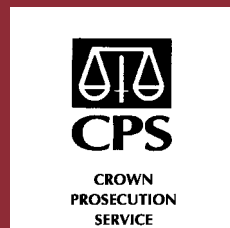


WORK-RELATED DEATHS

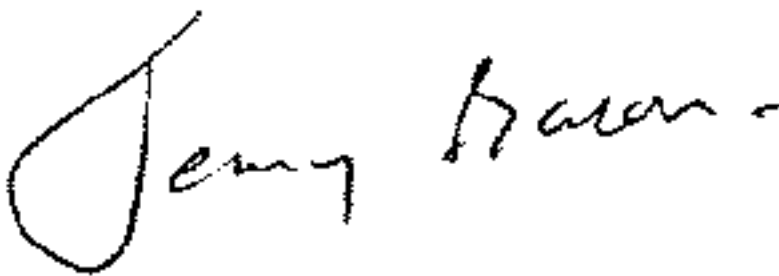
A protocol for liaison



■ Foreword

Foreword by Jenny Bacon CB, Director General, Health and Safety Executive

The Health and Safety Executive (HSE) fully endorses this protocol. We very much welcome the joint working between HSE, the Crown Prosecution Service and the Police that led to its development, and look forward to continued co-operation on putting it into practice. The protocol represents an important step forward in ensuring effective liaison between the enforcing and prosecuting authorities in relation to work-related deaths. The co-ordinated approach it describes and the arrangements it establishes for continuing liaison at national and local levels will help avoid any confusion that can arise because more than one authority is involved. More importantly, it will ensure that the timely decisions about prosecutions are taken on the basis of sound and thorough investigations.

A handwritten signature in black ink that reads "Jenny Bacon". The signature is written in a cursive style with a large, looped initial 'J'.

Jenny Bacon CB
Director General, HSE

■ Foreword

Foreword by Dame Barbara Mills QC, Director of Public Prosecutions

This is an important initiative. The offences to which this protocol relate are sensitive and the public must be sure that there has been a thorough investigation of the case and that the decision to prosecute has been carefully considered by all agencies before an announcement is made.

The protocol acknowledges these concerns and establishes a structure for effective liaison between the three organisations at each stage of the case from investigation through to a prosecution before the courts.

The Crown Prosecution Service looks forward to taking this protocol forward in partnership with the Health and Safety Executive and police.



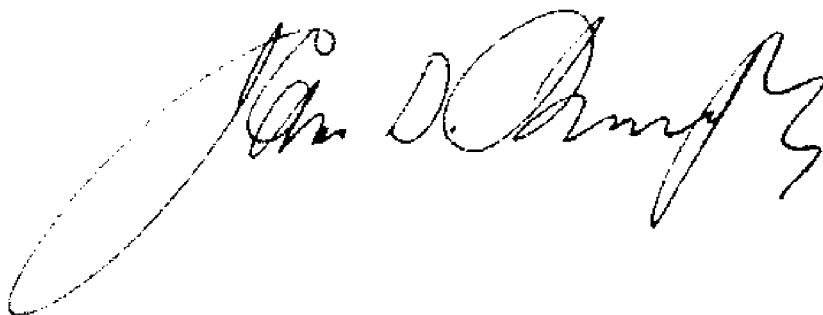
Dame Barbara Mills QC
Director of Public Prosecutions

■ Foreword

**Foreword by David Phillips, QPM, BA (Econ), Chief Constable of Kent County
Constabulary and Chairman of the Crime Committee of the Association of Chief Police
Officers**

The Crime Committee of the Association of Chief Police Officers fully endorses this protocol, which provides a broad framework within which the Health and Safety Executive, the Police and the Crown Prosecution Service can work together in cases involving death and life threatening injury associated with incidents which do not necessarily appear as homicides in the initial stages.

By following the procedures in this document, the agencies involved will ensure that an appropriate and thorough investigation is undertaken and that prosecution, where appropriate, is structured and unequivocal.

A handwritten signature in black ink, appearing to read 'David Phillips', written in a cursive style.

**David Phillips
Chief Constable
Chair of ACPO Crime Committee**

Introduction

This protocol has been agreed between the Health and Safety Executive (HSE), the Association of Chief Police Officers (ACPO) and the Crown Prosecution Service (CPS). It sets out the principles for effective liaison between the HSE, police forces and the CPS in relation to work-related deaths in England and Wales where HSE is the enforcing authority for health and safety legislation. In particular, it deals with incidents where evidence indicates that the crime of manslaughter or corporate manslaughter may have been committed.

The HSE, police and CPS have different roles and responsibilities in relation to a work-related death. The HSE is a statutory body responsible under section 18 of the Health and Safety at Work etc Act (HSWA) 1974 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 HSE cannot investigate or prosecute for general criminal offences such as manslaughter.

Police forces have the responsibility to investigate crimes in general and recommend prosecution of offenders to the CPS. The police will also have an interest in establishing the circumstances surrounding a work-related death in order to assist the coroner's inquest.

The CPS will review the evidence and decide if there is a realistic prospect of conviction and if so, whether a prosecution is justified in the public interest.

