

Work-related Deaths: **A Protocol for Liaison**

Foreword

This protocol has been developed through the representative bodies of the undersigned organisations to emphasise the importance of working together to investigate thoroughly work-related deaths in Scotland, and where appropriate, to prosecute and/or proceed to fatal accident inquiry.

This is the second version of the protocol. We will continue to review its operation and revise it as necessary in the light of experience. The protocol is available to the public and interested organisations and their views and experience of its operation are sought to aid that process. We are conscious of the strength of public feeling about workplace fatalities and of how these tragic incidents devastate peoples' lives.

All signatory organisations to this protocol recognise it is essential to ensure that consideration of the circumstances of a work-related death and its investigation is undertaken in a holistic way to reflect that different agencies may have different investigative roles and responsibilities in the investigation. There is a need for investigatory authorities to talk to each other and to share information and best practice. Ongoing effective liaison and communication are key to the operation of the protocol. We appreciate that people want to be confident that we are doing all that we can to co-ordinate our efforts and to co-operate with each other in the best interests of public safety and of those affected by work-related deaths.

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

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Introduction

- 1 This protocol has been agreed among its signatories. It sets out the principles for effective liaison among the parties in relation to work-related deaths in Scotland and is available to the public. In particular, it deals with incidents where, following a death, evidence indicates that a serious criminal offence which falls within the jurisdiction of more than one signatory to this protocol may have been committed. The protocol addresses issues concerning general liaison and is not intended to cover the operational practices of the signatory organisations.
- 2 All signatories to this protocol, and any other specialist reporting agencies (SRAs) in Scotland who support it have different roles and responsibilities in relation to a work-related death.
- 3 In Scotland, the Lord Advocate is the head of the systems of criminal prosecution and the investigation of deaths in Scotland. These functions are discharged on their behalf by the Crown Office and Procurator Fiscal Service (COPFS).
- 4 The objectives of a death investigation are:
 - to eliminate the risk of undetected homicide and other criminality associated with the death,
 - to eradicate dangers to life and the health and safety of the public,
 - to allay public anxiety,
 - to secure and preserve evidence and thereby enable COPFS to assess criminality, to prosecute criminality in the public interest, present evidence at a fatal accident inquiry (FAI) and to give effect to the rights of bereaved nearest relatives as provided by law, and
 - to assist in the maintenance of accurate statistics
- 5 The Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016 is the statutory framework for FAIs.
- 6 A mandatory FAI requires to be held into the death of a person if it was as a result of an accident in Scotland while the person was acting in the course of their employment or occupation, or if at the time of the death the deceased was in legal custody or was required to be detained or kept in secure accommodation. In certain circumstances the Lord Advocate can waive the requirement to hold a mandatory FAI where the circumstances of the death have been sufficiently established in the course of other proceedings.
- 7 The Lord Advocate also has power to instruct a discretionary FAI where a

death was sudden, suspicious, or unexplained, or occurred in circumstances giving rise to serious public concern and decides that it is in the public interest for an inquiry to be held into the circumstances of the death.

- 8 The investigation into the death requires to be thorough and address the issues that are relevant to both criminality and FAI. Evidence requires to be obtained in a manner that is comprehensive and in accordance with the legal requirements for obtaining, seizing and securing evidence.
- 9 COPFS investigates all sudden, suspicious, accidental and unexplained deaths. The investigation will usually be undertaken (usually for crimes other than health and safety ones) in the first instance by the police with appropriate direction from the Procurator Fiscal. The police gather evidence to establish whether there is criminality and will subsequently report the result of their investigation to the Procurator Fiscal. SRAs may also be investigating and gathering evidence, depending on the circumstances of the death. If appropriate, they too will report to COPFS.
- 10 The SRA, and other agencies in Scotland who support the protocol and aim to work in accordance with its recommendations will investigate in accordance to the legislation applicable to their regimes. This legislation may be the Health and Safety at Work etc. Act 1974 and its relevant statutory provisions, merchant shipping health and safety regulations, or other legislation specific to the SRA. Some of that legislation may or may not be devolved.
- 11 Each SRA will investigate in accordance with their enforcement policy statement (EPS). Whilst slightly different in wording the various EPS' follow the principles and framework laid out in either the Scottish regulators' strategic code of practice, or the Regulator's Code.¹
- 12 All decisions on whether to prosecute in respect of criminality are taken by COPFS.
- 13 The underlying principles of this protocol are:
 - an appropriate decision concerning prosecution and/or fatal accident inquiry will be made based on a comprehensive investigation of the circumstances surrounding work-related deaths;
 - where there is an indication of the commission of a serious criminal offence, (other than a health and safety offence) the police² will conduct an investigation (subject to any guidance or instruction from the Procurator Fiscal) jointly with other relevant SRAs. On the rare occasions where joint investigations would not be appropriate, there will

¹ The Regulators' Code is created in accordance with section 23 of the Legislative and Regulatory Reform Act 2006 and requires regulators to have regard to the Code.

