

Information for bereaved families from HSE

Scotland

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Introduction

This leaflet provides information about what happens when a death occurs at work, or in connection with work activities. It is for members of families who have lost a relative in such an incident.

Since an investigation will begin straight away into the circumstances, this leaflet is to help you at this difficult time by explaining:

- how the investigation will proceed, particularly, the role of the Health and Safety Executive (HSE);
- the legal processes and decisions that will follow;
- the services and support offered to you by other organisations.

If you have any questions about the information in this leaflet, or want to know more, please contact either:

- the person who gave or sent it to you; or
- the inspector leading the investigation, whose details are below.

Inspector's name:

HSE office:

Telephone:

Email:

The investigation

The Procurator Fiscal is responsible for investigating all sudden, suspicious or unexpected deaths and will be helped in this by the police (see www.copfs.gov.uk/about-us/about-us). HSE becomes involved in the investigation where the death is related to a work activity.

HSE's role in the investigation is to:

- find out what happened and why;
- ensure action is taken to stop it from happening again;
- establish if any health and safety law has been broken;
- submit a report of its enquiries and conclusions to the Procurator Fiscal.

The police and HSE inspectors work together from the start of the investigation. This is because the police have to consider whether an offence of culpable homicide and/or corporate homicide may have been committed, while HSE looks for any failures to comply with health and safety laws. The arrangements for jointly managing investigations are set out in a document called *Work-related deaths: A protocol for liaison* (www.hse.gov.uk/scotland/workreldeaths.pdf). The police will take the lead if homicide is under consideration. If not, the lead will fall to HSE, although the situation can change as the investigation progresses.

The investigators recognise that the families of people who have died in work-related incidents will be anxious for information, and to know what is happening in the investigation. The police may appoint a Family Liaison Officer (FLO) to meet this need, and HSE will make contact with you either through the FLO or separately.

We will offer to come and see you at your home or other convenient address as soon as you feel ready for this. If a home visit is not practical, for example, because of the distance involved, we will keep you informed by telephone. We will understand if you do not wish to see us, but if you change your mind or your circumstances change at any point, please contact us. If you have any information that you think might help the investigation, we would be grateful if you could let us know.

All visiting HSE staff carry identification with a photograph (inspectors hold warrants). You can ask to see this to avoid any confusion over who is contacting you and why.

We will keep you informed of progress of the investigation up to the stage when we submit our report to the Procurator Fiscal, who will then become your point of contact. Until the handover, we aim to communicate with you in the way that suits you best, and if you have any particular information needs, please discuss them with the inspector. The timing and intervals between our contacts with you will depend on factors such as how complex the investigation becomes, and how much evidence has to be gathered and analysed. We aim to avoid delay, but it may take up to a year, occasionally longer, for an investigation to reach its conclusion.

Since the Procurator Fiscal makes the decision whether to prosecute for any offences, there will be limits to the information we can provide, otherwise we might prejudice a possible criminal prosecution. Therefore, HSE staff will not be able to tell you anything about the likely cause of death. If there are other things we are unable to tell you, we will explain why. However, we will inform you about what we have done and any further action we intend to take.

If you wish to know more about our policy on working with bereaved families, see: www.hse.gov.uk/enforce/victims.htm.

A further source of support is Victim Information and Advice (VIA), a dedicated service for victims of crime, next of kin in cases of sudden death and some vulnerable witnesses. VIA is located within the Crown Office and Procurator Fiscal Service, and information is available at www.victimsofcrimeinscotland.org.uk.

VIA provides information only on cases that have been reported to the Procurator Fiscal. Bereaved families are entitled to certain information about their case, including:

- an explanation of how the criminal justice system operates in general and how the court process is likely to operate in their case; and
- advice, if they so wish, about key decisions affecting the case and when the offender is sentenced.

Legal processes

The legal processes usually, but not always, take place in the following order:

- criminal proceedings;
- Fatal Accident Inquiry (FAI);
- civil proceedings dealing with compensation.

Criminal proceedings

The circumstances of the death may indicate that an individual or a company has broken the law and the Procurator Fiscal may decide to prosecute. The Procurator Fiscal will consider whether there is evidence to prosecute under common law offences such as culpable homicide, the statutory offence of corporate homicide and statutory health and safety offences. Where there is sufficient evidence, the Procurator Fiscal can prosecute either individuals or companies or both.

If there are to be criminal proceedings, these will normally be heard in a Sheriff court. Criminal cases are heard by a Sheriff and a jury (solemn procedure), but can be heard by a Sheriff alone (summary procedure). Health and safety prosecutions can be brought against companies and individuals. The court has the power to impose a fine and, in certain cases against individuals, a prison sentence. The penalty is a matter for the Sheriff but maximum penalties are set out for certain cases.

Fatal Accident Inquiries

Deaths which result from an accident at work may be subject to an FAI. This is held in the Sheriff court in front of a Sheriff. Its function is to determine the identity of the person who has died, the place and time of death and the cause of death.

The Procurator Fiscal will present evidence to the FAI. Any other interested parties, which include the next of kin, can appear at the FAI and question witnesses.

At the end of an FAI, a Sheriff will make a determination. The determination will set out:

- where and when the death occurred;
- the cause of death;
- any precautions by which the death might have been avoided;
- any defect in systems that caused or contributed to the death;
- any other facts which are relevant to the circumstances of the death.

An FAI cannot make any findings of fault or blame against individuals.

This is in addition to the powers which HSE may use to ensure that risks to health and safety are controlled.

Compensation claims under civil law

It is for you to decide whether you want to sue for compensation, and to start the process. Citizens' Advice Scotland and solicitors can advise you on this. Some trade unions provide legal help to their members and families. You will need a solicitor to pursue a case through the courts. Civil proceedings are often delayed until any criminal proceedings, or an FAI has been held. It is not HSE's role to seek compensation on your behalf.

Sources of help and information

If you need it, the following organisations offer information and support, or can put you in touch with other local sources.

Citizens' Advice Scotland

Tel: 0808 800 9060

Website: www.cas.org.uk

Victim Support Scotland

Tel: 0131 668 4486

Website: www.victimsupportsco.org.uk

The Law Society of Scotland

Tel: 0131 226 7411

Website: www.lawscot.org.uk

HSE's website lists more organisations that provide a range of services to bereaved families. The information can be found on the *Working with victims* pages at www.hse.gov.uk/enforce/victims.htm.

HSE holds information which it makes available through the public registers on its website at www.hse.gov.uk. The information includes summaries of work-related fatalities (including the names of the people who have died), details of organisations and individuals convicted of breaches of health and safety law, and other enforcement action taken by HSE.

Making a complaint about HSE's service

If you are dissatisfied with the way we have treated you and wish to complain about the level of service, please refer to our Complaints Procedure at www.hse.gov.uk/contact/complain-about-hse.htm because we welcome opportunities to put things right and improve our performance.