This document contains the Centre for Corporate Accountability's comments.

They are in BOLD and UNDERLINED and a footnote summarises the reason for the proposed change

This should be read along with the main document.

INFORMATION

and

ADVICE

for

BEREAVED FAMILIES

(ENGLAND AND WALES)

NB: There will be a similar leaflet produced for deaths occurring on the Railways (referring to British Transport Police for instance), and a Scottish version of this leaflet to reflect the different legal arrangements.

Preface

- 1. We are sorry to have to contact you at this time, but this leaflet contains important information about:
 - how the investigation will proceed, how any decision about prosecution
 will be made and what information we can provide you¹; (Part 1)
 - support services that you may find comforting and helpful (Part 2)
 - the legal processes that are likely to follow (Part 3)
- You may find all this difficult to take in at first. We suggest you ask a relative or friend to read it with you, and you may need to read it several times over the coming weeks. Parts 1 and 2 are relevant now. The legal process described in Part 3 won't occur for some months, so keep this leaflet somewhere safe for when you need it later.
- 3. This leaflet primarily explains what the <u>Health and Safety Executive</u>² (HSE) will do. HSE is a government body which enforces health and safety law at work (this includes gas safety legislation which protects domestic gas consumers). We have also included a small selection of other leaflets too, to explain the role of other official services in a little more detail.
- 4. If you have any questions about this leaflet please contact the person who sent you the covering letter. The letter states their office address and their telephone number.

PART 1: THE INVESTIGATION

HSE's Role

These extra words should be present for the purpose of clarity – it sets out more clearly what the leaflet contains.

Needs full name before using acronym.

- 5. HSE's role in the investigation is to find out what happened, and whether any health and safety law has been broken. We have powers to require action to stop the incident recurring and to prosecute an organisation or individual ³. The Police are responsible for investigating the more serious offence of manslaughter.
- 6. We therefore start with a joint investigation involving both HSE Inspectors and the Police. The relationship between the police and the HSE is set out in the Protocol of Liaison on Work-Related Deaths which is enclosed.⁴ The police will take the lead if a charge of manslaughter seems a possibility, but HSE takes the lead if not. These decisions can be reversed however as new evidence comes to light during the investigation.

The police will appoint a person to be a "Family Liaison Officer" who will be able to inform you about the nature of the police investigation.

This person is:

And can be contacted on telephone number:	

- 7. In most cases the HSE's Inspector will start the investigation within 24 hours. As part of this process the Inspector will arrange to talk to you, and answer your questions as far as they are able.
- 8. We will try and come to see you at your home or other convenient address as soon as you feel ready for this. A home visit will not always be possible because of the distances involved, however, and if this is the case we will keep you informed by telephone. If you do not wish to see us we will understand, but if you

⁴ The relationship between the police and the HSE is a crucial one and it is important that families should be given an opportunity to understand that relationship. This relationship is set out clearly in the Protocol and families should be made aware of this document. In our view it should also be part of the pack of information that is enclosed.

It is important that families are aware of who is the Police's Family Liaison Officer and how they can be contacted. The role of the FLO is particularly important since s/he is in no way constrained by section 28 of the HSWA 1974.

In the CCA's view both these points need to be made clear.

change your mind later our invitation remains open. If you have any information that you feel could help us with our investigation, please let us know.

41. As the HSE investigation proceeds we will have a clearer understanding of the likely outcomes. The HSE Inspector will be able to tell you what we have done, the circumstances surrounding the death, what we think is the cause, and what action we will be taking.

The information that we can provide about the investigation⁶

The Health and Safety at Work Act 1974 imposes certain restrictions on the information that an inspector can provide you about the on-going investigation. However it is the HSE's policy to provide as much information as we legally can and if we are unable to tell you something we will explain to you why⁷.

We should be able to provide you with the following information8:

- copies of any improvement or prohibition notices imposed upon any company, organisation or individual that may have been involved in the circumstances surrounding the death;⁹
- summary details of any inspections that the HSE has made in the past of any company or organisation that may have been involved in the circumstances surrounding the death.¹⁰
- anonymised details of previous injuries and deaths that have taken place at the premises of any company or organisation involved in the death¹¹;

This is HSE's position on information – as stated in the HSE Board own statement on "openness" and in our view it does need to be emphasised.

