

Investigative Guidance

Firefighter Fatality in the Workplace



CFOA
Chief Fire Officers
Association



ASSOCIATION OF
CHIEF POLICE OFFICERS



Guidance for the investigation of firefighter fatalities arising from work activities.

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Introduction

This guidance note has been produced to assist those tasked with investigating the deaths of fire and rescue personnel whilst at work. It is intended to be read in conjunction with the HSE national document 'Striking the Balance between operational and health and safety duties in the Fire and Rescue Service' and the Work Related Deaths Protocol (WRDP).

The HSE initiated joint work with Fire and Rescue Service leaders to clarify how Fire and Rescue Authorities (FRA) can strike the balance between their operational and health and safety duties. The result of this collaboration is set out in a set of principles, which are by their nature high level and underpinned by National Operational guidance. This statement is intended to clarify how the FRS should comply with health and safety at work duties within their operational work.

The HSE statement and National Operational guidance assists FRA's in balancing risks, particularly in their wider role to protect the public and property, while meeting their health and safety at work duties to protect their staff and others. HSE recognises that firefighters and managers face difficult moral dilemmas and have to make decisions in what are sometimes extremely hazardous, emotionally charged and fast moving situations, set against public expectations of the emergency services.

1 What is 'Joint' Investigation?

Management of a joint investigation:

1.1 Investigations into work related fatal incidents should always be conducted in accordance with the Work Related Deaths Protocol (WRDP), whose signatories include the Chief Fire Officers Association (CFOA), Association of Chief Police Officers (ACPO), Health and Safety Executive (HSE), Local Authorities, Office of Rail Regulations (ORR) and other relevant enforcing authorities.

Investigations should always be managed professionally, with clear and consistent communications between the signatory organisations of the protocol for liaison (work related death) being continually maintained and ideally a mechanism to achieve this will be agreed between all parties at the outset. Investigations should generally be jointly conducted (the investigating authorities), with one of the parties taking the lead or primacy. It should be recognised that while active Police involvement is considered necessary, it is they who should take lead role. An investigation may also require liaison with any other enforcing authority that may have an interest, and will probably include liaison with the Crown Prosecution Service (CPS). Overall, the investigation should be conducted in a way that will best serve the public interest, and enable there to be a sound criminal investigation of all the relevant circumstances surrounding the death, including health and safety aspects. The aims of this joint investigation will include:

- Gathering evidence as part of a full and thorough investigation following all reasonable lines of inquiry.
- Gathering evidence and reporting to H.M. Coroner.
- Identifying any significant or systematic failings and ensure that appropriate lessons can be learnt and similar incidents prevented from occurring in the future through early dissemination of key lessons learned to other relevant parties.
- Establishing whether prosecution is warranted, and if so whether in respect of manslaughter or other serious criminal offence other than a health and safety offence, a health and safety related offence, or both or whether any other enforcement action might instead be appropriate.

If it becomes apparent that there is insufficient evidence that a serious criminal offence (other than a health and safety offence) caused the death, primacy in the investigation should, by agreement, be taken over by the relevant enforcing authority in accordance with the WRDP.

1.2 Throughout the period of the investigation, the Police and Health and Safety Executive (HSE), the Local Authority, ORR or other relevant enforcing authority should keep the progress of the investigation under review. Milestones should be agreed and monitored, and policy and key decisions recorded.

1.3 The police, HSE, the local authority, ORR or other relevant enforcing authority should agree upon:

- how resources are to be specifically used;
- how evidence is to be disclosed between the parties;
- how safety critical information can be disclosed;
- how the interviewing of witnesses, the instruction of experts and the forensic examination of exhibits is to be co-ordinated;
- how to ensure all evidence obtained takes account of all relevant legislation and potential offences, and be usable and disclosable to all parties in the investigation, including its use by HM Coroner and in any subsequent proceedings, but excluding any duty holder under investigation;
- how, and to what extent, corporate or organisational failures should be investigated;
- a strategy for keeping the bereaved, witnesses, and other interested parties such as the coroner, informed of developments in the investigation; and
- a media strategy to take account of the sensitivities of the bereaved and those involved in the incident, and to encourage consistency of information release and dealings with the media.

