Section 3: The criminal investigation

3.1 The police investigation

The police will investigate the death. They do this on behalf of the Procurator Fiscal (PF) and report their findings to the PF. The investigation will be run by a Senior Investigating Officer (SIO), who is normally a senior detective. The SIO has been trained in the investigation of murder and culpable homicide cases and will be responsible for a team of officers who will carry out the enquiries needed. The SIO will appoint a Family Liaison Officer (FLO) to be the link between the investigation team and the family. The SIO will normally contact the family through the FLO (see section 1.2).

The police work closely with the PF throughout the investigation. The PF undertakes their own investigation of the evidence and has final responsibility for the overall investigation of the death (see sections 3.5 and 3.6).

3.2 Gathering evidence

The police role is mainly to gather information. At times, especially in the first few hours of the investigation, this may seem insensitive. But the more information the police can get, the more they will understand the circumstances of the death. There may also be information that they cannot share with you (such as details of injuries) – this is because it would harm any future prosecution.

As explained in section 2.4, the police may need to keep some personal items belonging to the deceased person or seal your home while gathering evidence.

The FLO will ask you in detail about the person. You may find this difficult as it may feel like the FLO is prying into your private life. This is not the intention – it is just that the more the police know

about your loved one, the more chance they will have of identifying who committed the crime and collecting the evidence they need.

Any statement you give to the police may be given to the defence solicitor in the first few weeks after the case is reported to the Procurator Fiscal. Defence solicitors are not allowed to pass witness statements or contact details to the accused. If you have any concerns about the information that may have been passed to the defence, let VIA know.

3.3 How long will the police investigation take?

There is no set timescale for completion of a police investigation. In some cases, the police will make an arrest very quickly and be able to submit a report to the Procurator Fiscal (PF) immediately. In other cases, they might suspect who is responsible for the death but be unable to find them. Or the police investigation itself may take time.

If there is not enough evidence to charge a suspect, a senior officer will be appointed to review the investigation. That officer may contact you directly. If an investigation is then closed, it will be reviewed regularly and any new information will be acted upon.

3.4 The police report

The police report is a confidential document that summarises the information from witnesses, any interviews with suspects, any available reports from specialists and other relevant material. This evidence is used by the PF to decide whether there is enough evidence to begin a prosecution.

3.5 The role of the Procurator Fiscal (PF)

Procurators Fiscal are the public officials who investigate all sudden and suspicious deaths. They are lawyers and are employed by the Crown Office and Procurator Fiscal Service (COPFS).

PFs are responsible for:

- instructing a post mortem examination (see section 2.5)
- investigating the circumstances of a death
- instructing investigations to try to find out the cause of a death
- considering whether preliminary criminal proceedings are required and are supported by the available evidence (see section 3.6) and
- reporting the case to Crown Counsel for a decision about criminal proceedings.

The PF considers the report compiled by the police into the circumstances of a death and makes decisions on preliminary charges (see section 3.6). After the accused has appeared in court on preliminary charges (see section 4.2), the PF may interview witnesses and collect other evidence (this stage is called precognition and is explained more fully in section 3.8).

The PF will then send a report to a team of senior prosecutors (called Crown Counsel). It is Crown Counsel who decide whether a criminal prosecution should take place, against whom and on what charges. In some cases, the decision will be that no proceedings will take place.

You can ask to talk to the PF at any time and they will try to answer your questions, though they will not be able to discuss the evidence with you. The FLO or VIA Officer can tell you how to contact the PF, and you can keep their contact details in section 1.1.

The Crown Office and Procurator Fiscal Service (COPFS) produces leaflets about the work of the Procurator Fiscal, including the investigation of criminal deaths. These are available from the Procurator Fiscal or from COPFS' website www.crownoffice.gov.uk.

3.6 Deciding on charges

If a police investigation indicates that the conduct of one or more people amounted to a crime, the PF will decide whether they should be brought to court to answer any preliminary charge(s). Someone who is being charged with an offence is referred to as “the accused”.

Sometimes, the PF may need the police to carry out further investigations before reaching a decision about prosecution.

If the PF brings an initial charge of murder against the accused, they must then make a recommendation to Crown Counsel about whether the charge should remain as murder. Crown Counsel will consider the evidence and decide what the charge should be. They also consider whether or not the PF should oppose bail for the accused.

You will be invited to a meeting with representatives of the police and Crown Office and Procurator Fiscal Service – usually the FLO, SIO and VIA Officer. At this meeting, the police will explain the progress of the investigation to date and VIA will explain what will happen next. You will be able to ask questions or raise any concerns you may have but it is not possible to discuss the evidence.

The PF may want to interview any family members who may have witnessed something relevant to the investigation.

Hate Crime

A crime committed because the accused is motivated by prejudice against a particular race, religion, sexual orientation, transgender identity or disability is described as a crime aggravated by prejudice or a hate crime. If you feel that the death of your loved one involved such a crime, then please tell the police and the Procurator Fiscal of this. All crimes of prejudice are intolerable and where there is sufficient evidence in law of such prejudice this will be included in any charges an accused person will face.

3.7 Definitions of murder and culpable homicide

Murder is committed when the accused has acted with the intention of killing the victim or where the accused's conduct has been "wickedly reckless".

Culpable homicide is committed where the accused has caused loss of life through wrongful conduct, but where there was no intention to kill or "wicked recklessness". This may also be considered where in law the accused is found to be of "diminished responsibility" because of some mental illness, or where there was provocation.

"Wicked recklessness" will be inferred from the circumstances of the accused's actions. Normally this will be based on the severity of the injuries and other factors about the nature of the assault.

In some cases, an accused may be charged initially with murder but Crown Counsel may decide that the evidence does not support a murder charge. The accused will then be tried on a charge of culpable homicide or, possibly another charge such as assault. Changes like this can also happen during the trial.

VIA will advise you about any changes like this. Where possible, you will be given the reasons for a change to the original charge. It may not always be possible to give you a full explanation at the time the decision is made – in some cases this is because it might cause problems in bringing the case to trial.

3.8 Preliminary charges

If an accused is charged with an offence in relation to the death, they will appear in court while investigations to gather evidence continue.

When an accused appears in court on preliminary charges, they will be given a document (called a petition) that tells them what initial charge they will face. They will then be fully committed for trial. More information about these court hearings is given in section 4.2.

The accused may be given bail or kept in custody (prison or a Young Offender's Institution) between court hearings. This is explained in more detail in sections 4.2 and 4.3.

At that stage, the PF will begin their detailed investigation (called the precognition investigation).

The purpose of precognition is for the PF to examine all the available evidence and obtain any more evidence that is needed. This could include forensic or medical evidence which supports the case.

The PF may interview witnesses, and ensure that all the investigation that needs to be done is completed. You may be interviewed so that a precognition (statement) can be taken from you.

You may also be interviewed by the defence lawyer or someone on their behalf (a precognition agent). If there is more than one accused, you may have more than one interview. Defence lawyers or agents should always contact you in advance and offer you a suitable time and place for taking your precognition. This is an essential part of proceedings and you should co-operate with any requests. More information about this is given in section 4.6.

3.9 Decision on whether to prosecute

The PF makes recommendations to Crown Counsel about whether there should be criminal charges and what they should be.

Before making these recommendations, the PF will have considered the law, the evidence and whether it is in the public interest to prosecute. This means the crime has to be recognised in Scots Law. There also has to be enough reliable and credible evidence that the crime was committed and that the accused was responsible.

VIA officer (see section 1.3) will inform you about what happens to the case. They will automatically give you this information by letter – you do not need to ask for it. Contact them if you have any concerns about the case or want explanations about any part of the procedure. VIA will also give you dates for court hearings (including any trial dates). These can sometimes change (see section 4.8) but VIA staff will do their best to keep you informed.

Sometimes a decision to prosecute may be delayed until more evidence is available.

If a decision is taken not to prosecute, or the prosecution is dropped at a later stage, this is usually the end of the criminal case. If this happens, the Procurator Fiscal will contact you to let

you know that the case is not going ahead. They should offer you a meeting to explain the reasons for this.

It is possible in some circumstances to take the case to a civil court (see section 4.19). This is difficult and can be costly. You should seek advice from a solicitor about this.

4

Section 4: The criminal prosecution

4.1 Attending court

You can attend all court proceedings except when the accused:

- first appears in court (“appears on petition”) and
- appears for “full committal” (if remanded in custody at their first appearance).

Both of these hearings are held in the Sheriff Court in private. More information about this is given in section 4.2.

There may be times when you, and others attending the case, may be asked to leave the court. For example, the Judge may clear the court (except for legal staff) when there are legal arguments that need to be discussed in private, or a child witness is giving evidence.

