

LEALFLET WITH CCA'S PROPOSED CHANGES

Health and Safety Executive		Operational Circular	
Field Operations Directorate		OC	
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To

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CONTACT WITH AND DISCLOSURE OF INFORMATION TO THE RELATIVES OF PERSONS KILLED THROUGH WORK ACTIVITIES

This OC replaces OC 167/8 (Rev). It makes explicit the Executive's policy on how and when HSE Inspectors should make contact with bereaved families.

BACKGROUND AND INTRODUCTION

1 OC 167/8 (Rev) provided guidance on communication with the next of kin in respect of persons who have died as a result of work activities, and introduced the leaflet *Advice and Information for Bereaved Families* (file 167). The OC stated that contact should be made where possible, and that the leaflet should accompany any initial correspondence. A separate version of the leaflet was produced for use in Scotland.

2 There has continued to be concern, however that HSE is still not adequately meeting the legitimate needs of the bereaved by merely sending the leaflet and accompanying letter. HSE's corporate policy has now been revised in response to these expectations and Inspectors should now proactively contact the family and offer to visit them, wherever possible.

3 The ability to contact relatives in person will be dependent on the distances and difficulties involved. If these are considerable then the Inspector should still offer to meet them if they intend to visit that area. The offer to visit should indicate that this will be done as soon as the family feel that they are ready. If this offer is declined or the logistical difficulties of visiting the next of kin are significant (e.g. they are resident abroad) then Inspectors should ensure that a letter and a copy of the new leaflet pack (see appendix 1) is sent and an offer is made to keep them informed of progress by telephone.

HSE'S POLICY ON CONTACT WITH BEREAVED FAMILIES

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4 HSE's policy is stated as follows; "The Executive wishes Inspectors from any Division of HSE who are called on to investigate a fatality to ensure that early contact in every case with the bereaved family is made; to meet them as soon as they wish; to explain our role and responsibilities; and to issue the bereaved families leaflet pack to them. Inspectors should also keep relatives informed of the progress and outcome of the investigation".

Family contact when the Police are involved

5 The protocol for liaison on work related deaths, agreed between HSE, ACPO and CPS, indicates that the Police are likely to take the initial lead on an investigation, although HSE may be involved in a joint, or parallel, investigation at this stage. The working arrangements will be agreed with the Police in each individual case. Police fulfilling the Coroner's officer role, are also likely to have an early involvement with the family, and it is also possible that the Police may appoint a Family liaison officer (FLO) to the family. **Even if the Police take the lead we must still contact the family** to advise them that it is a joint investigation and provide them with the letter and pack. The Police should be advised of this. The letter should be amended accordingly to reflect our role within the investigation. We should also advise the family of any changes, for instance if the Police withdraw from the investigation.

The family

6 The potential diversity of the family should be appreciated by the Inspector. The term should include partners, siblings, children guardians and others who have a direct and close relationship with the deceased. This may include situations where the family has become extended or split in some way or involves the deceased's association with a particular lifestyle. Inspectors need to be sensitive to this and seek the advice of others such as the Coroners Officer. More than one initial contacts may be needed on some occasions. Whenever possible Inspectors should try and arrange for a single point of contact if the family has become extended.

Action

7 Contact will usually be led or undertaken by the investigating inspector's line manager (usually Band 2). This does not preclude the involvement of the investigating Inspector or Band 1 Manager. This should be made as soon as possible, bearing in mind the convenience of the family. Meeting the family can be upsetting for the Inspectors and see OM([hyperlink](#)) contains advice on support arrangements for staff. Experience has demonstrated certain longer term advantages in meeting the family early. These include that the family and relatives can have a better understanding that we aren't faceless bureaucrats, an understanding of our role, responsibilities and the purpose and scope of our investigations.

8 Good practice on contacting the family and the conduct of this (or any subsequent) meeting are contained in appendix 2. If possible, Inspectors should try and ensure that there is another relative or friend nominated by the relative present. **At this meeting the investigating Inspector may also be present. The Inspector should ask the family whether they would like the HSE to try and**

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arrange a visit to the location of the incident. Inspectors should contact the dutyholders involved, and explain to the family that we will pass on their request. Records of all of these contacts should be kept by HSE staff attending, in their notebooks, to meet the requirements of the CPIA.

