

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

Foreword

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

National Police Chiefs' Council (NPCC);
British Transport Police (BTP);
Care Quality Commission (CQC);
Care and Social Services Inspectorate Wales (CSSIW);
Chief Fire Officers' Association (CFOA);
Crown Prosecution Service (CPS);
Health and Safety Executive (HSE);
Health Inspectorate Wales (HIW);
Local Government Association (LGA);
Maritime and Coastguard Agency (MCA);
Medicines and Healthcare products Regulatory Authority: Medical Devices Division;
Office for Nuclear Regulation (ONR);
Office of Rail and Road (ORR);
Welsh Local Government Association.

Other enforcing authorities, investigators and regulators who are not signatories to this protocol but agree to abide by the protocol's principles include the Civil Aviation Authority (CAA) and the Independent Police Complaints Commission (IPCC).

The Protocol is a high level document which is supported by, and should be read in conjunction with the Work-related Deaths Protocol Practical Guide which sets out a straightforward step-by-step approach to the joint investigation of work-related deaths.

The purpose of the protocol and supporting guide is to ensure effective joint investigation of 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. By signing the protocol, signatories confirm their commitment to the joint investigation approach, appreciating that the public want to be confident that those investigating work-related deaths are doing all that they can to co-ordinate activities, and to co-operate with each other in the best interests of public safety and of those affected by work-related deaths.

Annex A provides a general guide to the enforcement of the Homicide related offences, the Health and Safety at Work etc. Act 1974 (HSW Act) and related legislation.

Signatories

	<p>Commander Dean Hayden Metropolitan Police Service National Police Chief's Council</p>	
	<p>Paul Crowther Chief Constable British Transport Police</p>	
	<p>Paul Hancock President Chief Fire Officers Association</p>	
	<p>Alison Saunders Director of Public Prosecutions Crown Prosecution Service</p>	
	<p>David Behan Chief Executive The Care Quality Commission</p>	
	<p>Imelda Richardson Chief Executive Care and Social Services Inspectorate Wales</p>	
	<p>Richard Judge Chief Executive Health and Safety Executive</p>	
	<p>Kate Chamberlain Chief Executive Health Inspectorate Wales</p>	
	<p>Nick Worth Regulatory Services Champion The Local Government Association</p>	
	<p>Alan Massey Chief Executive Maritime and Coastguard Agency</p>	
	<p>John Wilkinson Director MHRA Medical Devices Division</p>	
	<p>Richard Savage Chief Inspector Office of Nuclear Regulation</p>	
	<p>Richard Price Chief Executive Office of Rail and Road</p>	
	<p>Neil Moore Spokesperson for Regeneration, Economic Development and Regulatory Services The Welsh Local Government Association</p>	

1 Statement of intent

1.1 Signatories to the Protocol agree to work jointly and adhere to the following underlying principles:-

- The police will investigate where there is suspicion that a negligent homicide caused a death (or according to medical opinion, a strong likelihood of death);
- the relevant enforcing authority will investigate health and safety offences;
- the police will usually be first at the scene of work-related deaths and will contact and inform other relevant enforcing authorities as soon as practicable;
- investigations will be conducted and managed jointly in line with the Work-related Deaths Protocol: Practical Guide;
- that during the investigation, one party will assume primacy⁽¹⁾;
- that all parties to a joint investigation will seek to progress their own investigations regardless of who has primacy;
- that primacy for an investigation can change and the process of handover of primacy should be conducted in an efficient and timely manner;
- enforcement decisions will be based on sound investigations, be co-ordinated between all relevant parties and made without undue delay;
- relevant enforcing authorities will be consulted about pursuing other offences in addition to homicide related offences. This consultation will continue through to the conclusion of the enforcement action;
- the police and relevant enforcing authorities will agree how the Coroner is to be kept informed on the progress of an investigation;
- the bereaved and witnesses will be kept informed; and,
- the parties to the protocol will maintain effective liaison.

(1) Definition of Primacy: One Party to the Investigation takes the lead with the other parties working jointly and in parallel.

2 Protocol for Liaison

2.1 In the early stages of an investigation it is not always apparent whether any serious criminal offence has been committed. Joint decisions will be made on who will assume primacy, and the direction it will take. The decisions should be timely, informed by the best available evidence and technical expertise and take account of the wider public interest.

2.2 Whilst one party will have primacy for an investigation, all parties will work jointly to ensure their own investigations progress in parallel and without delay. Primacy should not be a barrier which hinders the progress of any investigation. Where primacy changes, most commonly from the police to the relevant enforcing authority, handover of the investigation should be carried out in a timely and efficient manner.