This is information that is publicly available and the HSE should routinely provide this information to bereaved relative.

This is a proposed new 'sub-heading'. The key issue for many families is to find out "what happened" and what investigations are being undertaken. For the HSE it is important that the family has confidence in the investigation. The question of what information the HSE can provide is a crucial question and needs to be highlighted with a sub-heading.

There needs to be greater clarify on exactly what information can be provided – rather than simply the vague statement set out in para 9 above.

Again, details about an inspection are routinely provided. HSE's GAP 1 Para 1.78 states that "There is no right to have a copy of the inspection or investigation report itself However, in most cases it would be reasonable to provide information on the factual aspects of a report e.g. the premises inspection, the date of inspection, what was found, any breaches of health and safety legislation, any action required and the date by which is required."

- the names of the individuals that we have interviewed and of those who have given us statements¹²;
- a summary of the evidence that we have obtained during the investigation ¹³ including, where possible, oral summaries of statements taken from individuals (we may not however be able to tell you the names of those people who gave us those statements).

It should be noted that in some situations we might ask you to keep certain information confidential to yourself and your advisors to avoid prejudicing any future legal proceedings.

It can be difficult to remember everything that we have said at a meeting or on the phone, so we would suggest that you take notes of anything that we have said. If you would like us to put anything we have said in writing, please do not hesitate to ask us – though we may not always be able to do this.¹⁴

You should also know that we can help organise a visit to the location of the incident where your relative died at any point in time. if you would like to take this opportunity up, please tell the inspector.

10. Some investigations will take much longer than others, some can take months or even longer, but we do try to complete our investigations with as little delay as possible. The time taken will depend on a number of factors; for example the complexity of the incident, the number of organisations involved, the number of witnesses to be seen. *However, if we have not already been in touch, we*

¹¹ This is information that is publicly available and should be offered to the family.

The CCA has been to a number of meetings – including one with Jennifer Terry – where the HSE provided the names of those individuals who have been interviewed and taken statements.

HSE's GAP 1, Appendix B, Para 1.B13 which states that information can be provided in a 'redacted from'

It is the CCA's experience that many families will forget details of what has been said by HSE inspectors. Para 5 of the Appendix 2 of the new proposed OC, states that 'studies show that

will contact you no later than 2 months into our investigation. ¹⁵ We will also advise you of the outcome of the investigation. As investigations can often take longer than 2 months we will agree with you how often you wish us to contact you about our progress. If you have specific needs for information please discuss this with the Inspector.

Usually, the HSE will wait until after a full inquest has taken place before it decides whether or not it will prosecute an organisation or individual.

11. HSE Inspectors are not involved in obtaining compensation for your loss. For information on this please see 'Compensation claims under Civil Law' in Part 3.

The Role of Others (in brief)

- 12. <u>The Police</u> will be automatically called to a death at work. They will usually be the first independent investigators at the scene. They will inform the next of kin and the Coroners Office.
- 13. A Police officer will produce a report and take statements to help the Coroner. The Police will consider charges of manslaughter against both the employer and individuals. (A charge of manslaughter can only be brought if there is evidence of "gross negligence"). The Police have their own procedures for keeping you informed of progress in their investigation.
- 14. <u>The Crown Prosecution Service</u> is responsible for approving and conducting any manslaughter case put forward by the Police.

people only retain 10% of verbal information, particularly when they are upset or traumatised.'

¹⁵ It is not clear what this means since para. 7 appears to suggest that the inspector will be in contact with the family immediately after the incident. If it is being suggested that an inspector can wait for two months before contacting the relative – this is far too long. Initial Contact should be made within two weeks. Two months is far too long a period. A lot can happen in two months and families should be aware of what the HSE inspector is doing and obtaining information from him or her.