9 At this initial home visit (or contact by telephone) (see Health and safety policy supplement) Inspectors should;

w explain their role and responsibilities, and that of others likely to be involved,

w advise the family about the possible length of time an investigation may take. It is important that the family are not given any unrealistic expectations of our investigation

w seek agreement on how and when the family wish to be advised of the progress and outcome of our investigation.

w refer to the other leaflets in the pack, such as the role of the Coroner, that an inquest will take place with a jury may be required, and this can take a long time to be organised.

w Explain that HSE investigates incidents to establish whether the duty holder has complied with the law and to ensure reoccurrence is prevented.

w Explain the distinction between criminal law and civil law and advise, if asked, that they should see a solicitor for legal advice as to pursuing any civil claim.

w **Clarify the difference between health and safety offences and the crime of manslaughter**

w Further explain that HSE does not pursue civil claims for compensation but may provide information to assist with such claims once the investigation is complete and it has been decided not to prosecute or when criminal proceedings have finished.

w **Set out what information can be provided by the Health and Safety Executive**

10 **The inspector should, in a sensitive manner actively ask whether any family member would like to have the leaflet in any other language.** If a letter and leaflet pack has not yet been sent to the family then this should be delivered by hand at this meeting. If the family need a translation service then this should be arranged through the DIAS Language Services (VPN), who have a list of suitable contacts. It is very important that accurate information is obtained of the needs and services required.

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11. There may also be a need for further contacts to keep the family informed of developments. The family should be advised that they can expect to hear next from HSE about the progress of the investigation and this will be no later than 2 months from commencement of our investigation. They should be told that they will always hear the outcome of our investigation. All these contacts over the progress of the investigation should normally be led by the Band 2. Any views expressed by the victim's family about possible HSE action (particularly any about the possibility of prosecution) should be noted and included in the investigation report.

12. If the possibility of prosecution is raised during discussions then the family should be advised that a potential prosecution would have to meet both the evidential and public interest tests in the CPS code. (Advice on this aspect of the CPS Code, and of developments in obtaining the views of the victims, is in preparation and will be issued as soon as it is available). Although future contacts will need to be negotiated between those involved, these should reflect reasonable milestones such as prior to the Inquests or immediately after a duty holder has been summonsed for any related offences.

13. You should provide the following information to the bereaved family

(see CCA's proposed new Para 9 in advice leaflet to bereaved families)

We should aim to be as informative as possible within the statutory bounds on disclosure and without prejudicing any subsequent legal proceedings by ourselves or another enforcing authority. It may be appropriate to explain the reasons why we do not provide **written copies of witness statements** (for further information on the legal reasons for this (see appendix 3) .

13 Where prosecution is being considered, inspectors should ensure that the defendant is informed of that decision before the bereaved family. In England and Wales, if there is to be a prosecution, the family should be informed of the date and place of the prosecution (in Scotland this is normally done by the Procurator Fiscal). Advice may also be given, if needed, on court procedures show where the family may sit etc. Where possible the inspector or any other appropriate HSE representative should make personal contact at court

14 *HSE is currently piloting a revised process for managing its prosecutions in London & SE England. At present the Prosecution Pilot Branch solicitors will not be directly involved with contacting bereaved families. However, this is a developing area and this policy may be reviewed in due course*

HSE leaflet

13 The HSE leaflet has been revised with reference to those produced by other Government departments (see appendix 1 for details of the contents). A personalised letter should also be sent by the Band 2 with this information pack. No standard letter has been produced as this should be personalised but the letter should refer to an offer to meet if appropriate, the pack of leaflets, specifically drawing attention to the HSE leaflet, which outlines what they can expect from our investigation and also indicate a willingness to listen to the family's concerns over

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any aspects of our investigation. The letter should be easily understood and if appropriate translated.