1.4 In most significant investigations it may be beneficial to form a strategic Police Chief Officer Liaison group to ensure effective inter-organisational communication to facilitate the sharing of information and experiences. All relevant investigators and authorities should be invited to be part of this group, although discretion may need to be exercised if any of those investigators/regulators are themselves relevant duty holders under investigation.

1.5 A key responsibility of the Strategic Liaison Group is to establish clear communication structures between agencies to prevent duplication of effort and any potential conflict. There is likely to be considerable

benefit in the Strategic Liaison Group developing an Investigation Memorandum of Understanding (MOU) to be agreed and formally signed by the relevant agencies, setting out details such as primacy for the investigation, the roles of different agencies, media management and the process around the communication of safety critical information.

2 Investigations and their Interface

Access to Interviews

2.1 It is necessary for investigation teams to conduct witness interviews in order to establish fact and obtain meaningful accounts from persons who witnessed an event or who are able to provide information or evidence relevant to the event or the circumstances that led to it occurring. It is also necessary on occasions to obtain negative statements from individuals.

2.2 Where there is a joint investigation, e.g. Police and HSE, it may be beneficial to have the interviewing team comprising of officers from both agencies, and for both agencies to work together to develop witness question sets. This will enhance the quality of the interview and negate the need for the witness to undergo two separate interviews. Live downstream monitoring can also assist here.

2.3 It may well be necessary to undertake more than one interview of the witness, not simply to satisfy the evidential needs of different agencies, but to clarify areas and comments made by the witness, where further, contradictory or differing information is obtained as part of the ongoing investigation.

2.4 It is understandable that in complex cases, witnesses will seek advice from their trade union or other association or a legal advisor. The union, employer or association may well appoint a legal advisor to assist the witness in these circumstances. It is important to know the witness's wishes at the earliest opportunity in order to effectively manage the interview process as the whole process can become unwieldy if not carefully managed. Establishing availability in the first place is complex.

2.5 The process and purpose of the interview must be clear and understood by all parties. Arrangements such as those above, will considerably increase the time taken to complete the interviews, particularly where there are many witnesses. This is also relevant to Significant Witness Interviews that are video recorded. The co-operation of all parties makes the interview a far more positive experience for the witness, as such interviews can be traumatic, depending upon the circumstances and the individual's involvement. It may be possible to release statements to the Fire & Rescue Service Internal Investigation in order to reduce the need for further interviews. Such agreement should form part of the discussion by the Strategic Liaison Group, taking into account the views of the SIO and Crown Prosecution Service, as outlined at Para 1.5.

3 Investigations and their Interface

The handling and sequencing of witnesses

3.1 Where there are significant numbers of witnesses, it is very important to manage the sequencing of these effectively. If, as described above, there are trade unions, associations and legal advisors involved, it becomes even more important.

3.2 The SIO will determine the order of interviews to best inform the investigative needs. This will be so as to obtain best evidence and minimise the need for subsequent interviews. This is a major consideration in a complicated case. It is made more complicated when there are many people needing to be present at each interview and extensive travelling time is needed for any of those parties, perhaps where there are legal advisors based a substantial distance from the investigation base.

3.3 Consultation at an early stage between the SIO and those representing witness' interests is important, and it is useful to have an agreed process for contact, arranging times, dates and locations for the interviews.

3.4 It is the responsibility of the SIO to establish and maintain the integrity of the interviews and information obtained thereby. This protection must be built in to any process agreed and preserved throughout. This is likely at times, to create some tensions between the parties but must be effectively managed.

3.5 A clear and comprehensive strategy must be established to achieve successful and timely completion of interviews and this should be planned and arranged in advance. Members of the investigation team should be identified and dedicated to this task, with single points of contacts for each agency identified. The continuity and sustainability of these points of contact is crucial in maximising co-operation as these investigations can often span several years.

