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# Crimes Abroad - Comment to the APPG on Deaths Abroad & Consular Services

## **Position Paper - The Consumer Experience**

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Frank Brehany - [frankbrehany.com](http://frankbrehany.com) - 26 October 2018



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## **Introduction:**

This Position Paper is provided ahead of the meeting of the All-Party Parliamentary Group on Deaths Abroad & Consular Services, on Tuesday 16 October 2018.

The primary purpose of this Paper is to demonstrate the experiences of dealing with Consumers, affected by the deaths of their loved-one's whilst on holiday. The deaths dealt with were of a suspicious nature and logically brought challenges to family members based in the UK.

In discussing these experiences, this Paper will also touch on a wider experience of crime in holidays and the impact on those holidaymakers or indeed how 'Authority' deals with these issues. Such an examination will feed into the discussion and consideration of deaths abroad.

The Paper will conclude by making Recommendations; these are based on an analysis of surviving family members problems and are offered to help all Stakeholders focus on what is required in these difficult and sad circumstances

## **About the Author:**

I am a retired Police Officer and a self-funded Solicitor.

I work extensively in the media, providing comment on Travel Consumer related issues.

I am not connected to nor do I work within or with any Law Firm or other Legal entity.

In the last 10 years, I have provided extensive comment to the UK & EU about Travel Consumer issues, creating over 65 reports to highlight the detriment they suffer. I have also provided Consumer commentary to the FAA (USA), the Australian House of Representatives and The World Tourism Organisation.

For 14 years, I was the Consumer Director of the Independent Travel Consumer Organisation, HolidayTravelWatch (HTW), until I left that post in July of 2017.

I have some 20 years experience, both in the handling of holiday claims and as a Consumer Campaigner, helping Consumers to deal with their Travel Complaints. Whilst at the helm of HTW, we proudly aided 97.5% of holidaymakers to self-resolve their complaints. In less than 2% of holidaymakers cases, where it was clear that they would not be capable of settlement by self-resolution methods, we worked with Partner Lawyers and Consumers to help them secure a just resolution to their complaints.

Since leaving HTW, I remain associated with Consumer issues, principally but not limited to the areas of Carbon Monoxide, Holidaymakers Rights, Justice & Consumers, General Consumer Rights, Whistleblowers, Toxins, Cabin Air Quality.

I am active in the field of Standards. I am currently the Chair of the BSI's ACE1/\_/1 Cabin Air Quality sub-committee (UK); I am a voting member and UK representative on CEN TC436 Cabin Air Quality (Europe); I am a voting member representing Consumers on ASHRAE SSPC 161 Cabin Air Quality (USA).

I do not receive any funding from any source and my continuing work to independently advocate the Consumer position is entirely self-funded.

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## **The UK Foreign & Commonwealth Office (FCO)**

It is appropriate to begin this commentary by sharing my personal experience of the FCO.

Since 2003, I have met and worked with some remarkable individuals within the FCO. Like any organisation, the FCO is fortunate to have within its ranks people who clearly believe in their work and have a passion for delivering a good Service to UK Citizens. Equally, I have met some who have perhaps different pressures and present some difficulty in establishing progression of dialogue or ideas.

Whilst engaged within HTW, I ensured that the organisation fully subscribed to the FCO's notable 'Know Before You Go' campaign (now 'Travel Aware'). I caused HTW to fully support the messages of 'Know Before You Go'; I ensured that Consumers were made aware of important initiatives presented by the FCO.

Since leaving HTW, I have endeavoured to remain part of the 'Travel Aware' Campaign, but have not been able to do so because of some apparent organisational/administrative difficulty.

On two occasions I have been invited to take part in the once a year 'Travel Advisory Group' (TAG) meetings. I take the view that whilst the meetings were primarily dominated by a Travel Industry presence, I was able to share the wider Consumer experience of problems encountered and their problems with Consular Assistance.

My involvement with the FCO was furthered by being invited to take part in a Stakeholder meeting with regards to Travel Advisories. It is recognised that I have made extensive comment about FCO Travel Advisories and it was refreshing to experience near unanimity in how those Advisories should develop. Despite representations made at the time, I have not detected the substantial changes discussed and presented to the Stakeholder cohort.

In conclusion, it is important for the APPG to recognise my opening paragraph on the FCO as demonstrating one of support for the dynamic-thinkers within its ranks. I would observe however, that it is clear that a 'political-push-me-pull-you' is perhaps evident, and as such, in my opinion, acts as a block to those who are keen to deliver the highest possible Service to UK Citizens.

## **Case Studies - The Survivors Experience**

It is important to provide a general overview of the types of crime problems Consumers experience, because such experiences lead to an understanding of the scale of the problem whenever a suspicious death abroad arises. It is not the intention to dominate the discussion with a broader commentary on crime and so some of this commentary will be supported by additional information within the Appendices. Following each general crime case study, a brief summary of what should have happened to assist that Consumer will be indicated.

With regards to the discussion on Deaths Abroad, one of the Appendices will contain information that was passed to surviving relatives by HTW (it is not clear if this detail continues to be passed to Consumers), so that they could navigate the minefields of Jurisdiction, Authority & Process (See Appendix 3). Appendix 3 illustrates a typical case passed, on Police Investigations/Human Rights.

### **Case Studies: General Crime**

**Consumer A** was attacked in Corfu and had her handbag stolen. The Tour Operator advised that they would help the Consumer to establish contact with the Police; they did not do so. Subsequently Consumer A complained that they did not know how to deal with a very traumatic situation; being in shock, they considered that they should have received more assistance from



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the tour operator and other authorities. *(Consumer A should have made a police report, received advice on how to contact Consular Services, received guidance from Consular Services on how to deal with Police or other Authorities, received direction on potential court obligations and any available criminal compensation scheme & potential assistance from the UK police).*

**Consumer B** had their room safe broken into in Mexico; it was established that members of staff were responsible through an internal enquiry. Their complaint resulted in them being refunded half of their money with the other half offered as vouchers to spend in the hotel. The Consumer was unhappy with the outcome and received no assistance from the Tour Operator. *(They should have been helped to make a report to the police, received contact information for Consular Services, received guidance on how to deal with Police & other Authorities, received direction on potential court obligations and any available criminal compensation scheme, potential assistance from the UK Police).*

**Consumer(s) C** were two serving members of the British Armed Services, who were threatened in Bulgaria and were at the time the report was received, locked in their hotel room. Relatives had made contact on their behalf and advised that locals had taken exception to their Nationality and their Profession (at the time there was heightened International Political Tensions). Despite attempts by Consumer(s) C to navigate a difficult situation and attempts by relatives to seek assistance from the Tour Operator, no help was received. As this was a 'live' situation, I contacted the Consular Service in London, advised them of the situation only to be told that there was nothing they could do. Only after they were advised that I would escalate the situation to the Press was it agreed to contact Consumer(s) C; they were then provided with assistance. *(They should have received positive assistance from the Tour Operator, Police assistance should have been received on their behalf, they should have been offered safe sanctuary and the potential assailants should have been investigated & interviewed, relocation should have been considered and reference made to Consumer Rights).*

**Consumer D** suffered an horrendous racial attack in Turkey. Consumer D was chased through streets by a gang and severely beaten and threatened; a local trader took him in and hid him from a continual threat - his wife and child remained in their hotel room afraid to venture out. Consumer D hid behind rubbish bins and slept in a local park that night. The hotelier would not allow him to continue staying at the hotel and the Tour Operator only agreed to move him at a cost payable by Consumer D; no further assistance was offered to Consumer D or his family. Upon return to the UK, Consumer D received no further assistance either from the Tour Operator or the Turkish Authorities. We attempted to broker a meeting with the Turkish Ambassador in London but his office did not acknowledge our letters or those sent by Consumer D. *(At first instance, as obligated by Consumer Rights, the Tour Operator should have offered immediate assistance to Consumer D and his family. Police should have been called immediately. Perpetrators should have been identified, investigated and interviewed. Consumer D should have received contact details for the Consular Service and received assistance to navigate Police & other Authorities and their processes. Consumer D should have received further assistance from the UK Police. Relocation should have been considered and reference made to Consumer Rights).*

**Consumer E** suffered with a serious sexual assault in Turkey, committed by a member of the hotel staff, the night before they were due to return to the UK. They reported the assault but were told that if they were to continue with the allegation, the police would require them to remain in Turkey. The Tour Operator insisted that Consumer E would have to pay to stay in Turkey and offered no other assistance. Consumer E returned to the UK and suffered sleeplessness, sought medical advices, medication, counselling and through their own efforts sought the assistance of Victim Support. Subsequently, the Tour Operator offered Consumer E counselling and a full refund via a voucher; no other assistance or advice was offered. *(The Tour Operator should have helped the Consumer as obligated by reference to Consumer Rights. Immediate reference should have been made to Consular Services. Consular Services should have helped advocate Consumer E's*

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*situation and they should have received guidance on how to navigate Police & Authorities and their processes. The perpetrator should have been investigated and interviewed. Consumer E should have received assistance from the UK Police).*

**Consumers F.** This is a group of Consumer experiences from the resort of Magaluf in Majorca. This location is but one example of a 'young' Brit destination. In recent years, the resort has unfortunately received negative publicity because of the alleged antics of young Britons. Behind the mask of tabloid reports, there exists a serious underbelly of crime which involves:

1. Young male holidaymakers being robbed at ATM's;
2. Young male holidaymakers being attacked and robbed by 'mugging prostitutes';
3. Young female holidaymakers being routinely sexually assaulted;
4. All holidaymakers being routinely given additional drinks and in some cases spiked drinks rendering them being severely intoxicated;
5. Young holidaymakers having additional cash added to their credit cards without their knowledge;
6. On occasions, holidaymakers unknowingly being administered with drugs - drugs are freely available to purchase;
7. One young woman holidaymaker was abducted after being severely intoxicated and left in a forest some 35kms from the resort, having no knowledge what happened to her;
8. Young holidaymakers presenting themselves to health clinics, trying to establish why they are so intoxicated and concerned as to issues stemming from sexual activity that they can recall;
9. Holidaymakers suffering with physical attacks allegedly carried out by security staff;
10. Holidaymakers falling from balconies suffering either serious injury or death. Little or no enquiry is carried out and the holidaymakers are often blamed for drunkenness or being under the influence of drugs.

It is important to note that 3 young people have died this year as a result of balcony falls; the resulting commentary is predictable and provides nothing in the way of a broader recognition of the inherent problems; holidaymakers and their families are proven to be on their own in such events.

The problems experienced by British holidaymakers are also proven by the commentary and protests carried out by local residents.

UK FCO Travel Advisories are specifically silent about the problems within this resort.

The criminality that exists is also demonstrated by the investigation and arrest of key police personnel and businessmen; there has been a local political fall-out as a result of the revelations stemming from those arrests.

To illustrate the issues, the APPG is referred to my recent article 'Who will weep for the Magaluf Mothers?' - <http://www.frankbrehany.com/blog/who-will-weep-for-the-magaluf-mother-s/>) and produced at Appendix 1.

