

WORK RELATED DEATHS

Guidance Notes to accompany
A Protocol for Liaison

Among

CROWN OFFICE AND PROCURATOR FISCAL SERVICE

HEALTH AND SAFETY EXECUTIVE

ASSOCIATION OF CHIEF OF POLICE OFFICERS (SCOTLAND)

BRITISH TRANSPORT POLICE

November 2008

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1. INTRODUCTION -

This guidance is produced and agreed among the signatory authorities to assist their staff on the practical implementation of the “Work Related Deaths: A Protocol for Liaison” document (the Protocol). This document is not directive but, rather, advisory and its adoption will be tailored to the circumstances on a case-by-case basis. As experience grows on conducting joint investigations under the Protocol so this guidance will be updated and reviewed. The key to successful implementation of the Protocol is the dialogue as soon as possible by the Police, Health and Safety Executive (HSE) and Procurator Fiscal (PF) to agree the tripartite strategy for and co-ordination of the initial enquiry phase and onwards.

2. OBJECTIVES -

The objective of the Protocol is that a police officer of supervisory rank should attend the scene and report to the PF on whether there is the potential for a serious crime (other than a Health and Safety at Work Act 1974 (HSWA)) so that such cases can be identified at the outset and pursued appropriately. There is a presumption that all work related deaths will be treated as potential serious crimes (in addition to potential HSWA crimes) and the police will lead such joint investigations until that possibility is excluded. Early reporting by the police to the PF should allow the PF to make early decisions to exclude such crimes and let the lead for the investigation pass to the HSE. Until such decisions are made both the police and HSE have the need to investigate respectively the crimes for which they are set up and hence there is a need to make the investigation joint, co-ordinating it so as to avoid duplication or conflict.

Part One of the Protocol indicates that both the police and HSE have the role to investigate and therefore the investigation will be done jointly. Joint methodology needs to be agreed on a case-by-case basis for an initial phase which permits the PF to make a timely decision on who will ultimately lead, or that the investigation needs to be continued as a joint one as a second phase. To aid this process the police will report to the PF on the potential serious crime aspect and HSE on whether HSW Act applies and whether they are the appropriate enforcing authority as soon as possible after the first phase. The PF should make a timely decision whether serious crime (other than HSWA) can be excluded. If so, the lead passes to the appropriate HSW Act enforcing authority and the police withdraw from the investigation (except for sharing of information and any special assistance thereafter needed). If the serious crime possibility cannot be excluded then the police will continue in the lead of the joint investigation as a second phase.

A review of typical Work Related Deaths in any one year indicates a wide range of circumstances from those where a serious crime (other than HSWA) can be excluded almost immediately upon the first police report, through to those where

it may take a week or two of investigation into the context to exclude such crime, to a very few cases where the possibility of such crime remains to the very end of the investigation so necessitating it to be joint throughout. The police and PF undertake to report and make a decision as to the potential serious crime (other than HSWA) as early as possible.

Where a work related death occurs there will be a presumption that the death will be treated as a potential serious crime other than a HSWA crime until the investigation establishes otherwise. The investigation will be a joint police, HSE investigation and the police will have the lead role overseen by the Procurator Fiscal.

3. DEFINITION OF WORK RELATED DEATH -

“Work related death” is not a legal term, so can have wide meaning and a wide interpretation should be applied in the earliest stages of an investigation to allow for the fullest possible exploration of possibilities in the dialogue mentioned at Paragraph 1 above.

4. MAJOR INCIDENTS -

While the bulk of work related deaths involve a single death, regrettably there are occasional major incidents which may involve single or multiple deaths. A major incident may be defined as “a significant event, which demands a response beyond the routine, resulting from uncontrolled developments in the course of the operation of any establishment or transient work activity” at the lower end of the scale and “any emergency that requires the implementation of special arrangements by one or more of the Emergency Services, the NHS or the local authority for: (a) the rescue and transport of a large number of casualties (b) the involvement either directly or indirectly of large numbers of people (c) the handling of a large number of enquiries likely to be generated both from the public and news media, usually to the police (d) any incident that requires the large scale combined resources of the Emergency Services (e) the immobilisation and organisation of the Emergency Services and supporting organisations, e.g. the local authority, to cater for the threat of death, serious injury or homelessness to a large number of people” at the upper end of the scale.