You may hear things during the course of the trial that are difficult to listen to, or that you disagree with and want to say something about. However difficult you may find this, the people watching the trial (including you, your family and friends, and the family and friends of the accused) are expected to listen quietly to proceedings. You can leave the courtroom if you become distressed.

If you are a witness in the case, you will not be able to sit in the public gallery of the courtroom until after you have given your evidence. You will also be asked not to attend the preliminary hearing (explained in section 4.2) as this could harm the case.

The Judge can ask anyone to leave the court if their behaviour is disruptive. They can also restrict movement to and from the courtroom during their “charge to the jury” (see paragraph 4.5).

4.2 What happens before the trial

The accused's first appearance in court

When an accused person is charged with murder or culpable homicide their first appearance in court will be in private. This is called “appearing on petition” and it will take place in the Sheriff court in the area where the crime was committed. The Judge in this court is called a Sheriff.

The petition sets out the charges for which there appears to be evidence and asks for the court's approval to take the next steps in investigating the crime. These next steps involve gathering all the evidence, interviewing all witnesses and arranging for expert witnesses to prepare reports.

At this first appearance, the solicitor for the accused will usually state that the accused “makes no plea or declaration”. The Procurator Fiscal (PF) will normally then ask the Sheriff to “commit the accused for further examination” and for the accused to be remanded in custody (kept in prison or a young offenders institution).

At this stage, the court will make a decision on whether the accused is released from custody until the trial. This is called bail. You may be surprised that bail is considered but, even in the most serious crimes, the accused has the right to ask for bail. The Sheriff will hear from the PF and from the accused's solicitor before making a decision on bail. The Sheriff has a duty to release the accused except where there are good reasons for not doing so. In reaching a decision, the Sheriff will always take into consideration the individual circumstances of each case These are explained more fully at section 4.3.

If bail is granted, the accused will be released (on conditions, as explained at section 4.3) and their next appearance will be at a preliminary hearing in the High Court. The preliminary hearing must take place within 11 months of their first appearance in court. The trial must take place within 12 months from the date of the first appearance.

Appearing for full committal

If bail is not granted at the first appearance before the Sheriff, the accused will be remanded in custody and must be brought back to court between 7 and 11 days later to be “fully committed” for trial. This hearing is also in private.

The accused can apply again for bail even if this was refused at the first appearance. If bail is refused, the accused’s next appearance will be at a preliminary hearing in the High Court. This must be within 110 days of “full committal”. The trial must begin within 140 days.

The time limits of 110 days, 140 days and 12 months can be extended by the court.

If a suspect is arrested and you have any concerns about the possibility of them being granted bail, you should **immediately** tell the police Family Liaison Officer (FLO) or Victim Information and Advice (VIA) officer. This will ensure that your concerns are taken into account when any decision is made. The PF can ask for special conditions to be attached to the bail order, to take account of your concerns.

Preliminary hearing

At the preliminary hearing, the prosecution and the defence will tell the Judge whether they are ready for the case to go to trial. If they are, the court will set a date for the trial. If they are not ready, the case will be “continued”. Another date will then be set to find out if the prosecution and defence are ready to go to trial. The trial date will only be set once both parties are fully prepared.

Preliminary hearings are held in public. But witnesses who might be called to give evidence during the case will be asked not to attend as this could prejudice the case.

The accused can plead guilty at the preliminary hearing. If VIA find out the accused intends to do this, they will do their best to let you know. But the accused may decide on this plea at the last minute. They can also change their mind about pleading guilty up until the time the plea is made in court.

4.3 Bail

Considering bail and bail conditions

Section 4.2 explained the times when bail will usually be considered. It can, however, be applied for at different stages of the case, even if it has been refused earlier. VIA will keep you informed about this.

This section explains what factors will be taken into account when the Sheriff decides whether bail should be granted or not.

The Sheriff will consider the nature of the charge and any other factors raised by the PF. It is important that you raise any concerns you may have about the possibility of an accused being granted

bail with the FLO or VIA officer immediately. This is to ensure that your concerns are passed on to the PF before any decisions on bail are made. The accused will be granted bail unless the court has good reason to believe that they may:

- not attend their trial or earlier court appearance
- commit an offence while on bail
- interfere with witnesses
- obstruct the course of justice, e.g. by absconding (disappearing)
- behave in a manner which causes, or is likely to cause, alarm or distress to witnesses.

These issues reflect standard conditions linked to bail. The PF may also ask for other, special conditions to be applied – for example, limiting where the accused can live or preventing them coming near you, your family and/or your home.

Bail appeals

All decisions about bail are taken by the Judge. If bail is granted, the prosecution may, in certain circumstances, appeal against the decision. The accused may also appeal against a refusal to grant bail. If bail is still refused on appeal, the accused can ask for the decision to be reviewed, but only where there is good reason.

VIA will tell you whether the accused has been given bail, and any special conditions which apply. If the accused person is granted bail and causes you any concern, **you should report this to the police and VIA immediately and keep a diary of any incidents.**

4.4 The High Court

Murder and culpable homicide charges are always heard in the High Court by a Judge and jury of 15 people chosen at random.

The evidence for the prosecution is presented by an Advocate Depute (who is a senior lawyer). A separate advocate, called “Counsel” or a Solicitor Advocate (a solicitor who has a right of audience in the High Court) will act for each accused person. Counsel will speak on behalf of the accused at the trial and before sentence is passed. When in court, the Judge and advocates wear wigs and gowns, and Solicitor Advocates wear gowns but not wigs.

The accused person will state their plea of “guilty” or “not guilty”.

If the accused person pleads guilty, there is no need for anyone to give evidence in court. The Advocate Depute will tell the Judge the facts of the case and the Judge may then pass sentence or may choose to do so at a later date. If sentencing is deferred (to be passed at a later date), VIA will inform you when and where this will happen.

If the accused person pleads not guilty, then a trial will take place and witnesses will be called to give evidence.

As explained in section 4.2, a “preliminary hearing” may be held before the trial to deal with issues (such as the availability of witnesses) that might otherwise delay the trial. You are entitled to attend the preliminary hearing if you wish. Witnesses are advised not to attend as this may prejudice the case. The trial should go ahead on the date fixed at the preliminary hearing.

The High Courts are in Edinburgh, Glasgow and Aberdeen. High Court cases are also heard in Sheriff Court buildings across Scotland. Your case may not be heard in the court closest to you. Preliminary hearings are only held in Glasgow and Edinburgh.

4.5 The trial

Both the prosecution and defence may call witnesses to give evidence and question them. As well as eye witnesses and police officers, expert witnesses such as forensic scientists may be called to give evidence. Photographs, videos and diagrams may be shown to the jury.

After all the prosecution (Crown) evidence has been presented, the Judge will consider if there is sufficient evidence in law to allow the case to continue. If there is, the defence will then present their evidence. If there is not enough evidence, the case will be dismissed and the jury will not be allowed to consider a verdict.

The accused can choose whether or not to give evidence. If the accused does give evidence, they can be cross-examined by the Advocate Depute.

Once all the evidence has been presented, the lawyer for each side gives a speech to the jury to sum up the evidence. It is up to the prosecution to prove the case “beyond reasonable doubt”. The Judge will also give a speech to the jury (known as “the charge”). In this, the Judge directs the jury in the law relevant to the case and his/her understanding of points of evidence they may wish to consider when deciding on a verdict.

4.6 If you are asked to be a witness

In certain cases you may be asked to be a witness to give evidence at a criminal trial.

If you are to be a prosecution witness, you may be required to attend a pre-trial interview (precognition) with the Procurator Fiscal or a precognition officer who works for the PF. The defence lawyer – or a precognition agent working for the defence – may also contact you to take a statement from you. See section 3.8 for more information about these “precognition investigation” interviews.

You should co-operate with any request for precognition, whether from the prosecution or the defence. It is an essential part of the criminal proceedings and helps the PF understand the evidence you are providing. You can claim reasonable expenses when you are asked to attend for precognition.

It may be possible for a relative or friend to sit with you during a precognition interview to offer support. If you want to be accompanied, ask the PF or defence lawyer if this is possible. You are not allowed to be accompanied by another witness and your supporter cannot participate in the interview.

4.7 Support from the Witness Service

The Witness Service, run by Victim Support Scotland (VSS), provides emotional and practical support to all victims and witnesses attending court, and their families.

The Service is managed by paid staff and provided by trained volunteers. They can tell you about court procedures but cannot discuss evidence with you. They can also discuss any concerns you

have. If the Witness Service cannot answer all your questions, they will try to put you in touch with someone who can help.

The Victim Information and Advice service (see section 1.3) will give you information about your local Witness Service. Or you can get the number of the Service from the Victim Support Scotland national office on 0131 668 4486, the VSS helplines on 0845 603 9213 or 0845 30 30 900, the website (www.victimsupportsco.org.uk) or your local victim support service (number in the local phone directory under “victim support”).

