



ASSOCIATION OF
CHIEF POLICE OFFICERS

Death of British Nationals Abroad in Road Collisions: Memorandum of Understanding between the Foreign & Commonwealth Office, ACPO, and Coroners of England & Wales

The Association of Chief Police Officers have agreed to this MoU being circulated to, and adopted by, Police Forces in England and Wales.

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This MoU has been produced by the ACPO Uniformed Operations Business Area. The purpose of this MoU is to provide a framework to ensure that a minimum standard of assistance is provided by UK authorities which would help to clarify the role of the Foreign and Commonwealth Office (FCO), UK Police and Coroners of England and Wales in respect of both the deceased and their family when a British national dies overseas as a result of a collision. It will be updated according to legislative and policy changes and re-published as required.

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Contents

Section		Page
1	Introduction	4
2	Objectives	4
3	Foreign & Commonwealth Office	4
	3.5 Communication	5
	3.6 Professional Service	5
	3.7 Effective Procedure	6
4	UK Police Involvement	7
	4.3 Senior Investigating Officers Role	7
	4.4 Family Liaison Officers Role	8
	4.5 Partnership with the FCO	8
	4.6 Body Repatriation	9
5	Coroner	9
	5.1 The Role of the Coroner	9
	5.2 Inquests	9
	5.3 Death Overseas	10
	5.4 Requests for Information from Overseas by the Coroner	10

1. SECTION 1 – INTRODUCTION

- 1.1 Following discussions with stakeholder groups and partners across Government, and UK agencies, it is clear that a Memorandum of Understanding (MoU) would ensure that a minimum standard of assistance is provided by UK authorities and would help to clarify the role of the Foreign and Commonwealth Office (FCO), UK Police and Coroners of England and Wales in respect of both the deceased and their family when a British national dies overseas as a result of a collision. Whilst the role of the FCO and the Police will remain the same wherever the British national is from in the UK, the Coronial role in Scotland is carried out by regional Procurators Fiscal, who do not have a legal responsibility to enquire into the circumstances of any death overseas. Similarly, in Northern Ireland the Coroner does not have a legal responsibility to hold an inquest where a person has died overseas. They are therefore not included in this MoU.
- 1.2 This MoU draws on the FCO publications "Support for British nationals abroad: A "guide" and "Guide for bereaved families", the National Policing Improvement Agency (NPIA) Road Death Investigation Manual 2007 and the NPIA Family Liaison Officer (FLO) Guidance 2008 and sets out how the FCO, UK Police and Coroners will work together to provide assistance to families when a British national dies as a result of a road collision abroad.
- 1.3 This MoU is not, nor could it ever be, a legally enforceable document. However, signatories to this MoU accept the principles, roles and standards described within and agree to shared efforts to respond to the death of a British national abroad and repatriated to the UK.

2. SECTION 2 – OBJECTIVES

- 2.1 The aims of this MoU are:
- i) To facilitate the appropriate support for the next of kin of all British nationals who are victims of Road Death abroad;
 - ii) As far as is possible, to assist in encouraging a proper and thorough investigation being carried out into the cause of death, leading to an effective inquest and/or prosecution;
 - iii) To provide a clear/consistent response from the UK authorities to each death.
- 2.2 Efforts to achieve these aims will be through the provision of the following:
- A professional and impartial service by appropriately trained staff who will ensure timely notification of death and answer outstanding questions where possible;
 - Relevant information and advice about local customs and procedures in the country concerned and as much information as possible about the circumstances of the death;
 - Assistance to the family in the UK, and in the country where the death occurred, in making arrangements to repatriate the person concerned, ensuring relevant advice is given in respect of embalming, cremation etc;
 - Practical and emotional support for the family when visiting the country where the death occurred;
 - Updates on progress of the investigation; and
 - Referral to appropriate third sector organisations to provide and facilitate support, if the family want it.

3. SECTION 3 – FOREIGN AND COMMONWEALTH OFFICE (FCO)

- 3.1 The FCO is the Government Department responsible for the United Kingdom's international relations, working for UK interests throughout the world. It provides support to British nationals in difficulty abroad. This support is provided by the FCO's Consular Directorate, and by Consular staff at Embassies, High Commissions and Consulates around the world.