The event may cause, or have the potential to cause, either:

- multiple serious injuries, cases of ill health (either immediate or delayed), and/or loss of life, or
- serious disruption or extensive damage to property, inside or outside the establishment

Some such incidents may involve application of the Civil Contingencies Act 2004.

For such incidents each organisation will follow its major incident procedures and will be expected to discuss and understand each others respective roles throughout the management of the incident and its aftermath.

5. **THE CRIME SCENE** -

At the outset, the police will preserve the scene as a crime scene and prohibit access by, and divulging of information to, third parties such as insurance companies, loss adjustors, proprietors of businesses etc. HSE is not a third party and police should allow access by HSE as necessary for them to consider HSWA offences and advise on the investigation.

Full Crime Scene protocols should be implemented, stipulating access (including recording of entry and egress from site) and security arrangements and evidence gathering procedures. At the earliest opportunity there should be full briefing of those who will be involved in the implementation of the protocols to ensure compliance

HSE has duties imposed on it by Section 20 of the Act to allow access/observation of aspects of their investigation by the duty holder but the Procurator Fiscal investigates in private and does not. Further legal advice on this aspect is required by HSE but, for the present, decisions on access by third parties will be taken in light of the facts and circumstances of each case and after full discussion as provided for in the Work Related Deaths Protocol.

6. **THE INITIAL ENQUIRY PHASE** -

The PF, police and HSE should meet as soon as possible after the initial scene attendance to agree, in relation to the nature of the case how to deal with the following issues:-

❖ **Safety**

Agreement should be reached, if necessary, on how each agency can conduct its investigation without inhibiting actions which need to be taken at the site to aid rescue, secure and record evidence and to make the scene and future work activities or investigation activities safe.

❖ **Body Handling and Autopsy**

Agreement should be reached, if necessary, on how each agency can conduct its investigation without inhibiting actions which need to be taken to expedite the recovery, identification, autopsy and release of bodies.

In the event of a multi-fatality disaster occurring within, for example, a collapsed or destroyed building, or where bodies and debris are scattered

over a wide area, it is recommended and, in some cases, it will be essential that a sectored aerial photograph(s) is/are used to record the locations of recovered bodies. The sector identification numbers/letters (whichever system is chosen) should be incorporated in the Body Recovery Logs or similar documents used to log the recovery of deceased by those recovering to ensure a full audit trail.

Experience has shown that, perhaps, understandably, due to their remit, rescue personnel such as fire service and paramedics do not record such information and it is not therefore available as evidence if required or to assist with identification issues. This is a police function and responsibility

❖ **Information Sharing**

All parties should agree the system for securing, logging, keeping and testing evidence recovered in the initial stages. All information should be shared among all parties.

❖ **Productions**

It is essential that any item which is identified as having any significance by an expert (or for that matter any other person) on the scene should be seized and retained as evidence. Even where an expert, on the scene is satisfied that there is no need for an item to be recovered it will still be important to consider whether that item may have a significance, may require to be disclosed or may be considered to be significant by the defence in any future trial. Essentially, where an item may have any possible relevance it should only be exempt from seizure where all parties to the investigation agree. It is particularly important that the evidential significance of the absence of the item should be fully considered before its disposal. In this way everything which is essential to the Crown will be seized and anything which may be of relevance will be considered for retention on the basis that it may be necessary to disclose to the defence. Further, the precise location from which various items are recovered must be clearly stated. Some Scenes of Crime will be very small and some very large, but it will be necessary to devise some system to pinpoint the precise location where items were discovered. Under no circumstances should productions be taken possession of from their original place without that place being recorded in detail. It will not be sufficient to specify that items were recorded as being found, for example, “in Union Street” with no further specification. Such a degree of specification is of no practical assistance and the greatest care must be taken to ensure that precise locations are given, possibly by reference to a grid of some sort and should be photographed before and after they are seized unless it is impossible to do so at the locus due to the volume in which identification

should be by grid and batch. Also see above re body recovery recommendations.

