

FAO Mr Stephen Reid
Chairman (SOLACE)
The Chief Environmental Health Officers Group
Ards & North Down Borough Council
Town Hall
The Castle
Bangor
BT20 4BT

Sent by email: Stephen.Reid@ardsandnorthdown.gov.uk

5th July 2022

Dear Mr Reid

Re: Revised Liaison Agreement for the Investigation of Work Related Deaths

You may recall that I had previously written to you about a draft revised liaison agreement for the Investigation of Work-Related Deaths, also known as the Work-Related Death Protocol (WRDP) that the PSNI and HSENI have been working on.

The original document, which was signed in 2007, has served us well for many years. However, this new revision aims to bring the original document up-to-date and has been tentatively signed by PSNI and HSENI. I have also attached a copy of the original version of the WRDP for your ease of reference so you can see where the document has been refreshed.

I would like to try and conclude this important piece of work and would be grateful if you could please consider signing the attached revised liaison agreement on behalf of your organisation (as per the original signatories).

While I hope the new draft has comprehensively covered all relevant information, I am of course content to discuss it further. With summer leave it may be best to contact me on nicola.monson@hсени.gov.uk and I will get back to you as soon as possible.

I would be grateful for your comments or signature by 1 September 2022, to allow the document to proceed.

Yours sincerely



Nicola Monson
Deputy Chief Executive
HSENI

► **Health & Safety Executive**
Northern Ireland

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INVESTIGATION OF WORK-RELATED DEATHS

Northern Ireland Agreement for Liaison

October 2022

FOREWORD

The partners to this agreement are the Health and Safety Executive for Northern Ireland, the Police Service of Northern Ireland, the Police Ombudsman for Northern Ireland and the Northern Ireland district councils through their representative body, Environmental Health Northern Ireland. The agreement is designed to emphasise the importance of the appropriate investigative agencies working together to ensure that a thorough investigation is carried out of work-related deaths in Northern Ireland.

We are acutely conscious of the strength of public feeling about workplace fatalities, and how these tragic incidents devastate people's lives.

All of the signatory organisations recognise the need for investigating authorities to talk to each other and to share information and best practice. 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 agreement. We believe that it provides an effective 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.

A handwritten signature in black ink, reading "Nicola Hanson", enclosed within a thin, double-lined rectangular border.

**Detective Superintendent
Serious Crime Branch
Police Service of
Northern Ireland**

**Deputy Chief Executive
Health and Safety Executive for
Northern Ireland**

**Chief Executive
District Council**

**The Police Ombudsman for
Northern Ireland**

INTRODUCTION

This agreement for liaison is between the Health and Safety Executive for Northern Ireland (HSENI), the Police Service of Northern Ireland (PSNI), the Police Ombudsman for Northern Ireland (PONI) and the Northern Ireland district councils through their representative body, Environmental Health Northern Ireland.

It sets out the principles for effective liaison between the parties in relation to the investigation of work-related deaths in Northern Ireland. In particular, it deals with incidents where, following a death, there is a suspicion that criminal offences such as manslaughter and breaches of health and safety legislation, may have been committed. The agreement addresses issues concerning general liaison and is not intended to cover the operational practices of the signatory organisations.

HSENI, PSNI, PONI and the district councils have different roles and responsibilities in relation to a work-related death.

At present, only PSNI can investigate serious criminal offences, not involving police conduct, within the Corporate Manslaughter and Corporate Homicide Act such as manslaughter. PSNI will also have a duty in establishing the circumstances surrounding a work-related death in order to assist the coroner's inquest.

HSENI and district councils are responsible, under Article 20 of the Health and Safety at Work (Northern Ireland) Order 1978 (HSWO), 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 for Northern Ireland and district councils have statutory responsibilities to investigate potential criminal offences relating to breaches of health and safety legislation. Each regulator has specific areas of responsibility, further details of which are set out in Annex A of this agreement.