- 3.2 The FCO can help British nationals who are visiting or living abroad, although there may be some limitations to the support it can provide to dual nationals. The FCO cannot help foreign nationals who have close ties to the UK. However, there are certain circumstances where the FCO will assist EU or Commonwealth nationals who do not have an embassy or consulate of their own to turn to. The activities of FCO staff overseas are governed by international agreements, such as the Vienna Convention on Consular Relations, or by bilateral consular conventions. Diplomatic and consular officers accredited to a particular country enjoy in that country certain privileges and immunities – and rights of access – which others (including other FCO staff and Police Officers) do not. This may enable access to relevant information which can be communicated to the family.
- 3.3 Under the Article 37 of the Vienna Convention on Consular Relations (VCCR) all countries have an obligation to inform the consular post within which district a suspicious death occurs 'without delay'. However, foreign Governments are under no obligation to provide the FCO with any further information, detail or support in relation to the death of a British national abroad. In some countries the investigating authorities and Courts may refuse to answer enquiries from third parties, including British consular staff.
- 3.4 The FCO cannot investigate deaths overseas.

3.5 COMMUNICATION

3.5.1 The FCO will endeavour to ensure:

- Notification of the death to the next of kin takes place sensitively and effectively within 24 hours of the FCO becoming aware of the case, in person by UK Police, or by foreign authorities or FCO Consular Staff if the next of kin is located overseas; including in those cases where formal identification is not yet complete.
- A Consular desk officer/caseworker is assigned to be the designated point of contact immediately on notification of the death, with an out of hours team fully briefed on the case, to ensure that, when urgent advice is needed, the next of kin can speak to Consular Staff 24 hours a day, 7 days a week;
- Referral, via secure email, to the Homicide Service within 24 hours of receiving information about a death. The Homicide Service will then allocate a named caseworker and ask the consular caseworker to contact the family and offer the Homicide Service. With the bereaved person's consent, the Homicide Service caseworker will make contact and arrange a meeting to conduct a needs assessment;
- The FCO will do everything it can to make sure that the next of kin do not hear about the death first from the media, although the FCO cannot always influence this. Where possible the FCO will inform the family of any media reports concerning the death being printed or aired;
- Next of kin are clearly informed that if the body does not get repatriated to England or Wales there will be no Coroner's inquest;
- Regular communication with the family (agreed with the UK Police if a Police Family Liaison Officer has been appointed), regardless of how long the investigation has been going on, at a frequency as agreed with the next of kin to help the family track the progress of the investigation and explain developments;
- Provision, if requested by the family, of a chronology of what the FCO has done for that case, for cases running for longer than 12 months;
- Help for the family to establish direct contact with the overseas Police Force if they wish to and this is possible;
- That consular staff deal with a single point of contact within the family.

3.6 PROFESSIONAL SERVICE

3.6.1 The FCO will endeavour to provide a consistently high standard of service to bereaved families through:

- Consular staff who are trained in the specific skills needed to communicate compassionately and honestly with bereaved families;
- Availability of a seconded senior expert from a UK Police Force, to support and advise Consular Staff in cases where a British National has died, and to strengthen links with UK and foreign law enforcement;
- Never speculating on the circumstances or cause of the death, or about any aspect of that individual's case;
- Continuously seeking to improve the Consular assistance provided by actively seeking feedback from the family in respect of quality of services provided, quality of lawyers on local list and acting on this to improve the service; and
- Ensuring the family is not misinformed in error including errors in translation of documents (Translation will only be undertaken by professional translators, not by consular staff. Consular staff will provide families with a list of translators/interpreters if needed).

3.7 EFFECTIVE PROCEDURE

- 3.7.1 The family will be provided with all possible information and assistance within the remit of Consular Staff to assist in repatriating the remains of the deceased, including providing information on cremation, embalming, post mortems and costs helping transfer money from the UK (for which there may be a charge), and providing lists of local and international Funeral Directors.
- 3.7.2 The FCO will consider making appropriate representations to the local authorities if there are credible concerns that there may be a breach of ECHR Article 2, or the investigation is not being carried out in line with local procedures or if there are justified complaints about discrimination against the person who has died or their family.
- 3.7.3 Basic advice will be provided to the family on media handling if requested, should the family consider contacting the media, always considering the best interests of the family when providing information.
- 3.7.4 FCO posts abroad will hold a bereavement pack containing information about the local customs and procedures of the country concerned including Police investigations and legal proceedings, post mortems, burials and repatriation, death registration, return of personal effects, availability of legal aid and any local compensation schemes. The bereavement pack will be published on the Embassy website, with links from the main FCO website www.fco.gov.uk.
- 3.7.5 The FCO will always recommend that families seek professional legal advice if they have concerns about the investigation. The FCO will maintain and make available to families a current list of English speaking local lawyers who can provide professional legal advice. Consular staff will make reasonable efforts to ensure that a sufficient level of English is spoken, and will solicit feedback from other consular customers on the quality of service they receive from lawyers on the list. Where known, indicative fees will be advised.
- 3.7.6 The FCO will also maintain a list of professional interpreters and translators.
- 3.7.7 The FCO will provide practical and emotional support to families visiting the country where the death occurred. This could include:
- Meeting them and offering basic advice on accommodation;
 - Allowing them to use facilities;
 - Helping to arrange, and attending, an initial range of meetings with Police, a Lawyer or other local authorities, where we judge there is a need (usually in countries where the legal system is significantly different to the UK, or language is an issue);
 - Accompanying the bereaved to the first day of a trial and the verdict, where we judge a need;
 - Identifying local providers of victim support and referring bereaved families who live overseas.