- 15. The <u>Coroner</u> will conduct an inquiry into all work-related deaths to establish the place, time and cause of death. This is explained more fully in Part 3, and you should have been provided with a separate leaflet produced by the Home Office.
- 16. You may hear references to a range of <u>other people</u> involved in the investigation. This may be very confusing, especially in the first few days. The kind of people you might hear mention of include:
- Safety Representatives (usually from a Trade Union);
- the employer's Health and Safety Officer, and
- the employer's insurers

All these people understandably want to know what happened, but they shouldn't be confused with the HSE Inspector or the Police. If you are in any doubt about who is who, please ask for identification.

PART 2: SOURCES OF INFORMATION 16 AND HELP

- 17. The most immediate sources of comfort and help are likely to be your own family and friends.
- 18. There are also local **sources who may be able to offer you the support that you require** such as your GP, a church perhaps, a family solicitor, and the Citizens' Advice Bureau. The funeral director will also be able to help with **some of** the immediate issues you face.
- 19. Because a death at work can be so unexpected and violent, people bereaved in this way are often traumatised as well as grief-stricken. This is common and nothing to be ashamed of. Some professional carers, such as counsellors, psychologists or psychiatrists have a particular specialism in helping people who

¹⁶ Not "Comfort" – since most of these organisations are not there to provide comfort.

are traumatised. They specialise in talking with traumatised people about their experiences and reactions, and ways to cope and feel stronger. Your GP may be able to refer you to more specialised local support services such as these.

NATIONAL ORGANISATIONS

20. The following national organisations offer <u>advice and information¹⁷</u> to people in your position. This is a list of organisations that HSE know about, but there may well be others too, and inclusion on this list shouldn't imply that we recommend or endorse them.

Work-related Death Advice Service
Centre for Corporate Accountability
Fourth Floor,
197/199 City Road,
London EC1V 1JN

Tel: 020 7490 4494

e-mail: advice@corporateaccountability.org

This is a free, independent and confidential advice service that will provide you: information on the law and procedures relating to work-related deaths (including the application of health and safety and manslaughter offences and advice that will help you ensure that your relative's death is properly investigated and adequately dealt with by the prosecuting bodies.

The Trauma After-Care Trust (TACT).
 Buttfields
 The Farthings
 Withington
 Glos, GL54 4DF

Telephone: 01242 890306

TACT holds lists of carers specialising in trauma, and can put you or your GP in touch with specialists in your area. Care can be free if your GP refers you.

¹⁷ Not 'support''.

22. British Association of Counselling and Psychotherapy

1 Regent Place

Rugby

Warwickshire CV21 2PJ

Like TACT, this body will provide listings of professional carers.

23. Cruse Bereavement Care

Cruse House

126 Sheen Road

Richmond

Surrey, TW9 LUR

Telephone: Helpline 0870 1671677 (Monday to Friday, 9.30 to 5pm) Telephone: Bereavement Line 0345 585565 (limited service times)

Cruse is a national charity offering free support to anyone who has been bereaved. Cruse volunteers, who are trained and live locally, can visit you in your home or talk to you over the telephone. If you call the national telephone number they will put you in touch with your local branch.

24. The Smaritans

Telephone No: 08457 909090

The Samaritans is a helpline which is open 24 hours a day for anyone in need. It is staffed by trained volunteers who will listen sympathetically.

25. The Compassionate Friends

53 North Street

Bristol, BS3 1 EN.

Telephone: 0117 953 9639.

A support service run by parents who have lost a child.

26. Victim Support

P O Box 1143

London, SW9 6ZH

Telephone: 0845 3030 900 (National helpline)

Victim Support is funded by the Home Office to provide care for victims of crime. It has trained volunteers, based locally, who can visit you in your home. Victim Support can also provide information and support during a criminal court trial.

27. Age concern

Freepost (SEB 30375)

Ashburton

Devon TQ13 7ZZ

Freephone: 0800 009966

A national charity working for older people, through over 1000 independent groups some of which offer bereavement counselling or know where it is available locally.