If you are a witness in the case, you may find it helpful to be shown a court before you attend the trial so that you know what to expect. This may be particularly useful if you are a witness at the trial. VIA will explain in a letter to you that they will refer you to the Witness Service for this “court familiarisation visit” unless you tell them you do not want it. Or you can ask the Witness Service about it yourself.

4.8 What to expect from a court case

Criminal cases are nearly always held in public. But, as indicated in section 4.1, the Judge may order members of the public to leave the courtroom. This can include you and your family.

If you are not a witness in the case you can sit in the public gallery. Other people in the gallery may be journalists, the public, or the family and friends of the accused.

If you are a witness you will not be able to discuss the case or what you can say with other witnesses, or listen to court proceedings, until you have given evidence.

A friend or relative can sit with you before you give evidence (as long as they have not been in court, either listening to the trial or giving evidence in the case).

If the accused pleads guilty before or during the trial, efforts will be made to ensure you are present if you want to be in court when this happens, even if you are a witness in the case.

In some cases, the prosecution lawyer may, after discussions with the defence, consider accepting a plea of guilty to a lesser charge (see section 3.7). In murder or culpable homicide cases, the decision to accept a plea to a lesser or amended charge is always taken by the Lord Advocate or the Solicitor General. The Lord Advocate is Scotland's most senior prosecutor, with overall responsibility for the prosecution of crime. The Solicitor General assists the Lord Advocate in heading the prosecution service.

If you do attend court, it may help to be accompanied by someone. The police will be there to give evidence and they cannot discuss your evidence with you. The Witness Service and your VIA officer can help explain what is happening.

It may be possible to arrange seating in the courtroom so that you do not have to sit near relatives or friends of the accused. Let the Witness Service or VIA know if you are concerned about this and they will try to arrange this for you.

It may also help you to know in advance that:

- A VIA officer can meet you when you attend court. The VIA High Court officer will keep in touch with you during the trial to help you with any questions or concerns, and to update you on any key stages

- Court hearings may start late, be cut short or postponed, or moved to another court
- You may have to wait for some time before going into court to give your evidence. This may be because of the time it takes other witnesses to give their evidence
- The defence lawyer may ask you questions about your evidence. This might feel probing but it is not personal – it is a normal part of the defence role and is intended to test the evidence
- Evidence presented in court is for the benefit of the Judge and jury. Sometimes you may not be able to see evidence being discussed (such as diagrams or videos)
- Some courts are modern and have good facilities, others don't. It may help to check, in advance, where the toilets and refreshment facilities are, and find out if there is a quiet room where you can sit
- If you tell the court officer or Witness Service volunteers who you are, they can offer help, inform you of any court changes and show you where the witness room is
- The first time that you see the accused may be in court
- You may see the accused and defence witnesses elsewhere in the court building, for example where refreshments are served.

Some people who are witnesses find it helpful to visit a court before the trial begins to get a better idea of what to expect. Section 4.7 explains how this can be arranged. Even if you do not want to visit the court before the trial, it might still be worth talking to a member of the Witness Service to discuss any concerns you have.

4.9 Witness intimidation

It is a criminal offence to try to frighten or intimidate a witness, juror, or anyone helping the police in an investigation.

If you are harassed or threatened in any way before or during the trial, tell the person who cited (called) you as a witness, or the police, so they can take the appropriate action. Or, if you feel threatened when at court, tell the security staff on duty. If you are harassed or threatened after the trial, you should contact the police.

4.10 Special measures for vulnerable or intimidated witnesses

Being a witness in court is a new experience for most people. As a witness, you may feel particularly anxious for a number of reasons – the circumstances of the case, or because of your age, the kind of evidence you will have to give, or your health. Or you may feel so distressed at the thought of giving evidence that this makes you feel vulnerable.

If you are cited (called) as a witness, you can discuss any concerns you have about giving evidence with the person who asked you to be a witness (sent the citation letter). Or you can speak with your Victim Information and Advice (VIA) contact. They can give you information about the court process and support arrangements to help you be better prepared for giving your evidence. They will also discuss your individual circumstances with you and whether to make an application to the court for what are called “special measures”. These are different ways to help you give your evidence.

Special measures generally apply to:

- all child witnesses under the age of 16 (under 18 in human trafficking cases)
- adult witnesses where there is a significant risk that the quality of their evidence will be diminished because of mental disorder, or fear and distress in connection with giving evidence.

The standard special measures automatically available to a child witness are:

- a screen so that you cannot see the accused
- using a live television link (in another part of the court building) so that you can give your evidence away from the courtroom
- having a support person along with either of the above standard special measures. They can keep you company before you give your evidence and provide a reassuring presence in the courtroom while you give your evidence. But they can't discuss your evidence with you.

Special measures (allowed at the discretion of the court) for child or adult vulnerable witnesses are:

- using a prior statement as your main evidence. This is a video or audio interview between you and the police, or a written statement you gave before the trial. It will be played or read out in court and you will be asked questions about what you said
- in certain limited circumstances, having your evidence taken by a "commissioner" (a Judge or Sheriff) appointed by the court. This means giving your evidence in the same way as you would in a trial but at a different time or place. The evidence you give would be recorded and played at the trial.
- a screen

- using a live television link either in another part of the court building or in a suitable place outwith the court building
- having a support person

You may be allowed to use one or more special measures. If you are, it is important that you know a few things.

You can still be cross-examined about your evidence – that is, asked questions by the defence lawyer – even if you use a special measure.

If you give evidence using a screen in the courtroom, this will mean that you cannot see the accused, but they will be able to see and hear you on a TV monitor while you give your evidence. The accused will also be able to see and hear you on the same sort of monitor if you give evidence by a live TV link.

If you give your evidence by prior statement, you will probably still have to attend the trial (be at court or give your evidence or use a live TV link). That is unless your evidence is agreed by the prosecution and defence lawyers in advance.

If your evidence is taken by a commissioner, your evidence is visually recorded (for example by DVD) and the accused will be able to see and hear your evidence as it is being taken. They will not normally be in the room where your evidence is being taken unless the court has agreed that they can be.

Applications are made to the court in advance of the hearing in which you are due to give evidence. The applications may or may not be approved, and you will be told what the court has decided by the person who made the application on your behalf.

If you have any questions, speak to the person who sent you the citation (letter) to be a witness or to VIA. They will be able to tell you how these measures might apply to you. They can let you have a booklet which explains special measures in more detail. They may also show you a CD-ROM about going to court, who you are likely to meet there and what they do, and how the special measures work. You can also find out more about being a witness from www.witnessesinscotland.com and www.crownoffice.gov.uk/Witnesses/Being-Witness-Court.

4.11 Expenses to attend court

You are entitled to expenses if you are cited to attend court as a witness. Bereaved nearest relatives are also entitled to expenses when required by the Crown to provide a precognition (see section 3.8), or when requested by the Procurator Fiscal or VIA to attend a meeting at their premises.

The Procurator Fiscal Service will refund reasonable travel expenses, loss of earnings, childcare expenses and the cost of a carer. Your witness citation will explain what you are entitled to claim.

Bereaved relatives who are not cited as witnesses can also get help with expenses incurred when attending court. This includes reasonable travel, accommodation and carer and/or child-minding expenses. It does not include loss of earnings. This support is normally limited to 3 individuals per family. VIA will be able to provide more details.

4.12 Verdicts

The accused may be found **guilty** or **not guilty**. Alternatively, the jury may reach a “**not proven**” verdict which is also a verdict of acquittal.

For the accused to be found guilty of a charge, a majority of the jury (at least 8) must choose this verdict.

For verdicts of not guilty and not proven, a majority (at least 8), must choose this verdict. These verdicts have the same effect and mean that the accused is free to go. For information about double jeopardy, see section 4.17.

It is worth noting that:

- If someone is found guilty of murder, the court must impose a sentence of life imprisonment. The Judge has to state the minimum period to be served before the person can apply for parole (early release from a prison sentence). This minimum period is called the “punishment part”.
- If someone is found guilty of culpable homicide, the maximum penalty open to the court is life imprisonment. But the court rarely imposes the maximum sentence and may impose a much lower penalty.
- Sometimes courts find the accused not guilty of a serious charge but guilty of a lesser charge, such as assault.

If you are unsure about anything that happened in court, VIA may be able to explain.

4.13 Sentencing

Before sentence is passed, Counsel for the accused will advise the Judge about any factors which they think might reduce the sentence. This is called a “plea in mitigation”. Sometimes the Sheriff asks for background information about the guilty person before deciding on the sentence. It is the Judge alone who decides what the sentence should be – the prosecutor is not involved in sentencing.