3.7.8 The FCO will regularly review and update consular policies, through discussion with stakeholders.

4. SECTION 4 – UK POLICE INVOLVEMENT

4.1 Where a British national dies as a result of a road collision, it will be investigated by the appropriate authorities in that country. However, there are circumstances where UK Police may be involved. These are:

- Identification of the victim is an issue and there is a need for forensic samples, e.g. DNA samples, dental records, fingerprints from the family;
- The foreign Police Service is specifically asking for enquiries to be conducted in the UK;
- The victim's body is returned to England and Wales and the local Coroner requests UK Police assistance in conducting an inquest. The Coroner may also order a post mortem, even if one was performed abroad. It is always worthwhile in these cases to speak to the Coroner (through the Coroner's Office) at a very early stage;
- Manslaughter deaths where the suspect is a British national. Under Section 9 Offences Against the Person Act 1861 the suspect can be prosecuted in England and Wales;
- Relatives request UK police to assist establishing the circumstances of the death of a British national. This often arises where the family are dissatisfied with the investigation overseas, and seek advice in respect of best practice in Road Death investigation. It is important to remember here that UK Police have no power to conduct investigations overseas and the primacy of the relevant country must be respected;
- Formal request from an overseas authority for direct investigative assistance in the country where the death occurred. This is a very rare circumstance but when it does occur it often presents unique challenges. These include the need for clear Terms of Reference and full cost recovery for services provided. It also may demand senior diplomatic discussions around sensitive human rights matters such as death penalty sanctions for anyone subsequently convicted.

4.2 The Foreign and Commonwealth (FCO) is the central Government Department to contact regarding deaths of British nationals overseas.

4.3 SENIOR INVESTIGATING OFFICER'S ROLE

4.3.1 Irrespective of the circumstances in which UK Police become involved it is considered best practice to appoint a Senior Investigating Officer as these cases often present unique challenges particularly around the distances involved, different languages, politics, cultures, religious and legal processes. The SIO is responsible for the development, implementation and maintenance of the Family Liaison Strategy if the decision is made to appoint a Family Liaison Officer. It is worthy of note that an SIO may develop a Family Liaison Strategy which does not always necessitate the deployment of a Family Liaison Officer.

4.3.2 The decision on whether to appoint an SIO rests with the Chief Officer of the appropriate Police Force.

4.3.3 Dependent on the circumstances of the case the SIO may wish to consider:

- i) Preservation/examination of clothes and other items returned with the body or with travelling companions;
- ii) Preservation/examination of post mortem samples;
- iii) Obtaining mobile/digital communications data, financial, and other records which may otherwise be lost or destroyed.

