

Work-related deaths:

Guidance on the timing of criminal proceedings in a work-related death case

(England and Wales)



Introduction

The Work-related death protocol (WRDP) gives guidance as to when a relevant enforcing authority,¹ as defined in the protocol, should commence criminal proceedings in relation to any inquest that is to be held into the death by a coroner.

Existing guidance was set out in paragraph 10.3 of the WRDP which stated:

- 10.3 Where the CPS has reviewed the case and decided not to prosecute, HSE, the local authority or other enforcing authority will await the result of the coroner's inquest before charging any health and safety offences, unless to wait would prejudice the case. Where, following an inquest, public inquiry, judicial review or other legal proceedings, it is necessary for the CPS to review or re-review the case, HSE, the local authority, or other enforcing authority will wait until the review by the CPS has been completed before instigating or continuing its own proceedings.*

After discussions and appropriate consultation this provision of the WRDP has now been amended to state:

- 10.3 Where the relevant enforcing authority has completed an investigation, they will consider whether it is appropriate to charge any health and safety offences at that stage, or to await the result of the coroner's inquest before making that decision. In making the decision they will consult as appropriate with the police, CPS, coroner, deceased's family and any other person who may have a legitimate interest.*

This gives a wide discretion to relevant enforcing authorities to make appropriate decisions on a case-by-case basis. However, consideration must be given in each case to the potential for such a prosecution to amount to a bar to any subsequent criminal proceedings being brought for serious criminal offences (other than health and safety offences) such as manslaughter (see *R v Beedie* (1992) CAR 1). In other words, the focus of any decision should be to consider the risk that proceeding with health and safety offences before an inquest could have on any subsequent decision by the CPS to bring a prosecution for manslaughter or other serious criminal offences.

This guidance is intended to assist regulators to make these decisions in individual cases.

¹ A relevant enforcing authority means the health and safety regulator with responsibility for the activity or workplace involved and includes the Health and Safety Executive (HSE), Office of Rail Regulation (ORR), local authorities, Maritime and Coastguard Agency (MCA) and the Fire and Rescue Services.

Guidance

- 1 The relevant enforcing authority should have appropriate internal management arrangements in place to ensure that such decisions are taken at the appropriate level by a senior manager and that such decisions are informed by legal advice.
- 2 A decision to bring criminal proceedings for health and safety offences before an inquest should only be taken if the liaison requirements set out in the WRDP have been followed and the police and/or the Crown Prosecution Service (CPS) have been engaged.
- 3 Primacy for the investigation should have been formally passed from the police to the relevant authority and recorded in writing.
- 4 A decision to bring criminal proceedings for health and safety offences before an inquest should not be taken unless the relevant enforcing authority is satisfied that:
 - (a) all reasonable lines of inquiry have been completed;
 - (b) all available and relevant material gathered; and
 - (c) it is unlikely that any additional relevant material would come to light at an inquest that would materially affect that decision.
- 5 Before a final decision to commence legal proceedings for health and safety offences is made it is important that appropriate consultation with others who have a legitimate interest is undertaken. If primacy has been passed from the police to the relevant enforcing authority without the involvement of the CPS, the police should be consulted before any final decision to proceed before the inquest is taken. If primacy has been passed to the relevant enforcing authority after the CPS has given the police early investigative advice or carried out a full evidential review, the CPS should be consulted.
- 6 In all cases the coroner should be consulted before a decision is reached. Any decision by the enforcing authority should take into account the following factors:
 - (a) What delay there might be in the hearing of any inquest?
 - (b) Whether the coroner will adjourn the inquest if criminal proceedings for health and safety offences are commenced?
 - (c) The views of any properly interested person.
- 7 It would not, in general, be appropriate to commence criminal proceedings for health and safety offences if the coroner is not content to adjourn the inquest until after those proceedings are completed. Also, it would not be appropriate to commence those proceedings if an inquest could be held within a short timescale and this would not prejudice the right to a fair trial due to delay.

This document is available at: www.hse.gov.uk/pubns/wrdp3.pdf

© *Crown copyright* If you wish to reuse this information visit www.nationalarchives.gov.uk/information-management/our-services/crown-copyright.htm for details. First published 09/11

Published by the National Liaison Committee for the Work-related deaths protocol (England and Wales) WRDP3 09/11