28. Bereaved by Work in the North West

Greater Manchester Hazards Centre

23 New Mount Street Manchester M4 4DE

Telephone: 0161 953 4037

Fax: 0161 953 4001

E-mail: gmhazards@hotmail.com

Offers understanding and support from similarly bereaved relatives, plus advice and help through the inquest and any criminal or civil proceedings.

29. The Carbon Monoxide & Gas Safety Society

Lorien House Common Lane

Claygate, Surrey KT10 OHY Telephone: 01372 466135

Fax: 01372 468965

The Carbon Monoxide & Gas Safety Society (Co-Gas) is a small registered charity. It is committed to reducing accidents from carbon monoxide and other gas dangers world-wide and supporting gas-related accident victims.

30. Disaster Action

49-50 Eagle Wharf Road

London N1 7ED

Telephone: 01483 799066 (New No. from BT - but no reply)

A charity whose members are all survivors and bereaved people from major disasters. It offers support to those affected by similar tragedies.

31 Institution of Gas Engineers and Managers (IGEM)

21 Portland Place London W1B 1PY

Telephone: (020) 7636 6603

Fax: (020) 7636 6602

E-mail: sharon@igem.org.uk

Bereaved families may want an independent report on the cause of a gas incident. The IGE keeps a list of qualified gas consultants who may be available for this work.

32. Inquest Ground Floor

Alexandra National House 330 Seven Sisters Road

Finsbury Park London N4 2PJ

Telephone: (020) 8802 7430

An independent advice and support organisation concerned with controversial deaths and the inquest system. It provides a free legal and advice service to the bereaved on inquest procedure and their basic rights in coroners' courts.

33. The Law Society113 Chancery Lane

London WC2A 1PL

Telephone: (020) 7242 1222 Accident line: 0800 192939

Website: www.solicitors-online.com

A professional body for solicitors in England and Wales. It can provide details of solicitors who will be able to give legal advice and information in the event of a bereavement.

34. The Lighthouse Club Benevolent Fund

Benevolent Fund Administrator

Armstrong House

Swallow Street

Stockport

Cheshire SK1 3LG

Telephone: 0161 429 0022

Fax: 0161 477 1022

A charity with local branches, helping workers in the building and civil engineering industry. It aims to relieve poverty by providing financial aid to victims of accidents and illness and to independents after fatal accidents.

35. The National Association of Widows

54-57 Allison Street

Digbeth

Birmingham B5 5TH (Now Coventry?)

Telephone: 0247 6525445

Offers friendship, support and advice to bereaved families.

36. SAMM (Support after Murder and Manslaughter)

Crammer House 30 Brixton Road London SW9 6DZ

Telephone: (020) 7735 3838

SAMM aims to help and support those bereaved through murder and manslaughter.

PART 3: LEGAL PROCESSES

37. The legal processes tend to proceed in a set order. The Coroner's Inquest first, the criminal trial is second, and the civil proceedings dealing with compensation come last.

The Coroner's Inquest¹⁸

The purpose of the Inquest is to establish who has died, and the place, time and circumstances of the death. The Inquest will not necessarily deal with *why* the events occurred, it is more concerned with *how* they occurred. The Coroner is the person who directs the Inquest, the Coroner's Officer is a Police Officer assisting the Coroner.

Inquests can be very upsetting, particularly when the medical evidence is presented. The Coroner or the Coroner's Officer will explain the process to you, and there is a more detailed leaflet on Inquests enclosed with this one. You are advised to see a solicitor, the Citizens Advice Bureau or a trade union representative for advice before the Inquest occurs. It is also advisable to have a lawyer representing you at the inquest itself.

The inquest will be formally opened a few days after the death for a very short hearing, but the full Inquest 19 – at which people will be called to give evidence in front of a jury 20 - will occur after the investigation by the Police or HSE has been completed, and may have to wait until the Crown Prosecution Service has decided whether to prosecute for manslaughter. (If there is to be a manslaughter trial, then there may be no need for a separate Inquest, as the manslaughter proceedings will show how the death happened).