The APPG is asked to note my experience within the article with a senior Diplomat when discussing the problems of Magaluf.

In all these cases, the victims are often so shocked by the 'criminal' experience that they are unable to rationalise and deal with the situation they are in. As a result, they not unreasonably rely on those contractual players who can direct them toward help and assistance. Whilst in the case studies presented, the FCO are clearly unaware of such experiences, the same cannot be said for the problems experienced by Consumers F in Magaluf and I would suggest other such resorts.

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## **Case Studies - Suspicious Deaths**

The previous case studies are in themselves shocking and represent a small proportion of the overall holiday experience.

However, nothing compares to the terrible experiences of UK Surviving Families and Friends following the suspicious deaths of their loved-ones on holiday.

Imagine, for one minute, waking up one morning, to hear the news that your son or daughter, or your friend, is not coming home. The shock of that message alone will not prepare you for the aftermath of lack of support, intransigence and the message that your loved-one was responsible for their own demise.

The following case studies reveal a shocking deficit for victims and their families:

### **Case 1:**

This young male British Citizen was found dead on a Tenerife beach, on his knees, in a state of undress. He appeared to have suffered with some injuries. It was clear that some money had been withdrawn from his bank account prior to his death. The family advised me that they had to navigate the Tenerife Authorities largely on their own, just to retrieve their son's body and to try and understand his last movements. They were subject to a harrowing local Coroners report, trying to comprehend what had happened to their son. They advised me that they received little or no help from the Travel Company, the FCO, the Guardia Civil or the Coroner in Tenerife. Once they managed to bring his body home, the family were then exposed to a second inquest to determine how their son had died. During the course of that second inquest, their son's body was released for burial, but of course many questions remained unanswered as to the circumstances of his death. One area of concern for the family was that the Guardia Civil in Tenerife had not returned his personal belongings. I met the family shortly after they had received their son's possessions. The box received was best described as 'tatty' and had been sent through ordinary post. The family displayed his clothes and then showed me a mobile phone which did not belong to their son. I caused the phone to be wrapped up in a freezer bag; the family told me that this phone was found next to his body and his phone was missing - this was clearly an important piece of potential evidence. The family presented this evidence to the police and the UK coroner but no-one displayed any interest in the phone. No action was taken by that Police area to work with the Tenerife Police, nor did they make contact with the FCO. The family sought to have the phone privately examined but this proved to be cost prohibitive. The UK inquest did not examine the concerns or information from the family and simply concluded that this was a 'lads night out' which had ended in misadventure. Despite detailed information we gave to the family at the time, none of the UK Authorities acknowledged that information or helped them to establish answers from Tenerife. The affect upon this remarkable family has been profound.

### **Case 2:**

This young male British Citizen was lost overboard from a cross-channel ferry. It is important for the members of the APPG to recognise that the disappearance of passengers from ships is a recognised world-wide problem and I have contributed views and solutions to the Australian House of Representatives. This young man's disappearance was not detected until close to arrival into the UK port. Emergency Services were alerted but it appears that a night time crossing limited search options. The parent's of this young man sought to understand from the ferry company and the police how their son could have simply disappeared overboard. They received very unclear and unhelpful responses from the ferry company and the Port Police and the local Police did not provide any clear consistent help or commentary to this family. In their grief, the family have sought to create a campaign that all passenger shipping be equipped with CCTV so that

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passengers, at any time of the day, can be recorded as to their movements on deck; they argue that this will help the ships crew establish the moment that person fell overboard and therefore indicate a more accurate search area. One aspect of this case is that there will always be a residual concern that their son may have been attacked; at present they just cannot be sure on this point. Despite the clear guidance we set out for this family, the police in particular, did not react to the family's concerns and their potential obligations either through law or practice. His parents maintain their vigil for justice & change.

### **Case 3:**

This involved a young male British Citizen who was found dead at the bottom of some metal stairs in Zante. This young man's last movements were to be found at a nightclub. Whilst he was in the club, he was seen speaking to a young woman. It has been suggested that the security at the club took exception to him speaking with this young woman and removed him from the club. His parents tried to receive consistent help from the tour operator, local police, the UK police, the FCO and in all cases, other than receiving much sympathy, nothing concrete was offered to help them understand what happened to their son and indeed bring to justice any perpetrator of his injuries and/or death. It is important for the APPG to understand that the issue of young British males speaking with young women in clubs have often been met with the attentions of security staff; most survive a severe beating. In this case, we equipped this family with key information to challenge action by the Authorities, but without the resources to pursue such points, they were unable to obtain the assistance they needed; they remain to this day without clear knowledge of what happened to their son on that fateful night.

### **Case 4:**

This involved a young male British Citizen who was found dead in woodlands in Turkey. This young man had been to a nightclub in his resort and as he left, he was followed by 2 people. When his body was found, he had a number of injuries and it was clear that he had fought back against his attackers. His Father has tried to establish what had happened to him but received no assistance from local police, the UK police or the FCO. He has employed a Turkish Lawyer in order to try and establish the truth and the identity of his son's attackers. He was provided with key information by us, but even his Turkish Lawyer did not at the time respond to the positive the Human Rights obligations in Turkey, with regards to the Police enquiry. He received no onward assistance from the UK Police or the FCO. He continues his fight for answers.

### **Case 5:**

In another case, a young male British Citizen was killed during the course of a robbery in Spain. It appeared that there had been a number of suspicious deaths in and around where he had been staying. The family were trying to establish their son's last movements and the identity of the attackers. The family told us that they did not require our assistance as they were engaged with the 'Authorities', but they did indicate that they were receiving slow responses and little progress; we indicated that we were ready to assist them should they so require.

### **Summary of General Crime & Suspicious Death Issues:**

To preserve confidentiality I have not indicated the granular detail of what was said to or claimed against victims and/or their families. In all cases there are common themes; they are:

1. Police or other Authorities abroad appear to always claim that the victim had taken drugs or was intoxicated, implying that they were responsible for their own problem or demise;
2. Travel Companies will often state that they are helping families. In some cases there appears to be a proactivity toward counselling. It is my understanding that some companies may not



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have a protocol on how to deal with suspicious death cases; one company has explained that each death is different and therefore one protocol may not be a suitable response vehicle for all situations;

3. Families have described the police 'support' given as 'useless'. There is a disparity of Service or recognition of International possibilities amongst the UK Police Services. Some may consider this an unfair accusation by families, but in many cases, families require more than just simply someone to talk to or being passed to Victim Support - they have a sense that they are engaged in a 'tick-box' exercise;
4. In one very high profile suspicious death case, I met with UK police and an MP to discuss how evidence could be obtained to help the family in that case. The response from the police indicated that they did not know how to take action against a corporate body and how powers created by parliament could be used to good effect to achieve that evidence. Despite advocating the position, no powers were used, no evidence was collated and the family had to engage in a very long legal battle abroad;
5. Many families have indicated that insofar as the FCO is concerned, they felt that they only did what they considered needed to be done (talking or perhaps meeting with the family and providing them with leaflets); that is the family perception! Some have indicated that they were asked not to create a 'fuss'. It is fair to say that whilst families do not hold the FCO in high regard and a feeling that they do nothing to help them get to answers in resort (except to provide contact details for a local solicitor), the FCO has tried to identify key issues via leaflets, that visiting and UK based British Citizens may have to face;
6. Victims and Families do not understand the apparent limitations in some force areas as to any potential investigatory help; some areas have a clear policy. Equally, they cannot comprehend, when presented with key International provisions and Human Rights obligations, why the police cannot help them achieve some progress through these routes, nor indeed why there is a reluctance to speak with the FCO on these matters. Equally, they express frustration as to why the FCO does not provide such information (they discover that information is publicly available and should be offered), preferring it appears to advise that they should seek legal help;
7. In the case of Coroners outside the UK, I have detected some dissatisfaction in the overall skill-set displayed by those Coroners; this arises from Survivors discussions with medical advisors. With regards to UK Coroners, there is disappointment that they appear not to want to listen to evidence presented by families and there is deep concern that some evidence is dismissed. Survivors consider that such a process is designed only for a quick resolution. Survivors argue, where it involves another jurisdiction, all steps, local and International, should be taken, noting that even the deceased has a right to be heard; a right to a fair hearing;
8. Those that have had experience of Victim Support reveal a positive experience. They recognise that this is an organisation with limited resources but nonetheless provides them with their first clear window of rights, some of which are indicated in non-UK jurisdictions (compensation schemes). All recognise the limitations of that service but for many, this is the only positive experience they have.

### **The TEU & TFEU, the Police and Future Challenges**

In discussing this area, it is important to recognise that the knowledge stated here is by nature academic and needs to be supported by an examination of practical issues. It is also important to state that not every suspicious death case will have evidence within the preview of the Victim's Families or Friends; this could potentially limit opportunities. This should not however prevent the UK Police from seeking some form of mutual assistance or cooperation to help families liaise with Police Authorities who are investigating the death of their loved-ones.

It is important to draw the comparison with the cases above and the comments in the following case:

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*“This incident, which we were made aware of this morning, is believed to have taken place on a plane at Barcelona Airport. Essex Police takes prejudice-based crime seriously and we want all incidents to be reported. We are working closely with Ryanair and the Spanish authorities on the investigation”.*<sup>1</sup>

*“Officers from Essex Police are currently investigating the incident. The incident took place on the tarmac of Barcelona Airport before the plane departed for Stansted, and the force said it would pass on information to the Spanish authorities in due course, in line with national protocols. Officers from West Midlands Police have assisted Essex Police”.*<sup>2</sup>

*“He could well be prosecuted by the Spanish authorities but it is unlikely. Why? Because the offender would have to hand himself in or alternatively Spanish apply under EU Arrest Warrant. Under the EU arrest warrant the offence needs to be criminal in Spain – it is – and the punishment on conviction must be 12 months or more”.*<sup>3</sup>

*“[he hoped] police would want to take action in such an extraordinarily unacceptable case”.*<sup>4</sup>

The quotes highlighted above, stem from the recent case of a black woman being subject to verbal abuse onboard a Ryanair Flight from Barcelona to Stansted.

The UK Police are empowered through International Treaty and legal instruments to assist the victims of crime, particularly where the offence is of a serious nature.

In the quoted case above, the crime is one of racial harassment and insult and such a crime in Europe offends the acceptable norms of our societies.

The quotes illustrate the point, that where a serious crime is revealed, there is a clear duty and a set of mechanisms gifted to the UK Police, to help UK Citizens, where serious crimes are committed; there is a clear route between the UK Police and the Police Authorities within Europe.

The issue becomes more problematic where a serious crime is committed outside the European area; here, it should be expected that the FCO would help any UK Police Service to advocate with those Authorities or to recognise reciprocal agreements that may exist between those countries and the UK or the EU.

The APPG should compare and contrast the experience of Delsie Gayle on her Ryanair Flight with those of the Consumers highlighted in this report.

Whatever about the apparent reluctance, or perhaps lack of knowledge within the UK Police Service, on the International possibilities, there is one factor that will have a major impact on the families and friends of future suspicious deaths abroad; brexit!

