

**HEALTH CARE JOINT AGENCY  
MEMORANDUM OF  
UNDERSTANDING FOR THE  
INVESTIGATION OF SERIOUS  
UNTOWARD INCIDENTS**

**Draft – 16 June 2003 v.2**

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## Foreword

*Agreed entry by Police and Department of Health.*

Signed

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**Chief Medical Officer**  
**Department of Health**

**John Broughton**  
**Assistant Chief Constable**  
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### 1. Introduction

- 1.1 This Memorandum of Understanding has been agreed by the Department of Health and the Association of Chief Police Officers with the overriding objective of enhancing public safety. It sets out the roles and responsibilities of both organisations when a serious untoward incident occurs, or is suspected of occurring, and principles for effective liaison when investigations may be needed into such incidents involving NHS patients.
- 1.2 This MoU addresses issues concerning liaison and is not intended to cover the operational practices of the signatory organisations.
- 1.3 The Department of Health and the Association of Police Officers are committed to ensuring that the response to any serious untoward incident is thorough and conducted in a spirit of inter-agency co-operation where appropriate. The Memorandum is aimed at patients in the care of the NHS [and in NHS premises] but the principles contained in the document could be applied as appropriate to cases involving private patients [being treated in NHS premises or elsewhere].
- 1.4 Guidance will be provided to the NHS about action to be taken where there is an unexplained or unexpected death or other serious untoward incident.
- 1.5 The Police work under a strict legal framework and standing instructions in the investigation of serious untoward incidents. These are set out briefly in Annex A. The NHS is also required to conduct investigations into serious untoward incidents. These different requirements underline the importance of each agency having an understanding of the responsibilities of the other agencies involved and for a commitment from each to the effective and expeditious investigation of such incidents.
- 1.6 The Health and Safety Executive also conducts investigations in health premises. Their role and responsibilities is set out for information in Annex B.
- 1.7 The main objectives of this Memorandum are to:
  - provide guidance on the role and responsibility of the police and the health service when dealing with serious untoward incidents involving NHS patients;
  - provide advice to the health service about identifying serious untoward incidents which require, or may require, referral to the Police or other agencies;
  - provide guidance to the NHS, the police and others about working together effectively, including points of contact;
  - help to ensure that investigations are conducted with the over-riding objective of enhancing public safety, while managing particular incidents in an effective, efficient and timely way;

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- provide a framework for inter-agency co-operation wherever possible when investigating serious untoward incidents;
- set out the process for initial referral and response to serious untoward incidents;
- ensure that the needs of patients, their relatives and staff are fully considered throughout the process of investigation.

1.8 The protocol will apply to patients as defined below in England and Wales. While it applies to all patients receiving care from the NHS, whatever the setting, the procedures are predominantly focused on dealing with incidents in NHS hospitals.

1.9 This memorandum takes account of national best practice from the respective organisations and other bodies.

1.10 For the purposes of this document the definition of a serious untoward incident is:

*"An accident or incident when a patient suffers serious injury, major permanent harm or unexpected death in hospital, other health service premises or other premises where NHS care is provided".*

1.11 An NHS patient is defined as:

*"a person receiving care or treatment under the NHS Act"*

## 2. The aims and advantages of working together

### 2.1 Working together –

- allows all three agencies to meet their over-arching and shared responsibility for safeguarding life
- allows roles and responsibilities to be made clear from the outset including the particular statutory responsibilities of the police
- permits all agencies to make clear their own operational needs and requirements
- prompts an early decision about the actions and investigation(s) thought to be necessary by all organisations and a dialogue about the implications of these
- provides an efficient and effective approach to case management and thereby minimises service disruption to the NHS
- develops and strengthens principles of partnership working where appropriate
- prompts the identification of lead personnel to manage liaison between agencies
- saves time and other resources of all agencies concerned

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2.2 In all cases, agencies should –

- handle communications in a consistent manner, and
- ensure that they have an agreed strategy in place to involve staff and relatives as appropriate in a co-ordinated fashion

2.3 While each agency will have different roles and responsibilities when it comes to investigating a serious untoward incident there are many advantages to be gained from liaising closely with one another from the outset. For example, where evidence indicates that a serious criminal offence may have been committed it is essential that the NHS does nothing to compromise the investigations by the police (or the HSE) given the statutory responsibilities of these organisations in these circumstances.

2.4 Likewise, the police should take account of the managerial and clinical needs and capability of the NHS when carrying out their work. Judgements about the conduct of any criminal investigation must be informed at the outset by the obligations and imperatives/duties of the NHS. This requires early and continuing dialogue between all investigatory organisations at an appropriately senior level.

2.5 It is also important to recognise that in certain circumstances all agencies will need to take certain action to meet their various statutory obligations. For instance, the NHS will want to ensure that patient safety is not at risk. Likewise, the police may wish to secure an area where a crime may have occurred. Close liaison over such steps will ensure that all agencies are informed of action being taken by others and that such actions do not conflict with one another or, where this cannot be avoided, that the issues raised are properly addressed.