² 'Police' is encompassing. It could refer to Police Scotland, British Transport Police, or other constabularies such as the Civil Nuclear Constabulary.

still be effective liaison and co-operation among the investigating parties;

- where health and safety offences only are involved the relevant signatory organisations will conduct an investigation, again in liaison with the police and COPFS;
- the decision to prosecute/hold a fatal accident inquiry will be made as expeditiously as possible when all material that is relevant to the decision is available to the Crown. the bereaved nearest relatives and witnesses will be kept suitably informed in accordance with an agreed communication strategy
- a media strategy will be agreed to ensure consistent messaging; and
- parties to the protocol will maintain effective mechanisms for liaison.

Application

- 14 For the purpose 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, that death is likely.
- 15 There will be cases in which it is difficult to determine whether a death is work-related or not in the early stages of an investigation. The Procurator Fiscal will determine whether or not a death is work-related and thus subject to this protocol after consultation with the police and signatory organisations.

Statement of intent

- 16 The parties to the protocol are committed to ensuring that any investigation into a work-related death is thorough and appropriate, to ensure reasonable lines of inquiry in respect of crime and the criminality associated with it are explored in the investigation, and that full and relevant evidence is seized in an admissible manner. They agree to work closely together in order to achieve this. Decisions in relation to who will lead the investigation, and the direction it will take, should be timely, informed by the best available evidence and technical expertise, and should take account of the wider public interest. Should there be any issue as to who is to be involved in investigating any work-related death, then the relevant SRAs and the Procurator Fiscal will work together to reach a conclusion. Where the Procurator Fiscal decides that a work-related death may be a serious criminal offence (other than a health and safety offence), then they have authority to direct the police to lead the investigation until such time as such serious crime is excluded. The Procurator Fiscal has no authority to issue instructions to SRAs, but SRAs

will assist the Procurator Fiscal and police as appropriate, where they have the skills, competencies and resources to do so.

Initial considerations

- 17 A police officer attending an incident involving a work-related death should treat the locus as a crime scene and arrange, according to the officer's force procedures governing unexplained deaths, to:
- identify, secure, preserve and take control of the scene, and any other relevant place;
 - supervise and record all activity;
 - inform a senior supervisory officer (who will notify onwards within the force as appropriate)
 - enquire whether the employer or other responsible person in control of the premises or activity has informed the relevant SRA(s); and
 - contact and discuss the incident with the relevant SRA(s) and agree arrangements for controlling the scene to allow them access, and for other local handling and procedures to ensure the safety of the public.
- 18 A suitably trained officer should attend the scene and any other relevant place to assess the situation, review actions taken to date and assume responsibility for the investigation. Should any other investigating or enforcing authority have staff in attendance before the police arrive, it should ensure that the police have been called, and preserve the scene in accordance with the initial actions (above) until the police get there.
- 19 The senior investigating officer or designated deputy should, when they have assessed the situation and reviewed actions taken, contact the Procurator Fiscal, or if out of hours, the duty Procurator Fiscal, and appraise them of the full circumstances of the death. They should comply with any instructions issued by the Procurator Fiscal who may decide to attend the scene of the death and/or to instruct a pathologist to attend. Other specialists should attend the locus in accordance with local arrangements for the investigation of a serious crime to ensure a complete and thorough investigation.

Management of the investigation

- 20 Investigations should always be managed professionally, with communications among the relevant agencies continually maintained. Investigations should generally be jointly conducted, with one of the parties taking the coordinating lead subject to the authority or guidance of the Procurator Fiscal, as appropriate.