An accused who is found guilty of murder will normally be kept in custody until the sentence is passed. This is a decision for the Judge. Sentencing normally happens within 4 weeks of the end of the trial.

If an accused pleads guilty to an offence, the Judge is required by law to consider passing a lesser sentence than might otherwise have been the case (you may hear this referred to as a sentence discount). The Judge will consider all of the circumstances of an individual case to ensure offenders receive an appropriate sentence for their offending behaviour. The Judge decides how much, if any, of the sentence will be discounted. The Sheriff should state in court how much of the sentence has been discounted.

If you do not understand or are unhappy about the sentence passed, VIA or the Procurator Fiscal may be able to explain more about this. They will also advise you about any appeal by the prosecutor (called a Crown Appeal – see section 4.17).

4.14 Mentally disordered offenders

What happens if the offender is mentally ill?

Mentally disordered offenders are people, who, as a result of mental illness, have been found by the court to have diminished responsibility, or have been found not guilty on account of mental illness or found to be unfit for trial. In these instances, the court can order a person to be detained in hospital for treatment. For restricted patients (people the court consider a serious risk to the public), this detention will be “without limit of time”.

If a prisoner is moved from prison to a secure psychiatric hospital during their sentence, the original sentence still stands. Whilst in

hospital, they are subject to the same arrangements as restricted patients.

Restricted patients cannot be given leave of absence (suspension of detention) or be transferred without Government (Scottish Ministers') consent. Such recommendations are made to Scottish Ministers by the patient's Responsible Medical Officer and involve a full risk assessment by the clinical team. This includes a full evaluation of potential risk to the public. Family and victim considerations are also taken into account.

All restricted patients are subject to the Multi Agency Public Protection Arrangements (MAPPA) which is the framework that joins up the agencies who establish arrangements for the assessment and management of risks posed by offenders. The fundamental purpose of MAPPA, is public safety and the reduction of serious harm. A MAPPA referral must also be made before any consideration of unescorted leave and at other key stages in a restricted patient's rehabilitation.

Decisions on discharge of restricted patients are made by the Mental Health Tribunal for Scotland. Tribunal panels which consider restricted patient cases are convened by a Sheriff (or the President of the Tribunal) and have a medically qualified and a general member. The Mental Health Tribunal for Scotland may give any person it considers to have an interest in a case the opportunity to make representations (either orally or in writing) and to lead and produce evidence. The Tribunal decides in any case who such a person might be. If you wish to make representations please contact the Scottish Government at the address below and they will bring your interest to the attention of the Tribunal.

If you have any questions about restricted patients, or have views or concerns you would like to bring to Scottish Ministers' attention

in relation to a restricted patient, you can contact The Restricted Patient Team Leader at the Scottish Government, Mental Health and Protection of Rights Division, Room 2N.02, St Andrew's House, Edinburgh EH1 3DG (telephone 0131 244 2510).

Disclosure of Information

Section 5.1 explains how you can register to receive information under the Victim Notification Scheme about an offender serving a prison sentence. The Scottish Government has considered the responses to their consultation on the introduction of a Victims Notifications Scheme for victims of Mentally Disordered Offenders and intends to bring forward draft proposals on this matter in due course

4.15 Victim statements

Victims or relatives affected by serious crimes (including murder or culpable homicide) can make a written statement that tells the court how the crime affected them – physically, emotionally and financially.

Victim statements will normally be given to the court if the accused pleads guilty, or is found guilty after a trial and will be considered before the accused is sentenced. A copy of any victim statement will be given to the defence at the same time. The Judge must consider your victim statement and decide what weight should be given to it.

The statement will not be read out in court or released to the press.

VIA will send you an information pack about victim statements. This includes a victim statement form and contact numbers for support agencies who can give you help or advice about making

the statement. It will also explain what the statement can (and cannot) cover and how it will be used.

You do not have to make a victim statement. If you choose not to, information about the impact of the crime can still be brought out during the prosecution case.

4.16 Appeals by a convicted person

Following a criminal case, a convicted person may appeal against their conviction or sentence. They can also apply for bail and may be released while waiting for the appeal (this is called “interim liberation”).

An accused found guilty at trial can appeal against the conviction or sentence or both. The court may refuse the appeal or may allow the appeal in full or part. If the appeal is allowed in full, the court may order a retrial or may acquit the accused.

If the accused plead guilty they can appeal against the sentence. All appeals are heard by Judges in the Appeal Court which is based in Edinburgh. The court is able to impose a higher or lower sentence, or may confirm the original sentence.

VIA will tell you if there is an appeal and how it progresses. In particular, they will tell you:

- if the offender is granted bail before the appeal
- the date of the appeal and
- the outcome of the appeal.

4.17 Appeals by the prosecution

As indicated in section 4.13, the Crown has a limited right of appeal against sentence, but only where a sentence is “unduly lenient”. Because of this, such appeals are rare. If an appeal is lodged, you will be kept informed of progress.

If the High Court Judge decides that there is insufficient evidence to convict the accused, then the Crown may appeal this decision. If such an appeal is lodged, you will be kept informed of the progress.

The prosecution cannot appeal against the decision of the jury to return a “not guilty” or a “not proven” verdict.

In most cases, the rule against “double jeopardy” means that an acquitted person cannot be retried. However, there are some strictly limited circumstances where it may be possible for a new trial to occur, for example if there is new evidence which, had it been available before, would have been highly likely to have led to a conviction.

All appeals under “solemn procedure” (where a trial takes place with a Judge and jury) must be lodged 14 days after a court’s decision, unless the court gives permission for this time limit to be extended. The time limit for the Crown lodging an appeal against an unduly lenient sentence is 4 weeks. VIA will keep you informed whether or not an appeal has been lodged and about the progress of any appeal.

4.18 Bringing a private prosecution

In certain circumstances an individual may seek to prosecute another person for a criminal offence. This is called a private prosecution. To bring a private prosecution you must have the Lord Advocate's consent. This process is very costly and you cannot claim legal aid. It is therefore very rare.

4.19 Civil action

If you are dissatisfied with an acquittal verdict (see section 4.12), you can raise a civil action against the acquitted person. A civil action is based on a different level of proof – “on the balance of probabilities” (a decision in a criminal case is based on “beyond reasonable doubt”).

Raising a civil action can be a very long and expensive process. There is no guarantee that you will be granted legal aid. Before proceeding with a civil action, you should seek advice from a solicitor.

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Section 5: What happens
after the sentence
has been passed?

5.1 The Victim Notification Scheme

What is the Victim Notification Scheme?

If the offender has been sentenced to 18 months or more in prison, you can choose whether or not you want to register with the Victim Notification Scheme.

The scheme has two parts and you can opt to receive information under either or both parts. The first part entitles you to information about:

- when the offender is to be released
- the date of their death, if they die before being released
- if they are transferred to a place outwith Scotland
- their eligibility for temporary release (for example, for training and rehabilitation programmes or home leave in preparation for release)
- them escaping or absconding from prison
- their return to prison, if the return relates to the offence which you are registered.

Part 2 of the scheme entitles you to information about the offender being considered for parole or release on Home Detention Curfew (HDC, sometimes known as “tagging”), see section 5.3 for more about consideration for release:

- when the Parole Board for Scotland is due to consider the case affecting you, you will be given the chance to send written comments to the Board
- when the Scottish Prison Service (SPS) is considering a prisoner’s release on HDC, you will be given the chance to send written comments to the SPS

- you will be told whether the Board recommends or directs the release of the offender
- you will be told whether any conditions have been attached to the licence that relate to you or your family (see section 5.3).

How do I register for the scheme?

VIA will send you a booklet about the scheme and a form to register for it. When you have filled the form in, you send it on to the Scottish Prison Service (SPS) who will register your details. When the offender is due to be released, SPS will send a letter telling you the date of release.

If, after registering for the Victim Notification Scheme, you decide to opt out of the scheme you should write to the Scottish Prison Service to let them know. You should also tell them if you change address. VIA will send you forms for this at the same time as they send out the form to register for the scheme.

If you didn't originally join the scheme but then decide you would like to register, you can do this at any time until the offender reaches the point in the sentence when they are due to be released. If the offender is just about to be released, or has already been released, then it will not be possible for you to join the scheme.

You can find out more about the Victim Notification Scheme from the Scottish Prison Service (www.sps.gov.uk). They can be contacted on 0131 244 8670, or email vns@sps.gov.uk.

What will the offender know?

The Prison Service does not tell the offender that you are on the scheme. But if you send written comments to the Parole Board, the offender is likely to see them. This is because offenders are

entitled to see all of the information that the Parole Board uses to make their decision. You do not have to state any personal details – like your address or contact details – on the form you send to the Board.

Although the Scottish Prison Service will make every effort to maintain your anonymity, the offender will be made aware of your comments if they have a bearing on the decision about whether to release them or on the specific conditions attached to the prisoner's licence.

