

Health and Safety Commission Paper			HSC/04/09
Meeting Date:	10 February 2004	Open Gov. Status:	Closed till after HSC meeting, then partially open
Type of Paper:	Below the line	Paper File Ref:	SASD/221
Exemptions:	The following material will be removed from the public version of this paper: all or part of paragraphs 4, 16, 17, 21, 22, 23 and Annexes 2 and 3.		

## HEALTH AND SAFETY COMMISSION

### PROPOSED HOME OFFICE VICTIMS CODE of PRACTICE – TREATMENT OF HEALTH AND SAFETY INCIDENTS

A Paper by: Jonathan Russell

Adviser: Peter Johnson

Cleared by Jane Willis on 21 January 2004

#### Issue

1. The need for the health and safety enforcing authorities to take account of the planned statutory code on treatment of victims of crime.

#### Timing

2. The Home Office have published a draft Victims Code of Practice for criminal justice agencies, likely to be implemented by April 2005.

#### Recommendation

3. The Commission is invited to:
  - note that we support the exclusion of health and safety incidents from the Home Office draft code, which is not written in terms that can be applied readily to health and safety enforcers;
  - note that in order to take account of the code as far as possible, we are reviewing the arrangements for HSE and local authority liaison with victims, and considering how to define 'victim' for health and safety purposes;
  - let us have any comments on these issues.

#### Background

4. The Home Office propose a statutory code on support for victims (**Annex 1**) which would apply to the police, CPS and criminal justice support agencies **in England and Wales only**. →← *This section removed under exemption 2(indent 2)(Internal discussion and advice)*
5. The code would require timely information for victims about the conduct of an investigation or legal proceedings, and their roles in it, eg. as possible witnesses; referral to Victim Support/Witness Service; enabling victims to make a victim personal statement (VPS) formally telling police and CPS how they have been affected; and an undertaking that those views will be taken into account when deciding whether to

prosecute. The code would also place requirements on the Courts and support bodies (eg. Victim Support, Probation Service).

6. The code is being introduced under the Domestic Violence, Crime and Victims Bill now before Parliament. The Bill provides for a new Commissioner for Victims and Witnesses to ensure an informed, coherent, effective voice for victims at national level.
7. The Centre for Corporate Accountability has called for all work-related deaths and investigated injuries to be treated from the outset as possibly resulting from criminal conduct, and injured persons and bereaved families treated as victims of crime. Additionally, following a letter from Anne Jones, the Chair stated that HSE's scheme would be looked at in the light of the Home Office proposals, and that he would comment on their approach.
8. The Home Office intend the code to exclude health and safety incidents, except where the police are also investigating possible manslaughter offences (under the work-related deaths protocol). In possible manslaughter cases, police and CPS would be expected to apply the Home Office code, including involvement of police family liaison officers. This would be complemented by HSE liaison as appropriate. The code also excludes most injuries caused by possible driving offences.
9. HSE already has measures in place for liaison with bereaved families and other victims. This includes leaflets (*Advice and information for bereaved families, HSE and you – after an accident*); information packs; instructions and training to inspectors on dealing with the bereaved; and instructions to take account of victims' views as required by Code for Crown Prosecutors.

### **Consideration**

10. The main points for consideration are:

#### **Home Office code – health and safety exclusion**

11. The code (**Annex 1**, paragraph 4.6) excludes work-related incidents, except where the police (including British Transport Police) are also investigating possible offences, and where CPS subsequently prosecute.
12. Certain aspects of the code can be applied to HSE, and are already practice, though not always by formal procedure:
  - keeping victims informed of the progress in an investigation;
  - notifying victims of charges and court hearings;
  - taking into account victims' views when deciding whether or not to prosecute;
  - informing victims of the outcome of proceedings and any appeals;
13. However, the code itself is written in terms which can only be applied readily to the police and CPS; it includes references to arrest, and other matters not relevant to HSE/ LAs. The code also refers to police family liaison officers which HSE does not have the resources to duplicate. The code is also prescriptive in timing and repetition of contacts, some of which would place a special burden on the relatively small health and safety enforcers, eg update on investigation progress monthly, as opposed to at agreed milestones as now. We could not apply the code straightforwardly to health and safety.

**Recommendation: (1) The exclusion of health and safety from the Home Office code is reasonable, and allows us to consider a separate statement on what work-related victims in England and Wales can expect of HSE/LAs (see below).**

## Taking account of the code

14. HSE/ LAs could agree to take account of the code, through a publicly available statement on what inspectors will do in health and safety cases, further developing procedures where appropriate. This would enable any additional inspector commitments to be tailored to available resources and existing strategic priorities.
15. We will need to make clear that incidents are investigated on publicly available criteria; health and safety victims will not necessarily be victims of an offence; there will not necessarily be any causal link between an injury and any failures investigated.
16. **Advantages** of agreeing to take account of the code, include:
- greater clarity in what can be expected of health and safety enforcers in this regard;
  - promoting greater consistency on the part of enforcing authorities;
  - demonstrating, as far as possible, consistency with police and CPS approach;
  - →← *This section removed under exemption 2(indent 2)(Internal discussion and advice),*
17. **Possible disadvantages** of formally acknowledging 'victim status' may include:
- giving extra emphasis to health and safety failures as a criminal matter;
  - →← *This section removed under exemption 2(indent 2)(Internal discussion and advice);*
  - some might see a toughening of HSC's enforcement stance, though enforcement policy remains unchanged.
  - may encourage perceptions that seriousness of breach is more to do with the outcome than degree of risk created;
18. As the Home Office code would need a good deal of modification to adapt to health and safety, a non-statutory commitment is appropriate.

**Recommendation: (1) HSE/ LAs should agree to take account of the broad thrust of the Victims Code of Practice, though further work is needed on the specifics, especially how to apply victim personal statements (see Annex 2); (2) A statement should be drawn up setting out what HSE and LAs will do in liaising with victims, within available resources.**

## Victim - definition

19. The definition of 'victim' for health and safety purposes is important for transparency. A moderately wide definition would include bereaved families and those major injuries to workers and injuries to members of the public which are subject to a criminal investigation by inspectors. The wider the definition the greater the likelihood of taking up more inspector time. This could impinge on strategic work priorities.

**Recommendation: As part of producing a statement of approach on liaison we will need to ensure that the definition of 'victim' and ensuing commitments take account of available resources.**

## Consultation

20. This paper draws on initial discussion with Home Office Victims Unit, and reflects consultation with operational directorates and divisions, and HSE Solicitor's Office.

## Presentation

21. →← *This section removed under exemption 2(indent 2)(Internal discussion and advice)*

**Costs and benefits**

22. **Annex 3** considers the costs and benefits of taking account of the Home Office code. Whether the costs are significant depends mainly on whether and how to employ victim personal statements, →← ***This section removed under exemption 2(indent 2)(Internal discussion and advice)*** The benefits of demonstrably taking account of the Home Office code appear to be worth securing.

**Financial/Resource Implications for HSE**

23. Decisions yet to be made on standards which should apply to victim liaison will need to take account of priorities for use of inspector time. →← ***This section removed under exemption 2(indent 2)(Internal discussion and advice)***

**Attachments:**

- Annex 1 ... .. draft Home Office code – for information**
- Annex 2 ... .. victim personal statements**
- Annex 3 ... .. costs and benefits - provisional**