- 21 There should be an early meeting of the signatory organisations involved in the investigation to establish roles and responsibilities. This recognises that investigations can be multi-faceted, can require a number of lines of investigation, with different agencies leading in relation to a particular line, and the management of information including evidence needs to be discussed and agreed.
- 22 Throughout the investigation period, the signatory organisations should keep the progress of the investigation under review through regular meetings. Milestones should be agreed and monitored, and policy and key decisions made after discussion with the Procurator Fiscal if necessary. All policy and key decisions are to be recorded.
- 23 All parties investigating the death should agree on:
- how resources are to be specifically used;
 - the order in which reasonable lines of inquiry will take place, and who will conduct those particular lines of inquiry;
 - how evidence and findings are to be shared among the parties, always bearing in mind the need to maintain the continuity of evidence which may be required for future court proceedings;
 - how the interviewing of witnesses, the instruction of experts and the forensic examination of productions are to be co-ordinated;
 - how, and to what extent, corporate or organisational failures should be investigated;
 - a strategy for keeping the bereaved nearest relatives, witnesses, and other interested parties informed of developments in the investigation;
 - a joint media strategy to take account of the sensitivities of the bereaved and those involved in the incident, and to encourage consistency of approach in reporting;
 - milestones and involvement of parties in any associated investigations; and;
 - whether general warnings need to be given to industry or other classes of duty holder if the investigation reveals risks which may not be generally understood. The wording of such general warnings should be agreed with the Procurator Fiscal to minimise jeopardising any later proceedings.

Decision making

- 24 This protocol formalises the arrangements for work-related deaths to be subject to initial investigation by the police and relevant SRAs. The relevant parties will discuss their initial findings and views with the Procurator Fiscal as soon as possible after the initial site visit, with a view to enabling the Procurator Fiscal to make an early decision as to whether a serious criminal offence (other than a health and safety offence) can be excluded. However, an early decision may not be possible in large and complex investigations until thorough investigation has taken place.
- 25 Where the investigation gives rise to a suspicion that a serious criminal offence (other than a health and safety offence) may have caused the death, the police will take the lead for the investigation, subject to the authority of the Procurator Fiscal, in partnership with any SRAs who will also investigate the circumstances of the death and any offending under their own legislative regime at the same time. Where it becomes apparent during the investigation that there is insufficient evidence to establish that a serious criminal offence (other than a health and safety offence) caused the death, it is appropriate that the lead for the investigation should, by agreement, be taken over by the relevant SRA. Parties should record such a decision and the reason in writing.
- 26 Information obtained and evidence gathered will continue to be exchanged as needed between the parties after any decision has been made on handover of the investigation. This is particularly important if new evidence is discovered which would cause the Procurator Fiscal to reinvolve the police in the enquiry.

Sharing of material between the police and SRAs during the investigation

- 27 Material gathered must always follow the established law and procedure. There requires to be a legal basis for sharing information between the police and SRAs who are investigating in terms of this protocol. There may be limited occasions when the Crown determines certain information cannot be shared between the Police and SRAs. All decisions on sharing material out with those investigating under the protocol, will be made by COPFS.
- 28 Where there has been an investigation, all reports of the investigation will be submitted to the Procurator Fiscal and shared, subject to any legal restrictions among the Procurator Fiscal, the police and the relevant signatory organisation(s). Special handling procedures may be necessary in certain cases.

Special inquiries

- 29 In the case of some incidents, particularly those involving multiple fatalities,

legislation may allow a public inquiry to be held, or a special report to be produced.

- 30 In such circumstances, all signatories will provide any necessary support and evidence, subject to the relevant regulations.
- 31 Complex legal issues may arise when there are parallel public inquiries and criminal investigations or prosecutions. The signatories will aim to keep the Procurator Fiscal and the Chairs of any inquiries informed of the progress of the investigation and the Procurator Fiscal will advise the inquiry as necessary.
- 32 Sometimes the report of a public inquiry may be delayed to await the conclusion of criminal proceedings, and on other occasions there may be no such delay because of strong public interest in publishing the report and the recommendations of a public inquiry quickly. In either event, the signatories to the protocol, in consultation with COPFS, will work together to ensure that the decision to prosecute can be made as expeditiously as possible and any criminal proceedings commenced timeously following upon a decision to prosecute.

Consultation prior to charge

- 33 Early and regular liaison as described above is essential in the best interests of the investigation and prosecution process as a whole. The Procurator Fiscal has an ongoing role in the death investigation.
- 34 The police must consult the Procurator Fiscal before charging an individual or the representatives of a company or corporate body with any serious criminal offence arising out of a work-related death.