Just because you have registered with the scheme doesn't mean that you have to send written comments to the Board (or to the Scottish Prison Service if an offender is being considered for release on HDC). Even if you decide not to send in written comments, you will still receive information about what the Parole Board (or the Scottish Prison Service about releases on HDC) has decided.

5.2 How long will the offender be in prison?

An accused who is convicted of murder will be sentenced to life imprisonment. Someone who is convicted of culpable homicide may be sentenced to a specified period of imprisonment (a determinate sentence) or to life imprisonment.

When passing a life sentence, the court will say how long the offender must spend in custody (known as the "punishment part"). A life sentence prisoner must spend at least that period in prison before they can be considered for release on life licence (this term is explained in section 5.3).

Homicide includes a range of offences including murder, death by dangerous driving, death by careless driving and culpable

homicide. In cases of homicide which are not murder such as death by dangerous driving or culpable homicide, the court has discretion to decide in the specific circumstances of a case to decide what the sentence should be. At present an offender sentenced to 4 years or more will be considered by the Parole Board for Scotland for release on licence after serving one half of their sentence. Being considered for release then or later does not mean it will happen automatically. But the offender will be released on licence after serving two-thirds of their sentence.

5.3 Consideration for release

The Parole Board for Scotland is responsible for determining when a life sentence prisoner or one sentenced to 4 years or more will be released on licence. The Board must be satisfied that the offender no longer presents an unacceptable risk to public safety. It also decides the conditions that will apply to the release.

If an offender breaches any of their licence conditions, including re-offending, they may have their licence taken away and be returned to prison. The court can also order a return to prison if the offender commits another imprisonable offence before the date they would have served the original sentence in full.

Home Detention Curfew (HDC) allows offenders to be released between 2 weeks and 6 months before the date on which they would otherwise leave prison. Offenders serving longer than 4 years in prison will not be released on HDC unless they have already been approved for parole. This means that they are unlikely to be released more than 6 weeks before they were due to be released on parole.

The Scottish Prison Service will carry out a risk assessment of an offender before they are allowed to be released on HDC. Offenders released on HDC must stay within a specific address for around 12 hours every night. This is known as a curfew condition and is monitored remotely by electronic equipment (a “tag”).

Offenders released on HDC will continue to serve their sentence during the HDC period and can be recalled to prison if they don't comply with the conditions.

5.4 Concerns after the prisoner has been released

The police are automatically told when a prisoner, who has been sentenced to 4 years or more, is released from prison. If you are worried about your safety, you should contact the police. They will then decide what action, if any, to take. If threats have been made against you, or you have been harassed or intimidated by the person, you may also apply to the civil courts for an interdict to prevent them from coming near you or your home after they leave prison. A solicitor will be able to give you advice on this.

6

Section 6: Practical issues

When a loved one dies suddenly, it can be difficult to cope with the practical matters you will need to address. This section covers some of those practical matters and gives details of agencies that you are likely to need to contact.

Victim Support Scotland offers practical support and can help people to deal with the various demands and pressures following a death. They can be contacted on 0131 668 4486 (national office) or the helplines on 0845 603 9213 or 0845 30 30 900. Calls are charged at the local rate.

6.1 How to register a death

Any death which occurs in Scotland should be registered **within 8 days**.

The death can be registered in any registration district in Scotland. You can get the address of the local registrar from the funeral director or telephone book (under “Registration of Births, Deaths and Marriages”). The funeral director or registrar will also be able to tell you what documents will be needed to register the death.

6.2 Murder, manslaughter and suspicious deaths committed in other countries

If a close friend or relative dies abroad and you are in the UK

If a close friend or relative has been killed abroad, this creates extra difficulties. In these circumstances, the British Consul is there to help and guide you. Once notified of the death of a British national, consular staff will pass the details to the police in the UK who will try to contact relatives as soon as possible. If the person was murdered, or the death is unexplained or suspicious, you may

be allocated a police Family Liaison Officer (see section 1.2) who will liaise with the Foreign and Commonwealth Office (FCO). This is the UK Government department, based in London, that deals with British interests abroad.

Consular staff at the FCO in London will keep in touch with you and the Consulate abroad until burial or cremation overseas, or until your loved one has been brought back to the UK. They will let the Consulate overseas know your wishes concerning funeral arrangements and do their best to ensure these are carried out.

If the person who died was known to be suffering from an infectious condition, for example, the hepatitis or HIV viruses, you should tell Consular staff.

There may be a delay before you can bring the person home if there is an overseas inquest and post mortem. With very few exceptions, neither the police in Scotland nor the Procurator Fiscal (PF) have any authority to investigate deaths abroad. The police in Scotland may be asked to carry out enquiries in the UK to assist the investigating police.

You should register the death according to the local regulations in the country concerned and obtain a death certificate. You may be able to register the death with the British Consul in that country for a fee. However, you are not obliged to do this.

If you do register the death with the British Consul, a record of the death will be sent to Scotland. You will then be able to get a copy from the National Records of Scotland. There may be a delay in obtaining this since details are returned from British Consuls at the end of each year and records amended in March/April of the following year.

If the death is registered only with the local authorities in the country where the person died, there will be no record held in the United Kingdom.

More information about registering a death is available at: www.fco.gov.uk/en/travel-and-living-abroad/births-deaths-marriages-civil/registering-a-death

How can British Consular staff help?

British Consular staff can keep the next-of-kin informed. Their job is to ensure you do not feel you are on your own. They have several helpful guides available at www.fco.gov.uk/en/travelling-and-living-overseas

They can advise on the cost of local burial or cremation, and tell you how to arrange for the return to the UK of the deceased person and their personal property. Consular staff cannot pay or help with these expenses. You would need to check if costs could be covered by a travel insurance policy.

Consular staff can provide a list of local funeral directors in the country where the death took place. If an English speaking firm is not available, Consulate staff will help you with the arrangements.

Where there is evidence of suspicious circumstances, Consular staff can suggest the best way to raise concerns with the local authorities. They cannot investigate deaths themselves, but will consider making representations to the local authorities if there are concerns that the investigation is not being carried out in line with local procedures.

Bringing the person who has died back to the UK

If you decide to bring your loved one back from abroad, and wish a cremation to take place, you must make a cremation application to the Public Health Team of the Scottish Government. You will be able to get advice on this from a funeral director, who will make these arrangements on your behalf.

Unless the death falls into one of the rare exceptions where the PF can carry out investigations (see above) there will be no need for investigation by the PF when the body is returned to Scotland. If investigations are necessary, these may include a post mortem examination (see section 2.5) and this could affect the PF's decision to allow cremation.

Support services

Many countries have services like Victim Support which can provide help. If you would like to contact a victim support service in another part of Europe, details can be found at: www.victimsupporteurope.eu. Alternatively, you may wish to contact Victim Support Scotland's National Office and they will try and find out what, if any, service exists in another country. Their phone number is 0131 668 4486. Some countries also have their own state compensation schemes.

Support After Murder and Manslaughter Abroad (SAMM Abroad) is a registered charity that helps people in the UK whose loved ones are the victims of murder or manslaughter abroad. More details are available at www.sammabroad.org or their contact telephone number is 0845 123 2384.

6.3 Claiming criminal injuries compensation

Eligibility and awards

If you are the relative or dependant of someone who has died as a result of a criminal injury, you may be eligible to receive compensation under the Criminal Injuries Compensation Scheme. The Criminal Injuries Compensation Authority (CICA) fatal injury award is not designed to compensate for the loss of life. The award is intended as an expression of public sympathy.

As indicated in section 2.7, the CICA may be able to refund funeral expenses and make payments to compensate for the loss of financial support due to the victim's death. You should keep all receipts as a refund can only be made if you provide valid receipts with your claim.

A final decision on your claim can sometimes take a year or more, depending on how complex your case is and which other organisations the CICA have to contact.

To check whether you are eligible to apply for an award either phone 0300 003 3601 or visit www.gov.uk and search "criminal injuries compensation".

Different people qualify for different types of payment. Payments will depend on your relationship with the victim and whether you were financially dependent on them. If you were a witness to the crime, you may also qualify for a payment.

You will only be given compensation if you meet the requirements of the scheme. The CICA may reduce or refuse an award on the grounds of your, or the victim's, conduct or convictions.

CICA currently does not cover homicides abroad.

Information and application

Applications under the scheme should normally be made within 2 years of the incident for which the claim is made. This time limit may be set aside in exceptional circumstances.

You can obtain more details, along with an application form and details of the documents you need, by contacting the CICA on 0300 003 3601.

Further information can also be found on their website at:
www.gov.uk

Your local Victim Support service can offer you help and information on making and completing an application under the scheme. You can find the address of your local Victim Support service in the telephone book, or you can ring the national office on 0131 668 4486 or the helplines on 0845 603 9213 or 0845 303 0900. Calls are charged at the local rate.