It is for the coroner to decide who should be called to give evidence at the inquest. – though the HSE Inspector who carried out the investigation will almost always be called. At the inquest you – or your lawyer - will be able to ask questions of any of the witnesses and also make representations to the coroner about what verdict should be available to the jury.

With most <u>deaths</u> at work the verdict is likely to be 'accidental death' - <u>however</u> you should realise that this verdict can still imply that the death was the result

¹⁹ It is important that families understand the difference between the 'opening' – which will probably have already happened by the time the HSE inspector meets the family – and the full inquest.

It is important that families have some sort of understanding of what happens at an inquest – the most important of course being that people are called to give evidence.

The paragraphs in this section have been changed around. If is the Centre's view that a number of points need to be put across in this section namely: (a) witnesses are called; (b) the family has an opportunity to question witnesses and to request that a coroner allows particular verdict open for a jury; and (c) that the family should be represented by a lawyer.

of negligence²¹. Other possible verdicts include 'unlawful killing' (where there is evidence of 'gross negligence') or an 'open verdict' (where the circumstances of death are unclear). If the jury decides that this has been a case of unlawful killing the Coroner will refer the case to the Crown Prosecution Service. and these Inquests can take longer to arrange than those without a jury.

The Coroner has the power to report the circumstances of a death to any authority who may have some power to prevent a recurrence of the death²²

HSE Prosecution under Criminal Law

- 43. If there have been breaches of the law then either the Crown Prosecution Service (for manslaughter) or HSE (for health and safety legislation) can prosecute. This leaflet only explains how HSE's cases will be progressed.
- HSE can prosecute organisations²³ (i.e companies) individuals, or both however most prosecutions taken are against organisations rather than individuals. Just because there has been a death you shouldn't assume that there has been a breach of the law, however, and that there will be a prosecution. [cut next phrase - 'This is usually the case, but not always']. 24
- 45. When all the evidence has been gathered the HSE Inspector will consider this against the Enforcement Policy Statement of the Health and Safety Commission (copy included). They will also consider the two criteria in the Crown Prosecution Service code, namely:
- 38 have we sufficient evidence to provide a realistic prospect of conviction, and
- is it in the public interest to prosecute.
- HSE will normally announce its decision on prosecution after the Inquest. 46. Summonses will be served on those to be prosecuted and we will write to tell you the date of the first hearing. This will usually be in a local magistrates court a few months later. All criminal cases are heard in public, so you will be able to attend.
- 47. There are a few practical issues you will need to bear in mind:
- sometimes the date of the hearing is changed at short notice, but we will try to keep you informed if this happens
- if you have a solicitor, you will need to keep them informed about date changes too

²⁴ Prosecution is not the usual response.

It is important the families are aware that the verdict of 'accidental death' – which as the document states is the most likely verdict - covers a range of incidents from those that are truly 'accidental' to those that don't quite fulfil the test for the 'unlawful killing' verdict (which is similar to the manslaughter test). The CCA wording may well be improved but the point needs to be made in some way or other.

Rule 42 of the Coroners Rules should, in the CCA's view, be mentioned

²³ Not just companies

- not all courts have modern facilities, so you might want to contact your local Victims Support organisation (see Part 2), to see what is available and whether they can organise anything for you (such as a waiting room for instance)
- 48. If the plea is "guilty" then the hearing is not likely to last more than <u>half a day</u>. You will hear only a brief summary of what happened and no witnesses will be called. The magistrates will decide whether they think their powers of punishment are sufficient, and can pass the case up to the Crown Court (with greater sentencing powers) if they think this more appropriate. The HSE does have an opportunity, prior to the magistrates decision, to argue that the case should be referred to the Crown Court for sentencing.²⁵
- 49. If the plea is "not guilty", the first hearing will again be in the magistrates court, and the magistrates will first consider which court should hear the full case. Both HSE and the defendants can say which court they think should hear the case, but the magistrates will make the **final** decision.
- 50. "Not guilty" pleas require more time in court, often more than a single day, but you will hear all the evidence in detail during the course of the trial. Besides taking longer in court, there is usually a longer wait before the full court hearing takes place.
- 51. REMOVE [There should be no need for this paragraph. By the time the case comes to court, the family should have been properly informed, obtained all the information that is required and any necessary agreements of confidentiality should be in place ensuring no prejudice should exist. If a family contacts the HSE at this stage and seeks information (not having been in contact with the HSE prior to this, information can still be provided in the same way as long as there are agreements of confidentiality]
- 52. If an organisation pleads guilty or is convicted, the court will almost always impose a fine. If sentencing takes place in the magistrates court the maximum fine that can be imposed is either £5000 or £20,000 depending on the nature of the offence; if sentencing takes place in the Crown court, the fines are unlimited. The size of any fine is decided by the magistrate or judge who will take into account the maximum fine available, the seriousness of the offence and whether the defendant had been given previous advice, or been convicted of similar offences in the past. The fact that a death has happened will be drawn to the attention of the court.