The decision to prosecute

- 35 The decision to prosecute any serious criminal offence, including a health and safety one, will follow a full review by the Procurator Fiscal of the material gathered during the investigation into the work-related death. Part of that review will be whether any further lines of inquiry to establish criminality could be explored. The review will be in accordance with the Prosecution Code. Following full consideration the Procurator Fiscal will submit a report to Crown Counsel who will make the decision and have it communicated to the Procurator Fiscal.
- 36 A serious criminal offence, other than a health and safety one, may be prosecuted with or without related health and safety offences. In respect of potential offences being considered by a signatory organisation, they will submit a report to the Procurator Fiscal with recommendations on how to proceed made in accordance with their individual Enforcement Policy Statements, processes and procedures.

- 37 The decision in respect of prosecution will be made as expeditiously as possible... If there is a delay then COPFS should notify the police and the relevant signatory organisations, explain the reasons for the delay, and keep them informed of the decision making progress.
- 38 COPFS should always take into account the consequences for the bereaved of the decision whether or not to prosecute, and of any views expressed by them. Where the 'Victim right to review' process has been invoked, the process must be concluded before any final decision on prosecution is made.
- 39 When Crown Counsel have made their decision, it will be communicated to the police and relevant signatory organisation as soon as practicable by the Procurator Fiscal.
- 40 No prosecution decision will be made public until the accused and the bereaved nearest relatives have been advised.
- 41 The public announcement of the decision will be made according to the jointly agreed media strategy.

The prosecution

- 42 COPFS will arrange all aspects of the prosecution and will:
- deal with the retention and disclosure of material;
 - make arrangements for keeping the bereaved nearest relatives and witnesses informed of developments;
 - make the announcement of the decision in consultation with the police and any other relevant SRA(s);
 - make arrangements for maintaining contact during the prosecution

Fatal accident inquiries

- 43 Where a death occurs as the result of an accident in the course of employment, or a death in legal custody, it is mandatory for the Procurator Fiscal to hold a Fatal Accident Inquiry. An exception to this is where a prosecution has taken place in which the circumstances of the death are fully explored. In that case the Lord Advocate may dispense with the need for a Fatal Accident Inquiry. The fact that there has been a prosecution does not mean that the FAI will necessarily be waived. There are often facts or issues beyond that which were addressed in criminal proceedings that may be addressed at the FAI. The bereaved nearest relatives will be kept informed of any decision in accordance with the standards found in the Family Liaison Charter.

- 44 The Procurator Fiscal will manage all aspects of the inquiry and will:
- deal with retention and disclosure of material;
 - make arrangements for keeping the bereaved and witnesses informed of developments;
 - make the announcement of the decision in consultation with the police and the relevant SRA(s);
 - make arrangements for maintaining contact during the inquiry.
- 45 Respective organisations may have a statutory right to attend Fatal Accident Inquiries and ask questions.
- 46 Following the Fatal Accident Inquiry, the Sheriff will issue a determination. If an agency has been represented as an Interested Party at the FAI then the court will provide a copy of the determination. Determinations are published on the Scottish Courts Tribunal website.

National liaison

- 47 The National Liaison Committee (NLC) comprises representatives from all signatories to this protocol. It will meet at least once a year to review the operation of the protocol and consider the need for changes to the arrangements.
- 48 The Committee will also liaise at least once a year with the NLC for the English and Welsh Work Related Death Protocol to share experience and learning.

ANNEX A

Information about the signatory organisations can be found on their websites.

Signatories to the Work-related Death Protocol



CROWN OFFICE
& PROCURATOR
FISCAL SERVICE

SCOTLAND'S PROSECUTION SERVICE

John Logue

Crown Agent and Chief Executive, Crown
Office and Procurator Fiscal Service.



**POLICE
SCOTLAND**
POILEAS ALBA

ACC Steve Johnson

Assistant Chief Constable,
Police Scotland



**BRITISH
TRANSPORT
POLICE**

Chief Constable D'Orsi,
Chief Constable of British
Transport Police



Richard Hines,
Director of Railway Safety and
HM Chief Inspector of Railways



David Murray

Director of Planning, Finance and
Procurement, Health and Safety Executive



**Office for
Nuclear Regulation**

Mark Foy

Chief Executive and Chief Nuclear Inspector,
Office for Nuclear Regulation



Stuart Stevens

Chief Officer Scottish Fire and
Rescue Service



**Maritime &
Coastguard
Agency**

Virginia McVea

Chief Executive, Maritime and
Coastguard Agency