3.6 The witness is the most important person in all this and the experience they have endured must not be aggravated by poor co-operation or a lack of professionalism between the parties to the interview process.

4 Investigations and their Interface

Scene management & Body Recovery

4.1 The Police have a duty and obligation to investigate fatal fires. The protocol for scene primacy is also well established, whether this is between Police forces or for example, between Police and the Fire and Rescue Service (FRS).

4.2 Where the FRS is in attendance to extinguish fire or rescue persons trapped within the fire, they would have primacy over the scene. Once it has been established that there are no persons to rescue and any fire is extinguished, consideration should be given to changing primacy, in the case of a potential crime scene, to the police. The police would normally be present to advise, where appropriate, during the fire service period of primacy and where it is possible, influence actions to preserve evidence. Preservation of life will of course always be the most important consideration.

4.3 The shift from a 'search and rescue' fire service operation, to a crime scene 'evidence preservation' operation should be virtually seamless. The police have a duty to preserve, obtain and account for evidence within any investigation undertaken. This includes the recovery of the bodies of any deceased. Clearly if there is an opportunity to save life; primacy would remain with the Fire and Rescue Service until this is complete. However, the Fire and Rescue Service must have cognizance of the need to preserve, wherever possible, the scene of crime and any evidence so that it is available for subsequent investigations. This might include their own equipment, logs, BA boards, etc, but the Fire and Rescue Service will also need to consider their role in protecting property.

4.4 Emotional and organisational cultural considerations should not override the professional judgement of individuals. The roles of fire service and police are well defined and understood at the scenes of fatal fires.

4.5 The bodies of the deceased at the scene of a fire are crime scenes in themselves, as of course is the location or building where the death occurred. Once death is established or can be safely assumed, primacy for recovery sits firmly with the police who should be in control of the scene(s). Although Fire and Rescue Service assistance may be sought, it is the police who dictate the method and timing of the recovery, cognisant of the sensitivities of Fire and Rescue Service personnel recovering colleagues.

5 Investigations and their Interface

The role of the HSE at the Scene

5.1 HSE is a Non-Departmental Public Body (NDPB) sponsored by the Department of Work and Pensions (DWP). HSE seeks to protect the health, safety and welfare of employees and safeguard other people, principally the public, by ensuring that risks arising out of work activities are properly controlled. This function arises directly out of the Health and Safety at Work etc Act 1974 (HSWA) and other health and safety legislation. HSE discharges this function by carrying out site inspections, by investigating complaints, accidents and other incidents, by providing advice and guidance:- by working with stakeholders at national and international level, etc, as well as by enforcing health and safety law.

5.2 HSE regulates occupational health and safety in the police and fire services, local authorities and central government. In other workplaces the enforcing authority may be HSE, the local authority or the Office of Rail Regulation. This is determined by the Health and Safety (Enforcing Authority) Regulations 1998 (as amended) and the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006 (as amended). Other government regulators enforce separate health and safety legislation in the marine and air transport sectors (i.e. the Maritime and Coastguard Agency (MCA) and the Civil Aviation Authority (CAA). The transport sectors also have their own Accident Investigation Branches i.e. Maritime Accident Investigation Branch (MAIB), Air Accidents Investigations Branch (AAIB) & Rail Accident Investigation Branch (RAIB). HSE has memorandums of understanding with these other regulators, establishing lead authorities for activities in workplaces where legislation may overlap or demarcation is not clear.

5.3 In the context of a work-related fatal accident, the role of HSE is as a relevant enforcing authority for health and safety legislation and is set out in the 'Work Related Deaths a Protocol for Liaison'. When on-site working in this context, HSE is not responsible for providing advice on issues of site safety, though will retain a role in relation to compliance with health and safety legislation by the emergency services. Enforcement of Health and Safety legislation in both the Police and Fire and Rescue Service sectors is allocated to HSE.