When an individual is convicted of an offence, the court may have the power to sentence the person to prison. However, for most offences the courts do not have this power and can only impose a fine.

In our view there needs to be a clearer distinction between sentencing of an organisation and that of individuals, as well as give more information about the level of sentences.

It is important that families are aware that the HSE inspector does have an important role in the question of whether or not a case is referred to the Crown court for sentencing. Whilst the Magistrate does make the decision, the HSE inspector can argue that a case should be referred to the Crown court.

53. Where there has been a police investigation, the Crown Prosecution Service may conduct the health and safety prosecution together with any police charges.

Compensation claims under Civil Law

- 54. It is for you to decide whether you want to sue for compensation, and to start the process. Any claim must be made within three years of the initial incident that resulted in the death²⁷. Citizen's Advice Bureaux and solicitors will be able to advise you in this, but you will need a solicitor to pursue your case through the courts. Some Trade Unions will give their members and the members families legal help. The Law Society telephone helpline may help you find a suitable solicitor (see Part 2 for the telephone number).
- 55. Once you have started civil proceedings, your solicitor can write to HSE to request copies of all the information we have. This may include a factual statement by the investigating Inspector and copies of any photographs. There may be legal restrictions on our disclosure of some items, and in this case your solicitor will need to apply for a court order.
- 56. HSE Inspectors do not usually take part in civil proceedings, although they will appear as witnesses in court if summonsed. We are obliged to charge for the full costs of the Inspector's attendance, but your solicitor will be able to explain how such costs are handled in practice.

Other Information

56. HSE holds other information which it makes available to the public via its public registers and web sites, (www.hse.gov.uk). The information includes details of firms and individuals convicted of breaches of health and safety legislation, and other enforcement action taken by HSE. We may also provide information that is available under the Data Protection Act 1998. HSE makes a charge for supplying such information, except where it is available under the Data Protection Act. We will give you (or your legal representative) details of any charges when you contact us.

How can I complain if I am unhappy with what HSE does?

- 57. HSE always aims to give the best standard of service it can and will try to help you as much as possible. We hope that this leaflet helps to explain why the law sometimes prevents us from doing certain things. But if you are not happy with the way we have dealt with you, we want to know.
- If you cannot sort out the problem with the person you have been dealing with, ask for the name of their manager (letters from us will also give this information).

²⁷ If this leaflet is mentioning civil claims – which the CCA thinks that it should – then it should make clear that a claim must be made within three years of the death taking place.

- You can then ask to speak to the manager, or if you prefer, write. They will certainly investigate your complain and tell you what they are going to do about it.
- 58. We find that most complaints are settled like this. We try to respond straight away but, if not, we always aim to get back to you within ten working days.
- If you are still not satisfied, you can write to HSE's Director General at the address given below. He will ensure your complaint is followed up promptly and fairly.

Timothy Walker
Director General
Health and Safety Executive
Rose Court
2 Southwark Bridge
London SE1 9HS

59. You can also ask your MP to take up your case with HSE or with ministers. Your MP may also ask the independent Parliamentary Commissioner for Administration (the Ombudsman) to review your complaint.

HSE acknowledges the input of the charities and other organisations involved in the preparation of this leaflet.

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