The UK is currently scheduled to leave the European Union on 29 March 2019, with an anticipated 2 year transition period in which the Laws of the European Union will still apparently apply to the UK.

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<sup>1</sup> <https://www.independent.co.uk/news/uk/home-news/ryanair-racist-video-passenger-ban-offense-london-flight-black-white-a8594951.html>

<sup>2</sup> <https://www.bbc.co.uk/news/uk-england-essex-45988890>

<sup>3</sup> <https://www.theguardian.com/uk-news/2018/oct/23/man-in-ryanair-racism-incident-identified-police-say>

<sup>4</sup> <https://www.theguardian.com/uk-news/2018/oct/23/man-in-ryanair-racism-incident-identified-police-say>

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In terms of criminal investigations and cross-border cooperation, the UK is currently bound by Chapter 5 - Police Cooperation - Articles 87 to 89 (replicated within Appendix 4) found in the Consolidated Versions of the Treaty of the European Union (Lisbon Treaty) and the Treaty of the Functioning of the European Union.<sup>5</sup> Article 87 (1) makes clear that:

*“The Union shall establish police cooperation involving all the Member States' competent authorities, including police, customs and other specialised law enforcement services in relation to the prevention, detection and investigation of criminal offences”.*

It is important for the APPG to understand that the issue of cross-border Police cooperation in the European Union flows back to 1959 and the Consolidated Treaty confirms established principle and further development.

A key stage in that discussion was the creation of the Europol Convention in 1995.<sup>6</sup> That Convention primarily focussed on tackling the offences of organised crime and terrorism. However, within Article 2, other forms of crime could also be investigated by Europol, subject to procedural issues. The Convention refers to the Annex in the Convention which sets out the ‘other forms of crime’ (See Appendix 4). One of those crimes referred to states:

*“Against Life, Limb or Personal Freedom:*

*- Murder, Grievous Bodily Harm”.*

It is important to state that a visit to the Europol website<sup>7</sup>, simply refers the public to its investigations into terrorism and organised crime. Nonetheless, each Member State should have at least a liaison officer with Europol and therefore, the APPG may benefit from a Consultation with that officer to determine the nature and extent of Europol’s activities.

Joint cooperation in criminal matters was created within the Council Act of 29/5/2000 (Establishing Mutual Assistance in Criminal Matters between Member States of the European Union)<sup>8</sup>. This Convention provides for the methodology and rationale behind mutual assistance and should form the bedrock of how UK Police can either seek mutual assistance or a joint investigation; it also makes provisions for evidential matters.

The goals of the aforementioned Treaty & Provisions are however crystallised within the European Unions Judicial Cooperation Unit (EUROJUST), which provides for Joint Investigation Teams (JIT’s)<sup>9</sup>.

The Legal Framework for the creation of JIT’s can be found in the Council Framework Decision of 2002<sup>10</sup>. Article 1 provides:

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<sup>5</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2008:115:FULL&from=EN>

<sup>6</sup> <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1995:316:0001:0032:EN:PDF>

<sup>7</sup> <https://www.europol.europa.eu/about-europol>

<sup>8</sup> <http://www.eurojust.europa.eu/doclibrary/JITs/JITs%20framework/2000%20EU%20Mutual%20Legal%20Assistance%20Convention/CAonMLA-2000-05-29-EN.pdf>

<sup>9</sup> <http://www.eurojust.europa.eu/Practitioners/JITs/Pages/JITs-sitemap.aspx>

<sup>10</sup> <http://www.eurojust.europa.eu/doclibrary/JITs/JITs%20framework/Framework%20Decision%202002-465-JHA%20on%20JITs/CFDonJITs-2002-06-13-EN.pdf>

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*“By mutual agreement, the competent authorities of two or more Member States may set up a joint investigation team for a specific purpose and a limited period, which may be extended by mutual consent, to carry out criminal investigations in one or more of the Member States setting up the team”.*

Further, it states that a JIT may be set up where:

*“a Member State’s investigations into criminal offences require difficult and demanding investigations having links with other Member States”.*

The European Union’s, ‘Joint Investigation Teams Practical Guide’<sup>11</sup> (14/2/17) provides for a good overview of the setting up of JIT’s and in particular reference is made to those countries outside the European Union. At 3.1.1 of that document, it again repeats the type of case suitable for the setting up of a JIT as found in the Council Act 29/5/2000 (above). Important issues relating to evidence gathering can also be found at 2.1.

The APPG should refer to the Crown Prosecution Service (CPS) Guidance on Jurisdictional<sup>12</sup> matters. It sets out a criteria and a reference to the types of crime that can attract action within the UK jurisdiction. Importantly, it makes a clear reference to cooperation. On the question of costs and resourcing (where there is a reluctance to prosecute (investigated?)), in one jurisdiction or another, the CPS document states that:

*“The costs of prosecuting a case, or its impact on the resources of a prosecution office, should only be a factor in deciding whether a case should be prosecuted in one jurisdiction rather than in another when all other factors are equally balanced. Competent authorities should not refuse to accept a case for prosecution in their jurisdiction because the case does not interest them or is not a priority for the senior prosecutors or the Ministries of Justice. Where a competent authority has expressed a reluctance to prosecute a case for these reasons, Eurojust will be prepared to consider exercising its powers to persuade the authority to act.”*

As can be seen from this brief analysis, there are a range of possibilities open to the UK Police to help families and friends who may be in possession of important evidence. Cost or lack of resources should not be a factor in these cases. I would also offer that where such evidence does not exist, the routes discussed are also open to the Police to help those same families and friends navigate a very difficult scenario in unfamiliar territory. It would provide confidence and a check on an investigation, which may fall short of those victims, families and friends Rights under Article 6 of the European Convention on Human Rights - the Right to a Fair Hearing.

**Brexit however is a major issue in this discussion.**

**We are informed that all EU Law will be transferred into UK law on Brexit-Day. This does not however relate it appears to International Treaties or Conventions the UK has previously subscribed to.**

**As the issue for Victim’s Families and Friends are already difficult, the position post-Brexit suggests that whatever opportunities exist at this time for cross-border possibilities, those will be less evident following our departure from the European Union.**

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<sup>11</sup> <http://www.eurojust.europa.eu/doclibrary/JITs/JITs%20framework/JITs%20Practical%20Guide/JIT-GUIDE-2017-EN.pdf>

<sup>12</sup> <https://www.cps.gov.uk/legal-guidance/jurisdiction>

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**This requires urgent clarification from the British Government along with reassurance to the British Public that the facilities currently enjoyed will not be lost.**

**All steps must be taken to protect these opportunities along with ensuring that the UK Police recognise and proactively proceed with these opportunities for the benefit of UK Citizens.**

**Recommendations:**

My experience and of those who worked in HTW has led to much consideration of the problems faced by families when their loved-one's die in suspicious circumstances abroad; **the FCO is not the only answer.** In light of that experience, I would recommend that the following actions be implemented:

1. In the first instance, any action on these recommendations should be considered not in isolation; these recommendations indicate a multi-disciplinary approach;
2. **Tour Operators** should in Consultation with the UK Police, FCO, Victim Support and The Chief Coroner, design and implement a protocol for dealing with:
  1. General Crime, and
  2. Suspicious Deaths on Holiday (such a protocol should indicate actions within on-site and off-site death scenarios);
  3. Such a protocol must be made publicly available to all Consumers and provided directly to all Victims Families/Friends;
3. **The FCO** should in Consultation with Tour Operators, the UK Police, Victim Support and The Chief Coroner, design and implement a protocol that delivers:
  1. Clear information as to rights in General Crime cases. Such information to include rights under the European Convention on Human Rights, particularly on Rights as to a Fair Hearing, including information on cases that support the Right to a proper investigation of complaints. Such information should also act as a pointer to Public Compensation Schemes for Victims and how to access those schemes;
  2. Where suspicious deaths occur, that protocol should be extended to demonstrate what to expect from a police inquiry, the process of a non-UK Coroner, how you can challenge decisions or lack of action;
  3. It is also important for the FCO to guide the victim's family/friends as to the process of repatriation, documentation, insurance help and of the role of the UK Police and of the UK Coroner;
  4. This protocol should be publicly available and provided directly to the Victim's Family/Friends;
4. **The FCO** should without further delay institute a Public Consultation on the state of Travel Advisories. The FCO needs to recognise the deficits within and the need to provide a better guidance as to what to expect in the destinations British Citizens visit;
5. **The UK Police & ACPO** should in the first instance review the guidance as to serious crimes abroad contained within ACPO (Association of Chief Police Officers) guidance. It is recommended that this guidance be re-written to take into account the following:
  1. All International Instruments that allow for cross-border cooperation;
  2. A review of the European Convention on Human Rights and cases that support a Right to a Fair Hearing, including those that point to obligations on investigations and the quality of those investigations;
  3. Helping Victim's families/Friends to navigate issues of evidence and cross border cooperation;
  4. A clear protocol with the FCO to secure that cross-border cooperation;
  5. Recognition of any Protocols created by Tour Operators, the FCO & The Chief Coroner and how the Police can best help to secure the goals of such protocols;
  6. The guidance should be clearly available to the Public



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6. Once the **ACPO guidance has been updated**, then all **UK Police Service areas be obligated** to include such a guidance within their own Force Policy Documentation and to ensure that each Victim's Family/Friends are provided with a copy of that Policy Document;
  7. Finally, I would recommend that **The Chief Coroner** consults with Tour Operators, the UK Police, Victim Support to create a clear policy that:
    1. Recognises the challenges of jurisdiction following a suspicious death abroad;
    2. That mirrors the amended ACPO guidance;
    3. That lays great importance on evidence presented by Family/Friends and how to maximise that evidence;
    4. That creates a clear cross-border possibility/opportunities of cooperation between Coroners, either through legal instruments or initiatives;
    5. The Chief Coroners conclusions must be made publicly available and directly to the Victim's Family/Friends;
  8. In conclusion, all Stakeholders recognise the concerns of Survivors and must move beyond providing a 'tick-box' Service to the Victim's Family & Friends; care must also be deployed, in whatever jurisdiction, in introducing Family/Friends to legal assistance which may not offer appropriate experience.

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**Conclusion:**

The APPG is now at the centre of this debate and upon its shoulders rests a great responsibility to change these experiences for the benefit of future Survivors.

Through this paper and the Testimony received by the APPG, the misery experienced by Family & Friends of the deceased is laid bare for all to see.

Many do not understand how British Companies or the Authorities can be indifferent to their need for action or a desire for answers, be that at home or abroad.

Those in Authority may cry that their criticism is unfair and in some circumstances that may be correct.

Whatever the emotion, simply doing what has always be done is in my view, no longer a sufficient response against the backdrop of this human experience.

Consumers deserve to be served with not only better Travel Advisories, but with a codified methodology that clearly demonstrates what the various Authorities will do in these difficult scenarios.