APPENDIX 1

Contents of leaflet pack (England & Wales)

- w HSE leaflet " Advice and Information for bereaved families"
- w Home Office leaflet " Coping when someone close has been killed"
- w Home Office leaflet "The work of the Coroner"
- w DWP leaflet "What to do when someone dies"

Contents of leaflet pack (Scotland)

APPENDIX 2

Contacting the family

Making contact

1 The introduction is vital, and the family may well have never had any previous knowledge or involvement with HSE. In addition, they may well have met many other persons with "official functions" in the early days after the bereavement. The introduction should therefore include a clear purpose plainly and clearly explained.

2 When speaking to a bereaved family refer to the victim by their proper name (e.g. Mr, Mrs, your husband, son, daughter etc) and not by the word "deceased" as this may cause unnecessary upset. The family should be told that our primary purpose is to establish why the **death** happened etc. They should be not given any unrealistic expectations of our investigation. Encourage them to have a friend or another relative present at the meeting.

3 Helpful statements will often begin with " what I am able to offer you is"(a point of contact) This could be extended with statements such as "What I can provide you with is upto date information"

4 It is important that the family appreciate that our time is not limitless, and it is both professional and courteous to say how long you consider you will stay on each visit when arranging the meeting.

5 The pack of information should be referred to, as studies show that people only retain 10% of verbal information, particularly when people are upset. Reference to the useful contacts may assist prior to departure.

Exit strategies

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6 When the investigation is completed and or personal direct contact with the family is over, (other than any legal proceedings which will be communicated primarily by telephone) it is important that Inspectors plan how they will effectively terminate their “relationship” with the family. This may be by meeting them. If so then this meeting should be properly planned taking into account the following;

- w Assessing the people you are dealing with
- w Referring back to the first meeting
- w Summarising what has been done
- w Allowing them the opportunity to ask questions
- w Having sources for referrals/other organisations who can help
- w Do not go on beyond the time frame previously set- unless it is absolutely unavoidable
- w Ensure that once this has been completed you LEAVE

Appendix 3

Disclosure of information

Disclosure of information

1 As a general principle, Inspectors when faced with requests for information from the bereaved family, should be as open as possible in providing information to them. However, while it is perfectly proper to give details about the progress of an investigation, care must be taken not to disclose investigation material, for example witness statements or records of interview. Apart from the restrictions on disclosure which section 28 of the Health and Safety at Work etc Act 1974 imposes, there are general principles of law which apply governing the disclosure of such material to third parties.

2 First, it is not usual to disclose material until any criminal proceedings have been completed. The leading case in this area is *Conway v Rimmer* [1968] 1 AER 874, in which Lord Reid said (at page 889):

... it would be generally wrong to require disclosure in a civil case of anything which might be material in a pending prosecution, but after a verdict has been given, or it has been decided to take no proceedings, there is not the same need for secrecy.

3 There are a number of subsequent cases which support this principle.

4 More recently, the Human Rights Act 1998 has had an impact on the common law. HSE as a public authority has a duty to act in accordance with Convention Rights. Individuals have rights, under Article 6, to a fair trial, and the presumption of innocence and, under Article 8, to respect for their family life and

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established in a criminal trial, and those who are not prosecuted or acquitted are entitled to the presumption of innocence. This would be undermined if HSE released evidence that allowed people to determine why the person was suspected in the first place or cast doubt on their innocence.

5 It is also recognised that there is a public interest in ensuring that witnesses feel free to come forward to give statements to investigators without fear that such statements will be used for other purposes (see, for example, Taylor v SFO [1997] EWCA Civ 2163); to do otherwise may put off witnesses from coming forward which would be detrimental to the criminal justice system as a whole. For this reason it is not usual to disclose witness statements to third parties even after proceedings have been completed, except with the consent of the witness or following a court order.

6 Lastly there is a possibility of prejudice which may occur from pre-trial disclosure to third parties. Any pre-trial meetings at which witnesses are present could generate potentially prejudicial material. HSE has to comply with its duty in relation to the disclosure of unused material in accordance with the Criminal Procedure and Investigations Act and the Attorney General's Guidelines on Disclosure. Any meetings at which witnesses are present creates material which must be recorded and retained, and which is potentially disclosable to the defence in any subsequent prosecution.

Cancellation of instructions

OC 167/5 (REV) - cancel and destroy

ASI headings

Citizen's Charter: disclosure of information: fatal accidents: information: public.

Date first issued: