

WORK-RELATED DEATHS

A protocol for liaison



FOREWORD

The first version of this protocol was introduced in 1998, and was signed by the police, the Health and Safety Executive and the Crown Prosecution Service. This is the second version, revised to extend our partnership to include local authorities through their representative body, the Local Government Association, and the British Transport Police, and to emphasise further the importance of working together to investigate thoroughly, and to prosecute appropriately, those responsible for work-related deaths in England and Wales.

We were pleased by the level of response to the public consultation exercises, which produced some excellent and extremely helpful suggestions. We are acutely conscious of the strength of public feeling about workplace fatalities, and how these tragic incidents devastate people's lives.

All five signatory organisations recognise the need for investigating authorities to talk to each other and to share information and best practice. We appreciate that people want to be confident that we are doing all that we can to co-ordinate our efforts and to co-operate with each other in the best interests of public safety and of those affected by work-related deaths.

We endorse this revised protocol. We believe that it provides an enhanced framework for liaison, and that its introduction will help ensure that all five signatory organisations work in partnership to deliver the high standard of professionalism that the public requires and deserves.



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INTRODUCTION

This protocol has been agreed between the Health and Safety Executive (HSE), the Association of Chief Police Officers (ACPO), the British Transport Police (BTP), the Local Government Association and the Crown Prosecution Service (CPS). It sets out the principles for effective liaison between the parties in relation to work-related deaths in England and Wales, and is available to the public. In particular, it deals with incidents where, following a death, evidence indicates that a serious criminal offence other than a health and safety offence may have been committed. The protocol addresses issues concerning general liaison and is not intended to cover the operational practices of the signatory organisations.

HSE, local authorities, the police and the CPS have different roles and responsibilities in relation to a work-related death.

HSE and local authorities are responsible, under section 18 of the Health and Safety at Work etc Act 1974 (HSW Act), for making adequate arrangements for the enforcement of health and safety legislation with a view to securing the health, safety and welfare of workers and protecting others, principally the public. Each has specific areas of responsibility, further details of which are set out in Annex A of this protocol.

Please note that this protocol does not take into account co-operation and liaison with the Rail Accident Investigation Branch (RAIB), which, at the time this protocol was written, had not come into being. When the RAIB is introduced, it is envisaged that a separate protocol, or protocols, governing liaison between the RAIB and the signatory organisations will be developed.

There are other enforcing authorities that have responsibility for enforcing health and safety, or other similar legislation. Some of these are listed in Annex A. The Civil Aviation Authority and the Maritime and Coastguard Agency are not signatories to this protocol, but each has agreed to abide by the protocol's principles.

At present, only the police can investigate serious criminal offences (other than health and safety offences) such as manslaughter, and only the CPS can decide whether such a case will proceed. The police will also have an interest in establishing the circumstances surrounding a work-related death in order to assist the coroner's inquest.

Health and safety offences are usually prosecuted by HSE, the local authority or other enforcing authority in accordance with current enforcement policy. The CPS may also prosecute health and safety offences, but usually does so only when prosecuting other serious criminal offences, such as manslaughter, arising out of the same circumstances.

When making a decision whether to prosecute, the CPS, HSE, the local authority or other enforcing authority will review the evidence according to the Code for Crown Prosecutors to decide if there is a realistic prospect of conviction and, if so, whether a prosecution is needed in the public interest. Local authorities that have signed up to the Enforcement Concordat must follow the principles and procedures within it.

The underlying principles of this protocol are as follows:

- an appropriate decision concerning prosecution will be made based on a sound investigation of the circumstances surrounding work-related deaths;
- the police will conduct an investigation where there is an indication of the commission of a serious criminal offence (other than a health and safety offence), and HSE, the local authority or other enforcing authority will investigate health and safety offences. There will usually be a joint investigation, but on the rare occasions where this would not be appropriate, there will still be liaison and co-operation between the investigating parties;
- the decision to prosecute will be co-ordinated, and made without undue delay;
- the bereaved and witnesses will be kept suitably informed; and
- the parties to the protocol will maintain effective mechanisms for liaison.

IN WHAT CIRCUMSTANCES WILL THIS PROTOCOL APPLY?

For the purposes of this protocol, a work-related death is a fatality resulting from an incident arising out of, or in connection with, work. The principles set out in this protocol also apply to cases where the victim suffers injuries in such an incident that are so serious that there is a clear indication, according to medical opinion, of a strong likelihood of death.

There will be cases in which it is difficult to determine whether a death is work-related within the application of this protocol; for example, those arising out of some road traffic incidents, or in prisons or health care institutions, or following a gas leak. Each fatality must be considered individually, on its particular facts, according to organisational internal guidance, and a decision made as to whether it should be classed as a work-related death. In determining the question, the enforcing authorities will hold discussions and agree upon a conclusion without delay.

1 STATEMENT OF INTENT

1.1 In the early stages of an investigation, whether any serious criminal offence has been committed is not always apparent. The parties to the protocol are committed to ensuring that any investigation into a work-related death is thorough and appropriate, and agree to work closely together in order to achieve this. Decisions in relation to who will lead the investigation, and the direction it will take, should be timely, informed by the best available evidence and technical expertise, and should take account of the wider public interest. Should there be any issue as to who is to be involved in investigating any work-related death, then the parties will work together to reach a conclusion.

2 INITIAL ACTION

2.1 A police officer attending an incident involving a work related death should arrange, according to the officer's own force procedures governing unexplained deaths, to:

- identify, secure, preserve and take control of the scene, and any other relevant place;
- supervise and record all activity;
- inform a senior supervisory officer;
- enquire whether the employer or other responsible person in control of the premises or activity has informed HSE, the local authority or other investigating or enforcing authority; and
- contact and discuss the incident with HSE, the local authority or other enforcing authority, and agree arrangements for controlling the scene, for considering

access to others, and for other local handling procedures to ensure the safety of the public.

2.2 A police officer of supervisory rank should attend the scene and any other relevant place to assess the situation, review actions taken to date and assume responsibility for the investigation. Should any other investigating or enforcing authority have staff in attendance before the police arrive, it should ensure that the police have been called, and preserve the scene in accordance with the initial actions (above) until the police get there.

3 MANAGEMENT OF THE INVESTIGATION

3.1 Investigations should always be managed professionally, with communications between the signatory organisations continually maintained. Investigations should generally be jointly conducted, with one of the parties taking the lead, or primacy, as appropriate. An investigation may also require liaison with any other enforcing authority that may have an interest, and may include liaison with the CPS.

3.2 Throughout the period of the investigation, the police and HSE, the local authority or other enforcing authority should keep the progress of the investigation under review. Milestones should be agreed and monitored, and policy and key decisions recorded.

3.3 The police, HSE, the local authority or other enforcing authority should agree upon:

- how resources are to be specifically used;
- how evidence is to be disclosed between the parties;
- how the interviewing of witnesses, the instruction of experts and the forensic examination of exhibits is to be co-ordinated;
- how, and to what extent, corporate or organisational failures should be investigated;
- a strategy for keeping the bereaved, witnesses, and other interested parties such as the coroner, informed of developments in the investigation; and
- a media strategy to take account of the sensitivities of the bereaved and those involved in the incident, and to encourage consistency of approach in reporting.

3.4 In certain large-scale investigations it may be beneficial to form a strategic liaison group to ensure effective inter-organisational communication, and to share relevant information and experiences.

4 DECISION MAKING

4.1 Where the investigation gives rise to a suspicion that a serious criminal offence (other than a health and safety offence) may have caused the death, the police will assume primacy for the investigation and will work in partnership with HSE, the local authority or other enforcing authority.

4.2 Where it becomes apparent during the investigation that there is insufficient evidence that a serious criminal offence (other than a health and safety offence) caused the death, the investigation should, by agreement, be taken over by HSE, the local authority or other enforcing authority. Both parties should record such a decision in writing.

4.3 Where HSE, the local authority or other enforcing authority is investigating the death, and new information is discovered which may assist the police in considering whether a serious criminal offence (other than a health and safety offence) has been committed, then the enforcing authority will pass that new information to the police. An enforcing authority inspector may do this, but it may also be from the enforcing authority's solicitors via the CPS. The police should then consider whether to resume primacy for the investigation. The decision and reasons should be recorded in writing.

4.4 There will also be rare occasions where as a result of the coroner's inquest, judicial review or other legal proceedings, further consideration of the evidence and surrounding facts may need to be made. Where this takes place the police, the enforcing authority with primacy for the investigation and the CPS will work in partnership to ensure an early decision. There may also be a need for further investigation.

5 DISCLOSURE OF MATERIAL

5.1 Disclosure must always follow the established law and procedure.

5.2 Where there has been an investigation, any material obtained should be shared, subject to any legal restrictions, between the police, HSE, the local authority or other enforcing authority and the CPS. Special handling procedures may be necessary in certain cases. The organisation responsible for retaining the exhibits, documents and other relevant material should also be agreed upon.

6 SPECIAL INQUIRIES

6.1 In the case of some incidents, particularly those involving multiple fatalities, the Health and Safety Commission may, with the consent of the Secretary of State, direct that a public inquiry be held. Alternatively, the Commission may authorise HSE, or any other person, to investigate and produce a special report.

6.2 In such circumstances, the police will provide any necessary support and evidence to the person appointed to conduct the public inquiry, or to the special investigation, subject to the relevant regulations.

6.3 Complex legal issues may arise when there are parallel public inquiries and criminal investigations or prosecutions. The signatories will aim to keep inquiry chairs informed of the progress of the investigation.

6.4 Sometimes the report of a public inquiry may be delayed to await the conclusion of criminal proceedings, and on other occasions, there may be no such delay because of strong public interest in publishing the report and the recommendations of a public inquiry quickly. In either event, the signatories to the protocol will work together to ensure that the decision to prosecute is made as expeditiously as possible and any criminal proceedings commenced without delay.

7 *ADVICE PRIOR TO CHARGE*

7.1 Early liaison by the police, HSE, the local authority or other enforcing authority with the CPS, is to be encouraged in the best interests of the investigation and prosecution process as a whole. There is no need to wait until a file is ready to be submitted before the police open discussions with the CPS. The police are encouraged, at any stage following a work-related death, to consult the CPS for advice, not only about the nature of any charges, but also as to the legal and evidential issues surrounding the investigation, including advice about expert evidence.

7.2 The police should seek the advice of the CPS before charging an individual with any serious criminal offence (other than a health and safety offence) arising out of a work-related death.

7.3 The police must consult the CPS Casework Directorate for advice when there is any consideration of charging a company or corporation with any serious criminal offence (other than a health and safety offence).

8 *THE DECISION TO PROSECUTE*

8.1 The decision to prosecute any serious criminal offence (other than a health and safety offence) arising out of the death will be taken by the CPS according to *The code for crown prosecutors*. Such an offence may be prosecuted either with or without related health and safety offences. The decision will be made following discussion with the police, and, where appropriate, HSE the local authority or another enforcing authority.

8.2 There should be no undue delay in reaching the prosecution decision. If there is a delay, then the CPS will notify the police and the enforcing authority and explain the reasons for the delay, and will keep them informed of the progress of the decision making.

8.3 The CPS should always take into account the consequences for the bereaved of the decision whether or not to prosecute, and of any views expressed by them.

8.4 When the CPS has made its decision, it must be communicated to the police, HSE, the local authority or other enforcing authority as soon as practicable, so that HSE, the local authority or other enforcing authority can decide as expeditiously as possible whether to prosecute for health and safety offences if the CPS is not doing so.

8.5 Where HSE, the local authority or other enforcing authority has primacy for the investigation, then the decision whether to prosecute for health and safety offences will be taken without undue delay. The relevant enforcing authority should then inform the police of its decision.

8.6 No prosecution decision will be made public until the bereaved, the Coroner's Office and any potential defendants have been notified according to the previously agreed strategy.

8.7 The public announcement of the decision will be made according to the agreed media strategy.

8.8 Where there is to be no CPS prosecution, the announcement of the CPS's decision shall include the fact that the decision of HSE, the local authority or other enforcing authority will be made after the inquest (subject to paragraph 10.3, below). It is CPS policy to set out its reasons in writing and send them to the bereaved, and to offer to meet them to discuss the reasons for reaching the decision.

9 THE PROSECUTION

9.1 Where the CPS and HSE, the local authority or another enforcing authority seek to prosecute offences arising out of the same incident, the prosecution(s) shall be initiated and managed jointly.

9.2 There should be an early conference attended by the CPS, the police and HSE, the local authority or other enforcing authority to consider the management of the proceedings. In particular, the following issues should be discussed, agreed and recorded:

- who will take lead responsibility for the prosecution;
- the nature and the wording of the charges (including, where appropriate, consideration of any alternative charges and acceptable pleas);
- arrangements for the retention and disclosure of material;
- a case management timetable;
- arrangements for keeping the bereaved and witnesses informed;
- the announcement of the decision;
- arrangements for maintaining contact during the prosecution, and an agreement as to a mechanism for consulting, should an issue arise which results in the discontinuance of the proceedings or no evidence being offered;
- an agreement as to any specific instructions to the prosecuting advocate; and
- any other case management issues.

9.3 Where the CPS is prosecuting, and there is no prosecution by HSE, the local authority or other enforcing authority, but an enforcing authority wishes to retain an interest in the case, the CPS will keep that enforcing authority informed of the progress and outcome of the case.

10 HM CORONER

10.1 The police or the CPS will notify the coroner when a serious criminal offence arising out of a work-related death (other than a health and safety offence) has been charged. The coroner may then adjourn the inquest until the end of the criminal prosecution. The Director of Public Prosecutions may also ask the coroner to adjourn the inquest where there are certain proceedings before a magistrates' court that are related to a death.

10.2 Where the CPS is prosecuting, and HSE, the local authority or other enforcing authority has submitted documents or a report to the coroner about a work-related death, the CPS and the police shall also be given a copy. Similarly, where an enforcing authority is prosecuting, and the police or CPS has submitted documents or a report to the coroner about a work-related death, the enforcing authority shall also be given a copy. In all cases, documents or reports may not be disclosed to any party without the consent of the party that originally submitted them.

10.3 Where the CPS has reviewed the case and decided not to prosecute, HSE, the local authority or other enforcing authority will await the result of the coroner's inquest before charging any health and safety offences, unless to wait would prejudice the case. Where, following an inquest, public inquiry, judicial review or other legal proceedings, it is necessary for the CPS to review or re-review the case, HSE, the local authority or other enforcing authority will wait until the review by the CPS has been completed before instigating or continuing its own proceedings.

11 NATIONAL LIAISON

11.1 The National Liaison Committee comprises representatives from the police, BTP, the CPS, HSE and the Local Government Association. It will meet at least twice a year to review the operation of the protocol and consider the need for changes to the arrangements.

12 LOCAL LIAISON

12.1 The Regional Liaison Committees comprise representatives from the signatories, nominated at local levels. These committees will meet on a regular basis to discuss issues of mutual interest and concern, and in particular, the operation of the protocol from a local standpoint, to monitor the protocol's effectiveness, and to communicate any issues to the National Liaison Committee.

12.2 The Regional Liaison Committees will be responsible for ensuring that there is an identified and effective line of local communication between the five organisations.

ANNEX A: A GENERAL GUIDE TO THE ENFORCEMENT OF THE HEALTH AND SAFETY AT WORK ETC ACT 1974 (HSW ACT) AND RELATED LEGISLATION

Enforcement of the HSW Act and the related legislation is generally shared between HSE and local authorities. A general guide to the allocation of the main activity is detailed below. For more detailed guidance on allocation of specific activities or premises refer to HSE's website: www.hse.gov.uk/lau/lacs/23-15.htm

The Health and Safety Executive

HSE is responsible for enforcing work-related health and safety legislation in:

- factories and other manufacturing premises, including motor vehicle repair
- chemical plants and refineries
- construction
- railways, tram and underground systems
- mines, quarries and landfill sites
- farms, agriculture and forestry
- hospitals, including nursing homes
- local government, including their offices and facilities run by them
- schools, colleges and universities
- domestic gas installation, maintenance or repair
- utilities, including power generation, water, and waste
- fairgrounds (travelling or fixed)
- airports (except terminal buildings, car parks and office buildings)
- police and fire authorities; Crown bodies, including the Ministry of Defence
- prisons
- docks
- nuclear installations
- offshore gas and oil installations and associated activities, including pipe-laying barges, and diving support vessels

- onshore major hazards, including pipelines, gas transmission and distribution
- transport of dangerous goods by road and rail
- manufacture, transport, handling and security of explosives
- common parts of domestic premises.

Local authorities

In England and Wales, local authorities enforce the HSW Act in respect of certain non-domestic premises, including:

- shops and retailing, including market stalls, coin-operated laundrettes, and mobile vendors
- most office-based activities
- some wholesale and retail warehouses
- hotels, guest houses, hostels, caravan and camping sites, restaurants, public houses and other licensed premises
- leisure and entertainment, including night clubs, cinemas, social clubs, circuses, sports facilities, health clubs, gyms, riding schools, racecourses, pleasure boat hire, motor-racing circuits, museums, theatres, art galleries and exhibition centres
- places of worship and undertakers
- animal care, including zoos, livery stables and kennels
- therapeutic and beauty services, including massage, saunas, solariums, tattooing, skin and body piercing, and hairdressing
- residential care homes
- privately run pre-school child care, eg nurseries.

There are other authorities and agencies with responsibilities for the investigation and enforcement of the HSW Act and other similar legislation. These include, for example:

- the Fire Authorities
- the Maritime & Coastguard Agency (on board ships)
- the Care Standards Commission (health care premises)
- the Environment Agency

- the Civil Aviation Authority
- Trading Standards
- the Department of Trade and Industry (DTI)
- the Marine Accident Investigation Branch.

Contacting HSE out of hours

HSE is not an emergency service. It has produced guidance for police and other emergency service control rooms describing how to contact HSE inspectors out of hours.

Contacting local authorities out of hours

There will be local arrangements in place for contacting the authorised health and safety inspectors within local authorities. Contact can usually be made through the local town hall or council offices during office hours and on an emergency number out of office hours.

ACKNOWLEDGEMENTS

The National Liaison Committee is extremely grateful to those people and organisations that responded to the public consultation exercises. Their contributions were invaluable to the revision process, and, as a result, many of the ideas and proposals have now been included in this protocol.

FURTHER READING

More information can be found in these free publications:

Advice and information for bereaved families (England and Wales) MISC446a 2002
(available from HSE inspectors, **not** HSE Books)

Advice and information for bereaved families (Scotland) MISC200 2000 (available from HSE inspectors, **not** HSE Books)

Enforcement policy statement HSC15 HSE Books 2002

Health and safety in local authority enforced sectors. Section 18: HSC guidance to local authorities MISC488 HSE Books 2002

The code for crown prosecutors Crown Prosecution Service, Communications Branch, 50 Ludgate Hill, London EC4M 7EX, Tel: 020 7796 8442, Website: www.cps.gov.uk

FURTHER INFORMATION

HSE priced and free publications are available by mail order from HSE Books, PO Box 1999, Sudbury, Suffolk CO10 2WA. Tel: 01787 881165 Fax: 01787 313995 Website: www.hsebooks.co.uk (HSE priced publications are also available from bookshops and free leaflets can be downloaded from HSE's website: www.hse.gov.uk)

For information about health and safety ring HSE's Infoline Tel: 08701 545500, Fax: 02920 859260 e-mail: hseinformationservices@natbrit.com or write to HSE Information Services, Caerphilly Business Park, Caerphilly BF83 3GG.

CPS publications are available from CPS Communications Branch, 50 Ludgate Hill, London, EC4M 7EX; Tel: 020 7796 8442, Website: www.cps.gov.uk

ACPO website: www.acpo.police.uk

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