



# **Memorandum of Understanding between the UK Accident Investigation Branches and the National Police Chiefs' Council**

## **1. FRAMEWORK OF UNDERSTANDING**

### **1.1 INTRODUCTION**

- 1.1.1 This Memorandum of Understanding (*MoU*) is established between the Chief Inspectors of the United Kingdom Air, Marine and Rail Accident Investigation Branches (the *AIBs*), and the National Police Chiefs' Council (*NPCC*). It does not consider relationships between the signatories and other parties, which may be the subject of other MoUs.
- 1.1.2 The aim of this MoU is to ensure effective investigation of transport accidents and any crimes associated with them, while maintaining the independence of those investigations and promoting effective cooperation between them.
- 1.1.3 This MOU is not legally binding. The AIBs each have a separate legal regime. The parties to this MOU understand that a tri-branch AIB MOU of this nature aims to create practical working arrangements between the AIBs and NPCC. The specific legal regime of each AIB must still be taken into account.
- 1.1.4 On signing this MoU, the NPCC will recommend and advise the police forces of England, Wales, Scotland and Northern Ireland of the operating principles it contains.
- 1.1.5 The underlying principles of this MoU are that, insofar as the relevant legislation permits:
- the AIB and police investigations will be independent and can proceed in parallel;
  - the public interest requires that safety considerations are of paramount importance, which may mean that the interests of an AIB safety investigation take priority over a criminal investigation;
  - there will be early contact and close co-operation between the AIB Investigator-in-Charge (IIC) and the police Senior Investigating Officer (SIO), and;
  - there should be a continual exchange of factual information as both investigations proceed.

## **2. PARTIES TO THE AGREEMENT**

### **2.1 ACCIDENT INVESTIGATION BRANCHES – GENERAL**

The sole purpose of an AIB safety investigation is to determine the circumstances and causes of transport accidents and make recommendations to prevent a reoccurrence. It is not the purpose of an AIB investigation to apportion blame or liability. AIBs may conduct safety investigations of occurrences involving criminality, if necessary, to ensure that transport safety and survivability lessons can be learned. The AIBs are functionally independent bodies within the Department for Transport, separate from the transport regulators and they report directly to the Secretary of State on all investigation matters.

### **2.2 THE AIR ACCIDENTS INVESTIGATION BRANCH**

- 2.2.1 The Air Accidents Investigation Branch (*AAIB*) is responsible for investigation of civil aircraft accidents as detailed in Regulation (EU) 996/2010 on the investigation and prevention of accidents and incidents in civil aviation and The Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 2018 (SI 2018/321) (the *2018 Regulations*).
- 2.2.2 The 2018 Regulations define accidents, lay down the requirements for reporting accidents, set out the purpose of investigations, impose duties upon the AAIB and grant powers to an Inspector of Air Accidents. They make provision for the ordering, notification, and conduct of investigations.
- 2.2.3 The AAIB will normally appoint a team of investigators headed by an Investigator-in-Charge. The team will usually consist of Inspectors of Air Accidents who, with their specialist knowledge, investigate the operations, human factors, engineering, and recorded data aspects of an occurrence. AAIB support personnel assist inspectors throughout all stages of the investigation.

## **2.3 THE MARINE ACCIDENT INVESTIGATION BRANCH**

- 2.3.1 The Marine Accident Investigation Branch (*MAIB*) was established in 1989 with responsibility for investigating marine accidents to determine their circumstances and causes. Its legislative powers are contained in Part XI of the Merchant Shipping Act 1995 and the Merchant Shipping (Accident Reporting and Investigation) Regulations 2012, as amended (SI 2012/1743) (the *2012 Regulations*) put this framework into effect.
- 2.3.2 The 2012 Regulations also implement the provisions of the International Maritime Organisation's Casualty Investigation Code, and of Directive 2009/18/EC. The 2012 Regulations apply to merchant ships, fishing vessels, other commercial vessels and, with some exceptions, private pleasure craft. They define accidents, set out the purpose of investigations, and lay down the requirements for the reporting of accidents. The MAIB is required to investigate and publicly report on all accidents involving commercial vessels (though some smaller vessels are exempt) that result in death, loss of a vessel or serious pollution. Other accidents will be investigated at the Chief Inspector's discretion, depending upon their severity or potential severity, public interest, and the likelihood that important safety lessons will be learned.