PONI have a responsibility under the Police (Northern Ireland) Act 1998 to, inter alia, investigate any matter which appears to the Police Ombudsman to indicate that a member of the police service may have committed a criminal offence or behaved in a manner which would justify disciplinary proceedings if it appears that it is desirable in the public interest to do so. In addition, the PSNI have a duty to report any matter to the Police Ombudsman where it appears to indicate that the conduct of a member of the police service may have resulted in the death of some other person. In such cases it is the responsibility of the PONI to fully investigate the matter.

Whilst HSENI, the district councils, the PSNI and PONI have a role in investigating work-related deaths, only the Public Prosecution Service for Northern Ireland (PPSNI) (formerly the Director of Public Prosecutions for

Northern Ireland) can decide whether a prosecution in such a case of manslaughter will proceed.

The underlying principles of this agreement are as follows:

- Appropriate recommendations concerning prosecution will be made to the PPSNI based on a sound investigation of the circumstances surrounding work-related deaths;
- PSNI will conduct an investigation into potential criminal offences, such as offences within the Corporate Manslaughter and Corporate Homicide Act (formally gross negligence or corporate manslaughter). The Health and Safety Executive for Northern Ireland and district councils will conduct investigations into potential criminal offences relating to breaches of health and safety legislation.
- There will usually be a joint investigation, but on the rare occasions where this would not be appropriate, there will still be liaison and co-operation between the investigating parties;
- PONI will conduct an investigation if the requirements of the Police (Northern Ireland) Act 1998 apply. Where this occurs, PONI may take similar investigative measures as the PSNI otherwise would have, and will retain ownership of the investigation;
- The bereaved and witnesses will be kept suitably informed; and
- The parties to the agreement will maintain effective mechanisms for liaison.

There are other authorities that have responsibility for enforcing other similar legislation. Whilst these organisations are not signatories to this agreement they may wish to take onboard the principles enshrined within it.

IN WHAT CIRCUMSTANCES WILL THIS AGREEMENT APPLY?

For the purposes of this agreement, a work-related death is a fatality resulting from an incident arising out of, or in connection with, work¹. The principles set out in this agreement 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.

There will be cases in which it is difficult to determine whether a death is work-related within the application of this agreement; for example, those arising out

¹ "Work" as defined in Article 2(4)(a)(b)(c) and (5) of the Health and Safety at Work (Northern Ireland) Order 1978 as amended.

of some road traffic collisions², or in prisons, or health care institutions, or following a gas leak. Each fatality must be considered individually, on its particular facts 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 where possible agree upon a conclusion without delay.

1. STATEMENT OF INTENT

- 1.1 In the early stages of an investigation, whether any criminal offence has been committed is not always apparent. The parties to the agreement are committed to ensuring that any investigation into a work-related death is thorough and appropriate, and agree to liaise 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 parties will liaise together to reach a conclusion.
- 1.2 The provisions of the ECHR as given effect by the Human Rights Act 1998 will apply to investigations carried out under this agreement.
- 1.3 Article 2 ECHR, the right to life, requires, by implication that there should be some form of effective official investigation when there is reason to believe that an individual has sustained life-threatening injuries or death in suspicious circumstances. The investigation must be capable of establishing the cause of the injuries and the identification of those responsible with a view to their punishment.

2. INITIAL ACTION

- 2.1 A PSNI or PONI officer attending an incident involving a work related death should arrange to carry out duties, according to the officer's own general orders governing unexplained deaths, including:
 - identify, secure, preserve and take control of the scene, and any other relevant place;
 - supervise and record all activity including photography and mapping;
 - inform a senior supervisory officer (PSNI in accordance with the Service Instruction SI2016);
 - enquire whether the employer or other responsible person in

² "Collisions" can include any incident on the roads where a person or persons are killed.

control of the premises or activity has informed HSENI, the district council or other relevant authority; and

- contact and discuss the incident with HSENI, the district council or other relevant authority, and agree arrangements for controlling the scene, for considering access to others, and for other local handling procedures to ensure the safety of the public.
- consider the need for seizing of any physical or documentary evidence.