The kind of discipline which is used in the recovery of evidence following a plane crash could be used in these circumstances and the kind of grid system used in any major incident might also be useful.

At any event, when a production is to be seized consideration should be given and advice taken, as to whether it should be examined in situ before being disturbed. A record of its condition must be made before it is disturbed e.g. the setting on a dial, or the position of a valve. Also the place that it was seized should be marked by a permanent marker of some sort, such as a stake and label or something similar if possible and the place of recovery should be given by reference to some objective standard such as a grid. If over a large area, aerial photography may be considered the best means of assisting such recording. Where it is necessary to remove certain items to get to, for example, a casualty or body, then this exercise should, wherever possible, be videoed or photographed and the items which are removed to permit access should be bagged and labeled immediately. Where the item to be recovered is a body, there is no reason why, even though this has to be done quickly, the items which are moved could not still be identified and recorded. Thereafter they can be labeled appropriately. It is essential that the strictest discipline is followed in relation to the seizure and labeling of productions and that no one person or organisation makes a judgement on the disposal of a production which has either been identified by an expert as being necessary or may be relevant despite what an expert may say since evidential, investigatory and prosecutorial matters will all be significant to a greater or lesser degree.

While much will depend on the nature of the inquiry, it may be necessary to obtain appropriate premises such as a warehouse or other large building to sift, evaluate and examine productions; in other cases more modest premises will suffice and the nature of the inquiry will dictate how complex arrangements need to be; in addition at least some productions are likely to have to go to the Health and Safety laboratory while others may go to police or university labs; all aspects of seizure, storage, transport, examination and return will need to be agreed and fully evidenced and documented.

❖ **Photographs and statement of photographer**

It is essential that photographs are taken of everything that can conceivably have any relevance to the investigation and it is imperative that photographers prepare detailed statements at the time the photographs are taken setting out precisely what each photograph shows and the date and time it was taken. Given the significant delay that can occur between

investigation and trial it is perfectly possible that the photographer will not recall precisely the details of the photographs and this applies to both Police and HSE photographers. If necessary, the photographs should be taken and recorded by reference to any grid system identified for the seizure of productions but, whatever, it should be possible at any trial for the photographer to give the fullest possible evidence and for anything which could be remotely significant either for the Crown or for the defence or for evidential investigation or prosecution reasons to be available. When books of photographs are prepared the photographs should be presented in chronological order, ie, the chronological order in which they were taken.

It is clear that in major incidents decisions as to relevance often cannot be made, most obviously when the cause has not been established at an early stage. The transfer of images to DVD for information sharing and disclosure to the defence is highly effective and, in some cases, essential. These should be presented chronologically with a view to selecting and using images, which are of real evidential value, as appropriate for presentation of 'chapters' of the case, e.g. in conjunction with technical reports or witness statements.

❖ **Video recording of scene**

A video recording of a crime scene has a far greater visual impact than a set of photographs and it is recommended that video be used wherever possible, even though the scene is a relatively simple one. Ultimately, a jury will be able to gain more from a video than from photographs and detailed consideration should be given to whether or not R2S or other, similar, technology should be used to give a 360° representation. It is worth noting that media organisations often obtain high quality images of the scene, very often aerial views and consideration should be given, in appropriate circumstances, to attempting to acquire copies of these. Consideration should always be given to obtaining aerial photographs, but not to the extent that the presence of a helicopter might interfere with the investigation. It may also be that a simple schematic demonstration or representation of the scene would be of value.