4.4 FAMILY LIAISON OFFICER'S ROLE

- 4.4.1 It is good practice to deploy Family Liaison Officers (FLO) in cases involving the death of British nationals overseas through Road Death. The decision on whether or not to deploy a FLO rests with the Chief Officer of the appropriate Police Force and a key part of this decision process will be whether there is an investigative role for the FLO.
- 4.4.2 When a FLO is deployed they will work under the direction of an SIO. The Force Family Liaison Co-ordinator will be responsible for the strategic and tactical support of the FLO and SIO.
- 4.4.3 If an FLO is deployed it is essential that an effective partnership with the FCO is established based upon a mutual understanding of each other's role with a genuine emphasis on teamwork.
- 4.4.4 The initial telephone briefing of the circumstances and information from the FCO to the FLO will be followed by written confirmation, either by fax or email. Should there be more than one death in the same incident and the families of the victims are from different parts of the country, it will be the decision of ACPO as to which Police Force will lead on the investigation.
- 4.4.5 The Desk Officer or the Police Adviser will notify the appropriate SIO or Family Liaison Co-ordinator from the relevant Police Force and provide advice and guidance as necessary.
- 4.4.6 When a death is first notified to the FCO Consular Directorate via the overseas post the Consular desk officer will arrange for the local Police to sensitively notify the next of kin as soon as possible. For operational reasons and so as not to delay notification this is likely to be done by the first available Response Officer. The process will be as follows:
1. The Consular desk officer (or, out of hours, the FCO Global Response Centre) will identify the next of kin's local Police Force (if they are **NOT in London**) from the Police Almanac. They will telephone the appropriate Force HQ Control Room to advise them of the death and ask them to sensitively inform the next of kin. They will ask the Police to pass on the name and contact details of the Consular desk officer/caseworker who will lead on the case;
 2. The FCO will follow up the call with a fax or email giving as many details as possible about the case. The local Police must alert the relevant Consular desk officer or the FCO Global Response Centre (out of hours) once the next of kin has been informed;
 3. **In London**, the FCO will contact the Operational Reserve at New Scotland Yard and follow the same procedure.

4.5 PARTNERSHIP WITH THE FCO

- 4.5.1 In all cases where a FLO has been deployed it is good practice that they and the SIO should attend a Strategy Meeting at the FCO wherever possible, or at the very least be invited to participate in a case conference call.
- 4.5.2 This will build rapport between the FLO and Consular desk officer and clarify the roles for what may be a long and complex case. It will allow an opportunity to discuss what the FCO and the Police can and cannot do in this particular case, the communication link with the family and the frequency of that communication. The FLO in turn can give more detailed background information about a family; whilst the FCO can give information on repatriation, foreign police/judicial systems, cultural issues, the likelihood of getting information etc.
- 4.5.3 In the early stages of the investigation where a FLO has been appointed, it is especially important that the FLO becomes the Single Point of Contact (SPoC) with the family. This will prevent possible duplication and conflicting messages. However, should the family wish to have direct contact with the FCO, they may do so.
- 4.5.4 It is essential that the family understand that the UK Police through the FLO are working in partnership with the FCO.

4.5.5 When the Consular desk officer gives the information to the FLO over the telephone, and vice-versa, the information should be confirmed by e-mail to ensure that the correct information is relayed and documented for future reference.

4.5.6 Where appropriate the family may wish to agree on a member of the family acting as a Single Point of Contact in dealing with UK agencies, FCO etc.

4.6 BODY REPATRIATION

4.6.1 Where a body is repatriated to England or Wales and identification is necessary, FLOs should in consultation and guidance from the coroner, obtain all the relevant information from the family such as DNA and other forensic samples, original medical and dental records and fingerprints. It is essential that the packaging of any exhibits is completed and dealt with in a manner that preserves their continuity and evidential integrity and where appropriate advice may be given to foreign authorities in respect of UK evidential requirements.

4.6.2 If a deceased victim is being repatriated to England or Wales, the local Coroner may ask the Police Force involved for assistance when conducting an inquest. They will require the local Police to make enquiries as to how that person died and they may also order a Post Mortem even if one was carried out abroad.

4.6.3 SIOs and FLOs can assist the Coroner in these circumstances and it will be necessary to liaise with the Coroner's Officer as soon as possible to establish the exact information that the Coroner requires. They will also be able to explain to the family about procedures regarding inquests, organ retention and the release of their loved one's body for cremation or burial.

5. SECTION 5 – CORONER

5.1 THE ROLE OF THE CORONER

5.1.1 The Coroner is an independent judicial officer with legal responsibility for investigating the cause and circumstances of any death which may be violent, unnatural, and sudden with unknown cause or where the cause of death arose in Prison and in certain other circumstances where the body lies within that Coroner's jurisdiction. The Coroner has lawful physical control of the body in such circumstances and for all practical purposes is the only person who may authorise a Post Mortem examination. Where appropriate the Coroner must hold an inquest to establish certain facts about the death. Most inquests are heard by a Coroner sitting alone but deaths occurring in custody or involving Police action will normally be the subject of an inquest by a Coroner sitting with a jury. The law is set out in the Coroners Act 1988 (as amended), The Coroners Rules 1984 (as amended) and in a substantial body of case law.

