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The Rt Hon Patrick McLoughlin MP  
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Great Minster House  
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LONDON SW1P 4DR

A handwritten signature in black ink, appearing to read 'Peter Patrick'.

15 October 2015

## **DVLA procedures on medical fitness to drive Consideration of a public consultation**

You will be aware of the recent Fatal Accident Inquiry (FAI) at Glasgow Sheriff Court in relation to the tragic accident on 22 December 2014 in Queen Street and George Square, Glasgow when the driver of a bin lorry lost consciousness and, as a result, the lorry mounted a pavement and collided with a number of pedestrians, killing 6 people and injuring 15 more. You may also be aware that I conducted the Inquiry on behalf of the Crown.

The FAI adjourned on 27 August 2015 for the Sheriff to consider the evidence led during the 5 weeks of the Inquiry. The Sheriff indicated that his Determination, in terms of Section 6 of the Fatal Accident and Sudden Deaths Inquiry (Scotland) Act 1976, will be issued between the end of October 2015 and January 2016.

In considering what recommendations the Sheriff may wish to make in his Determination in respect of the Driving and Vehicle Licensing Agency (DVLA), I submitted the following:

*In light of the evidence elicited at the Inquiry, there are problematic issues with the existing DVLA system of assessing fitness to drive, including the clarity of existing guidance; the awareness of that guidance amongst the medical profession and the system's reliance upon the declarations of an individual alone.*



INVESTOR IN PEOPLE  
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*DVLA should approach the Secretary of State for Transport to request a public consultation to undertake a wholesale review of the regulation and licensing of fitness to drive for both Class 1 and Class 2 licences and, in particular, the consultation should include and address:*

- Consideration of rewording and restructuring the "At A Glance" guidelines and the associated driver application forms, with a view to making them clear, consistent and more understandable to the medical profession, drivers and to the general public.*
- Consideration of whether a "dual reporting" system should be introduced, namely a system under which the medical profession has a legislative requirement to report matters of concern to DVLA;*

*and*

*consideration of whether fitness to drive assessments must involve the consideration of medical records as part of the process through either (i) countersigning by GPs; (ii) access to medical records by Occupational Health doctors or (iii) such assessments only being able to be undertaken by GPs.*

In addition, I invited the Sheriff to recommend that the DVLA should reconsider their mechanisms for dealing with notification of medical information of a driver. This was in light of an omission by the DVLA to consider the bin lorry driver's full medical history when deciding whether to return his driving licences in April 2015 (his licences were initially returned and then revoked in June 2015).

During the course of my submissions, the Sheriff raised the prospect of the Scottish Government making representations on the issue of a public consultation directly with the Department of Transport and I confirmed it was my intention to do this. I should, however, be clear that now raising these matters with you in my role as a Law Officer will not affect the Sheriff's Determination in the FAI, which is an entirely separate matter.

Most regrettably, this was the latest of a number of recent FAIs where medical fitness to drive has been a key issue at the Inquiry, namely:

- The FAI into the deaths of Mhairi Samantha Convy and Laura Catherine Linda Stewart ("the Convy/Stewart FAI") in which a Determination was issued by Sheriff Normand on 14 November 2014 (enclosed);*
- The FAI into the death of John Paul Pratt ("the Pratt FAI") in which a Determination was issued by Sheriff Caldwell on 19 November 2014 (enclosed); and*





- The FAI into the death of James Lochrie ("the Lochrie FAI") which was conducted at Glasgow Sheriff Court in June and August 2015 and which was adjourned on 18 August 2015 to await the Sheriff's Determination in terms of Section 6 of the Fatal Accident and Sudden Deaths Inquiry (Scotland) Act 1976.

The DVLA were represented as an interested party at each of the Inquiries referred to and witnesses were called from the DVLA at each FAI.

In addition to these FAIs, there have been 3 further incidents in the previous 6 months alone in Scotland where the driver of bin lorries or buses have become unconscious at the wheel. Thankfully, in none of these cases were there any significant injuries or fatalities, but the frequency of such events serves to highlight the importance of ensuring as robust a system as possible in the regulation and licensing of fitness to drive.

In the Convy/Stewart FAI Sheriff Normand determined (paragraph 10.69):

*"It is reasonable to conclude that if there had been notification of William Payne's losses of consciousness ("blackouts") to the DVLA by William Payne (or one of the doctors who examined or treated him) or by disclosure of the history of losses of consciousness in the DVLA form for renewal of Mr Payne's HGV (Group 2) licence, revocation of Mr Payne's driving licence may have been in operation as at 17 December 2010, Mr Payne may not have been driving and the fatal accident might have been avoided".*

Sheriff Normand also observed, in respect of the doctors involved with the driver, that their familiarity with the DVLA guidelines varied; was not known in the case of several doctors and that not all of the medical practitioners who dealt with the driver were familiar with the DVLA guidance or the detail thereof. As a result of this, Sheriff Normand directed the Clerk of Court to bring his Determination to the attention of appropriate medical bodies for *"information, consideration and any action they think appropriate in connection with the training of their members in respect of the DVLA guidance and the relevant duties of doctors"* (paragraph 12.25).

Sheriff Normand also found the recommendation proposed by the Crown – that DVLA should give consideration to making it a requirement that the doctors conducting medical examinations for Class 2 driving licence renewals should be required to have sight of an applicant's medical records or at least a medical history form completed and stamped by a GP – understandable in the context of the Inquiry (the driver having not gone to his GP for his renewal). The Sheriff considered that there was no information available in the Inquiry to assess whether this proposal would be a proportionate response and so was not persuaded to make the recommendation.