❖ **Witness Interview and Investigation Strategy**

In initial witness interview strategy and investigation policy it may be agreed that each agency will pursue some early lines of enquiry, eg the police, eye witnesses and rescue workers, whilst HSE or Local Authority pursue technical, organizational and supply chain witnesses or that some or all will be pursued jointly. Key witnesses will be identified at an early stage and agreement reached as to where and when they should be interviewed and by whom; in particular, if the witness is being interviewed

in respect of serious criminal implications the police will need to be present and if the witness is speaking to technical, organizational or maintenance issues then HSE should be present. In any event, each investigating authority should be given the opportunity to identify the questions that need to be put to that witness and these should be agreed by the parties. Whilst the police lead the investigation, statements will be written in the normal police format and detailed discussions will be needed to decide whether HSE will use its Section 20 powers, either in relation to the interview of witnesses or the seizing of productions. Where technical witnesses, expert witnesses etc are being interviewed then their evidence might be secured in a report which they testify to as being their own. Flexibility is needed to ensure that the most effective interview and evidence gathering techniques are used but it will be necessary to keep in mind the question of whether or not any answers given by a person in pursuance of a Section 20(2)(j) requirement or other questioning would be admissible in evidence against that person or his/her spouse in any proceedings.

❖ **Experts**

Each agency will need to identify experts necessary to speak to particular aspects (eg expert opinion on technical matters); such experts should be identified as early as possible in the inquiry to avoid them being lost to the prosecution and instructed by the potential accused. Such expert witnesses may be included as part of the investigation team or be kept at arms length from becoming intimately involved in the investigation in order that they can be used as independent technical experts to support and corroborate opinions of other witnesses in court.

❖ **Legal Representatives**

The legal representatives of witnesses and other parties must be identified and the mechanisms which will be used to involve them when dealing with their clients be agreed.

❖ **Investigation of Corporate Failings**

A strategy should be agreed on how to approach corporate organizations so as to gain information about how they are structured, organized and conduct their work and who are the best individuals within their organization to interview. This is so that witness interviewing can be structured in a systematic manner. It will be very important to identify who might provide factual information on management organization and who may need to be interviewed under caution, either then or later, in respect of their role in the operations of the organization. Great caution will be necessary to ensure that nothing is done to affect the recording or

admissibility of answers given by witnesses/potential accused and, subject to the authority of the procurator fiscal, the approach to, and structure and conduct of, inquiries into potential corporate or organizational criminality, must be agreed jointly so as not to make later investigation more difficult or impossible. It will not be assumed that any agency's procedures will be adopted automatically but rather that the best choice be made in the context of the inquiry.

❖ **Victims and Bereaved Relatives**

There needs to be agreement on how best to deal with bereaved families and injured parties so that the objectives of HSE's investigation process and bereaved families procedures and Police Family Liaison Officers are both met. COPFS VIA should be involved in discussions. Effective liaison through VIA working with the COPFS investigation team is essential

❖ **Media**

Agreement should be reached among all parties on how to jointly approach and respond to the media.

❖ **Business Recovery Management Team**

Should a major incident occur which involves or affects business/commercial concerns it may be advisable to establish a Business Recovery Management Team to resolve possible conflicts of interest between investigatory procedures/requirements and commercial recovery efforts (which may ensure the financial viability of the organization and ongoing employment of survivors). This group should comprise representatives from COPFS, HSE, Police, and Company Management. Agreement should be reached and recorded, inter alia, about the return of recovered commercial and personal property/ documents (or copies) which can be categorically excluded as being of evidential value. This will require careful handling due to the position of the Company as a potential accused.

❖ **Investigative Procedures**

Whilst the police will be the lead agency in phase 1, it is not intended that police procedures will automatically over-ride the consideration of the needs of a joint investigation at this stage. For example, how to approach, structure and conduct inquiries into corporate activities must be agreed jointly so as not to make later investigation more difficult.