The time for inaction or a perceived lack of desire to help fellow Citizens toward a better solution or answers in law is over; I strongly recommend that the APPG adopt the recommendations I have made in full and to cause parliament to create the conditions whereby these goals can be achieved.

Frank Brehany  
Independent Consumer Campaigner & Commentator  
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26 October 2018

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## **Appendix 1:**

### **“Who will weep for the Magaluf Mother’s**

On any morning, as you walk up the Carrer Punta Balena, the stench of vomit competes with the smell of disinfectant.

Another night has gone and a new day beckons to deliver another hedonistic opportunity, not just for those who have just left school, but it also seems, for those in their 30’s and 40’s.

Magaluf, like many popular resorts has fashioned itself around the promise of a no-holds barred experience. Consumers bring not only tales from Magaluf, but also from other popular resorts on Tenerife, Cyprus and other holiday destinations.

Stories told are usually delivered by victims or parent’s or brothers and sisters, often either reliving some horror or humiliation, or trying to understand or make sense of their loved-one’s last hours and the mystery that surrounds their movements.

Stories such as, the young woman, abducted in Magaluf, completely unaware of her surroundings with no knowledge of what was done to her, except that her cash and cards had disappeared and that she was ‘dumped’ in a forest some 35kms away from the resort.

Another experience relates to a young man, found dead on a Tenerife beach. He was found naked from the waist down.. The family had managed to piece together that he had been with some people, withdrew some cash and had apparently taken drugs. The family received little or no help from the UK Foreign Office, the resort police, the travel company or indeed, the UK Coroner. The only clue that they had was found in the box of clothes returned by the Guardia Civil, where they discovered that the phone found next to his body, was not his; a vital piece of evidence? Not so, at every turn they were frustrated because here was just another drunk Brit; no luxury of being able to rely on good detective work and International laws and agreements!

In another case, a young man was visiting a nightclub when he became friendly with a young woman. Little did he know that this woman, was the girlfriend of the bouncer. When the bouncer saw what was happening, he threw the young man out of the club. As the young man walked away from the club, a group of men started to follow him, chased him back to the ‘sanctuary’ of his hotel and threw him over the balcony; fortunately he survived but with serious injuries.

I have spoken with many young holidaymakers and their families and all recount terrible experiences, from being robbed at the cash till, to having their drinks spiked; some just barely having the presence of mind to find themselves a medical centre before the outcome of their intoxication becomes worse.

On speaking with travel reps, it is clear from those who continue working after one season, that the holidaymaker is manipulated from the moment the aircraft doors open.

At the opening of the main season, I have been told by those same reps that bars and clubs will apparently deliver to senior reps, a carrier-bag of cash; this ‘cash’ is designed to be an inducement for the reps of that company to ‘introduce’ the arriving holidaymakers to those same bars and clubs.

Seasoned reps describe the arrival of young people as ‘cash-cows’; ripe for the picking!

Those who arrive late at night are awoken in the early hours to some ‘faux’ emergency, only to be given a presentation of trips, pub-crawls and tours - the objective being to secure as much money

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from our younglings as quickly as possible. Reps who introduce groups of young people to a bar are provided with a small kick-back; providing enough to supplement their meagre income.

Young people are subjected to a sophisticated operation of extracting money from them; it starts with the first drink - accompanied by a 'free' drink. I have tasted one of these drinks; the one I tasted was frankly disgusting and was probably better applied to strip paint!

Spiked drinks and attentive staff soon increase the young person's vulnerability, no matter how well they think they can drink in the UK, nothing will prepare them for this. Strip clubs and tattoo-parlours provide another avenue to extract monies; young people, already heavily intoxicated, easily hand over their credit-cards only to find later that an 'additional' €200-300 has been added to the bill. Tattoos are liberally applied at a cost to the unwitting; many waking up to find new markings and messaging applied to their foreheads. Young women are prey to sexual assaults both from their fellow intoxicated holidaymakers and from those who invite them to commit sexual acts on the dance-floor of some bar or club. Photographs and videos abound and are circulated, not just for titillation but for cash. Drugs are freely available and openly sold to those who willingly partake.

The sceptical will by now be howling that they could just say 'no'; a fair comment. However, the vast majority of young holidaymakers have never been into an environment such as this and they are quickly intoxicated by spiked and extra drinks; all sense of control is lost, simply because they are not physically or mentally prepared for what is happening to them. It is easy to be critical of our youth; it is quite another thing to experience the extent of this type of tourist operation.

The other side to our youngling vulnerability lies also with those young people who decide to leave the UK for that job in the sun. Enticing websites appear to hop from entity to entity (the last time I investigated, the main one was apparently based in Tenerife) and promises a carefree life; a life of working in the sun, lovely accommodation and pay to boot!

The reality revealed is that young Brits arriving for that job were placed into a shabby apartment building and in one case up to eight young people sharing a two-bedroomed apartment. For some, they had to wait for several weeks before they were provided with work and that work usually started with them being 'employed' as an 'enticer' for some bar or club, relying on numbers they could capture to deliver a meagre commission. Some have revealed that after 4/5 weeks, they simply came home, penniless and humiliated. Others stuck it out a little longer and suffered greater humiliations.

Against this backdrop, British newspapers revel in the exposure of a shameful British youth; a disgrace to the Nation! By producing these stories, the British press reveals its own inherent laziness by a lack of investigation into the background of these resorts.

There is an argument that by choosing to travel to these resorts, young people are willingly exposing themselves to that risk or they just simply want a brief shot at an hedonistic experience; is life so dull in the UK? A recent article by [Daniel Briggs](#) highlights the many reasons why young people may choose to visit these 'sinbins'; the premise of the article does indeed offer a glimpse into their rationale. The article exposes their 'dreams', promoted and perpetuated by a 'Love Island' mentality, brochures and a political authority.

If everything I have written were not enough to make people think about the choices of holiday destination they make, then there is the issue of crime to consider. Crime is of great concern to the locals; the ordinary people of Majorca. There are some, at great personal cost, who have revealed information on this criminal control. Some protest on the streets, but are cautioned that they are hurting the tourism product and therefore the local economy! One person described how they would not go public, because they would end up as fish-bait in the Bay of Palma.

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Many of the popular resorts used by young people appear to endure a level of lawlessness, with the holidaymaker being the fall-guy. In Magaluf, there is the continual problem of what is referred to as 'mugging prostitutes'. These are usually economic migrants or refugees from Africa who ply 'their trade' in the resort. Whilst prostitution may well be a vehicle for survival, there is a practice of attracting a young man, taking him to the ATM and persuading the already intoxicated youth to extract more cash than is needed; in return, no service is provided, the cash is grabbed (sometimes with the card) and they run away. These 'mugging prostitutes' not only operate in Magaluf but also in other resorts on the island. One worrying aspect of this practice is the absolute failure to recognise that whatever their origin or reason for being in Majorca, someone is controlling them and yet, the xenophobic rationale is in full throttle rather than examining the how these women are being controlled and the abuse that is being perpetrated on them.

But let's consider the nature of the crimes being committed; there are the crimes surely of administering noxious substances through questionable drinks? There are the crimes of extracting additional cash from a credit-card so 'willingly' handed over? There are crimes of sexual assault and abuse? There are crimes of violence? There are crimes of drug-dealing? There are the crimes against travel insurance companies? You would have thought such crimes would concern any resort; who could imagine that amongst these resorts and azure seas, so much lay hidden from the holiday brochure?

My own simple investigation revealed that at the heart of some of these tourist operations, some British people were allegedly instrumental in the commission of these crimes. When I spoke with a senior Foreign Office diplomat, he expressed surprise at the depth of the experiences of UK holidaymakers and naively wanted me to provide him with the names of my contacts and of the alleged British perpetrators. When I suggested that the correct course of action should be for him to speak with the National Crime Agency (because it was likely they had information about criminal movements in Europe) and they in turn could talk to me. His response? He simply looked at me and walked away!

When you visit the island of Majorca, the one thing that strikes a 'non-holidaymaker' is just how much the island relies on tourism. Everywhere you look there is evidence of infrastructure, sponsorship, money and political power. The power of what has and may be continuing to happen on the island, is seen through the arrest and bailing of one the island's most notorious nightclub owners. A [recent article](#) on the consequences of his arrest reveals a commentary and set of allegations, that not only cuts to the heart of the political and commercial establishment, but seeps down to the very base-level of tourism operations.

The last time I visited Magaluf, it was revealed to me that the Chief of Police had been arrested for alleged corruption charges and on that very morning, he had been released from prison on bail and subsequently [suspended from duty](#) (at the time of writing this article, it is not clear if he has been exonerated or has stood trial and either convicted or acquitted). Concern was also expressed to me that some police-officers also owned some of the very establishments used by holidaymakers; apparently other police officers have also been arrested.

Corruption appears to be epidemic. When the new [Podomos government](#) came to power on the island, they discovered years of commercial and contractual abuse applied to infrastructure. Standards in public life have been laid bare, but so too are the standards by which we expect our young people to be protected.

This year alone, [3 young people](#) have been found on the ground at an apartment block in Magaluf. The 'sport' of balconing is blamed. Where death or serious injury occurs, authorities have in the past been direct in their blaming of young people for their fate (it was sometimes suggested that they were usually drunk, a drug-user, took a risk and in one case, the holidaymaker was accused of being in an incestuous relationship with her dead brother!).



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Relatives tell of very little counter-investigation being carried out - no questions are asked about the quality of a complex, does a complex satisfy regulations?

Another key question concerns licences. In another country, a young man was found floating at the bottom of a hotel swimming pool; subsequent pressured investigations revealed that the hotel did not have a licence for the pool and had no licence to operate a hotel - this was a hotel sold by a major tour operator to young people, who had presumably carried out the appropriate due diligence?

And so, yet another family, another Mother, following the death of her son, begins the journey of her 'new-normal'.

**Thomas Channon's Mother** Ceri, has understandably been 'angered' by what she sees as deficits at the complex where her son met his death. Balance that against the commentary from the Council of Magaluf, who have apparently declared buildings in the resort as 'absolutely safe'; they also claimed that buildings were 'regularly checked'. This same council official also claimed that falls were a 'direct result' of the abuse of alcohol.

Like many parents before her, Ceri commented:

*"[the resort] need[s] to change their attitudes towards our children [they were not] a means to generate a tourist industry [the children] deserve care, consideration and dignity".*

The two positions could not be more of a contrast and Ceri's comments echo what I have heard from family members many times.

In similar circumstances, the UK Foreign Office and Travel Company statements also offer a 'tea and sympathy' approach, offering nothing more than a repeat of the off-the-shelf phrases, **heard so many times before**.

The stock answer, sometimes with an offer of private meetings with family members, results only in a listening exercise, but not providing any resolute action to deal with the obvious problems.

Of course, UK Authorities will no doubt point to their many initiatives, one in particular stands out in Magaluf, where two **UK police** were deployed and apparently provided an air of 'familiarity'; the officers found themselves with no powers and the butt of media attention; a PR disaster. Stunts simply do not offer the kind of information and protection our young people deserve; it is arguable that all involved in the tourist product are at least guilty of looking the other way in the face of such organised complacency or indeed criminality?

