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### **HMAAdv. v McCourt, Edinburgh Sheriff Court, April 2013.**

Our organisation requests the Crown to appeal the apparent leniency of the sentence imposed by Sheriff James Scott at Edinburgh Sheriff Court in the case of Gary McCourt who was recently found guilty of causing the death of Audrey Fyfe by careless driving.

In particular we are extremely concerned that a person who has killed two people on the roads in separate incidents should be allowed to continue to drive (after a 5-year ban) and potentially to put at risk the lives of other members of the public, rather than having a lifetime ban. A jail sentence should also be considered, especially in view of the fact that two deaths have already resulted from driving which was found to be careless in one case and reckless in the other.

Secondly, in pronouncing sentence the Sheriff said he was following guidelines laid down by the Court of Criminal Appeal and although there was no fault on the part of the victim he was also taking into account the fact that she had not been wearing a cycle helmet, thereby implying that she had contributed to the fatal outcome of the incident.

We have only media reports of the case, but apparently no evidence was led as to the efficacy of cycle helmets in general or any benefit which the victim would have had from wearing one in this case. However even if there had been evidence that the victim would not have died had she been wearing a cycle helmet it seems illogical then for the accused to have been found guilty of causing death by his careless driving. If the fatality (rather than serious injury) was caused by the lack of a helmet the accused should have been convicted of careless driving alone not of *causing death* by careless driving.

We look forward to hearing that the Crown has marked an appeal against sentence in this case and await with interest the Appeal Court's pronouncement on the factors taken into account by the Sheriff in determining that sentence.

Dave du Feu  
for Spokes