6.4 Legal aid

If you have a low income, you may be eligible for legal advice on matters arising from the crime. You may be asked to pay a contribution towards the cost of this legal aid but you may be able to pay this in instalments over several months. Your solicitor can advise whether you will qualify for legal aid and what the arrangements are for claiming it.

If you raise a court action with the help of public funding and your case is successful, you will be asked to put some or all of

the money you receive towards your solicitor's bill. This is called "clawback". Make sure that your solicitor explains it before you go ahead with your case.

6.5 Benefits

Many people have financial worries after bereavement, so you might want to check if you are entitled to any welfare benefits.

The Registrar (who registers the death) will give you a certificate to fill in and return to the Department for Work and Pensions. You should read the information on the certificate regarding the DWP Bereavement Service and call them to notify them of the death. In addition, they can complete a benefits check of what you may be eligible for, take your claim for certain benefits over the phone and advise who to contact to claim others.

- Phone 0845 606 0265 then:
- Select the option "if you are calling to tell us about someone who has died, or check what help may be available following a bereavement".

If you call the DWP Bereavement Service to report the death, you do not have to send in the BD8 form. Keep the BD8 form and a note of any reference numbers as you may need them later on. You should also let the Tax Office know about your change in circumstances.

You can also receive advice from your local Citizens Advice Bureau (your local branch will also be listed in the telephone directory).

6.6 Wills

A Will appoints someone (known as the executor) to administer a dead person's estate (everything they owned).

It also gives instructions on how possessions and money should be distributed.

You will need to find out if the person made a Will. Copies of Wills may be held by a bank or a solicitor. If you are in doubt, contact a solicitor.

Wills can be complicated. Sometimes there is no Will. Whether or not there is a Will, a solicitor will be able to give you advice on what you need to do.

If you do not have a solicitor, the Law Society of Scotland can give you details of solicitors in your area. The Law Society is the professional body to which all solicitors in Scotland belong. You can contact them on 0131 226 7411 (textphone 0131 476 8359) or visit their website at www.lawscot.org.uk.

Sorting out the affairs of someone who has died can be complex and distressing. It may take many months or years. Friends and family can be supportive at this time – they may be able to help in all sorts of ways.

6.7 Who do you need to tell about the death?

Depending on the circumstances, you may also need to contact some other organisations and people. These could include:

- GP
- Any hospital the person was attending
- Other health professionals (for example, dentist, optician)
- Employer
- Personal or occupational pension schemes
- Insurance company
- Bank and/or building society
- Mortgage provider or housing association
- The local council housing department if the person was living in a council house
- The local council Housing Benefit/Council Tax Benefit section if the person was getting Housing Benefit and/or Council Tax Benefit (see section 6.5 about who to tell about other benefits)
- A child or young person's teacher, or college or university if a parent, brother, sister, grandparent or close friend has died
- DVLA (if the person had a driving licence, you will need to return it)
- The Passport Office (if the person had a passport, you will need to return it)
- A car insurance company (if you are insured to drive the car under the person's name, you will cease to be legally insured)
- Gas, electricity and telephone suppliers
- The Post Office so that they can redirect the mail of the person

- Child Benefit Centre if child benefit was being received
- Benefit Delivery Centre if benefits were being received
- The tax office at HM Revenue & Customs.

For more detailed information you may find the leaflet *“What to do after a death in Scotland”* useful. It is available from the Scottish Government at www.scotland.gov.uk/Topics/Justice/law/damages/succession or telephone 0131 244 3581. A Scottish Government textphone facility is available at 0131 244 1829

6.8 Stopping unwanted mail

It can be upsetting to receive direct mail or sales calls for someone who has died. One way to reduce the chance of receiving junk mail is to contact the “Bereavement Register” by calling 0800 082 1230 or logging on to its website at www.the-bereavement-register.org.uk. The process of registering is straightforward and free.

You can also reduce the chance of unwanted telephone sales calls, mail and faxes by registering free with the following:

- Telephone Preference Service
(0845 070 0707 or www.tpsonline.org.uk)
- Mailing Preference Service
(0845 703 4599 or www.mpsonline.org.uk)
- Fax Preference Service
(0845 0700 702 or www.fpsonline.org.uk).

You have to re-register with these services every few years.

6.9 Debts

You may have worries about debt, or about managing your finances, especially if you are not used to dealing with money and bills on your own.

You may need to contact some organisations to establish responsibility for outstanding balances. Who these organisations are will depend on your own financial arrangements or those of the deceased person.

If you have any money worries, get in touch with your local Citizens Advice Bureau. They provide advice but cannot themselves offer you financial support. You will find their telephone number in your local directory.

For advice on debt, call the National Debtline free on 0808 808 4000 or www.nationaldebtline.co.uk/scotland/.

6.10 If you have concerns about the criminal justice system

This page explains how to make a comment or complaint to the authorities about the criminal justice system.

The police

If your comments are about the police you can write to the Chief Constable of the Police Service of Scotland. If you are not satisfied with the reply you receive, you can complain to the Police Complaints Commissioner for Scotland (PCCS), Hamilton House, Hamilton Business Park, Caird Park, Hamilton, ML3 0QA, or call freephone 0808 178 5577, or email enquiries@pcc-scotland.org (www.pcc-scotland.org). PCCS will investigate how your complaint

was dealt with by the Chief Constable, and may make recommendations to the police force concerned.

The Procurator Fiscal Service

Complaints should be directed to the relevant Procurator Fiscal's Office (or, where appropriate, the relevant Crown Office Unit or Division) where the complaint originated. Your complaint will be handled by a local manager. If you are dissatisfied with the response you can request a review by a more senior manager. The review will often be carried out by the Area Procurator Fiscal (or a senior manager nominated on their behalf), the Area Business Manager or the Head of the relevant Crown Office Unit or Division. A complaint that remains unresolved may be referred for a final review to the Crown Agent and Chief Executive (the Head of COPFS) Crown Office, 25 Chambers Street, Edinburgh EH1 1LA or a senior manager nominated on their behalf.

Courts

If your comments are about a Sheriff Court you can write to the Sheriff Clerk, if about the High Court, you can write to the Deputy Principal Clerk of Justiciary. If you are not satisfied with the reply you receive, you can write to the Sheriffdom Business Manager (Sheriff Court) and Principal Clerk of Justiciary (High Court). If you are still not satisfied, you can write to the Chief Executive, at the Scottish Court Service, Saughton House, Broomhouse Drive, Edinburgh EH11 3XD.

If your comments are about a Sheriff or Judge you can write to The Executive Director, Judicial Office for Scotland, Judicial Office for Scotland, 1A Parliament Square, Edinburgh EH1 1RQ.

Your Members of the Scottish Parliament (MSPs)

Your MSP's job is to represent your interests in the Parliament. You may want to write to or meet them to discuss any aspect of your case which you think they could act upon.

You can write to your MSP at the Scottish Parliament, Edinburgh EH99 1SP. You can find out the name of your MSPs by calling 0131 348 5000 or 0800 092 7500 (textphone 0800 092 7100) or visiting the Scottish Parliament website at www.scottish.parliament.uk.

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Section 7: Useful organisations and support

This section provides contact details for organisations which can offer you support at this difficult time. Some offer support at specific times (e.g. the Witness Service at court) while others can provide support before and after the court case.

7.1 Services provided by Victim Support Scotland (VSS)

Victim Service

Victim Support Scotland gives free and confidential help and support to all those affected by crime. They have specially trained people who are able to support people bereaved by violent crime.

The police can put you in touch with your local Victim Support service or you can contact them yourself. Look in the phone book for details of your local office or contact the VSS national office on 0131 668 4486, or the helpline on 0845 603 9213 between 8.00 am-8.00 pm.

A UK Victim Support helpline, 0845 30 30 900, is open 9.00 am-9.00 pm weekdays and 9.00 am-7.00 pm weekends. Calls are charged at the local rate.

Further information can also be found on the Victim Support Scotland website at www.victimsupportscotland.org.uk

Support After Murder (SAM)

This VSS service offers support to families and friends who have been bereaved as a result of murder or culpable homicide. Trained volunteers also offer specific support to young people in the aftermath of murder. This service can be accessed through the same contact points given on the previous page.

Witness Service

The Witness Service, run by Victim Support Scotland, is available in every Sheriff and High Court in Scotland. It provides a free and confidential service including:

- someone to talk to in confidence
- information on court procedures
- the opportunity to visit a court before the trial
- a quiet place to wait before and during the hearing
- someone to accompany you into the courtroom when giving evidence
- practical help, for example, with expense forms
- putting you in touch with people who can answer specific questions about the case (please note the Witness Service cannot discuss evidence or offer legal advice) and
- the opportunity to talk over the case when it has ended and to get more help or information.

You will find details of the Witness Service in the phone book under the name of the Court. Or you can contact the Victim Support Scotland national office on 0131 668 4486 or the helpline on 0845 603 9213.

7.2 Self-help and other support groups

Petal (People Experiencing Trauma and Loss)

Petal Support provides support to people who have experienced the loss of a family member or friend through murder, culpable homicide and suicide. The organisation provides services to adults, young people and children. Petal delivers therapeutic services which include one to one counselling, group and telephone counselling, stress relieving therapies, suicide prevention, peer support groups, advocacy, practical advice on legal aspects and related issues, and mediation between clients, agencies and employers.

A telephone counselling service is provided to members when they are unable to travel to the Petal support centres in Hamilton and Glasgow. It is a registered charity with no affiliation to any religious or political party and welcomes all sections of the community.

Petal is free and confidential and provides support to murder and suicide victims' families and friends – **irrespective of time.**

PETAL can be contacted on 01698 324502 or you can write to them at:

8 Barrack Street
Hamilton
ML3 0DG

The website address is www.petalsupport.com, and the e-mail address is info@petalsupport.com.

Cruse Bereavement Care Scotland

A nationwide service offering counselling and advice for all bereaved people. You can contact them at:

Cruse Bereavement Care Scotland
Riverview House
Friarton Road
Perth
PH2 8DF

Telephone: 0845 600 2227 or 01738 444178
e-mail admin@crusescotland.org.uk
or visit the website at www.crusescotland.org.uk

The Compassionate Friends

Compassionate Friends is a self-help group offering friendship and support to bereaved parents or grandparents who have lost a child of any age through illness, accident, violence or suicide. They can be contacted via their local rate helpline – 08451 23 23 04 – which is always staffed by a bereaved parent and is available 365 days, e-mail at info@tcf.org.uk or visit the website www.tcf.org.uk. If you prefer, you can write to:

Compassionate Friends
53 North Street
Bristol
BS3 1EN

Lesbian and Gay Bereavement Project

The LGBP operates a helpline which offers a listening ear to lesbians and gay men who have been bereaved as well as to family and friends, colleagues and carers. They can be contacted on 0207 837 3337. More information on the project is available at www.londonfriend.org.uk/bereavementhelpline/

Help, information, advice and support is available from the Lesbian and Gay Switchboard:

Lothian LGBT Helpline – 0131 556 4049/www.lgbthealth.org.uk
Strathclyde Lesbian and Gay Switchboard – 0141 847 0447/
www.sgls.co.uk

Samaritans

Branches throughout the UK offer help to people who are suicidal or in despair. Look in the phone book for details of your local branch, or contact their 24-hour helpline on 08457 909090. You can call any of the local branches or, if you would prefer, write a letter, to the correspondence branch at:

PO Box 9090
Stirling
FK8 2SA

or email jo@samaritans.org.

Further information can also be found on their website at:
www.samaritans.org.uk.

7.3 Other sources of help

The Moira Fund

The Moira Fund makes grants available to individuals referred to them, who have been bereaved through violent death. This includes supporting:

- Access to specialist bereavement counselling
- Access to respite and/or retreat
- Participation in a support network
- Needs which may arise and for which there is no current provision.

The Moira Fund may be contacted at the following address:

The Moira Fund
PO Box 3213
Stafford
ST16 9LJ

or email: info@themoirafund.org.uk. The website address is www.themoirafund.org.uk

Citizens Advice Bureau (CAB)

Bureaux provide free, independent, impartial and confidential advice and assistance on a wide range of issues, including financial and legal matters. For your nearest CAB look in the phone book, contact the national organisation (Citizens Advice Scotland) on 0131 550 1000 or visit www.cas.org.uk.

The Law Society of Scotland

The Law Society is the professional body to which all solicitors belong. They can provide you with details about solicitors in your area. You can contact them on 0131 226 7411, by textphone on 0131 476 8359 or visit their website at www.lawscot.org.uk. Alternatively, you can write to:

The Law Society of Scotland
26 Drumsheugh Gardens
Edinburgh
EH3 7YR

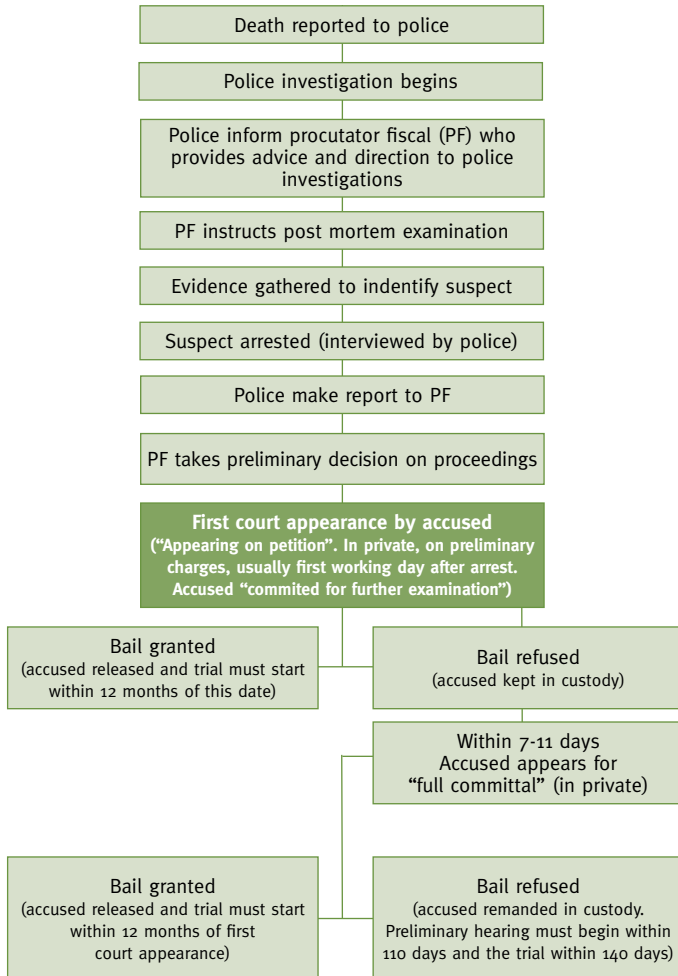
Local authority housing or social work services

You can find details under the name of your local council in your local telephone directory.

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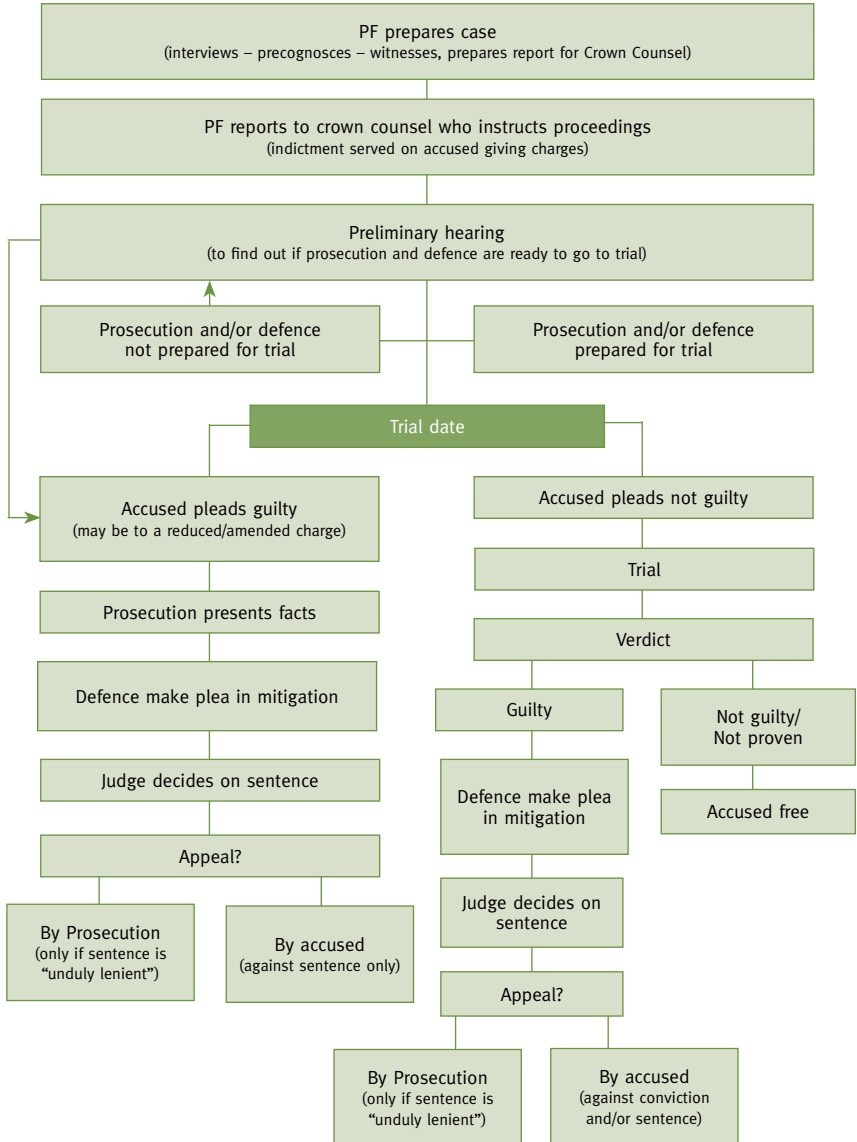
Section 8: Understanding the legal process and terms

8.1 Flowchart showing the investigation and prosecution process



Notes:

1. Procedures will not always follow the flowchart (for example, the accused may be identified but cannot be traced or arrested immediately). If this is the case, the Family Liaison Officer/VIA/procurator fiscal will explain this to you.
2. The terms used in the flowchart are explained more fully in section 8.2.