## **2.4 THE RAIL ACCIDENT INVESTIGATION BRANCH**

- 2.4.1 The Rail Accident Investigation Branch (*RAIB*) was established by the Railways and Transport Safety Act 2003 (*RTSA*) as the independent railway accident investigation body for the United Kingdom. The RTSA enabled the Secretary of State to make detailed provisions in regulations with respect to the investigation of rail accidents, and sets out the general powers available to Inspectors of Rail Accidents. These powers are given application by the Railways (Accident Investigation and Reporting) Regulations 2005, as amended (SI 2005/1992) (the *2005 Regulations*).
- 2.4.2 The RAIB is required by the RTSA to investigate serious accidents, as defined in the 2005 Regulations and has discretion to investigate other accidents and incidents. The 2005 Regulations specify the purpose of investigations, make provision for their scope and conduct, and set out the requirements for reporting accidents and the publication of reports and summaries. The 2005 Regulations define the RAIB's scope as covering all railways, except for those in most industrial curtilages, museums and funfairs. The remit includes tramways in England, Wales and Scotland, and the UK side of the Channel Tunnel Fixed Link up to the mid-point.
- 2.4.3 The *European Railway Safety Directive* (Directive 2004/49/EC) (the *2004 Safety Directive*) requires each member state to have a railway accident investigation body that is independent in its organisation, legal structure and decision-making from any party whose interests could conflict with the tasks of the investigating body. Together, the RTSA and 2005 Regulations already addressed the requirements of the 2004 Safety Directive.

## **2.5 THE NATIONAL POLICE CHIEFS' COUNCIL**

The NPCC was formed on the 1st April 2015 and replaced the Association of Chief Police Officers (*ACPO*), which previously provided national police coordination and leadership. The NPCC is a national policing body which brings together chief police officers to share ideas and drive improvements in policing.

## **3. INVESTIGATIONS**

### **3.1 AIB SAFETY INVESTIGATIONS**

- 3.1.1 AIB inspectors are accorded a wide range of statutory powers under their regulations to have immediate and unrestricted access to sources of evidence such as accident sites, debris, recording devices and witnesses to facilitate their investigations.
- 3.1.2 The respective regulations require that AIBs shall not disclose certain types of information other than for the purposes of safety investigation. For example, an AIB is not permitted to share with police the identities of, and statements made by witnesses it has interviewed, nor to disclose sensitive personal information such as medical records, unless ordered to do so by the High Court in England, Wales and Northern Ireland or the Court of Session in Scotland. The AAIB is similarly prevented from sharing

cockpit voice and image recorder data. However, the police are not prevented from sharing witness statements and other information with the AIBs.

## **3.2 POLICE INVESTIGATIONS**

- 3.2.1 The police's responsibility is to protect life and property, prevent and investigate offences, and prosecute offenders. In Scotland, this also extends to the investigation of sudden and suspicious death. Police also have an immediate role at the scene of an incident to maintain public order and restore normality as soon as practicable, to secure and preserve evidence, and identify victims. Their activities when fulfilling these duties can provide valuable assistance to the safety investigation. The police also conduct enquiries on behalf of, and as directed by, H.M. Coroner and the Crown Office and Procurators Fiscal Service (COPFS) in Scotland.
- 3.2.2 Police powers are extensive, and are contained in a number of Acts and secondary legislation. In particular, in England and Wales, key powers of arrest, interview, evidence gathering and use are outlined in the Police and Criminal Evidence Act 1984 (*PACE*). In Northern Ireland the Police and Criminal Evidence Order 1989 applies and in Scotland, the Criminal Justice (Scotland) Act 1995 and Common Law powers are key pieces of legislation. Where injury or serious damage has occurred, the police usually attend the scene of the incident and commence preliminary enquiries. Where criminal offences are suspected, a more thorough police investigation will ensue. When there has been a fatality, it is most likely that the police will carry out a major investigation, supervised by an SIO.

## **3.3 PARALLEL INVESTIGATIONS**

- 3.3.1 In "Disasters and the Law – Deciding the form of Inquiry" (16 May 1991), the Lord Chancellor provided guidance on the relationship between police inquiries and safety investigations conducted by organisations such as the AIBs. Police and AIB investigations can proceed in parallel, and only in the case of conflicting requirements should it become necessary to determine precedence in accordance with the relevant legal provisions and the Lord Chancellor's guidance.
- 3.3.2 In Scotland, the Crown Office and Procurators Fiscal Service (COPFS) is responsible for the prosecution of crime and the investigation of sudden or suspicious death. COPFS provide guidance and direction with regards to the reporting structure of any parallel investigation.
- 3.3.3 Unless it is evident that serious criminality was the cause of the event, the AIB investigation will take precedence. In order that a safety investigation is able to proceed, the AIB will be given immediate and unrestricted access to the accident site, evidence and witnesses.
- 3.3.4 Usually the police will secure the site. Evidence will normally be recovered to the AIBs' facilities in Farnborough, Derby and Southampton, but it may also be taken to dedicated facilities for specific testing and analysis.
- 3.3.5 An air, marine and rail transport accident may result from technical malfunctions, human error or failures in procedure, and it may not be clear at the outset whether it has involved criminal activity. Consequently, the police will also have access to the site and may wish to conduct their own investigations in parallel, at least initially.
- 3.3.6 If it is evident that serious criminality was the cause of the event, it is likely to be agreed that the police investigation will take precedence. In such cases, while the police will deploy appropriate resources to conduct the investigation and to recover evidence, the AIB will have access to the accident site and evidence as necessary for it to identify whether a safety investigation may benefit transport safety. The AIB may, on request, offer guidance and advice on recovery and investigation techniques.
- 3.3.7 Victim identification and recovery will be coordinated by a police Senior Identification Manager (SIM), who will work closely with the relevant SIO and AIB IIC to ensure each investigation's objectives are met.