2.2 A PSNI or PONI officer of supervisory rank should ordinarily attend the scene and any other relevant place to assess the situation, review actions taken to date and assume responsibility for the investigation. See Service Instruction SI2016. Before leaving the site, PSNI or PONI officer of supervisory rank should also arrange for a follow-up meeting with staff from relevant authority.

2.3 It shall be assumed that the PSNI or PONI has primacy in the case unless Section 4.2 of this document is applicable.

2.4 Should any other investigating or enforcing authority have staff in attendance before the police or PONI arrive, it should ensure that the police or PONI have been called, and preserve the scene in accordance with the initial actions (above) until the police or PONI get there.

3. JOINT INVESTIGATIVE STRATEGY

3.1 A Joint Investigative Strategy should be drawn up at the follow-up meeting and subsequently recorded as agreed. The purpose of this document is to ensure that investigations are always managed professionally, with communications between the relevant signatory organisations continually maintained and expectations of the parties clearly set out.

3.2 PSNI, PONI, HSENI, the district councils and/or other relevant authority, as part of drawing up the Joint Investigation Strategy, should consider and agree upon:

- Investigative primacy and cooperation between relevant authorities (see Sections 4.1 and 4.2).
 - How evidence is to be shared, used and disclosed between the parties;
 - How, and to what extent, corporate or organisational

- failures should be investigated;
 - The mechanism by which the PSNI, PONI, HSENI or the district council or other relevant authority will keep the progress of the investigation under review; and
 - What liaison if any, may be required with the PPSNI at an early stage and throughout the course of investigation;
- Witness/suspect status.
 - Agreement on how witnesses and suspects will be approached and interviewed (recognising that a witness for one agency may be a suspect for another).
- Sourcing of expert or forensic requirements.
 - How the instruction of experts and the forensic examination of exhibits is to be coordinated; and
 - Identification and use of established frameworks for sourcing.
- Investigative funding.
 - Equal division of costs between relevant parties for expert/forensic requirements;
 - Who will take the lead in specific contracts; and
 - If applicable, the need for budgetary approval of costs.
- Liaison with other interested parties.
 - Consideration should be given to a single point of contact with the agency who has primacy. This should include how the bereaved, and other interested parties such as the coroner, will be informed of developments in the investigation and level of information shared; and
 - The need for media liaison to take account of media interest and the sensitivities of the bereaved and those involved in the incident, and to encourage consistency of approach in responding to such queries.

4. DECISION MAKING

- 4.1 At the initial follow-up meeting, consideration should be given to determining if the investigation gives rise to a suspicion that a criminal offence, within the Corporate Manslaughter and Corporate Homicide Act, or police officer conduct may have caused the death. If so, PSNI (or PONI) will continue to have primacy for the joint investigation. The arrangements for joint working will be set out the in the Joint Investigation Strategy.
- 4.2 Where it becomes apparent during the investigation that there is insufficient evidence that a criminal offence within the Corporate

Manslaughter and Corporate Homicide Act, or police officer conduct caused the death, the investigation should, by agreement, be taken over by HSENI, the district council or other relevant authority. Such a decision must be recorded in writing³. Arrangements, subject to legal restriction, should be made to allow access to or release of, if appropriate, exhibits which were in the possession of PSNI or PONI and are relevant to the investigation.

- 4.3 Where HSENI, the district council or other enforcing authority is investigating the death, and new information is discovered which may assist PSNI or PONI in considering whether a criminal offence (other than a health and safety criminal offence) has been committed, or police conduct may have led to the death, then the enforcing authority will pass that new information to PSNI or PONI. The police or PONI should then consider whether to resume primacy for the investigation. The decision and reasons should be recorded in writing⁴.
- 4.4 Where PSNI or PONI no longer maintain primacy for an investigation, the relevant enforcing authority will establish contact with the Coroner's Office to advise of a continuing criminal investigation which may result in criminal proceedings. Close liaison between the relevant enforcing authority and the PSNI (acting as the Coroner's Officers) will be necessary to ensure any action by the Coroner's Officers does not adversely impact or conflict with the criminal investigation.
- 4.5 There will also be rare occasions where as a result of the coroner's inquest, judicial review or other legal proceedings, further consideration of the evidence and surrounding facts may need to be made. Where this takes place PSNI or PONI and the enforcing authority with primacy for the investigation will liaise to ensure an early decision on the need for further investigation.