6 How do all Agencies access Independent Expertise?

6.1 In the case of a Police-lead investigation the Senior Investigating Officer (SIO) may well seek independent support and advice. It will be a decision for the SIO as to how this will be achieved which will be based on the key principle of independence.

6.2 In such circumstances and following discussion with HSE or other relevant enforcing authority the SIO may wish to explore the potential to meet this need by seeking the assistance of the respective independent national principal Fire Adviser i.e.:

- *England* - Chief Fire and Rescue Adviser (CFRA)
- *Scotland* – Chief Inspector of Fire and Rescue Service
- *Wales* – Fire and Rescue Adviser and Inspector
- *Northern Ireland* – Chief Fire Officer

6.3 The decision should be taken in consultation with HSE, or other relevant enforcing authority, as they will have much more detailed knowledge of where independent expertise might be sourced, and may be able to suggest experts from outside the Fire and Rescue Service, such as fire behaviour and materials scientists.

6.4 In the case of Northern Ireland there is a single Fire and Rescue Authority with a Chief Fire Officer. It has been agreed that the Senior Investigating Officer may therefore approach the Chief Fire and Rescue Adviser (England) where external sector competent assistance is required.

6.5 Where such a request is received the respective principal National Fire Adviser will liaise with their counterparts to facilitate access to the required advice and support.

6.6 In the case of the Health and Safety Executive (HSE) there are existing protocols in place to provide HSE investigators with external support to the investigation when required. These include technical specialist and the services of the Health and Safety Laboratory (HSL). HSE can facilitate an SIO's access to these resources.

7 Review mechanisms. Reflective and Active

- 7.1** The importance of carrying out independent reviews of major crime investigations is recognised throughout the Police Service. It is strongly recommended that a similar review should be conducted on all aspects of the investigation into Fire Service deaths or serious injuries by the constituent parties. The need for independence to align with ECHR legislation and principles is paramount.
- 7.2** Gold Commanders or the equivalent should ensure that a review is carried out as outlined. The objective should be to constructively evaluate the investigation to ensure that any activity conforms to nationally approved standards and practices that processes are thorough, that any investigation has been conducted with integrity and objectivity, that opportunities have been exploited, and that good practices are identified. Together this will support organisational learning.
- 7.3** In major crime, reviews are conducted of both detected and undetected cases to capture learning and good practice regardless of the outcome. Gold Commanders should consider review regardless of outcome as the default position. This will provide transparency and the chance of learning. There should always be an expectation that review will take place.
- 7.4** Gold should consider the most appropriate timing for review and the most appropriate independent officer to conduct it. This might dictate early intervention, mentoring, thematic or a progress review. Gold should determine the parameters to be reviewed.
- 7.5** It remains fundamental that any review should be conducted in co-operation between the SIO and the reviewing officer, to ensure that it remains supportive and not threatening. In joint investigations the reviewing officer should also seek the views of the other parties involved in the investigation and in particular explore the effectiveness of the arrangements put into place by the police for joint investigation in accordance with the WRDP.
- 7.6** If the investigation team is being advised by an independent fire expert, this advice should form part of the review. This part of the review has to be independent and the appropriate Chief Fire Advisor should be contacted for this purpose.

8 Understanding training and resources for family Liaison

8.1 The police have well established Family Liaison Strategies and well trained staff in these key roles. Persons are selected, trained and monitored in the roles of Family Liaison Officer (FLO) and Family Liaison Co-ordinator. The Co-ordinators identify appropriate officers for deployment to specific roles and the ongoing welfare support of FLO's throughout their deployments. FLO's also have regular Occupational Health monitoring and support.

8.2 FLO's are a conduit between the Senior Investigating Officer and the family members. They gather and provide information to and from the investigation, as well as provide support to the family.

8.3 Family Liaison and support to bereaved families is paramount and a critical element of any investigation or tragic event where persons are seriously injured or killed, it is therefore crucial that at the outset of any significant investigation clearly defined roles are established between the Police, the Fire and Rescue Service and the Health and Safety Executive in respect of the Family Liaison Officer role. The Police having primacy for the investigation take the lead in providing Family Liaison Support. This must be co-ordinated with any support provided by the FRS.