2.3 The police may reassume primacy in investigations where new evidence of a suspected homicide related offence has come to light, or as the result of a Coroner's inquest conclusion of unlawful killing.

2.4 Only the police can investigate homicide related offences (corporate or gross negligence manslaughter), and only the CPS can decide whether such a case will proceed. Whenever there is a suspicion that a negligent homicide may have caused a death, the police will assume primacy for an investigation and work jointly with other relevant enforcing authorities.

2.5 The police will also have an interest in establishing the circumstances surrounding a work-related death in order to assist the coroner's investigation.

2.6 Health and safety offences are usually prosecuted by the relevant enforcing authority. The CPS may also prosecute health and safety offences, but usually do so only when prosecuting a homicide related offence, arising out of the same circumstances⁽²⁾.

2.7 Advice from the CPS should be sought as early as possible in a homicide related investigation and, within 3 months from the date of death, a comprehensive review should be undertaken with CPS. The review should include the police and other relevant enforcing authorities.

2.8 Investigations into work-related deaths should be the subject of regular review, and any issues that arise should be discussed and resolved at the appropriate level. Investigations should be completed, and any decision to prosecute made, as quickly as possible, taking into account the nature of the case. All parties should aim to ensure that any prosecution is brought as soon as possible and except in exceptional circumstances no later than 3 years of the date of death⁽³⁾.

(2) An offence of failing to comply with the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 including a failure to provide safe care and treatment resulting in avoidable harm or a significant risk of exposure to avoidable harm can only be prosecuted by CQC unless the Attorney General provides written consent to another person (Section 90 Health and Social Care Act 2008).

(3) CQC prosecutions must be commenced within twelve months of the date at which sufficient evidence, in the opinion of the prosecutor, to justify a prosecution exists. The time-scale for completion of the investigation in these cases will be shorter.

3 In what circumstances will this protocol apply?

3.1 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.

3.2 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 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.

4 National liaison

4.1 The National Liaison Committee comprises representatives from the police (NPCC); BTP; the CPS; CQC, CSSIW, HIW, HSE; local authorities; ONR, ORR; MCA, MHRA 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. Terms of Reference for the NLC are detailed in Annex B.

5 Local liaison

5.1 The Regional Liaison Committees (RLCs) comprise of representatives from the signatories, nominated at local levels. These committees will meet at least twice a year 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.

5.2 RLCs will be responsible for ensuring that there is an identified and effective line of local communication between signatory organisations. A suggested Terms of Reference for RLCs is detailed in Annex C.

Annex A: A general guide to the enforcement of Homicide related offences, the Health and Safety at Work etc. Act 1974 and related legislation

Homicide related Offences

Investigations of homicide related offences i.e. Gross Negligence Manslaughter (GNM) and Corporate Manslaughter are carried out by the police. The police also have a role in assisting the coroner in the coronial investigation.

Prosecution of homicide related offences are carried out by the Crown Prosecution Service (CPS). Complex Crime Units (CCUs) within the CPS deal with all gross negligence manslaughter cases other than those of a medical nature. Medical manslaughter and corporate manslaughter (except partnerships which are dealt with by CCUs) are dealt with by the CPS Special Crime Units in the Special Crime and Counter Terrorism Division (SCCTD).

Health and Safety at Work etc. Act 1974

Enforcement of the HSW Act and the related legislation is shared between HSE, local authorities, ONR 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.

HSE, local authorities, ONR and ORR are responsible, under section 18 of the Health and Safety at Work etc. Act 1974 (HSWA), 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 Health and Safety Executive⁽¹⁾

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 subject to CQC's lead for health and safety incidents where users of services have been harmed;
- 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;
- 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;
- manufacture, transport, handling and security of explosives; and
- common parts of domestic premises.

The Care Quality Commission⁽¹⁾

CQC is the independent regulator of health and social care in England. It is also the lead inspection and enforcement body under the Health and Social Care Act 2008 (HSCA 2008) for the safety and quality of health and social care services provided to patients and other service users by providers registered with CQC.

CQC's regulatory remit includes:

- Care and nursing homes;
- Private and public hospitals;
- Health and social care in secure settings including prisons, youth offender institutions and secure hospitals;
- Domiciliary care;
- GP and dental practices; and,
- Mental health services.

CQC's main objective is to protect and promote the health, safety and welfare of people who use health and social care services, as set out in the HSCA 2008, and its associated regulations, the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 ('RAR 2014') and the Care Quality Commission (Registration) Regulations 2009 (RR 2009).