8.2 Explanation of legal terms

This section is intended to help you understand the terms that you might hear during the investigation and any trial. It is listed alphabetically and shows common abbreviations you may also hear.

Term (Abbreviation)	Explanation
Adjournment	A break in court proceedings. This may be for lunch, overnight or to a completely new date.
Advocate Depute (AD)	An advocate or senior Procurator Fiscal who works only for the prosecution and prosecutes only in the High Court.
Appeal	A challenge to the accused's conviction or sentence or both. The prosecution can only appeal against a sentence if they regard it as unduly lenient.
Appearing on petition	This refers to the accused's appearances in the Sheriff Court to answer preliminary charges (see later in table). These proceedings are held in private and may involve two separate appearances – committal for further examination and full committal (both are explained later). The accused will either be granted bail or remanded in custody.

Term (Abbreviation)	Explanation
Bail	When the accused is released from custody until the trial, or after conviction and before sentence. When released on bail, the accused must adhere to standard conditions that he/ she appear at court, does not commit further offences, does not interfere with witnesses or otherwise obstruct the course of justice, does not behave in an alarming or distressing manner, and makes himself/herself available for enquiries or report. The courts may add any further, special conditions they like to ensure the observance of these standard conditions. Examples of special conditions are that an accused does not enter a certain area or has a curfew, meaning he/she must remain at home during certain periods of the day/ night.
Charge (to the jury)	The Judge's legal direction to a jury in matters of law and evidence before they decide on their verdict.
Citation (to be a witness)	A letter which tells a witness to attend court to give evidence at a trial. It states the date, time and location the witness should attend.
Clerk of Court	Responsible for the management of the court and jurors. The clerk is the main point of contact with the Judge and ensures the correct recording of all proceedings, including the verdict.
Committal for further examination (CFE)	What happens at the end of the accused's first court appearance. The accused will either be granted bail or remanded in custody until being fully committed for trial (see later).

Term (Abbreviation)	Explanation
Crown Counsel	Senior prosecutors (also called Advocates Depute) who decide whether a criminal prosecution should take place, against whom and on what charges. They receive reports from the procurator fiscal about the evidence in the case.
Counsel	The advocate that acts for either the prosecution or the accused (a different advocate will act for each).
Court familiarisation visit	This can help you find out what to expect at court, particularly if you will be a witness at the trial. It can be arranged in advance of the trial through the VIA officer or the Witness Service.
Determinate sentence	When someone who is convicted of culpable homicide is sentenced to a specific period of imprisonment.
Family Liaison Officer (FLO)	The police officer who acts as the contact with the police investigation and keeps you informed of developments.
Forensic evidence	The scientific evidence collected from a crime scene, the body of the deceased and from other people, e.g. fingerprints, DNA samples.
Full committal (FC)	The second appearance by the accused in private in the Sheriff Court. It is held to confirm that the accused should be brought to trial. Bail can also be considered at this hearing.

Term (Abbreviation)	Explanation
Home Detention Curfew (HDC)	After a risk assessment, offenders can be considered for release between 2 weeks and 6 months before the date on which they would otherwise leave prison. Offenders released on HDC are subject to curfew conditions and monitored remotely by electronic equipment (a “tag”).
Indictment	The document that sets out the charge(s) in writing. It is given to the accused so that they know what they are accused of.
Interim liberation	When the offender is released on bail, after appealing against sentence and/or conviction and before a decision on the appeal is made.
Judge	A Judge presides over cases heard in the High Court (in a Sheriff Court, the Judge is called a Sheriff).
Law Officers	The most senior prosecutors in Scotland – the Lord Advocate and the Solicitor General. Any decision to accept a plea of guilty to a reduced charge in a murder case can only be taken with their approval.
Licence	When an offender is released from prison before the end of their sentence, the licence sets out the conditions of behaviour that they must meet.
Lord Advocate	Scotland’s senior prosecutor, with overall responsibility for the prosecution of crime in Scotland.
Macer	An officer of the court who attends to the Judge and assists with witnesses and productions in the trial.

Term (Abbreviation)	Explanation
Mentally disordered offender (MDO)	Mentally disordered offenders are people, who, as a result of mental illness, have been found by the court to have diminished responsibility, or have been found not guilty on account of insanity.
Parole	When an offender is allowed to be released early from a prison sentence. This release will be subject to licence conditions (see earlier in table).
Parole Board for Scotland	Responsible for deciding when a life sentence prisoner or one sentenced to 4 years or more will be released from prison on licence. The Board also considers any breaches of licence conditions and determines whether the risk can no longer be managed in which case the offender may be recalled to prison.
Pathologist	A qualified doctor who examines the body of the deceased to find out the cause of death.
Petition	The first document which sets out the charge against the accused, and starts the formal court process. This will not necessarily result in a trial and if it does, the charges that the accused faces at trial may be different from those set out in the petition.
Plea	The accused's answer to the charge. No trial is needed if they plead guilty.
Plea in mitigation	Any factors that the accused's counsel thinks should be taken into account before sentence is passed.
Post mortem examination	The medical examination of the body of the deceased.

Term (Abbreviation)	Explanation
Precognition or precognition investigation	The process of getting information from witnesses to find out what they know about a crime. This happens before a trial and usually involves taking a written statement. It is done by the prosecution (Procurator Fiscal or precognition officer) and may also be done by the defence (solicitor or precognition agent). It is a vital part of the prosecution process and you must give a precognition if asked to do so.
Precognition agent	A person working on behalf of a defence lawyer to find out from witnesses what they know about the crime. They will usually take a written statement and contact you at home to arrange this.
Precognition officer	A person employed by the Procurator Fiscal to find out from witnesses what they know about the crime. They will usually ask you to attend the Procurator Fiscal's Office so they can take a written statement from you.
Preliminary hearing	This is where the prosecution and the defence will tell the Judge whether or not they are ready for the case to go to trial. They may also agree any uncontroversial evidence. The trial date will only be set once both parties are fully prepared.
Proceedings	General term for the court process.
Procurator Fiscal (PF)	A qualified lawyer who is the public official in a local area responsible for investigating sudden deaths and prosecuting crime.
Productions	Documents shown as evidence in court during a trial, e.g. a forensic report. Other items, e.g. clothing are referred to as labels.

Term (Abbreviation)	Explanation
Punishment part (of sentence)	How long an offender who is given a life sentence must spend in prison. It is the minimum time they must spend in prison before being considered for release.
Remand or remanded in custody	When a person is kept in custody (prison or a Young Offenders' Institution) awaiting trial or before sentence.
Senior Investigating Officer (SIO)	The senior police officer in charge of the police team investigating the death.
Sentence discount	When the Judge reduces the length of sentence passed because the accused has pleaded guilty. The discount should be stated in court and should not be more than a third of the maximum available sentence.
Sheriff	A Judge who works in the Sheriff Court in a local area.
Sheriff Court	The local area court where the first step of the court proceedings will take place.
Solemn procedure	Where a trial takes place in front of a Judge and jury (always the case in a murder or culpable homicide trial).
Solicitor General	Assists the Lord Advocate in leading the prosecution service.
Special measure	A form of support that may be considered for a particularly vulnerable witness to help them give evidence.

Term (Abbreviation)	Explanation
Victim Information and Advice (VIA) service	Part of the Crown Office and Procurator Fiscal Service. Keeps victims and their families advised about the progress of the case that affects them. VIA also provides general information about the criminal justice system, can discuss any concerns you have if you are a witness in the case and can put you in touch with organisations that offer practical and emotional support.
Warrant	A document from a court allowing the police to take certain action, e.g. to arrest someone or to search premises.

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