5.1.2 The Coroners service in England and Wales is a local, not a national service. Therefore different Coroners may handle matters in different ways.

5.2 INQUESTS

5.2.1 The role of the inquest into a death in custody or involving contact with the Police is to determine the identity of the deceased, and establish when, where and how the deceased came by his or her death. If a death occurs whilst the individual is in the care of the State (such as death in Prison or in Police custody) the inquest will ordinarily be the way in which the State fulfils its obligation under Article 2 of the European Convention on Human Rights to investigate, and this means establishing not only how the deceased came by his or her death, but also the circumstances in which the death occurred. The conclusions will be recorded as a verdict.

5.2.2 The inquest is not a trial of rights and obligations, but is a fact-finding exercise, with no parties or pleadings. The inquest verdict cannot determine or appear to determine civil liability. Verdicts appearing to determine criminal liability are permitted, but not on the part of a named person.

5.2.3 At the conclusion of the inquest the Coroner (but not the jury) may make a report to a person in authority under rule 43 of the Coroners Rules 1984 (as amended) if he or she believes that action should be taken to prevent the recurrence of similar fatalities.

5.3 DEATH OVERSEAS

5.3.1 Under the laws of England and Wales, Coroners are responsible for investigating the circumstances which gave rise to the deaths of those persons whose bodies lie or are brought into their district.

5.3.2 Section 8 of the Coroners Act, 1988 provides that, *'where a Coroner is informed that the body of a person (the deceased) is lying within his district and there is reasonable cause to suspect that the deceased (a) has died a violent or an unnatural death – then whether the cause of death arose within his district or not, the Coroner shall as soon as practicable hold an inquest into the death of the deceased.'*

5.3.3 The wording of the law was interpreted by the Court of Appeal in England as requiring a Coroner's inquest when a body is brought into the district, even when the death has occurred overseas.

5.3.4 *'With all respect other learned Judges of the Divisional Court, I do not accept their premise that there is no warrant in any of the legislation or at common law to support the proposition that an inquest can be held where both the cause of death and the death itself occurred outside the jurisdiction of the English courts. The presence of a dead human body in this country is a matter of significance. It creates a very real and legitimate interest in holding an inquiry. In the absence of a Death Certificate by an appropriate authority in this country, it may very well be considered essential at the very least to ascertain where the body came from, whether the deceased died in this country and, if so, how. This case is concerned with the finding of a body in this country. Mr Smith (the appellant) has told us where it came from and, of course, I do not doubt his assertion. But neither the Divisional Court (part of the High Court), nor (the) Court (of Appeal) is the appropriate authority to accept or test this assertion. That is the function of the Coroner.'* (From *R v West Yorkshire Coroner, ex parte Helen Smith 1983*).

5.3.5 The decision was based upon the interpretation of the words as they were written in the statute of 1887 and not upon the meaning they were understood to have had for 700 years. There is no provision for the Coroner to hold any form of inquiry overseas or to summon witnesses from another country.

5.4 REQUESTS FOR INFORMATION FROM OVERSEAS BY THE CORONER

5.4.1 The Coroner will as a matter of statutory duty inquire into deaths that are violent (including suspicious) or unnatural, even if the Death Certificate from foreign authorities records that the death was attributed to natural causes. The fact that the medical cause of death is stated to be a natural cause does not necessarily mean that the death was not unnatural.

5.4.2 All requests by Coroners for information from foreign authorities are routed through the FCO Consular Directorate's Coroners Liaison Officer (CLO). The CLO will be asked to forward the request to the relevant consular post overseas who themselves will request the information of the foreign authority. The report, when provided, will then be returned to the Coroner through the same channels. There is no legal duty for foreign countries to supply this information, and in a number of cases the information takes a considerable time to be made available if at all. However, the FCO recognises the importance of this information and will make every appropriate diplomatic effort to obtain it. Material likely to be requested (but the list is not intended to be exhaustive) includes:

1. Death Certificate;
2. Post Mortem Report (including photographs if taken);
3. Toxicology reports (if samples taken);
4. Any medical reports;
5. Any photographs, plans or drawings of the scene;
6. Any witness statements;
7. Police Report outlining:

- History of deceased;
- Circumstances of death;
- Evidential aspects;
- People interviewed;
- Forensic aspects;
- Persons charged;
- Continuing enquiries.

5.4.3 All enquiries relating to the activities of any commercial or non-governmental organisations to be addressed directly to that organisation, rather than via the FCO.