The story of Magaluf is not unique; it is a story of many popular resorts, particularly those that attract young people.

It is a story of business, possible corruption, designed to make a quick buck for the few. In its wake are the stories of countless young people, battered, abused and sometimes paying the ultimate price.

Is it any wonder that local people are protesting about the rape of their living environment; that so many who protest at the massification of travel are branded as extremists, when all the while, travel companies and the authorities are complicit in the murky world of tourist development? The tears and anger of Ceri Channon are real, but in the face of such financial and political power, her voice will probably be no more than an echo of protest to this power.

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The indifference to her grief has been replicated many times; all the parents I have spoken with, from whatever resort, now living their version of hell, are all Magaluf Mothers; the only way things will change is if we help to catch their tears and ensure their sorrow and anger is heard.

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## **Appendix 2:**

Typical case offered by HTW to Family & Friends.

### **Commissioner of the Police for the Metropolis v DSD and NBV and Alio Koraou v Chief Constable of Manchester [2015] EWCA Civ 646 – [read judgment](#)**

The Court of Appeal has ruled that the police have a positive duty under Article 3 ECHR to conduct investigations into alleged ill-treatment by private individuals. There is a sliding scale from deliberate torture by State officials to the consequences of negligence by non-State agents. The margin of appreciation enjoyed by the State in terms of complying with the Article 3 procedural duty widens at the bottom of the scale but narrows at the top.

#### **Background**

This was an appeal brought by the Metropolitan Police Service (MPS) against the [decision](#) of Green J in the High Court that the police force were in breach of the prohibition on inhuman or degrading treatment or punishment under Article 3 ECHR. A summary of the judgment at first instance can be found [here](#).

The claimants were two women, DSD and NBV, who had been victims of rape and sexual assault committed by John Worboys, the “black cab rapist”. Administering sedative drugs and alcohol to his passengers, Worboys was the perpetrator of more than 105 assaults on women between 2002 and 2008.

In a conjoined appeal, the claimant Alio Koraou appealed a finding against him by HHJ Platts. He had been subject to an assault in a bar and part of his ear had been bitten off.

Both of these claims alleged that the failures of which the police were accused constituted violations of a duty to investigate said to be inherent in the right guaranteed by Article 3.

#### **Decision**

The Court of Appeal rejected submissions made on behalf of the MPS that a positive duty to investigate was not part of domestic law.

It held that allegations of ill-treatment of the gravity stipulated by Article 3 gave rise to a duty under that Article to conduct an official investigation. Moreover, this obligation was not limited solely to cases of ill-treatment by State agents, but could arise where crimes were committed by private actors.

#### **The reach and nature of the investigative duty**

The Court emphasised that an appreciation of the reach and nature of the investigative duty under Article 3 demanded a broader consideration of the aims of this part of the ECHR. It was important to keep in mind the Article’s overall purpose.

“The idea at the core of the Article is that of safeguarding or protection in all the myriad situations where individuals may be exposed to ill-treatment of the gravity which the Article contemplates” [para. 44].

Reference was made to a sliding scale: from deliberate torture by State officials to the consequences of negligence by non-State agents. The energy required of the State to combat or

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redress these ills is “no doubt variable, but the same protective principle is always at the root of it” [para. 45].

Further, the margin of appreciation enjoyed by the State as to the means of compliance with Article 3 widens at the bottom of the scale but narrows at the top. At the lower end of the scale where injury happens through the negligence of non-State agents, the State’s provision of a judicial system of civil remedies will often suffice. Serious violent crime by non-State agents is of a different order, lying higher up the scale. Such cases, which included those of the respondent women, generally require a proper criminal investigation by the State.

### **Were the MPS in breach of their duty?**

The Court went on to consider whether the judge had placed the cases in front of him too high on the sliding scale in terms of the degree of rigour required of the police investigation. A contrast between the ECHR and common law negligence was in this regard crucial. Whereas the purpose of English private law is compensation for loss, the strategic aim of the ECHR is to secure minimum standards of human rights protection. This distinction marks important differences in practice.

“The contrast between damages as of right and compensation at the court’s discretion is one. But another, in my judgment, goes to the standard applicable to the ascertainment of breach of the Article 3 investigative duty, as compared with what might constitute breach of a common law duty of care. Because the focus of the human rights claim is not on loss to the individual, but on the maintenance of a proper standard of protection, the court is in principle concerned with the State’s overall approach to the relevant ECHR obligation” [para. 67].

“The enquiry into compliance with the Article 3 duty is first and foremost concerned, not with the effect on the claimant, but with the overall nature of the investigative steps to be taken by the State” [para. 68].

Drawing on the account of Green J, the Court noted the judge’s findings that there were systematic and operational failures in the cases of both claimants. Applying the above legal principles to the facts, the Court held it to be “inescapable” that Green J was right to find a violation of Article 3.

### **Koraou**

In the second of the conjoined appeals, the Court affirmed the approach of HHJ Platts: a finding that there were clear failings in the police investigation would not lead in every case to liability under Article 3.

It had been noted by the judge that this was not the most serious of cases and that the allegations made by the Claimant were of questionable reliability. In his judgment it was not, therefore, a case where it would have been reasonable to require that the investigation left no stone unturned.

Account had to be taken of the fact that police resources were limited. Further, this was not a case where the police did nothing.

The Court concluded that HHJ Platts had weighed the proved deficiencies of the investigation, its difficulties as he found them to be, and the gravity of the case. His decision to dismiss the claim could not sensibly be faulted

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### **Appendix 3:**

#### **Historic Information Provided to Surviving Family & Friends in the case of Suspicious Deaths Abroad**

The following information was provided to family and friends who had contacted the helpline at HTW. Such information was generally passed by e mail and was specific to a country or a resort. In presenting this information to the APPG it is important to stress that this has not been updated since July 2017 and as such care should be taken with the information therein. It is not known if HTW continues to offer this information to Consumers. Nonetheless, the information provided a good anchor for Surviving Family & Friends and empowered them to deal with Authority and Process through what for them was proving to be an unwanted but extraordinary situation.

The information provided to a family member or friend always began with an expression of condolences along with an explanation that the information was lengthy but contained key information about how to deal with the situation they were now dealing with; I have not included such introductory paragraphs as they were generic in nature. At the end of these paragraphs, we would provide a conclusion to the information and again, this is not provided as this was specific and generic in nature.

#### **The information provided contained the following paragraphs:**

#### **Recommendations: (This paragraph was tailored to each case - each set of recommendations to a Surviving Family Member or Friend would be different)**

I am conscious of the need to grieve and deal with immediate matters, however, it is our view that you should consider the following actions:

1. If the family needs to obtain the services of a Spanish Lawyer (or if one has been obtained and you are uncertain with the current services), note our warnings below and speak with us without delay;
2. Obtain information from the UK Tour Operator under the Data Protection Act and report any failures to provide this information to the Information Commissioner (note we can help you with the request – information below);
3. Consider Legal Representation at the forthcoming Inquest – see our comments below;
4. Do not forget how important the EU Convention on Human Rights are to this situation – see our comments below including the urgent action you should take if you suspect any authority is in breach;
5. Ensure that all information from Tenerife is laid before the Coroner (advise him of any shortfalls in that information);
6. Seek early Police assistance to secure information from Tenerife to aid the Coroner over and above that you may already have if the Police in Tenerife have supplied you with information;
7. Challenge the Police/Crown Prosecution to secure cross-border cooperation as detailed below using the EU legislative provisions;
8. Ensure that you seek the support from the Coroners Officer and the Police Liaison Officer as described below;
9. Do not forget the potential tour operator liability under the Corporate Manslaughter Act; consider also the Police Powers under the Police & Criminal Evidence Act – see detailed notes below;
10. Write to the MP's who have recently discussed Victims of Crime issues as detailed below.



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## **Crimes Against Holidaymakers**

Historically, HolidayTravelWatch has heard from holidaymakers who have been the victims of crime within their holiday resorts; I will provide you with several examples:

1. We have dealt with Carbon Monoxide (CO) poisoning cases where allegations of 'negligence' under criminal law have been made. In one case in Tenerife a brother and sister were affected by CO with the result that the brother was killed and his sister was rendered severely disabled. The police and authorities enquiry was questionable, with allegations being made against the brother and sister of a very serious nature or were under the influence of drink or drugs (all of which were disproved); the police finally decided that the whole incident was an unfortunate accident. During the course of the investigation, the family were either refused access to key information and were advised to not 'agitate' the situation for fear of closing doors; there was ultimately a flawed investigation and little in the way of a resolution offered to the family;
2. In other CO cases (these are often criminal cases), many of the victims complaints are often ignored and they are accused of being under the influence of drink or drugs – no enquiry as to the source of their injuries are carried out;
3. In the past we have had knowledge of balcony deaths, where it is alleged that the young person has fallen off the balcony due to being under the influence of drink or drugs. In one case in Tenerife, the young person survived and we were told that he had simply smiled at a young girl in a bar, who unknown to him happened to be the girlfriend of a bouncer. We understand that the young man was beaten and chased out of the club back to his hotel. He was followed back to his room where it was alleged that these same men threw him over the balcony. In that case there was little police enquiry and the situation was made all the more tragic by the fact that he did not have travel insurance and a huge debt was incurred by his family to repatriate him back to the UK;
4. In cases of serious illness outbreaks at hotels, holidaymakers have suffered burglaries in their hotel rooms (often with a duplicate key) to steal away the evidence held on paper or cameras obtained by the holidaymakers;
5. Since 2010, we have received regular reports from holidaymakers of burglaries to their rooms, where cash, cameras, personal items are stolen. Without exception, every single case involved a duplicate key. In some cases the holidaymakers were asleep when they were disturbed by the burglaries. The holidaymakers in those cases were threatened with violence. In all cases the hoteliers often refused to involve the police, tour operator representatives simply wash their hands of any complaints and any involvement of the police results in little or no action being taken. The primary focus of such activity appears to be on the Islands of Majorca & Ibiza and on the Spanish mainland. In 2011 we called for direct action from the Guardia Civil, Hoteliers, Tour Operators and the British Foreign Office to deal with this problem, to date we have received no response to our calls. These links will demonstrate the issues to you - <http://www.holidaytravelwatch.net/2011/07/10/is-there-a-mini-crime-wave-in-majorca/> - <http://www.holidaytravelwatch.net/2011/08/15/is-there-a-mini-crime-wave-in-majorca-ii/> - <http://www.holidaytravelwatch.net/2011/07/26/is-there-a-mini-crime-wave-in-ibiza/> - <http://www.holidaytravelwatch.net/2011/07/26/call-for-action-on-spanish-police-tour-operators-the-fco/>
6. Since the beginning of 2012, we are aware of a number of balcony falls from hotels in the resort of Magalluf. It appears in the early part of this year up to six reports were made. In five cases these resulted in deaths; in one case, one which we dealt with, the same issues of being chased from an innocent situation by 'unknown men' resulted in that holidaymaker suffering with serious injury. The response by the police to the falls has been to subscribe them to an over indulgence in drink or drugs. In one case we read, the family revealed that the woman in question was a quiet and responsible lady and that she would not have been involved in such activity. In our view it raises serious questions about the quality of the investigations by the police or local authorities.