### 3. Role and responsibility of investigatory organisations

3.1 As a general rule the Police will investigate a serious untoward incident where there is evidence or a suspicion of deliberate intent or gross negligence/recklessness on the part of an individual, rather than human error or carelessness.

3.2 The NHS is responsible for ensuring patient safety and will conduct an investigation of any serious untoward incident. The level and type of investigation will depend on the nature and seriousness of the incident. The Department of Health Investigations and Inquiries Unit may provide advice to the NHS on the appropriate and proportionate response to serious incidents in the NHS.

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### 4. Post-referral action

- 4.1 Once a serious untoward incident that has been reported to the police appears to warrant a more detailed *assessment/investigation/inquiry*, then a meeting should be arranged by the appropriate agency. The representatives that attend this initial meeting should form an Incident Co-ordination Group (ICG).
- 4.2 The NHS should seek advice about any action it intends to take before the meeting of the ICG to ensure that any investigation by the police is not compromised.
- 4.3 The meeting should be arranged as soon as practicable following the referral. A representative from all agencies likely to have an interest in any ongoing assessment or investigation of the untoward incident should attend.
- 4.4 The purpose of the meeting is to facilitate the exchange of relevant information by those agencies that may be involved in progressing further action and to establish what if any steps should be taken and by whom.
- 4.5 The incident co-ordination group amongst other things should consider: -
  - Which agency should take the lead in any further investigation
  - How relevant information is to be shared between agencies without compromising any statutory or professional obligations.
  - How details of all appropriate physical, scientific and documentary evidence is to be obtained and shared as appropriate;
  - How the family and background information of the patient is to be obtained and shared as appropriate;
  - How the relevant medical history of the patient is to be obtained and shared as appropriate;
  - How relevant information concerning all those associated with the incident is to be obtained and shared;
  - How access to early explanations from those involved (written or oral) is to be achieved.
  - How the interviewing of witnesses will be co-ordinated.
  - How the family or injured party will be informed of progress;
  - A media strategy that is sensitive to the needs of all persons involved in the incident.
- 4.6 A decision record of the meeting should set out what further action has been agreed and which agency is responsible. Where possible timescales should be agreed and further meetings of the incident co-ordination group should be scheduled to correspond with key decision points.
- 4.7 A meeting of the incident co-ordination group will also take place at the conclusion of an investigation. This will enable all the agencies involved to ensure that they are aware of the decision and the process that led to it; and to agree upon a mechanism for further consultation and closure.

## 5. Good practice when supporting patients and relatives

- 5.1 In the event of a serious untoward incident it is vital, in the best interests of the patient and his or her relatives, that inter-agency barriers do not stifle effective communication. The importance of early support and liaison cannot be over emphasised.
- 5.2 It will therefore be the responsibility of **each** agency to work together to ensure that a family liaison strategy is agreed and implemented for each incident. All agencies will be expected to agree the strategy at the first meeting of the incident co-ordination group.
- 5.3 The NHS and/or the police as appropriate will be expected to provide access to specialist resources in support of the family liaison strategy, which should ensure that one named person from each agency is responsible for liaison with the patient and his or her family. Where a number of patients are, or are potentially, involved, consideration should be given to setting up a help-line.
- 5.4 The essential requirements of the family liaison strategy are:
- to identify a designated point of contact from the lead agency, if any, or from each agency;
  - all available support options are outlined to the patient or their relative(s);
  - the patient involved and/or a relative(s) receives initial and ongoing progress reports;
  - the patient and/or relative is involved appropriately at all stages of the investigation.

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### Annex A

#### The role of the police

1. When a serious untoward incident has been reported to the police, a Senior Investigating Officer will ensure that a Detective Officer of supervisory rank attends the scene of the incident.
2. The first Police Officer attending an incident involving a death or injury should arrange, according to the officer's own Force procedures governing unexplained deaths, to:
  - contact the lead person in the Trust to establish the nature of the incident and any action already taken by way of response
  - identify and secure the scene to the extent that this is necessary;
  - inform a Senior Supervisory Officer;
  - where appropriate enquire whether the Trust has informed the HSE;
  - discuss the incident with the HSE; or another relevant authority, and agree with the lead person from the NHS Trust arrangements for controlling the scene, for considering access to others, and for other local handling procedures to ensure the safety of the public.
3. Should any other investigating or enforcing authority have staff in attendance before the police arrive, it should ensure that the police have been called, and preserve the scene in accordance with the initial actions (above).



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### Annex B

#### The role of HSE

1. If a serious untoward incident has been reported to the HSE they will ensure that an Inspector attends the scene or other relevant location and provide advice [to whom?] on safeguarding evidence. They will also be expected to make an initial assessment about whether the circumstances would constitute an offence under Health and Safety legislation. In this case any action should be taken forward in consultation with the lead person for the NHS Trust and, if appropriate, the police.

[HSE to add something about the approach taken to investigations etc]

## **Annex C**

### **The legal framework under which each agency works**

*Contributions needed from -*

- *Police - PACE Act etc*
- *NHS - NHS Act, guidance etc*