5. SHARING AND DISCLOSURE OF INFORMATION AND MATERIAL

- 5.1 Sharing and disclosure must always follow the established law and procedure.
- 5.2 Where there has been an investigation, any material obtained should be shared, subject to any legal restrictions, between PSNI, PONI, HSENI, the district council or other relevant authority as appropriate. Special handling procedures may be necessary in certain cases. The organisation responsible for retaining the exhibits, documents and other relevant material should also be agreed upon.

³ The PSNI / PONI should officially inform HSENI or the relevant District Council in writing of such a decision.

⁴ As above

6. SPECIAL INQUIRIES

- 6.1 In the case of some incidents, particularly those involving multiple fatalities, the Government Department concerned or HSENI may undertake a public inquiry. Alternatively, the Government Department concerned or HSENI may authorise any other person to investigate and produce a special report.
- 6.2 In such circumstances, PSNI or PONI will provide any necessary support and evidence to the person appointed to conduct the public inquiry, or to the special investigation, subject to the relevant regulations and legal constraints.
- 6.3 Complex legal issues may arise when there are parallel public inquiries and criminal investigations or prosecutions. The signatories will aim to keep inquiry chairs informed of the progress of the investigation so far as is possible.
- 6.4 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 agreement will liaise together to ensure that any recommendation regarding prosecution is made as expeditiously as possible.
- 6.5 Consideration will be given to legislation covering inquiries including the Inquiries Act (2005).

7. REVIEW OF AGREEMENT

- 7.1 The Signatory Organisations will review the operation of the agreement as appropriate and consider the need for changes to the arrangements.

ANNEX A

ENFORCING AUTHORITIES UNDER THE HEALTH AND SAFETY AT WORK (NORTHERN IRELAND) ORDER 1978 (HSWO) AND RELATED LEGISLATION

Enforcement of the HSWO and the related legislation is generally shared between HSENI and district councils. A general guide to the allocation of the main activity is detailed below. In circumstances where it is unclear as to who the enforcing authority is, advice can be sought from HSENI (see below for contact details).

Health and Safety Executive for Northern Ireland (HSENI)

HSENI enforces health and safety at work legislation in:

- factories
- building sites
- farms
- motor vehicle repairs
- quarries
- chemical plants
- schools and universities
- leisure and entertainment facilities
- fairgrounds
- hospitals and nursing homes
- district council
- fire and police
- government departments
- domestic gas installation, maintenance or repair
- any other workplace not listed under District Councils below

Contacting HSENI

Health and Safety Executive for Northern Ireland
83 Ladas Drive
Belfast
BT6 9FR

Tel: 028 9024 3249

Web: www.hseni.gov.uk

HSENI operates an out of hours contact system to respond to major incidents. Outside normal working hours, calls are redirected via the 028 90 243249 number who will pass on your call to the HSENI Out of Hours Inspector to respond.

This should only be used for emergency situations within HSENI's enforcement remit, where an incident is related to a work activity and involves:

- a fatality;
- an injury which is so severe that it may result in a fatality; or
- a matter of public safety related to a work activity.

The Out of Hours System does not respond to routine notifications of minor incidents.

District Councils

District Councils enforce health and safety at work legislation in:

- offices
- retail and wholesale shops
- tyre and exhaust fitters
- restaurants, take away food shops, mobile snack bars and catering services
- hotels, guest houses, residential homes, etc.
- wholesale and retail warehouses
- leisure and entertainment facilities (privately owned)
- exhibitions
- religious activities
- undertakers
- therapeutic and beauty services
- animal care

Contacting district councils out of hours

There will be local arrangements in place for contacting the authorised health and safety inspectors within district councils. Contact can usually be made through the local town hall or council offices during office hours and on an emergency number out of office hours.