8.4 It should be noted that although the Fire and Rescue Service may use Liaison (welfare) Officers, they are unlikely to have obtained the competencies required by the Police Service. HSE and other relevant enforcing authorities also have a role in liaising with family members and co-workers of the deceased. HSE provide staff with training in how to deal with the bereaved and provides them with an information pack to provide to bereaved families.

8.5 Where there is a criminal investigation and the police are undertaking this, they will deploy FLO's to family members of persons seriously injured or killed. The Fire and Rescue Service will understandably support the families of firefighters who sadly find themselves in this position. However the police and fire service must work together to ensure that support to the family is fully considered in any dealings between both agencies. Support provided by the FBU or other trade union should also be taken into account HSE or other relevant enforcing authority may also wish to have contact with the bereaved family but will usually only make such contact after consultation with the police and via the FLO.

8.6 Careful planning and consideration must be given, with an understanding as to the role of both police and fire service with the families. It must also be remembered that the integrity and independence of the investigation must be preserved at all times and this is complicated where for example, the fire service in question, or members of it, are being investigated by the police and at the same time engaged with them in supporting the families.

8.7 If the police hand over primacy in an investigation, eg to HSE or another relevant enforcing authority and as a result withdraw their FLO support to the family, co-workers, deceased employer etc, continued family liaison support will need to be provided by the relevant enforcing authority having primacy in the investigation. HM Coroner and any other relevant parties should be informed of this change of primacy and of any new arrangements for contacting the new lead investigating body. The Fire and Rescue Service welfare/liaison officers should not be involved in any aspect of the investigation.

9 What is independent Investigation?

9.1 Where employers or others acting on behalf of the state (or other emanations) potentially bear responsibility for loss of life (whether by their actions or omissions), the right to life in Article 2 of the European Convention on Human Rights (ECHR) will be engaged. For Article 2 to be engaged there must be reasonable grounds for thinking that the death may have resulted from a wrongful act on behalf of the state, or will require investigation to determine whether or not it did.

9.2 In such a case, the state is under an obligation to initiate an effective public investigation by a body independent of the parties involved. The House of Lords has ruled that, while a criminal investigation and prosecution may not discharge this obligation, an inquest is likely to do so. The inquest must, however, determine not only the identity of the deceased and when, where and how the death occurred, but also in what circumstances. The limited ambit of a 'standard' inquest will not usually satisfy these obligations on the state.

9.3 Whether the enhanced form of inquest will be required will depend on the precise circumstances of the particular case. Only those inquests that are concerned with a possible breach of Article 2 by an agent of the state have this wider scope; other types of inquest can be more limited. The Coroner's decision will determine the questions he or she will need to address during the inquest and will have an impact on the assistance that investigators and regulators might be asked to provide to HM Coroner.

10 Employer's own Internal Investigations

10.1 There is an expectation that the employer will undertake an internal investigation in accordance with the Health and Safety at Work act 1974 and the Management of Health and Safety at Work Regulations 1999 (as amended), Regulation 5 refers. This states that an employer should measure what they are doing to implement their health and safety policy and arrangements, and that monitoring should include "adequately investigating the immediate and underlying causes of incidents and accidents to ensure that remedial action is taken, lessons are learnt and longer term objectives are introduced." However, a duty holder under investigation must have cognisance of the police's primacy in the investigation of a work-related death, and of the role and functions of HM Coroner and relevant health and safety enforcing authorities.

10.2 At an early stage, the Gold group or Senior Investigating Officer (SIO) should make clear the distinction between an internal investigation for the purposes of organisational learning and one intended to establish any breach of legislation for the purposes of criminal enforcement. Any investigation intended to establish facts relevant to the incident for the purposes of potential criminal enforcement, should be independently conducted. It is the responsibility of the police, any relevant enforcing authorities and, when involved, the CPS to make sure that the employers/ duty holders own internal investigation does not therefore give rise to any prejudice to any such future criminal proceedings. Hence the need for an agreed mechanism highlighted in Para 1.5.

10.3 The conduct of such an internal investigation should not obstruct or compromise those being carried out by the relevant regulatory authorities or hinder the administration of justice. The findings of any such internal investigation should be shared with the regulatory authorities as far as possible and to do so may be beneficial in clarifying key facts and findings. However, an employer cannot be compelled to produce documents which are entitled to be withheld on grounds of legal professional privilege.

10.4 There are two types of legal professional privilege: advice privilege and litigation privilege. Legal advice privilege extends to all confidential communications between a lawyer and client that are made for the purpose of giving or obtaining legal advice and can include statements, reports and other information. Legal advice privilege does not cover communications sent to or from a third party.

10.5 Litigation privilege extends to documents created for the dominant purpose of existing or contemplated adversarial legal proceedings (such as civil litigation or criminal proceedings but not, for example, investigative inquiries). Litigation privilege attaches to communications between solicitors and expert witnesses, but not to the expert's opinion on the case or the documents or objects on which the expert's opinion is based, unless that material is itself privileged. However, you should note the separate requirements relating to disclosure of expert evidence in criminal proceedings.

10.6 The privilege belongs to the client and not the lawyer, so a duty holder has the ability to waive any privilege and show investigators the document in question, for example to assist, or to co-operate with the investigation. Similarly, a client may choose to waive privilege in order to use the document in evidence.

10.7 If a third party working for the Fire and Rescue Authority has prepared an incident report, litigation privilege may be claimed if the dominant purpose of creating the document was to obtain legal advice in relation to legal proceedings. An engineer's report, for example, that was obtained for the purpose of deciding whether to contest proceedings (civil or criminal) will be protected by privilege. However, this will not be the case if the report was prepared as part of an adverse incident investigation in order to comply with duties under relevant health and safety legislation.

11 Implications and considerations in relation to Safety Representatives and Union Representatives

11.1 Under the HSWA, safety representatives appointed under the Safety Representatives and Safety Committees Regulations 1977 (as amended) may, as one of their functions, investigate incidents and dangerous occurrences, and to examine the causes of accidents at the workplace. This is a statutory right, enforceable by the HSE, local authority and Office of Rail Regulation (ORR). The safety representatives may conduct a joint investigation with the employer, though there is no legal requirement for them to do so. The safety representative also has a right to inspect and take copies of any documents relevant to the staff they represent which the employer is required to keep by virtue of any relevant statutory provision. These rights apply only to the HSWA and relevant statutory provisions made under it, and do not apply to any other legislative regimes. Further, these rights do not extend to any information obtained by the employer for the purposes of bringing, prosecuting and defending any legal proceedings.

11.2 Non-Trades Union representatives of employee safety appointed under the Health and Safety (Consultation with Employees) Regulations 1996 (as amended) must be provided with any relevant records the

employer is required to keep under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR). The employer is also required to make available to their employees such information as is necessary to enable them to participate fully and effectively in consultation. Again however, the employer does not have to make available any information obtained by them for the purposes of defending any legal proceedings.

11.3 HSE, local authorities and Office of Rail Regulation enforcing the Health and Safety at Work Act 1974 (HSWA) and other relevant statutory provisions have a duty under HSWA Section 28(8) to provide employees or their representatives with factual information relevant to their health and safety obtained by the Inspector, relating to the premises they work in, anything which was or is therein, or was or is being done therein; and information with respect to any action which the Inspector has taken or proposes to take in connection with those premises.

12 Interviewing under caution and taking of statements - relevant considerations

12.1 When taking voluntary statements in accordance with Section 9 of the Criminal Justice Act 2003, those being interviewed have no particular right to have someone with them. However, in a unionised workplace it is common for employees to ask to have a trade union "friend" present when being interviewed. Further, many trade unions will provide legal representation free of charge to their members in such circumstances.

12.2 When HSE, local authority or Office of Rail Regulation staff exercise their powers under Section 20(2) (j) of the HSWA to compel someone to provide answers, that interview can be conducted in the absence of persons other than someone nominated by that potential witness to be present, and any persons whom the inspector may allow to be present. The Police and other non-HSWA enforcing authorities will need to seek legal advice on their ability to use evidence obtained in this way.

12.3 When a person is being interviewed under caution in accordance with Code C of the Police and Criminal Evidence Act (PACE), they have a right to legal advice. If interviewed in a police station, this can be provided under the duty solicitor scheme. If being interviewed elsewhere, they still need to be advised of this right but are not entitled to free advice under the scheme. In such circumstances trade unions, or indeed their employer, may provide legal representation for them.

12.4 If there is a potential conflict of interest between the legal representative's provision of advice and any other role or function they might have (i.e. representing the witness's employer or a trade union), then that is a matter for the legal representative themselves to be aware of and to resolve. However, the Solicitors Regulation Authority (SRA), the body that regulates solicitors in England and Wales, the Law Society of Scotland and the Law Society of Ireland have issued guidance to solicitors on whether it is appropriate for the employer's solicitor to be present during interviews of an employee. Whilst this is only

guidance, the SRA and the courts will take it into account and it is therefore appropriate to refer to it.

12.5 However, there is no "property" in a witness. This means that the fact that the police or HSE have taken a statement from a witness and are likely to call them to give evidence does not prevent any other agency or body taking a statement from the same witness. However, a person who seeks to speak to a witness who has already provided a statement for another interested party may be exposed to the suggestion of tampering with evidence, particularly where the witness changes their evidence as a result. Best practice would be for them to alert the party leading the investigation of the intention to re-interview that witness, to enable them to consider being present at that interview.

12.6 Where the defence seek to interview a witness whom an interested party intend to call to give evidence, the witness may be advised that they have a choice as to whether they make a statement to the defence. Where the witness consents to make a statement to the defence, it should be suggested to the defence that subject to the consent of the witness a police officer or an official from the relevant enforcing authority should also be present when this takes place.

12.7 It is important that a decision on whether to progress with a criminal or other prosecution is made as soon as practicable.

13 Implications of Building Regulations

13.1 Building Regulations are made under the Building Act 1984 which only considers the health, safety and welfare of people in and around buildings. As such they cannot include regulations to assist fire officers although they are considered in guidance regarding accessibility and for search and rescue operations.

13.2 The Fire and Rescue Service is consulted where appropriate on receipt of a Building Regulation submission; however, it is a local authority function to ensure compliance on fire safety matters under building regulations. The Fire and Rescue Service has no statutory duty or enforcement powers until the building becomes occupied/in use (which should be after a LA or independent authorised person has issued a completion certificate).

14 What should Independent Adverse Event Investigation look like?

14.1 An “Independent Adverse Event Investigation” is one carried out by a body that is separate to and not within the responsibility of the employer of the deceased and which is commissioned by the SIO as part of their criminal investigation.

14.2 It is considered important that any external investigation of the death at work of a Fire and Rescue Authority (FRA) employee is independent of the employer to maintain transparency of the process and retain the principles of Article 2 of the Human Rights Act. So there is an expectation that employees of the FRA other than as witnesses will not normally engage in any part of the external investigation or provide expert advice to it.

14.3 Due to this, support and advice to the external criminal investigation will normally be provided from outside the FRA of the deceased, ensuring a suitable FRS to undertake this role transparently and independently. Consideration needs to be given to the organisational capacity of the FRS taking on this role and that they have the necessary skill sets to be effective.

15 Policies and Procedures

15.1 For further guidance for the documenting, recording of decisions made, briefings and meetings throughout an incident is included in the National Operational Guidance available to the Fire and Rescue Service.

16 Fire Safety Enforcement Implications

If the Fire and Rescue Authority (FRA) is also responsible for the enforcement of fire safety legislation in the premises where the fatality occurred, the following should be considered;

16.1 The employing FRA of the deceased will normally be responsible for the enforcement of the fire safety legislation applicable to the premises at which the employee died.