❖ **HOLMES**

How best to use the police HOLMES computer system needs to be agreed to ensure approaches to witnesses are co-ordinated to pick up the needs of all agencies and fit into the structured approach to witnesses interviews agreed. If HOLMES has to be used, all agencies will require to use the ISJICS style disclosable/non-disclosable statements used by the police.

7. **SUBSEQUENT ENQUIRY PHASES** -

As the inquiry develops aspects of managing the investigation jointly will need to be reviewed and adjusted if the PF decides that serious crime, (other than HSWA) cannot be ruled out and the joint investigation continues. Some additional aspects are:-

❖ **Reports to PF**

This may be a joint report, if so the broad headings and lead for drafting the contents under each heading should be agreed. This is to ensure that all relevant information is transmitted to COPFS. The police will have primacy, with regard to the submission of the initial report. However, this should be done in close co-operation with HSE, in order to ensure the capture of all relevant information and prevent any confusion, loss or duplication of reports. Ideally, the initial report will be in the ISCJS Standard Police Report, Sudden Death Report or freestyle Subject Report format as appropriate. If a separate report is submitted by HSE great care should be taken when documents are referred to as appendices. HSE reports are often prepared in this form and any further documents recovered following submission of the report are added as additional appendices. This means that the report continues to change after its submission to the Procurator Fiscal or to Crown Office and neither has the up-to-date version. This can lead to confusion when consideration is given to the report or when the defence seek recovery of the report as the appendices tend to be inconsistent. When reports are prepared which include appendices, they should be finalised prior to submission to the Procurator Fiscal and no changes should be made thereafter. When any additional documents are received they should be passed to the Procurator Fiscal either free standing or as part of a second, third or subsequent report, but should not be incorporated into an earlier report as an appendix or addition to the appendices. Detailed arrangements should be made by reference to the individual circumstances of any enquiry.

❖ **Health and Safety Feedback**

Mechanisms for giving feedback to employers, employee representatives including safety representatives, injured people and bereaved families should be agreed. It must be kept in mind that HSE has statutory obligations placed on it by HSWA (S.28(8)) in relation to keeping employees and their representatives informed of certain matters affecting their health and safety.

Where there is an emerging issue potentially affecting public safety, HSE should act to disseminate information appropriately.

❖ **Liaison arrangements**

At all stages of the inquiry mechanisms to secure effective liaison among the PF, Police and HSE or Local Authority should be agreed. The following may be appropriate:-

➤ **Debriefings**

Periodic debriefings of emerging evidence should be held, normally by PF and HSE attending police debrief sessions.

➤ **Review of Investigative Strategy**

Periodic meetings among the PF, Police and HSE should be held to agree investigation strategy.

➤ **General Briefings**

Periodic communication meetings should be held at the locus to brief collectively all relevant staff of all agencies. This to ensure that personnel working at the locus are aware of progress and other aspects of the investigation and so that the Police Senior Investigating Officer, PF and HSE Senior Inspector are updated formally as to progress at the locus.

➤ **Progress Discussions**

Periodic PF/Police/HSE “progress of investigation” stocktaking management meetings must be held to track and expedite milestones.

➤ **Meeting Chairs**

Until serious crimes, other than HSWA are excluded the police Senior Investigating Officer (SIO) will chair all of the above meetings.

➤ **Analyses of Evidence/Law**

Periodic “evidence analysis/law applicable” exchange meetings of all parties should be held as evidence collection proceeds and the analytical process starts within each of the agencies.

➤ **Ministerial Briefings**

For those cases which give rise to serious concern periodic meetings to identify how best progress of the case can be communicated to the Law Officers, Ministers, Health and Safety Commission and other senior officers in the respective organisations and how that can be co-ordinated and consistent.

➤ **Frequency of Meetings**

It is anticipated that there will be daily meetings in the early stages of an inquiry but this will stretch to, probably, weekly, as the inquiry progresses but frequency of meetings will be dictated by the needs of the inquiry.