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 manslaughter (or another serious general criminal offence).
- HSE will also investigate under the HSWA 1974 and pass information suggesting manslaughter on to the police or, where appropriate, the CPS.
- The decision to prosecute will be made by the CPS and HSE without undue delay and will take full account of the criteria set down in *The Code for Crown Prosecutors*. The HSE will also have regard to the principles of the Health and Safety Commission's Enforcement Policy Statement.
- The prosecution decision will be co-ordinated.
- Bereaved families and witnesses will be kept suitably informed.
- The HSE, police and CPS will establish effective mechanisms for liaison.
- This protocol is available to the public.

1 INITIAL PROCEDURE

1.1 A police detective of supervisory rank should attend the scene of a work-related death, or where there is a strong likelihood of death resulting from an incident arising out of or in connection with work, and should:

(a) make an initial assessment about whether the circumstances might justify a charge of manslaughter, or other serious general criminal offence, in which case the police will commence their investigation (see clause 2.1);

(b) where the Health and Safety Executive (HSE) is the enforcing authority (see Annex A) confirm whether the employer, or other responsible person (eg the person in control of the premises at which, or in connection with the work at which, the incident occurred) has notified the death or injury to the HSE by the quickest practicable means; and

(c) liaise with the HSE inspector, or HSE duty officer if out of office hours and either:

(i) inform the HSE of the police decision to investigate; or

(ii) where the initial assessment indicates that there will be no police investigation, discuss arrangements for preserving the scene and the nature of the assistance that the police are able to provide to the HSE investigation.

2 INVESTIGATION

Police investigation

2.1 As a general guide, the police will investigate where there is evidence or a suspicion of deliberate intent or gross negligence or recklessness on the part of an individual or company rather than human error or carelessness.

2.2 The HSE will provide any agreed technical support to the police, and continue to investigate matters relating to possible offences under the Health and Safety at Work etc Act (HSWA) 1974. The HSE will not

lay an information until the police and Crown Prosecution Service (CPS) have reached a prosecution decision.

2.3 The police and the HSE will liaise and agree arrangements for keeping relatives informed, dealing with media inquiries and making any public announcements.

HSE investigation

2.4 Where the police decide that a charge of manslaughter, or any other serious offence, cannot be justified, the HSE will continue with its own investigation.

2.5 Where there is an HSE investigation the police will, upon request, provide agreed local support.

2.6 Where, during the HSE investigation, evidence indicates an offence of manslaughter may have been committed, HSE will refer the matter to the police without delay. Where matters cannot be resolved after referral to the police, HSE Solicitor's Office may refer the matter to the CPS.

2.7 Where there was an initial investigation by the police and the police indicate that they wish to retain an interest, the HSE shall notify police of the outcome of the inquiry and the nature of the charges preferred.

3 RETENTION AND DISCLOSURE OF MATERIAL OBTAINED DURING THE COURSE OF AN INVESTIGATION

3.1 Where there is a police investigation, material obtained during the course of the inquiry should be shared subject to any statutory restriction placed on HSE by the HSWA 1974. Agreement should also be reached as to which organisation will assume responsibility for the retention of exhibits.

3.2 The retention and disclosure of material in relation to manslaughter, health and safety or other prosecutions brought by the CPS shall be in accordance with the guidelines produced by the CPS.

4 SPECIAL INQUIRIES

4.1 In the case of some serious incidents, particularly those involving multiple fatalities, it may be appropriate for the investigations to be jointly managed. The Health and Safety Commission may also direct the HSE to investigate and produce a special report. Alternatively, the Commission may, with the consent of the Secretary of State, direct that a public inquiry be held.

4.2 In accordance with this protocol, the police will, upon request, provide the necessary support to the investigation. The police will also provide any material evidence requested by the person appointed by the Commission to conduct the public inquiry, subject to the provisions of the Health and Safety Inquiries (Procedure) Regulations 1975.

4.3 Reports relating to public inquiries and other major HSE investigations cannot generally be published until the conclusion of any criminal proceedings. In order that observations or recommendations about health and safety that are in the public interest can be disclosed and acted upon as soon as practicable, there should be no undue delay in taking the decision to prosecute and expediting proceedings thereafter.

5 ADVICE PRIOR TO CHARGE

5.1 The police should seek the advice of the CPS prior to charge where consideration is given to charging:

- (a) an individual with manslaughter in a situation envisaged under the protocol; and
- (b) must consult CPS when consideration is being given to charging a company with corporate manslaughter.

6 DECISION TO PROSECUTE

6.1 Any decision to prosecute following a work-related death should be co-ordinated and follow liaison between the police, the HSE, and CPS. There should be no undue

delay in reaching the decision. Once a decision is reached the police should be advised.

6.2 Where the police do not propose to prefer charges, or the CPS decline to prosecute, the HSE should be advised of the decision as soon as possible in order that they may expedite proceedings for any related HSWA 1974 offence(s); subject to clause 8.2.

6.3 The prosecution decision should be made known to the accused and bereaved families prior to any public announcement through the arrangements agreed in clause 2.3.