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7. In 2012, we have started to hear of more burglaries in rooms, the latest coming from a group of young men who when coming back to the hotel one evening found their rooms had been ransacked and all their personal possessions taken. They complained to the hotelier who refused to call the police but agreed to sign a statement prepared by the young men, so that they could present it to the police the next morning. During the night, the local police burst into their room and allegedly assaulted them and threw them out of the hotel;
  8. We have heard of further problems in Magalluf where at one hotel, young British male holidaymakers are being attacked by the security at the hotel and they also report that many other young people in the hotel have suffered with assaults;
  9. We are dealing with a large increase in sexual assaults against women since the beginning of 2012 in Egypt and Turkey; many of the women do not receive any assistance from the tour representative and are often dissuaded from making any complaints to the police;
  10. We are also dealing with a serious case of a violent racial assault upon a holidaymaker in Turkey, simply because the owners thought that he had spoken to a woman in the hotel bar. The holidaymaker was racially abused, beaten severely by the hotel staff and chased around the resort for several hours upon the threat that they were going to kill him. We have sought a meeting with the Turkish Ambassador to discuss this issue, to date, he has failed to even acknowledge both our's and the family's request;
  11. We are aware of other deaths which appear to have occurred in 'suspicious' circumstances. In all cases the police investigation appears to have been minimal often coming to a conclusion which mis-describes the character of the deceased. Some of the cases involve break-ins to rooms whereas others occur away from the hotel; in many cases little information is obtained and no one appears to be arrested for any crime;
  12. To demonstrate our concern on crime, and to illustrate that this is not an isolated issue, current reviews for the Hotel Riudor in Benidorm reveal deep-seated concerns from holidaymakers about the crime immediately outside their hotel and how the police and the tour operators are doing nothing to resolve the situation (bear in mind most of the negative reviews never reach these pages) - [http://www.tripadvisor.co.uk/Hotel\\_Review-g187525-d1010477-Reviews-Hotel\\_Riudor-Benidorm\\_Costa\\_Blanca\\_Alicante\\_Province\\_Valencian\\_Country.html#REVIEWS](http://www.tripadvisor.co.uk/Hotel_Review-g187525-d1010477-Reviews-Hotel_Riudor-Benidorm_Costa_Blanca_Alicante_Province_Valencian_Country.html#REVIEWS)

### **Criminality from the UK perspective**

In situations that I have written about above, common sense will often tell those affected what crime has been committed (eg: robbery, assault etc). The problem occurs when you try to apply that common sense to another country's criminal justice system. With Europe, the legal system is mostly codified, that is to say the laws have been written down. In the UK, for many years, we did not have that system, we relied on the common law, so for example, someone would be charged with 'assault contrary to common law' and so on. However, since 1968, we have started to codify our criminal law and for the most part that is the situation today, but the decisions made in Common Law are still used. If you have been the victim of a crime or a relative/friend of a victim of crime, it is sometimes difficult to establish or understand which criminal laws apply in a foreign jurisdiction, but the simple rule is that as we all now have a mostly codified set of systems, the following offences would or should be incorporated into each EU country:

- A. Going equipped to commit a crime;
- B. Being an accomplice to a crime;
- C. Attempted Burglary;
- D. Burglary;
- E. Aggravated Burglary (that is going into commit a burglary but committing another crime such as assault, criminal damage etc);
- F. Robbery;
- G. Assault occasioning actual bodily harm;
- H. Assault occasioning actual bodily harm with intent;
- I. Manslaughter;

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J. Murder.

### **Assistance from the Foreign & Commonwealth Office**

For many years, the Foreign Office (FCO) came under severe criticism for their lack of assistance to UK citizens. It is fair to say that the FCO have made great strides to guide citizens of how their service can assist when a problem arises. In cases such as burglaries, the FCO provides services as described at this link - <http://www.fco.gov.uk/en/travel-and-living-abroad/when-things-go-wrong/crime/> In cases such as suspicious deaths abroad, the FCO provides detailed advices as to what they can and cannot do - <http://www.fco.gov.uk/en/travel-and-living-abroad/when-things-go-wrong/death-abroad> As you will see from the last link, the FCO will facilitate progress on how to deal with death of loved one's abroad but always defer to legal advices. We have dealt with some cases where the family have been advised 'not to make waves' as this could potentially close doors. We would always advise that when confronted with that logic, then a more senior member of the FCO team should be spoken with to obtain an explanation of why legitimate questioning should not be pursued. We also note that that provide an overview of processes and in making that comment they advise that legal assistance should be sought. Whilst we have dealt with holidaymakers who have obtained the assistance of a Spanish Lawyer or Abigado, many have discovered that they have entered a minefield of costs difficulties and sometimes the Abigado does not have the necessary experience to deal with situations like this. If you have found yourself in this situation, and are unsure how to deal with this, then you should speak with us and we will guide you further, possibly with the initial assistance of a UK based Travel Lawyer.

### **Information from a UK Tour Operator**

As is often the case, victims families find themselves caught in 'Ping-Pong' correspondence with a tour operator. The tour operator will either have provided little assistance in the resort and will often deny that a problem exists at a hotel, where burglaries, assaults or worse offences are a feature of the property. There is no question that events surrounding problems within a resort will have been recorded by both the hotel representative and the resort manager for a period of time. You should also be aware that they will have monitored travel review websites through the season and will have received complaints from holidaymakers. If you consider that the tour operator was less than helpful or may have information which demonstrates problems within the resort, then we would strongly recommend that you make an application for information on behalf of the estate under the Data Protection Act - [http://www.ico.gov.uk/for\\_organisations/data\\_protection.aspx](http://www.ico.gov.uk/for_organisations/data_protection.aspx) We are happy to help you draft such a letter and assist with the list of questions which should release documents they have created. Remember, if they refuse, you can report their refusal to the Information Commissioner who will examine the reasons behind their refusal and hopefully resolve the matter.

An important consideration with regards to a tour operators liability rests on two points:

1. Under Regulation 15 of the Package Travel Regulations - <http://www.legislation.gov.uk/uk/si/1992/3288/contents/made>, they are responsible for failures in the contract and also responsible for the actions of their agents and servants. They can evade such liability if they can show that the 'event' was due to the actions of the holidaymaker, it was the fault of a third party or what happened was simply unforeseeable or could not be foretold. Remember, criminal situations are rarely one-off events; there will be a range of criminal activity which on occasions leads to a death. If the tour operator is aware of such activity and ignored the warning signs and did nothing to protect holidaymakers, then there is a chance that liability under the Regulations could be established; only qualified legal assistance can help you establish the opportunity to develop this route;
2. Companies can now be pursued for their failures under the Corporate Manslaughter Act; I shall deal with this important area below.

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## **The Coroners System in the UK**

You are now engaged within the Coroners system - [http://www.direct.gov.uk/en/governmentcitizensandrights/death/whattodoafteradeath/dg\\_066713](http://www.direct.gov.uk/en/governmentcitizensandrights/death/whattodoafteradeath/dg_066713). A Coroner is obliged to hold an inquest ([http://en.wikipedia.org/wiki/Inquests\\_in\\_England\\_and\\_Wales](http://en.wikipedia.org/wiki/Inquests_in_England_and_Wales)) whenever a death occurs outside the UK. The Coroners Court is not a court of blame, it is simply there to establish facts surrounding the death of [NAME] and to make a conclusion as to what happened. The Coroner's powers are contained within the Coroners Rules 1984 - <http://www.legislation.gov.uk/uksi/1984/552/contents/made> - these rules govern the whole process of the inquest and indeed how the Coroner will conduct the hearing. You should note Rule 24 which provides the Coroner to call someone to answer questions on their conduct; this could technically refer to the tour operator, the hotelier or any other witness. Most Coroners appoint a Coroners Officer who will liaise with you to discuss the process of the inquest and the results of tests. Any tests carried out on [NAME] will produce a preliminary finding as to the cause of death or will be subject to further amendment once the tests are returned; if the tests are inconclusive, further discussions will be had as to the options. It is also possible that bodily samples will be taken; you should be advised as to what will happen to those samples and you should be involved in any decision making on this sensitive issue. Whatever questions you may have, you should ask the Coroners Officer who should be able to answer any queries; if they are unable, then they will refer to the Coroner. It will be the case that in a case such as this, you will be advised to seek legal assistance to help you at the inquest. We can help you find such assistance and would hope that you could secure such assistance either on Legal Aid or through a 'pro bono' (free) facility. Obtaining such assistance can help you establish facts at a stressful time and will help the Coroner manage the information and the facts of the case; this will ultimately help with his final verdict.

## **What is the nature of the criminal system in Spain?**

With regards to the police, the systems are not always like the system we have here in the UK. Continental police services tend to be broken down from a National Police (Spain - Guardia Civil), Judicial Police to local Police (Police Municipal or Tourist Police) – dependent on the country where the death occurred. There are further breakdowns in some countries dealing with issues like tax or financial crime, or you may have a over-arching police service such as the FBI which deals with cross federal state crimes. In the EU we do not have such a Police body, but we do have Europol which deals with coordination of EU Police forces on National security issues and Interpol which is primarily a clearing house for information with some powers for International warrants.

Where crimes are committed, travel insurers will often insist that you report the matter to the police. In some cases and in some countries, the police demand a fee for the administration of the report and can in some serious cases require you to attend specialist units who will deal with the complaint.

In Spain there are several procedures for dealing with crime:

1. Procedimiento penal ordinario por delitos graves (Serious Crimes);
2. Proceso penal abreviado (A shortened criminal procedure);
3. Proceso penal abreviado con juicio oral inmediato (A quick criminal procedure);
4. Procedimiento de faltas (Minor offences).

Before criminal proceedings can start, they have to establish that a crime has been committed.

We understand that several investigations take place led by the Judicial Police. Once a 'crime' has been established, they then work to establish who committed the crime; once these facts are

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established then the criminal procedure can commence. The Judicial Police are part of the Judicial system and the Prosecution. At this stage 'La instruccion' is conducted by 'el jeez instructor' (Judge) who will not be allowed to be part of the final trial. The Judge has wide powers to investigate, any hearing he holds is usually in secret and he has control of all aspects of the investigation and will give his instructions to the Judicial Police and the Prosecutor. However, both the Judicial Police and the Prosecutor can offer their thoughts on how the investigation should proceed and he will usually make orders on their recommendations. Investigations will produce findings and documentation and this is clearly why the FCO and indeed ourselves recommend that you have representation in Spain. You should also read our comments about Human Rights below. Again, we can help you access such guidance with the caveats we have given above.

### **The Criminal Process in Turkey**

We note that Turkish Lawyers are essentially allowed to practice after they have completed one year's training post graduation; this contrasts with most jurisdictions where the period is two years. On 'qualification' they are then classed as advocates and have to register with the local bar association.