8. **PRIOR INVOLVEMENT OF ENFORCING AUTHORITY** –

❖ **Separation of Roles**

Although it is not practicable to implement a policy of potential investigators being excluded from an investigation because of their prior involvement with a duty holder, HSE should consider whether it is appropriate for individuals to be part of an investigation or to continue after initial response and lines of enquiry become clearer. Where an inspector has been involved in relation to the specific issues being investigated then their inclusion in the investigation should be carefully considered. In any event previous involvement should be drawn to the attention of the police and PF. The P F must be satisfied that any investigation is transparent and this goes further than previous involvement simply being drawn to their attention it may involve some enquiry into the significance of any previous involvement.

❖ **Previous Advice to Duty Holders**

The HSE report to the PF would normally include evidence about previous advice given to the duty holder about potential offences.

❖ **Prior Involvement**

Where any investigating agency has previously been involved with a potential accused or relevant premises as enforcing authority they should

prepare a narrative of their involvement, so that appropriate consideration can be given and reported to Crown Counsel as part of the precognition. This situation is most likely to occur in serious incidents. It should be noted that HSE may have had considerable dealings with some larger duty holders and there will be practical difficulties in recovering information on the nature of those interventions. This will be particularly the case where duty holders operate at many locations such as major construction companies. These issues and any implications should be discussed as the investigation proceeds. Where it becomes necessary, for a full and fair criminal enquiry, to carry out a detailed investigation of the prior involvement of any of the signatory agencies, special arrangements will be made, among the agencies, to establish an investigating team separate from the team carrying out the criminal investigation and which does not contain any individuals who may have been a party to such prior involvement.

❖ **Documentation on Prior Involvement**

All relevant documentation from all the relevant enforcing authorities, having had previous dealings with the potential accused or premises, should be gathered and disclosed to the joint investigating team.

❖ **Policy and Procedures Review**

HSE normally conduct a prior role inquiry into declared Major Incidents itself. This is normally to determine whether there are lessons to learn for the future in relation to its policies and practices. The fact of the review and any information obtained during the review which may support the defence case or undermine the prosecution case must be intimated to the Procurator Fiscal immediately for consideration of disclosure.

9. **DECISION MAKING** -

❖ **Industry Standards**

If the PF, from police reports, considers that a serious criminal offence (other than HSWA) is likely to proceed then they will inform HSE. Consideration will be given to evidence of industry practice, or standards expected being collected by or given by HSE towards proving such a level of culpability.

❖ **HSE Reports**

For HSWA charges, it is normal practice for HSE to prepare a full prosecution report recommending action to the PF to consider. Alternatively, where prosecution action is not recommended, HSE

normally supply an investigation report discussing why HSE does not recommend prosecution for that work related death for which HSW Act is applicable and HSE is the appropriate enforcing authority.

❖ **Precognition**

If the PF wishes to commence proceedings in advance of receiving HSE's full prosecution report then "emerging recommendations" meetings will be needed between the PF and HSE Approving Inspector (perhaps involving HSE's solicitor to offer advice on how the issue would be actioned in England and Wales). In addition, it may be useful for an HSE Inspector to work with the PF on witness precognition so as to ensure a mutual understanding of technical and organisational evidence.

❖ **Precognition and preparation for trial**

In a large precognition it is best practice to have a common folder which is accessible by the precognition and prosecution teams. The common folder should be password protected to restrict access and amendment of data within the folder limited to a small number of clearly identified number of members of the team. The folder should contain all precognitions and police statements, scanned productions, lists of labeled and documentary productions. A summary of each witness' evidence should be hyperlinked to their precognition and police statements. A summary of documentary productions should be hyperlinked to the scanned document. In this way an E-precognition can be easily constructed and would be a worthwhile way forward. Use of detailed tables in relation to deceased and injured in a major incident should also be included.