16.2 It should be recognised that the FRA responsible for the relevant fire safety legislation may in the above circumstances have limited access to evidence for investigation/prosecution e.g. witness statements, due to the primacy of the external investigation taking place.

16.3 In such circumstances the FRA must consider any potential conflict of interest in undertaking an investigation/prosecution under the appropriate fire safety legislation when there is a parallel external Police/ HSE investigation for the same incident at the same premises.

16.4 The responsibility for fire safety enforcement can, in some circumstances, be passed to another enforcement authority e.g. Article 26(3) of the Regulatory Reform (Fire Safety) Order 2005 in England and Wales, to avoid any perceived conflict of interest.

17 Independent Fire Investigation Team

17.1 Such a Fire Investigation Team (FIT) will be professionally managed from within their own team, but will report to the SIO. Members will not be expected to comment or observe upon the activity of the body under investigation to other members of the Police/HSE teams until they formally report their findings unless safety critical matters are identified. All Matters of disclosure will be managed and controlled by the SIO, who will take responsibility for this aspect and therefore, 'owns' the report and all other material gathered or relied upon.

17.2 It is essential to undertake a Fire Investigation of the fire which is independent of the FRA involved in the incident under investigation. Findings and conclusions of such investigations should also inform the criminal investigation and nothing must be done to undermine or prejudice this. It is important to note that the role of the Fire investigator is to investigate the cause of a fire and the cause and development of the spread of fire, not the cause of death.

17.3 The independent Fire Investigators may be allowed to assist a two way transfer of information that greatly assists the investigations. This may be achieved by embedding an independent investigator within the criminal investigation team. This allows a meaningful two-way transfer of information that can potentially assist both elements of the investigation and is necessary for the discharge of the Fire and Rescue Authority's Health and Safety Responsibility.

17.4 It is important that there is clear understanding on lines of reporting, to achieve the above, to manage the disclosure of information generated by both elements of the investigative process and understand that the SIO (senior investigating officer) will control that disclosure/ reporting in those cases where there is a Police lead investigation. It is

important that any risk critical information is released in a controlled manner to the Fire and Rescue Service and should be brought to the attention of the Strategic Liaison Group to ensure appropriate, expeditious dissemination.

18 Safety Critical Disclosure

18.1 Issues of a safety critical nature that are identified during the course of the investigation which have implications with the employing Fire and Rescue Service, and those which have national implications for the FRS, will be subject to detailed discussion between the Police, HSE and the Government Chief Fire and Rescue Advisor. Promulgation will be agreed as soon as possible. The Chief Fire and Rescue Advisor can disseminate information within the wider Fire and Rescue Service and HSE or other relevant enforcing authority can communicate such issues to wider industry/employer groups. Where HSE is the relevant enforcing authority, safety critical information can be disseminated via its safety bulletins website: <http://www.hse.gov.uk/safetybulletins/>.

18.2 It must be strongly emphasised that all safety critical information (for the FRS) obtained from whatever source or investigation must be considered urgently by the Police SIO as future firefighter safety is paramount to ensure the early release of such information and appropriate dissemination.

Depending upon the nature of the issues and failures emerging from the investigation, HSE or other relevant enforcing authorities may consider it necessary to serve enforcement notices. HSE's Prohibition Notices require an activity giving rise to a risk of serious personal injury be stopped until that risk is removed or ameliorated. HSE's Improvement Notices require certain steps to be taken within an agreed timescale. Service of such notices will also be subject to detailed discussions with the Police SIO.

The recipient of such enforcement notices can, within 21 days of their service, appeal against them to an employment tribunal. The response by HSE or other relevant enforcing authority to any such appeal will need to be reconciled with the ongoing interest of the investigation, so as to avoid prejudicing any subsequent prosecution.

19 Near fatal accidents

19.1 In cases where a serious injury occurs which is likely to lead to death, then the principles set out in this protocol should be considered and followed appropriately.

Guidance for the investigation of firefighter fatalities arising from work activities.