CQC will pursue civil and, where appropriate, criminal enforcement action against registered persons who provide health and social care services for breaches of health and social care law under HSCA 2008 and RAR 2014.

From 1 April 2015 CQC has a power to prosecute for failures to provide safe care and treatment resulting in avoidable harm or a significant risk of exposure to avoidable harm (Regulation 12(1) RAR 2014). This power does not apply to failures before 1 April 2015. Prosecutions can be brought against registered providers, individual registered managers and directors of corporate providers.

CQC cannot investigate or prosecute murder, manslaughter, health and safety at work act offences, wilful-neglect or ill-treatment.

CQC also has a power to prosecute unregistered providers of health and social care services for an offence of carrying on a regulated activity when unregistered to do so.

Care & Social Services Inspectorate Wales⁽¹⁾

CSSIW is the independent inspectorate and regulator for social care in Wales. As part of CSSIW's regulatory function, it registers, inspects and takes action for improvement to make sure that only people and organisations that will provide a safe and high quality service are registered. Legislation provides for two different

legal remedies for enforcement, civil and criminal action. CSSIW can take either or both simultaneously.

CSSIW regulates and inspects:

- Care homes for adults, including those providing nursing care;
- Domiciliary care agencies;
- Adult placement schemes;
- Nurses' agencies;
- Children's homes;
- Child minders;
- Day care services for children;
- Fostering agencies;
- Adoption agencies;
- Boarding schools;
- Residential family centres;
- Residential special schools; and,
- Further education colleges which accommodate students under 18.

Healthcare Inspectorate Wales⁽¹⁾

HIW is the independent inspectorate and regulator of all health care in Wales.

HIW's primary focus is on:

Making a contribution to improving the safety and quality of healthcare services in Wales.

Improving citizens' experience of healthcare in Wales whether as a patient, service user, carer, relative or employee.

Strengthening the voice of patients and the public in the way health services are reviewed.

Ensuring that timely, useful, accessible and relevant information about the safety and quality of healthcare in Wales is made available to all.

HIW do this by:

- Inspecting NHS healthcare to provide assurance on the quality and effectiveness of NHS services through our programme of inspections and review activities;
- Regulating independent healthcare;
- Inspecting Mental Health & Learning Disabilities hospitals in both the NHS and independent sector to ensure the most vulnerable individuals in society are protected, cared for and treated appropriately in environments conducive to their recovery;
- Fulfilling the function of the Local Supervising Authority (LSA) for Wales and further education colleges which accommodate students under 18.

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 of a house which is occupied as a single private dwelling.

Local authorities⁽¹⁾

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 launderettes, 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 subject to CQC's lead for health and safety incidents where users of services have been harmed;
- privately run pre-school child care, e.g. nurseries.

Maritime and Coastguard Agency⁽¹⁾

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.

Office for Nuclear Regulation

ONR is responsible for regulating health and safety on GB Nuclear sites, Authorised Defence sites, Nuclear Warship sites, and Nuclear New Build. ONR is responsible for the investigation of Work Related Deaths which may occur at those sites.

Office of Road and Rail⁽¹⁾

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, movements and carriage of goods;
- station operation;
- transport of dangerous goods by rail.

Medicines and Healthcare products Regulatory Authority: Medical Devices Division

The MHRA is the UK regulatory authority for medicines and medical devices. The Devices Division investigates all reported incidents involving medical devices used in hospitals, primary care and social care settings. We work closely with the HSE, the Police and Coroners in cases involving patient deaths, as appropriate.

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 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.

(1) The lists of activities are meant as a guide and are not exhaustive.