10. DISCLOSURE –

The Crown is under a general obligation of disclosure and full consideration must be given to the structure of the report, bearing in mind that it, or a large part of it, is likely to be the subject of disclosure. Great care should be taken to ensure that the factual elements of the investigation are clearly identified and take up a part of the report, that the analysis of the evidence which constitutes the factual elements and the conclusions to be drawn are prepared as an identifiable different part and that any other information unsuitable for disclosure, such as personal information about individuals, views, opinions or the like, from informed or, even, uninformed sources, should be kept separate again so that the material can easily be redacted.

Adopting the format used in the standard police statement would be extremely useful in this context and it should be possible to extract and disclose factual elements from a report.

Disclosure will be a matter for the Procurator Fiscal only and will be made in accordance with the law, procedures, practices and any protocols or agreements in force at the relevant time.

11. WARNINGS TO INDUSTRY -

❖ Duty Holders

If HSE considers the attention of other duty holders needs to be drawn to the hazards identified in the investigation then the wording of any such guidance should be discussed with the PF to minimize any implication or prejudice to future witness interviews or potential legal proceedings. However, the COPFS recognises that public safety needs may have to take precedence.

HSE must act accordingly and the detail of any guidance issued is a matter for them. The PF should be advised of the intention to issue such guidance (and the wording).

12. FATAL ACCIDENT INQUIRIES -

❖ Preparation

The HSE investigation report would normally contain sufficient information and evidence on the technical, organizational, legal and standards applicable issues to inform the PF of HSWA matters in arranging and conducting the FAI. Where the PF considers that further information is required from HSE then HSE will try to assist where they have the resources and expertise.

13. GENERAL -

❖ Correspondence

To avoid the risk that the defence legal team might try to rely on things which they claimed had been communicated to them by the Procurator Fiscal or Crown Office (or other agencies for that matter) which involved misconstruction or misinterpretation or that they write immediately following a telephone conversation and record a version of the conversation which does not accord with what was actually said it is important that the Crown or other agencies should ensure that all correspondence on significant matters is in, or at least confirmed in, writing and the terms of any matters put in writing are clear, precise and unambiguous. Where the defence has written to different agencies the reply should be co-ordinated in clear, precise and unambiguous terms.

Should the defence legal team present a misleading version of a conversation or discussion the Crown or other agency should immediately respond in writing with an accurate account of the position. It is, therefore, important to have a clear strategy to co-ordinate correspondence with the defence legal team.

HSE will not engage in any correspondence with the defence team once a report has been sent to the Fiscal. They might correspond with the duty holder during the investigation e.g. about managing continuing risks, where HSE may have served an enforcement notice on them – this should have been discussed with the PF and police so that they are aware of the HSE action. Any proposed action by HSE which is potentially linked to the subject matter of the investigation should be discussed with the PF.

Policy Books (police) and Key Decision Logs (HSE) will normally be used to record investigation strategy and key decisions. They should be coordinated and signed by both parties where joint decisions are made. These are likely to be disclosable documents.

❖ **AD involvement**

In a large case the early involvement of the Advocate Depute who will be presenting the trial is essential. If possible, the same Advocate Depute who will present the trial should be involved in the drafting of the indictment and early involvement will ensure that all appropriate investigations are carried out.

❖ **Liaison with family at Court**

Apart from highly effective liaison among all agencies at the investigation stage, it will be important to be in a position to ascertain whether family members are present in court so that material which may be distressing to them can be led effectively. This may mean that they would wish to leave the court and they should be given the opportunity to leave the court if that is what they want. Liaison with family at court is the primary responsibility of VIA.

❖ **Video/CD Rom/DVD**

Video evidence can be difficult to lead and it is hard to get a sharp image when a video is paused. Video evidence should be recorded onto digital storage means such as CD Rom etc, or, preferably, the footage should be recorded digitally in the first place.

❖ **HSE Liaison**

It is of great benefit for the prosecution team to have an identified point of contact within HSE. The PF will work closely with the police reporting officer and HSE Investigating Officer, but this will not always be possible at a later stage if either is a witness. It is preferable, therefore, for the police reporting officer and relevant HSE investigator, not to be witnesses and to be able to advise and assist at the trial.