

Health and Safety Executive		Operational Circular	
		OC 168/9	
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Target Audience:
All HSE Inspectors

ASSURING THE INDEPENDENCE OF PROSECUTION DECISIONS

1 These guidelines apply to all cases, including those subject to independent legal oversight under the arrangements agreed by Solicitors Office (*OC 168/8 refers*).

2 They are intended to help ensure that prosecution decisions involve an **independent** review of the evidential sufficiency and public interest. In many cases taken by HSE this decision can be properly taken by the investigating inspector's line manager. (For FOD, this is likely to be the majority of cases).

3 The person making the prosecution decision must do so in a fair, independent and objective way so that they are not affected by improper or undue pressure from any source. They should therefore not be **closely** involved in directing, or be identified with, the investigation process. However they can and should be involved, if necessary, in advising the investigating inspector on lines of enquiry. Neither does the normal management role of band 1 or 2 staff in monitoring the investigation work of inspectors compromise their ability to make the prosecution decision.

4 Before approving any prosecution, the manager should consider the following criteria. If they judge that one or more of the criteria apply to them in a way that could compromise their independence they should refer the case(s) to another approving officer:

- a) has **controlled and directed** the investigation beyond performing the manager's role of ensuring the investigation was properly conducted and meets HSE's standards of performance;
- b) has been **directly** involved in securing evidence, such as assisting in taking witness statements or conducting or assisting in PACE interviews with potential defendants or their representatives;
- c) have had **significant** prior dealings with any potential defendants, e.g. as a result of contact on operational matters or through sector or other representational work;

- d) has become the “public face of HSE” as a result of direct and ongoing publicity following an incident, as distinct from simply an immediate media response following an incident;
- e) has become **directly** involved with the potential defendant at Board (or equivalent) level in agreeing remedial measures following an incident, *[or has been subjected to a formal approach by a potential defendant or their legal representative to consider alternative action to that of prosecution]*, or
- f) has been **closely** involved with victims, their relatives or other agents acting on their behalf, e.g. discussing requests for HSE to take enforcement action beyond any initial expression of expectation that HSE will take such action.

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