In any case involving criminal matters it is important to note that the concept of jury trial is not known in Turkey; decisions are made by a Judge or a panel of 3 Judges. Criminal Judges are recognised as qualified advocates and will wear a black robe with a red collar.

Criminal Judges serve in the penal courts and these are classified as:

1. The Assize Court;
2. The Penal Court of First Instance (these are courts that deal with minor offences with one Judge sitting – there is one in every city or district divided up sometimes to cover the population or specialisms);
3. The Penal Court of Peace (the heavy penal courts – the central criminal courts – deal with offences attracting 5+ years imprisonment and involve one main Judge sitting with 2 others and a criminal prosecutor. Again, there is one in every City and these are sometimes divided up to cover the population and the specialisms required);
4. The Court of Cassation – They deal with appeals from the criminal and civil courts.

Public charges are brought by the Prosecutors (the Prosecutor of the Republic) and they work in the Chief Office of Prosecution. We understand that Prosecutors are divided into specialisms in respect of the law that they cover.

It is clearly the duty of the Prosecutor to investigate the crime which logically should be reported to him by the police. Through his office he has powers and resources to investigate the crime and bring charges before the court against any accused. We would draw your attention to the Turkish Penal Code which deals with the criminal process. It does not have a very good index, but an examination of the code (it is also written in English) reveals that there are issues covered such as the Prosecutors and Courts responsibilities to investigate the crime, experts, witnesses, the right to compensation etc - <http://www.justice.gov.tr/basiclaws/cmkk.pdf>



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## **European Human Rights Law in Criminal Investigations**

The most important aspect of all inquiry, whether it is by the UK Police, the UK Coroner, the Spanish Coroner, the Spanish Courts and the Spanish is their obligations to you and your family under the EU Convention on Human Rights - [http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/CONVENTION\\_ENG\\_WEB.pdf](http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/CONVENTION_ENG_WEB.pdf). This Convention is applied in most EU member States and this is the case in Spain and the UK. I would point out that the Canary Islands hold special status within the EU, but we believe that the Convention obligations are applicable there; clearly legal assistance would guide you on this issue. The key 'rights' within the Convention are:

1. Article 2 – The Right to Life;
2. Article 3 – Prohibition on Torture, however the article also refers to inhuman or degrading treatment which may have been experienced by the family during the course of the investigation in Tenerife or via subsequent failures in the processes thereafter;
3. Article 6 – the Right to a Fair Trial (this will also include investigations – I will deal with that below);
4. Article 8 – the Right to Private & Family Life;
5. Article 13 – The Right to an Effective Remedy.

The one area which causes victims and their families many problems is the manner and method of the investigation. A failure in an investigation has many implications not least of which is the right to a fair hearing and the right to an effective remedy.

There are additional failures in rights which affect privacy and family life. There are several cases of importance (See this link Page 28 on investigations) - [http://www.coe.int/t/dghl/cooperation/capacitybuilding/Source/documentation/Echr\\_and\\_crim\\_procedure.pdf](http://www.coe.int/t/dghl/cooperation/capacitybuilding/Source/documentation/Echr_and_crim_procedure.pdf): Aksoy v Turkey (1997), Aydin v Turkey (1998), Kaya v Turkey Court (1998), Kurt v Turkey (1999) (these are cases you can rely on but are subject to subsequent cases). The failures in criminal investigations included:

1. Failing to ascertain possible eye witnesses;
2. Failing to question suspects at an early stage;
3. Failing to search for corroborative evidence;
4. The adoption of an over deferential attitude to those in authority;
5. Failing to follow up on proper complaints;
6. Ignoring obvious evidence;
7. Failing to carry out a prompt post-mortem;
8. Failing to test for gunpowder traces.

It is important to remember that at each stage of the proceedings since [NAME] died, consideration must be given to these important issues as they will help you ensure that a fair enquiry has been carried out. If you suspect that a breach of Human Rights has occurred then you will need legal assistance to help you further.

### **Possible Assistance to the Coroner**

As I highlighted above, the Coroners Court is a Court of Inquiry. In order for a Coroner to establish the facts before him and to highlight and deficiencies in the inquiry into [NAME] death, it seems logical that any information from the investigation in Tenerife should be laid before him. We would recommend that you seek the assistance of the Coroners Officer and the Police Family Liaison Officer on this important point; if you encounter difficulties, then please come back to us for further guidance.



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## **Possible Assistance from the UK Police to the Coroner**

It is quite likely that that your local police will appoint a Family Liaison Officer to guide you generally on the legal issues on this case. It is important to remember, the UK police have no power to investigate matters in Tenerife, that is solely a matter for the Spanish Police. That said, you may have heard of the expression ‘the internal market’; in many respects crime and police operations have a similar ‘market’ whereby cross-border cooperation is possible. A good example of this in action is through the Madeleine McCann case. It is rare to find any such cross-border cooperation and is usually limited to serious crime and as I will demonstrate below, concerns issues such as terrorism, child trafficking etc. That said, there is a logic that in order for the Coroner to complete a full inquiry, access to investigation papers, witnesses etc should be secured. There is a strong argument that the UK Police could assist in this regard through the mechanisms I describe below.

## **Possible Assistance from the UK Police (Usually included if there were important issues related to investigation/evidence/forensics)**

I have carried out some further research and believe that there are a number of areas where your local police should provide assistance to you and your family and there may be a possibility of securing forensic assistance from them. This is by no means guaranteed and it may mean that as a family you will have to consider the earlier forensic opportunities.

I will now link you to some key police documents which should help you make your argument for greater police assistance to you and your family.

<http://www.acpo.police.uk/documents/crime/2006/2006CBAMIM.pdf> - This is a document produced by the Association of Chief Police Officers which is then implemented nationally. Please refer to Section 8 of this document. It seems clear that the Police should liaise with the Foreign & Commonwealth Office to establish assistance that can be provided. It seems also clear that a Senior Investigating Officer should be appointed to help collate the evidence that may be relevant in the crime complaint. I would suggest that you read/digest its contents and apply the provisions against anything that has or has not been given to you and your family.

[http://www.staffordshire.police.uk/media/doc\\_rep/policy\\_strategy/pdf/sudden\\_death](http://www.staffordshire.police.uk/media/doc_rep/policy_strategy/pdf/sudden_death) - This is a Staffordshire Police document. It provides the force with a policy on how to deal with sudden death and will follow the National guidelines above. On page 4 of the document, it advises that the police will attend deaths arising from or connected to ‘a death where the cause is unknown and an investigation is ordered by the Coroner, this could include where a death occurs abroad’. The policy begins with a statement at page 1 which states ‘This Policy applies to any death that has come to the attention of Staffordshire Police by reasons of it being a death that has not occurred naturally’. Note the fact that it applies to any death – there appears to be no jurisdictional limit – and – the policy applies to any death ‘that has come to the attention of...’. At 1.4 they state that they will conduct a ‘thorough investigation into the circumstances of the death’ and then they refer to the principles of the European Convention on Human Rights. They also add that they will comply with local and national guidelines on how cases should be investigated. They also represent that they will provide ‘effective’ liaison between themselves and the surviving family. They also highlight that if they have to work with other agencies that they will create an agreement as to the division of responsibility (so for example, the Foreign Office/Tenerife Police?). On page 3 they state of investigations that ‘The public expect such offences to be investigated thoroughly, to high professional standards and by officers who are skilled and experienced. On the same page they refer to the very likely involvement of officers with specialist knowledge.

I think that you should write to the Staffordshire Police (to the Chief Constable) along the following lines:

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Dear Sirs

[NAME] – Suspicious Death Tenerife [INSERT DATE]

I write to you with regard to the suspicious death of my son in Tenerife which is now subject to a hearing before the Coroner at [INSERT LOCATION].

[INSERT A PARAGRAPH ABOUT THE FACTS]

I am concerned that certain aspects of investigation have not been carried out by the Tenerife Police, but I am also concerned that certain aspects of assistance that should be logically offered to me and my family has either not been provided by your force or by the Foreign & Commonwealth Office.

Murder or suspicious death is a serious offence no matter where it happens; we feel that it is incumbent on all authorities to examine all the evidence so that those responsible can be brought to justice.

I have read the 2006 ACPO document on how murder cases should be investigated, particularly when the death has taken place abroad. I have also read your own policy document – ‘Sudden Death - Investigating and Reporting’. It is clear in your own opening paragraph that the policy applies to ‘any death’ so borders do not have any influence it appears, and you go on to say that this policy applies to any death that has come to the attention of your force. At 1.4 you describe how you will ‘conduct a thorough investigation into the circumstances of the death’ and I can see that you refer to the principles of the European Convention of Human Rights which as I now know refers to Article 6 – the Right to a Fair Hearing. I know that there has been some liaison between your officers and the Coroner but I am not convinced that sufficient heed has been paid to any role the Foreign Office could play in this case and that we are receiving the full benefit of a thorough investigation either in Tenerife or here in the UK.

In particular, I have in my possession clothes that [NAME] wore at the time of his death and a telephone which was found on the ground next to [NAME] when he was found. This phone did not belong to [NAME]. We have established that no forensic examination has been carried out on [NAME] clothes but more importantly the telephone that was found next to him. In addition, no one from your force has examined these items nor submitted them for forensic examination.

My family do not feel that all avenues have been explored and I would ask that you and your officers urgently examine these items and carry out a full forensic analysis, particularly the phone.

It is also important to us that if a Senior Investigation Officer has been appointed (if one hasn't I would like to know why this is not the case), that he take charge of this important matter and advise also what steps he is taking to liaise with the Foreign Office and what other issues he has discovered during the course of his enquiries and how those enquiries have been reported to the Coroner.

I have sent a copy of this letter to the Foreign Office for their comment and a copy to the Coroner for his information.

[INSERT ANY FURTHER COMMENT YOU MAY HAVE EITHER PERSONALLY OR BY REFERENCE TO THE DOCUMENTS I HAVE REFERRED TO ABOVE]

[NAME] deserves to still benefit from his rights and the right to be heard and those who may be found to be responsible to be brought to justice.

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Yours Sincerely,

Etc etc

You should as the letter states, send a copy to the Foreign Office and ask them to provide a comment by return and you should also send a copy to the Coroner for his information.