In the Pratt FAI Sheriff Caldwell considered the principal issue for the Inquiry to be that the driver, a longstanding abuser of illegal drugs, had been able to obtain a licence to drive heavy goods vehicles. In relation to Class 2 driving licence renewals Sheriff Caldwell recommended in his Determination (paragraph 58):

*"that the DVLA institute a practice whereby in cases where the examining doctor is not the applicant's general practitioner that the general practitioner is asked to verify from his records that the applicant has no condition likely to adversely affect his fitness to hold a relevant licence."*

I understand that the DVLA had concerns regarding this recommendation which they considered may involve requirements upon applicants to be registered with a GP; changes to the terms and conditions of employment of GPs; delay and additional cost to the D4 renewal process and legislative change which could only occur following a full impact assessment and public consultation. I understand that the DVLA has not therefore progressed this recommendation (but has met with the General Medical Council to discuss improving guidance to doctors and members of the public and to explore ways of increasing the profile of this guidance).

In the Lochrie FAI, Mr Lochrie was killed on 31 March 2012 having been struck by a bus driven by a colleague who had lost consciousness at the wheel. The driver had had two previous episodes of a loss of consciousness and potentially had suffered a third such episode in the past (the third episode was in dispute at the Inquiry). Although the issues in this Inquiry were slightly different as the DVLA had known about the two previous episodes and had returned the driver's licence to him, submissions were made by the Crown regarding DVLA consulting with the medical profession and any other interested parties on how the medical profession could notify the DVLA of concerns they had regarding a driver's health.

As indicated in the submission I have already outlined above, the evidence elicited during the Queen Street/George Square FAI highlighted a number of deficiencies with the existing DVLA process of assessing fitness to drive:





- Dr Wyn Parry, who is the Senior Medical Advisor to the DVLA, gave evidence to the Inquiry that there was "*a recognisable lack of awareness of the guidelines*" (Dr Parry indicated work had been undertaken to attempt to remedy this and further steps would be taken post-Inquiry to raise awareness). Where the guidelines were known, there was a lack of awareness amongst the medical profession on the exact meaning. The evidence at the Inquiry exposed serious issues with the workability and the user-friendly nature of the DVLA "At a Glance" guidelines that requires to be addressed immediately (for completeness, Dr Parry indicated in his evidence that any recommendations following the FAI would be considered).
- The lack of direct notification to the DVLA by the medical profession was recognised as a weakness in the current system. If there was a statutory duty on the doctor to report, it would, to a certain extent, make it easier for the doctor to make the decision without compromising their relationship with the patient. The Inquiry heard evidence that certain other Commonwealth countries have different systems in which there is a duty upon a doctor to report a fitness to drive issue to the relevant licensing authority.
- The current DVLA statutory system relies on self-reporting by the applicant and the truthfulness of the applicant. There are no independent checks carried out to verify the accuracy of a form, or a declaration, by the applicant. Dr Parry's evidence was in agreement that that system was, to a certain extent, flawed for that reason – the reliance on a single source – and required to be addressed. The use of a GP, either exclusively or as a counter-signatory, or the mandatory consideration of medical records by a non-GP undertaking a fitness to drive assessment are different possible approaches to addressing that flaw and providing, to a certain extent a check on the accuracy and truthfulness of information that an applicant is providing.

As can be seen, the existing DVLA process for the regulation and licensing of fitness to drive has now been examined in several FAIs and found to have a number of flaws and areas for potential improvement. It is against this background that I now write with a request that action be taken to consider and address these matters.





It is, of course, recognised that the DVLA operates under a statutory framework of operation, and within that statutory framework there is a limit on what the DVLA, as an organisation, can change without Parliamentary intervention. The first stage, going forward, in any legislative reform is public consultation. In recent years the DVLA has issued a number of public consultations on a wide range of topics and fitness to drive would now appear to be a priority area to address.

I fully appreciate that there are a number of issues for consideration in relation to any changes to the existing process, for example the balance between any additional burden on the medical profession against the need to enhance public safety in relation to driving on the roads, and these could be fully canvassed in a public consultation. It is also appreciated that, for any such consultation to be comprehensive, it would require the views of the General Medical Council, the British Medical Association, trade unions, the road haulage industry, councils, organisations, medical and other interested parties.

While, of course, it is correct to expect drivers to be accurate and honest when dealing with DVLA and doctors, and it is correct that there are sanctions for failing to do so, it is also necessary to ensure the regulation and licensing system is robust and rigorous enough to protect the public and to ensure, as far as possible, that only medically fit and safe drivers are on the roads.

I consider it incumbent upon me in the public interest to raise these issues in this letter with you directly – irrespective of the pending Determinations in the Queen Street/George Square FAI and the Lochrie FAI - and request that you give consideration to a public consultation, through the DVLA, into the matters I have raised.

I am, of course, happy to discuss any of these matters with you in further detail. I am copying this letter to the Cabinet Secretary for Justice, and the Cabinet Secretary for Health at the Scottish Government and to the Secretary of State for Scotland.



**LESLEY THOMSON QC**

Enclosures

Determination into the death of Mhairi Samantha Convy and Laura Catherine Linda Stewart, Sheriff A.C. Normand, 14 November 2014.

Determination into the death of John Paul Pratt, Sheriff C. Caldwell, 19 November 2014, Sheriff C Caldwell