6.4 The announcement of any decision to the media by the CPS and/or HSE should be co-ordinated.

6.5 Where a decision by the CPS is not to prosecute for manslaughter and clause 8.2 applies, the announcement shall make it clear that the decision by HSE will follow the inquest.

7 CPS PROSECUTION

7.1 Where the CPS prosecute, but HSE indicate that they wish to retain an interest, the CPS undertakes to keep HSE advised as to the progress of the case and notify HSE of the result of any court proceedings.

7.2 Where the allegation concerns a work-related death, the HSE will disclose to the CPS a copy of any report or document(s) submitted to the coroner. The report may not be disclosed to any party without the consent of the HSE.

7.3 The police or CPS will advise the coroner when a charge of manslaughter is preferred. The coroner may thereafter adjourn the inquest until the conclusion of the criminal prosecution. The Director of Public Prosecutions (CPS) may also request that a coroner adjourn the inquest where there are proceedings before the magistrates' court for offences that are related to a death (section 16 Coroners Act 1988).

8 HSE PROSECUTION

8.1 Where the HSE prosecutes exclusively, following the decision to prosecute (see clause 6.1) there will in general be no need to advise CPS of the progress of the case unless CPS has requested that they be so advised.

8.2 Where the police decide not to prefer charges or CPS has reviewed the papers and declined to prosecute for manslaughter:

- (a) in order not to prejudice any post-inquest review of the decision to prosecute for manslaughter, the HSE will await the result of the coroner's inquest before preferring charges under the HSWA 1974 unless delay would prejudice the HSE case; and
- (b) where the verdict of the coroner's court causes the CPS to review their initial decision not to prosecute, the HSE will seek to ensure that their case is not heard until a further review has been completed by CPS.

9 JOINT PROSECUTION

9.1 Where CPS and HSE seek to proceed for offences arising from the same incident, a conference should be convened to discuss the management of the case with a view to initiating joint proceedings. In particular, the following issues should be discussed and agreed:

- (a) who will take lead responsibility for the proceedings;
- (b) the wording and nature of the charges;
- (c) arrangements for the retention and disclosure of material;
- (d) the timing of proceedings;
- (e) arrangements for keeping bereaved families and witnesses informed;
- (f) the announcement of the decision;

(g) arrangements for maintaining contact during the life of the prosecution and agree a mechanism for consultation should an issue arise which results in the prosecution being withdrawn or no further evidence offered; and

(h) any other case management issue.

10 NATIONAL LIAISON

10.1 The police, CPS and HSE shall form a national liaison committee which should meet at least once a year to review the operation of the protocol and consider the need for changes in arrangements.

11 LOCAL LIAISON

11.1 The police, CPS and HSE shall nominate identified local liaison officers. These persons should meet on a regular basis to discuss implementation of this protocol at a local level and other issues of mutual interest and concern.

11.2 The liaison officers' responsibilities will also include:

- (a) ensuring that there is an identified and accountable local line of effective communication between the three organisations;
- (b) monitoring the effectiveness of the protocol; and
- (c) communicating any issues that may have implications for the protocol or issues of concern to the national liaison committee.

■ Annex A (Clause 1.1(b))

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

Health and Safety Executive

Enforcement of the HSWA 1974 and related legislation is shared with local authorities who cover certain types of work activities. As a general guide, the **Health and Safety Executive** (HSE) is normally the enforcing authority for work activities and premises including:

- Factories and other manufacturing, 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 from April 1998)

- Police and fire authorities; Crown, including Ministry of Defence
- Docks
- Nuclear installations
- Offshore gas and oil installations and associated activities including pipe-lay barges, and diving support vessels.
- Onshore major hazards, including pipelines, gas transmission and distribution
- Transport of dangerous substances by road and rail
- Manufacture, transport, handling and security of explosives

CONTACTING HSE OUT-OF-HOURS

The 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.

LOCAL AUTHORITIES

In England and Wales, **district, borough or city councils** enforce the HSWA 1974 in respect of certain non-domestic premises, including:

- Shops and retailing, including market stalls, coin-operated laundrettes, and (from April 1998) mobile vendors
- Most offices
- Some wholesale and retail warehouses
- Hotels and catering, including guest houses, hostels, caravan and camping sites, restaurants, pubs, cafés, and wine bars

- Leisure and entertainment, including night clubs, social clubs, circuses, sports facilities, health clubs, gyms, riding schools, racecourses, pleasure boat hire, motor racing circuits, and (from April 1998) museums, theatres and art galleries
- 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

Arrangements for liaison in circumstances where local authorities are the enforcing authority will be developed. In the meantime, existing local liaison arrangements should continue.

References

More information can be found in these free publications:

HSE *The Health and Safety Commission's enforcement policy statement* HSE Books
1995 MISC030

CPS *The Code for Crown Prosecutors* is available free from: Crown Prosecution Service, Publicity Branch, 50 Ludgate Hill, London, EC4M 7EX. Tel: 020 7796 8000.

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.)

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 CF83 3GG. You can also visit HSE's website: www.hse.gov.uk

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