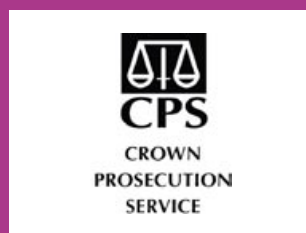


Work-related deaths:
A protocol for liaison
(England and Wales)



Foreword

This is the third version of this protocol, which was first introduced in 1998. The signatories to the protocol are now:

- ◆ the Crown Prosecution Service;
- ◆ the police through their professional body the Association of Chief Police Officers;
- ◆ the Health and Safety Executive;
- ◆ local authorities through their representative bodies the Local Government Association and the Welsh Local Government Association;
- ◆ the British Transport Police;
- ◆ the Office of Rail Regulation;
- ◆ the Maritime and Coastguard Agency; and
- ◆ the Fire and Rescue Services through their professional body the Chief Fire Officers Association.

The protocol aims to emphasise the importance of working together to investigate thoroughly and to prosecute appropriately those responsible for work-related deaths in England and Wales. Since its introduction in 1998, the protocol has become a tried and tested approach to effective liaison between the signatory organisations when investigating a work-related death. All eight signatory organisations recognise the need for investigating and prosecuting authorities to engage with each other and to share information and best practice. We appreciate that the public want to be confident that we are doing all that we can to co-ordinate our activities, and to co-operate with each other in the best interests of public safety and of those affected by work-related deaths.

Changes in this third version of the protocol include:

- ◆ revision of paragraph 10.3 giving the option, where appropriate, for commencing criminal proceedings before an inquest for health and safety offences;
- ◆ inclusion of the Office of Rail Regulation, the Maritime and Coastguard Agency and the Chief Fire Officers Association as signatory organisations; and
- ◆ updates to the text to reflect organisational and administrative changes.

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



Simon Foy
Commander Metropolitan Police
Association of Chief Police Officers



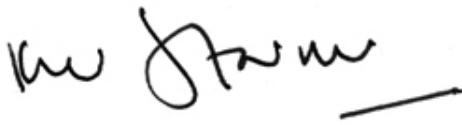
John Ransford
Chief Executive
The Local Government Association



Andrew Trotter
Chief Constable
British Transport Police



Steve Thomas
Chief Executive
The Welsh Local Government
Association



Keir Starmer QC
Director of Public Prosecutions
Crown Prosecution Service



Alan Massey
Chief Executive
Maritime and Coastguard Agency



Geoffrey Podger
Chief Executive
Health and Safety Executive



Peter Holland
President
Chief Fire Officers Association



Richard Price
Chief Executive
Office of Rail Regulation

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;
- ◆ the Welsh Local Government Association;
- ◆ the Crown Prosecution Service (CPS);
- ◆ the Office of Rail Regulation (ORR);
- ◆ the Maritime and Coastguard Agency (MCA); and
- ◆ the Chief Fire Officers Association (CFOA).

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. A separate protocol exists for Scotland. 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.

The police, CPS and relevant enforcing authorities have different roles and responsibilities in relation to a work-related death. A relevant enforcing authority is defined as the health and safety regulator with responsibility for the activity or workplace involved and includes HSE, ORR, local authorities, MCA and the Fire and Rescue Services.

HSE, local authorities and ORR 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.

The MCA is responsible, under the Merchant Shipping Act 1995, for enforcing work-related health and safety legislation aboard commercial vessels of any size and in the case of UK vessels this applies anywhere in the world and in the case of other vessels whilst they are in UK waters.

The Fire and Rescue Services are responsible for enforcing the Regulatory Reform (Fire Safety) Order 2005 in all types of premises with the exception of premises that are comprised in a house which is occupied as a single private dwelling.

Each has specific areas of responsibility, further details of which are set out in Annex A of this protocol.

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 (CAA), and the Independent Police Complaints Commission (IPCC) 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 (whether corporate or gross negligence), 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 the relevant 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 or relevant 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. Enforcing authorities that have signed up to the Enforcement Concordat must follow the principles and procedures within it and also the Regulators Compliance Code.

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 the relevant 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 the relevant enforcing authority; and
 - ◆ contact and discuss the incident with the relevant 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 relevant 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 the relevant 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 and the relevant 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 the relevant 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 the relevant enforcing authority. Both parties should record such a decision in writing.
- 4.3 Where the relevant 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 relevant 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, the relevant 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, HSE may, with the consent of the Secretary of State, direct that a public inquiry be held. Alternatively, the HSE Board 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, or the relevant 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 Special Crime and Counter Terrorism Division for advice when there is any consideration of charging an organisation 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, the relevant 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 relevant 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, and the relevant enforcing authority, as soon as practicable, so that the relevant 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 a relevant 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 the relevant enforcing authority will be made in accordance with 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 the relevant 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 the relevant 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 the relevant enforcing authority but the relevant enforcing authority wishes to retain an interest in the case, the CPS will keep that relevant 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 the relevant 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 the relevant enforcing authority is prosecuting, and the police have submitted documents or a report to the coroner about a work-related death, the relevant 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 relevant enforcing authority has completed an investigation, they will consider whether it is appropriate to charge any health and safety offences at that stage, or to await the result of the coroner's inquest before making that decision. In making the decision they will consult as appropriate with the police, CPS, coroner, deceased's family and any other person who may have a legitimate interest.