### **European Conventions/Treaties on Cross Border Police Cooperation**

As I have highlighted above there are a number of potential EU laws/Processes that foster cross-border Police cooperation; I shall describe each source:

1. The Prum Decision was an agreement between several EU Countries to deal with cross-border and serious crime. Its intention was to deal with terrorism and other such serious offences, but led to the creation of an EU wide law incorporating its provisions - [http://en.wikipedia.org/wiki/Pr%C3%BCm\\_Convention](http://en.wikipedia.org/wiki/Pr%C3%BCm_Convention);
2. Council Decision 2008/615/JHA – This formalised the Prum Decision on serious cross-border crime. Its all about closer police and judicial cooperation (see preamble 17) but seems aimed at terrorist offences; there is an argument to challenge its limitations as murder is clearly a serious offence - <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:210:0001:0011:EN:PDF>
3. At DG Justice in Brussels (Home Affairs), they set out the various ways in which cross-border cooperation could be achieved (again strong reference to terrorist offences but challengeable?) - [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/police-cooperation/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/police-cooperation/index_en.htm)
4. EU Council Framework Decision – Joint Investigation Teams – 2002/465/JHA - <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:162:0001:0003:EN:PDF>. This is potentially significant. It allows for police forces throughout the EU to set up joint investigation teams. Again the emphasis is on terrorism, however the decision refers to ‘one of the Unions’ main objectives is to provide citizens with a high level of safety’. Importantly it states that a joint investigation may be set up where – ‘a Member State’s investigations into criminal offences require difficult and demanding investigations having links with other Member States’. It is our view that this is a potential challenge that could be made to local police or for that matter, the Crown Prosecution Service on the basis of the facts relating to this hotel, the crime and the reports made by British Holidaymakers – the argument is that this is a serious situation that requires joint efforts to collate the information between 2 jurisdictions;
5. The European Convention on Mutual Assistance in Criminal Matters (1959) - <http://conventions.coe.int/Treaty/en/Treaties/html/030.htm> - may be of minor assistance. It is designed to foster cross-border cooperation but only where punishment of the offender lies in the jurisdiction of those requesting assistance. As I have stated above, this could not be in this country – the police have no overt powers of investigation and any offender could not be punished in the UK, however, given that the inquest is taking place in the UK and that there is a potential benefit arising from his inquiry, there is perhaps the possibility that the UK Police could invoke this assistance to aid the Coroner which in turn could aid the Spanish Courts;
6. I add a link to the Benelux Treaty of 1962 which again demonstrates the possibility of cross-border cooperation - [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/polju/en/EJN220.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/polju/en/EJN220.pdf)
7. I thought that you might like to see a transcript of a discussion in the UK parliament (<http://www.publications.parliament.uk/pa/cm201213/cmgeneral/euro/120626/120626s01.htm>) about support for victims of crime. This debate took place in June 2012 and reveals that a Regulation/Directive is currently being considered by the EU Parliament and the Council of Europe (co-decision); it highlights many issues of cooperation and provides a useful list of UK MP’s who have an interest in this subject;

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8. This is the proposed Directive which has largely been agreed by EU Member States and therefore arguable that they should already be taking steps to aid victims through its measures - [http://ec.europa.eu/justice/policies/criminal/victims/docs/com\\_2011\\_275\\_en.pdf](http://ec.europa.eu/justice/policies/criminal/victims/docs/com_2011_275_en.pdf)
  9. Another important cross-border 'law' can be found in the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000 - <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2000:197:0001:0023:EN:PDF> This Council Act provides for a clear method on providing mutual assistance and joint investigations as detailed in point 4 above. Again we would suggest that a challenge to the local police or the Crown Prosecution Service could elicit important steps using this 'law'. The benefit is to repair any deficit in the investigation and bring about clear assistance to the Coroner in the UK.

Remember, a failure by Public Authorities to assist you where there is a need or evidence to support the notion, there may be issues arising under the Human Rights Convention.

### **Letters Rogatory**

This is simply a request to extract information or to create the process of information flow or joint investigation. Each of the above 'laws' sets out the process, but I thought that it would be useful to you if I provided a brief description on this issue - [http://en.wikipedia.org/wiki/Letter\\_rogatory](http://en.wikipedia.org/wiki/Letter_rogatory)

### **The Corporate Manslaughter Act & the Tour Operator**

In returning to the tour operator, it is important to note that whilst the Corporate Manslaughter Act is primarily a UK Jurisdiction Law, there is a strong debate within the Travel Industry as to the extent to which this law will apply where holidays are sold. Remember, the issue here is, did they know that wide-spread crime was being committed, did they ignore the warnings of holidaymakers and did they continue to sell holidays to this hotel/destination knowing of the problems regardless without any consideration of Consumer safety?

To illustrate the debate, I highlight the following comments from key members of the Travel Industry:

During the European Tour Operators Association meeting in June 2008 (Travel Trade Gazette 5/6/08), Cynthia Barbour (Solicitor K&L Gates) stated that she felt that the wording of the Act left the position 'unclear' as to whether a company could be prosecuted for the death of a holidaymaker on foreign soil. She is quoted as saying, "*There are two schools of thought on this...In my view an operator could be at risk of prosecution if a decision it made in the UK was grossly negligent and led to the accident overseas*", She went onto to provide an example concerning fire safety issues in a hotel, she asked, "*If letters are sent by guests to the operator pointing out the dangers, but someone from the operator says what the hell, lets take our chances, and people then die, could they be prosecuted?*"

I would point you to Section 2 which describes what is meant by a duty of care and you will note that it includes a situations where goods and services are supplied. It is important to note the comments above and the fact that the contract is made in the UK whatever about where it is delivered – remember – the point here is that by their contract, the tour operator has a term implied that the product that they supply will be safe and this may be an important point if the problem originates at the hotel - <http://www.legislation.gov.uk/ukpga/2007/19/contents>

### **Potential Police Powers under the Police & Criminal Evidence Act (Corporate Manslaughter)**

In considering the Corporate Manslaughter Act potential against tour operators, there is a question of accessing the evidence contained within tour operators records as I have described above. In

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our view this is a matter that should be discussed with the Police and the Crown Prosecution Service. In particular, the Police Powers under the Police & Criminal Evidence Act of searching premises for evidence – if there are no powers under the Corporate Manslaughter Act, then the following should be considered:

1. Section 8 – Justices have the power to issue warrants to search and enter premises;
2. Section 8 (1) – This states that there are several reasons for granting such a warrant – an indictable offence has been committed; there is material on the premises that is likely to be of value to the investigation; the material is likely to be relevant evidence; it does not include legal privilege or excluded material;
3. Section 8 (1 A) – includes multi-premises;
4. Section 8 (1 B) – the Justice must be satisfied when making an all-premises warrant that there is reasonable grounds to search all the said premises and that it is not reasonably practicable to name all the premises.

I would warn you that there is often resistance to such proposals, but again I would remind you that if you have evidence to suggest that an offence of Corporate Manslaughter has been committed, you should not forget the provisions contained within the Human Rights Convention!

### **Criminal Injury Compensation**

This is a difficult area because there is the potential to make a claim under the Criminal Injuries Compensation scheme in Spain - [http://ec.europa.eu/civiljustice/comp\\_crime\\_victim/comp\\_crime\\_victim\\_spa\\_en.htm#2.1](http://ec.europa.eu/civiljustice/comp_crime_victim/comp_crime_victim_spa_en.htm#2.1). Unlike the UK, in certain circumstances, the extended family can make a claim. For the present I will simply link you to that information and would suggest that this is something that will require Legal Assistance if you wish to take that route; please note we can assist you in that regard.

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## **Appendix 4:**

**This Appendix contains text and information from the Consolidated Treaty of the The Treaty of the Functioning of the European Union. It also contains Text from the Europe Convention. The illustration of this text is designed to help the APPG of the possibilities arising from our membership of the European Union. The APPG should consider the replication of this information as a starting point when considering the issues subject of their enquiry with regards to UK Police action within the European Union.**

Consolidated Treaty of the Treaty of the European Union & The Treaty on the Functioning of the European Union:

Articles 87 to 89:

### CHAPTER 5 POLICE COOPERATION

Article 87  
(ex Article 30 TEU)

1. The Union shall establish police cooperation involving all the Member States' competent authorities, including police, customs and other specialised law enforcement services in relation to the prevention, detection and investigation of criminal offences.

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures concerning:

- (a) the collection, storage, processing, analysis and exchange of relevant information;
- (b) support for the training of staff, and cooperation on the exchange of staff, on equipment and on research into crime-detection;
- (c) common investigative techniques in relation to the detection of serious forms of organised crime.

3. The Council, acting in accordance with a special legislative procedure, may establish measures concerning operational cooperation between the authorities referred to in this Article. The Council shall act unanimously after consulting the European Parliament.

In case of the absence of unanimity in the Council, a group of at least nine Member States may request that the draft measures be referred to the European Council. In that case, the procedure in the Council shall be suspended. After discussion, and in case of a consensus, the European Council shall, within four months of this suspension, refer the draft back to the Council for adoption.

Within the same timeframe, in case of disagreement, and if at least nine Member States wish to establish enhanced cooperation on the basis of the draft measures concerned, they shall notify the European Parliament, the Council and the Commission accordingly. In such a case, the authorisation to proceed with enhanced cooperation referred to in Article 20(2) of the Treaty on European Union and Article 329(1) of this Treaty shall be deemed to be granted and the provisions on enhanced cooperation shall apply.

The specific procedure provided for in the second and third subparagraphs shall not apply to acts which constitute a development of the Schengen acquis.

Article 88  
(ex Article 30 TEU)



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1. Europol's mission shall be to support and strengthen action by the Member States' police authorities and other law enforcement services and their mutual cooperation in preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by a Union policy.

2. The European Parliament and the Council, by means of regulations adopted in accordance with the ordinary legislative procedure, shall determine Europol's structure, operation, field of action and tasks. These tasks may include:

(a) the collection, storage, processing, analysis and exchange of information, in particular that forwarded by the authorities of the Member States or third countries or bodies;

(b) the coordination, organisation and implementation of investigative and operational action carried out jointly with the Member States' competent authorities or in the context of joint investigative teams, where appropriate in liaison with Eurojust.

These regulations shall also lay down the procedures for scrutiny of Europol's activities by the European Parliament, together with national Parliaments.

3. Any operational action by Europol must be carried out in liaison and in agreement with the authorities of the Member State or States whose territory is concerned. The application of coercive measures shall be the exclusive responsibility of the competent national authorities.

Article 89  
(ex Article 32 TEU)

The Council, acting in accordance with a special legislative procedure, shall lay down the conditions and limitations under which the competent authorities of the Member States referred to in Articles 82 and 87 may operate in the territory of another Member State in liaison and in agreement with the authorities of that State. The Council shall act unanimously after consulting the European Parliament.

#### The Europol Convention 1995

##### Annex (Partial Reproduction):

##### ANNEX

Referred to in Article 2

List of other serious forms of international crime which Europol could deal with in addition to those already provided for in Article 2 (2) in compliance with Europol's objective as set out in Article 2 (1).

Against life, limb or personal freedom:

- murder, grievous bodily injury
- illicit trade in human organs and tissue
- kidnapping, illegal restraint and hostage-taking — racism and xenophobia

Against property or public goods including fraud:

- organized robbery
- illicit trafficking in cultural goods, including antiquities and works of art — swindling and fraud
- racketeering and extortion
- counterfeiting and product piracy
- forgery of administrative documents and trafficking therein

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- forgery of money and means of payment
  - computer crime
  - corruption

Illegal trading and harm to the environment:

- illicit trafficking in arms, ammunition and explosives
- illicit trafficking in endangered animal species
- illicit trafficking in endangered plant species and varieties
- environmental crime
- illicit trafficking in hormonal substances and other growth promoters.