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Tuesday, 26 December 2023

Dear All

I wanted to give a brief (the below *is* the brief version!) summary of the situation with getting National Highways (NH) to face corporate manslaughter/gross negligent manslaughter charges for deaths resulting directly from their Smart Motorways program.

There are many reasons why this is not simple, and as a result is taking a very, very long time.

- 1) I have to deal with different Police forces, depending on where the deaths occurred.
So in Jasons, Alexandrus and Mrs Begums case this is South Yorkshire Police (SYP)
- 2) When pursued on this point for 3 years by myself and Mrs Begums family, SYP insisted that they are led by the Crown Prosecution Service (CPS) in these decisions, in order to make sure taxpayers' money is not spent on cases that would 'probably' not succeed in court.
- 3) I have for the third time now challenged the CPS on the fact that they concluded that the 'legal threshold was not met' causing SYP to say they would not take the case any further, but CPS have replied saying they only "advise and that the 'decision' on whether or not to proceed with an investigation is entirely up to the relevant Police force"
- 4) Any other police force in the country is seemingly looking at the SYP decision and following suit.

So I am stuck in limbo with SYP blaming the CPS and the CPS blaming SYP, and every other force in the country just shrugs their shoulders and points at this situation as an excuse to not try for themselves.

The CPS took advice from National Highways own legal team in order to come to their conclusion.
Meaning they effectively asked the potential defendant whether they thought they should be investigated!

Unsurprisingly enough NH said no.

They came up with the very surprising defence that they don't owe the public a duty of care. All other organisations, corporations and government departments do, but a privatised department of the government that can make profit and pay executives large dividends for reaching targets (such as reducing spending/budgets/staffing levels) apparently doesn't owe us a duty of care.
Except in certain circumstances:

These are:

If road works were present

If the deceased was an employee of NH

If the deceased was a prisoner being transported

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So now Mike Rawson and I have to contact individual police forces every time a death occurs which fits in the narrow criteria above, and push said force to consider investigating Corporate Manslaughter. So far not one police force has done this.

This is further complicated by how road traffic accidents (RTA) are recorded and reported. Deaths on smart motorways (SM) are not recorded separately to deaths on other motorways, so we have to hear about the incident, search its location, determine if its SM, find the relevant force, contact someone there who will acknowledge us and allow us to present our argument while allowing them space to investigate the incident.

The recent trend of referring to anyone not in a vehicle as a pedestrian is not helping either, it automatically suggests the blame is on the "pedestrian" There have been cases recently where people have walked onto the motorway. But if someone is in an RTA and gets out their vehicle, they are NOT a pedestrian and should not be referred to as such.

I have also been pushing for years for an answer on how SM are allowed under the disability discrimination act. They disproportionately endanger people with mobility and other health problems and this is against the law. The general public are told if you have a problem on a SM to get out the vehicle (on the passenger side) and over the crash barrier quickly.

What if you are not able to get over the centre console, out the door, onto the road and over a 3 foot barrier in seconds?

According to the government you are to put your seat belt on (i.e. brace for impact) and put your hazard lights on. because that will stop the 40 tonne truck doing 56 mph that was right behind you when your vehicle stopped.

Nargis Begum was killed trying to get over the crash barrier, Derek Jacobs was killed as he tried to get out of his vehicle, Jason Mercer and Alexandru Murgeanu were killed because there was a 30 foot drop over the other side of the crash barrier.

.. and when something terrible has happened, how do the emergency vehicles get through 4 lanes of stuck traffic? These promised extra refuge areas aren't going to do anything at all to alleviate that issue.

All the above is to say that I have again pushed SYP and the CPS on both corporate manslaughter charges and disability discriminations and still both just blame each other.

..... and public law moves very, disappointing, frustratingly, slow!

But we won't give up.

Regards

Claire Mercer

On behalf of Smart Motorways Kill

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