## **3.4 COORDINATION AND COOPERATION**

- 3.4.1 The AIB and police should establish and maintain liaison and cooperation throughout their respective safety and criminal investigations so that both can proceed in parallel without obstruction. The following areas of mutual interest have been identified:

- The notification of incidents and accidents;
- The collection and, where permissible, the sharing of evidence;<sup>1</sup>
- The conduct of forensic examinations;
- The operation, removal and interpretation of recorded information, including data, voice and image recorders;
- The maintenance of an effective dialogue with families;
- The release to the media of information obtained in the course of the investigations;
- The processes to be followed in the event of a major accident;
- The timing of AIB investigation report publication in the event of possible prosecutions;

#### 3.4.2 Accordingly, each organisation will:

- establish contact between the AIB liC and the police SIO (and the SIM if appropriate) as soon as is practicable after an occurrence has been reported;
- ensure the other has immediate and unrestricted access to the site of an accident;
- maintain effective co-operation throughout the conduct of their respective investigations by regular dialogue between the AIB liC and the police SIO/SIM;
- exchange factual information and facilitate access to evidence that is considered important to either investigation;
- notify each other of any intention to carry out investigative actions that may alter evidence;
- invite the other to attend investigative activities such as operational trials, metallurgical tests and forensic examinations;
- obtain agreement from each other before returning any evidence to its owner;
- keep the other informed of the proposed timings of report publications and criminal proceedings.

### 3.5 AIB ACCESS TO WITNESSES

The AIBs must carry out their own separate interviews of witnesses without other parties being present, and will play no part in the interviews conducted by the police. The AIBs will normally interview persons before the police and early access for the AIBs should therefore be facilitated.

### 3.6 STATEMENTS BY AIB INSPECTORS

If requested, individual AIB inspectors will produce factual statements to describe their own activities, such as continuity of evidence statements and the timing and content of tests they have conducted. AIB inspectors cannot offer a separate analysis of the available evidence, provide opinion or act as expert witnesses.

## 4. COORDINATION WITH THE CORONER and COPFS

- 4.1 The AIB will make early contact with the relevant coroner and will inform the coroner about investigation progress through the coroner's officer. On completion of its investigation, the AIB will make the investigation report available to the coroner. If requested to do so, the AIB will assist the coroner in understanding the contents of its report.
- 4.2 Usually it is desirable for the coroner's inquest to take place after the relevant AIB has published its investigation report.
- 4.3 In Scotland, the AIB will make early contact with COPFS and will continue to keep them informed as the investigation continues. On completion of its investigation, the AIB will make the investigation report available to COPFS. If requested to do so, the AIB will assist COPFS in understanding the contents of its report.
- 4.4 COPFS is required to hold an inquiry if it appears that death has resulted from an accident occurring in Scotland while the person who has died, being an employee, was in the course of their employment or, being an employer or self-employed person, was engaged in their employment. It is a matter for COPFS to decide whether to instigate a criminal prosecution, Fatal Accident Inquiry (FAI) or both and the order in which either

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<sup>1</sup> Scottish criminal law requires that all essential facts in the commission of a crime are corroborated, i.e. the prosecution must present corroborated evidence to the court to establish that a crime was committed and who is responsible. This means that there must be evidence of each essential fact from two independent sources.

of these proceedings will take.

## **5 MONITORING OF THE MEMORANDUM**

The working and text of this MOU will be reviewed at least every five years, or as circumstances dictate, by the Chief Inspectors of the AIBs and the Chair of the NPCC [*Operations and Coordination Committee*]. Other persons or organisations may be invited to contribute as appropriate. Any proposed amendments will be agreed by all parties. Any issues or problems arising with the implementation of this Memorandum during the conduct of investigations will be resolved by the Deputy Chief Inspector at the respective AIB, and the Chair of NPCC [*Operations and Coordination Committee*].