11 National liaison

- 11.1 The National Liaison Committee comprises representatives from the police; BTP; the CPS; HSE; local authorities; ORR; MCA and CFOA. 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 eight 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 shared between HSE, local authorities and ORR. A general guide to the allocation of the main activity is detailed below. For more detailed guidance on allocation of specific activities or premises between HSE and local authorities refer to HSE's website: www.hse.gov.uk/lau/lacs/23-15.htm. For more detailed guidance on specific activities or premises allocated to ORR refer to www.hse.gov.uk/aboutus/howwework/framework/mou/orrmou.pdf.

The Health and Safety Executive

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

- ◆ factories and other manufacturing premises, including some motor vehicle repair;
- ◆ chemical plants and refineries;
- ◆ construction;
- ◆ 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, emerging energy technologies 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;
- ◆ 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.

Office of Rail Regulation

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

- ◆ railways, tram and underground systems within Great Britain;
- ◆ railway infrastructure integrity;
- ◆ rail vehicle or rolling stock safe design, maintenance and use;
- ◆ train preparation;
- ◆ train movements and carriage of goods;
- ◆ station operation;
- ◆ transport of dangerous goods by rail.

Fire and Rescue Authorities

In England and Wales, Fire and Rescue Authorities are responsible for enforcing the Regulatory Reform (Fire Safety) Order 2005 in all types of premises with the exception of premises that are comprised in a house which is occupied as a single private dwelling.

Maritime and Coastguard Agency

The MCA is responsible for enforcing work-related health and safety legislation aboard commercial vessels of any size and in the case of UK vessels this applies anywhere in the world and in the case of other vessels whilst they are in UK waters. Legislation covers the following areas:

- ◆ structure of ships;
- ◆ safe design, maintenance and use of the ship;
- ◆ safe design, maintenance and use of ships equipment;
- ◆ crew living and welfare arrangements;
- ◆ transport of dangerous goods by sea;
- ◆ all safety-related operations of ships.

Other authorities and agencies

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

- ◆ the Care Quality Commission (health and social care premises) in England;
- ◆ the Care and Social Services Inspectorate Wales and Health Inspectorate for Wales;
- ◆ the Environment Agency;
- ◆ the Civil Aviation Authority;
- ◆ Trading Standards;
- ◆ the Department of Business Innovation and Skills (BIS);
- ◆ the Marine Accident Investigation Branch (MAIB);
- ◆ the Rail Accident Investigation Board (RAIB);
- ◆ the Air Accident Investigation Board (AAIB).

Where a work-related death from an air, marine or rail accident is being investigated then the relevant Accident Investigation Branch (AIB) of the Department for Transport has additional duties of investigation. There is a separate Memorandum of Understanding (MoU) between the AIBs collectively and the CPS, and in addition each of the AIBs has MoUs with the other relevant agencies. These memoranda must be read in conjunction with this document.

Out-of-hours contact

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. Emergency contact details may also be available on your local council website.

Contacting ORR out of hours

ORR is not an emergency service. It has produced guidance for the British Transport Police and other emergency service control rooms describing how to contact ORR out of hours. The number to use is 020 7282 3910.

Contacting Fire and Rescue Services out of hours

Fire and Rescue Services can be contacted out of hours through their emergency control rooms.

Contacting MCA out of hours

Her Majesty's Coastguard is part of the MCA and is a 24-hour 999 emergency service. The MCA duty enforcement officer can be contacted through any of the Maritime Rescue Co-Ordination Centers located around the coast of the United Kingdom.

Further reading

More information can be found in these free publications:

Advice and information for bereaved families (England and Wales) MISC199
(available from HSE inspectors, not HSE Books)

HSE's Enforcement policy statement HSE41 (rev1) 2009 – available on the HSE website at www.hse.gov.uk

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

The Code for Crown Prosecutors, last updated February 2010, is available on the CPS website at www.cps.gov.uk.

Further information

For information about health and safety, or to report inconsistencies or inaccuracies in this guidance, visit www.hse.gov.uk/. You can view HSE guidance online and order priced publications from the website. HSE priced publications are also available from bookshops.

Crown Prosecution Service publications are available via the CPS website at www.cps.gov.uk.

Association of Chief Police Officers website: www.acpo.police.uk

Office of Rail Regulation: ORR's general role is explained on ORR's website at www.rail-reg.gov.uk and with regard to health and safety regulation www.rail-reg.gov.uk/server/show/nav.1210

The Chief Fire Officers Association website: www.cfoa.org.uk

Further information about the Maritime and Coastguard Agency can be found on the MCA website: www.dft.gov.uk/mca/

This document is available at www.hse.gov.uk/pubns/wrdpl.pdf

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