Annex B: National Liaison Committee: Terms of Reference

WORK-RELATED DEATHS NATIONAL LIAISON COMMITTEE

TERMS OF REFERENCE

1. The National Liaison Committee (NLC) comprises representatives from the National Police Chiefs' Council (NPCC), the British Transport Police (BTP), the Care Quality Commission (CQC), the Chief Fire Officers Association (CFOA), the Crown Prosecution Service (CPS), the Care and Social Services Inspectorate Wales (CSSIW), the Health and Safety Executive (HSE), the Health Inspectorate Wales (HIW), the Local Government Association (LGA), the Maritime and Coastguard Agency (MCA), the Medicines and Healthcare products Regulatory Authority: Medical Devices Division (MHRA), the Office for Nuclear Regulation (ONR), the Office of Rail and Road (ORR) and the Welsh Local Government Association (WLGA). Representatives of non-signatory organisations may also be invited to attend.
2. The NLC will meet at least twice a year to review the operation of 'Work-related Deaths: a Protocol for Liaison' (the Protocol), to:
 - (i) consider the need for changes to the Protocol and to liaison arrangements;
 - (ii) to identify good practice;
 - (iii) to discuss issues of mutual concern, mainly of a national level; and
 - (iv) provide an usefull network of contacts.
3. The Chair of the NLC will be on a rotation basis, each of the signatories to the Protocol taking the Chair for two years in turn. Each year will run from 1 April to 31 March.
4. All WRDP signatory organisations regardless of their organisation's size and resources should have the opportunity to Chair the NLC.
5. The Chair will host four meetings of the NLC during their period of chairing and will circulate minutes of meetings.
6. The NLC does not oversee individual cases although it may monitor them to identify learning points about the effectiveness of the Protocol.
7. The NLC will oversee Regional Liaison Committees (RLCs) by providing guidance and advice as to how they should operate.
8. There will be communication between the NLC and the RLC as to the effectiveness of Protocol, and to facilitate the identification of best practice and the sharing of knowledge.
9. These Terms of Reference will be reviewed from time to time as necessary.

Last Reviewed January 2016

Annex C: Regional Liaison Committees: Example Terms of Reference

WORK RELATED DEATHS REGIONAL LIAISON COMMITTEE

TERMS OF REFERENCE

1. The Regional Liaison Committee (RLC) comprises representatives from the National Police Chiefs' Council (NPCC), the British Transport Police (BTP), the Care Quality Commission (CQC), the Chief Fire Officers Association (CFOA), the Crown Prosecution Service (CPS), the Care and Social Services Inspectorate Wales (CSSIW), the Health and Safety Executive (HSE), the Health Inspectorate Wales (HIW), the Local Government Association (LGA), the Maritime and Coastguard Agency (MCA), the Medicines and Healthcare products Regulatory Authority: Medical Devices Division (MHRA), the Office for Nuclear Regulation (ONR), the Office of Rail and Road (ORR) and the Welsh Local Government Association (WLGA). Representatives of non-signatory organisations may also be invited.
2. The Regional Liaison Committee (RLC) Chair will (where possible) be from the same partner to the protocol as the NLC Chair. If this is not possible, the RLC will decide which partner would be best placed to take on the Chair's role for the two year period.
3. RLC Chairs should continue to rotate at the same time as the NLC Chair after the two-year period.
4. The RLC will meet at least twice a year to:
 - (i) discuss issues raised at NLC level which have been communicated to RLCs (usually via the circulation of NLC meeting minutes);
 - (ii) monitor the operation and effectiveness of the protocol at a local level;
 - (iii), communicate any significant issues to the NLC;
 - (iv) promote the practice of joint investigation by sharing examples of good and poor practice;
 - (v) discuss issues of mutual interest and concern;
 - (vi) as required, or via direction from the NLC identify and deliver CPD events to promote the principles of the WRDP and the practice of joint investigation as recommended in the WRDP Practical Guide.
5. The RLC will establish and maintain effective lines of communication at a local level between signatory organisations to ensure that issues can be discussed, and if necessary escalated.
6. These Terms of Reference will be reviewed from time to time as necessary.

Last Reviewed: xx/xx/xxxx

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 at HSE: Guidance on health and safety at work. HSE priced publications are also available from bookshops.

This document is available at www.hse.gov.uk/pubns/wrdp1.pdf.

The Work-related Deaths Protocol: Practical Guide is available at www.hse.gov.uk/pubns/wrdp2.pdf.

Crown Prosecution Service publications are available via the CPS website at Crown Prosecution Service Publications: Documents published by the CPS.

National Police Chief's Council publications are available from <http://site.npccms.coraider.com/FreedomofInformation/Documents.aspx>.

British Transport Police publications are available from www.btp.police.uk/advice_and_info.aspx.

Care Quality Commission publications are available from www.cqc.org.uk

Care and Social Services Inspectorate Wales publications are available from www.cssiw.org.uk

Chief Fire Officers Association publications are available from www.cfoa.org.uk/11898

Health Inspectorate Wales publications are available from www.hiw.org.uk/

Maritime and Coastguard Agency publications are available from www.gov.uk/government/publications.

Medicines and Healthcare products Regulatory Authority publications are available from www.gov.uk/government/organisations/medicines-and-healthcare-products-regulatory-agency/services-information.

Office of Rail and Road publications are available from <http://orr.gov.uk/publications>.

Office for Nuclear Regulation publications are available from www.onr.org.uk/resources.htm.

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

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