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Welsh Fire and Rescue Significant Incident Protocol

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Welsh Fire and Rescue Services Significant Incident Investigation Protocol

Introduction

This document sets out the protocol of the Chief Fire & Rescue Adviser and Inspector (Wales) (CFRAW) when a significant incident occurs involving any of the Welsh Fire and Rescue Services. It covers circumstances where (i) the CFRAW on behalf of Welsh Government chooses to act on its own behalf following a significant incident or (ii) advice is sought by other statutory investigating bodies.

In this document 'significant incident' means incidents, the circumstances or outcomes of which are likely to attract public interest or concern. This may include, but is not limited to, incidents in which firefighters or members of the public are killed or seriously injured, as well as serious incidents which are high profile.

The CFRAW has statutory functions as an Inspector under the Fire & Rescue Service Act 2004 and could use these powers to commence an inquiry under the terms of this protocol.

Police and Health & Safety Executive Primacy in relation to fatalities

It is important to note that in any case involving a fatality – whether a Welsh FRS employee or any other person – or possible criminal proceedings, the Police and Health & Safety Executive have primacy in relation to any investigation. This means that the CFRAW will in every such case contact the Police and HSE to discuss before any decision is made on whether or how the CFRAW should investigate.

Is it a 'significant incident'?

There are a wide range of possible circumstances that might be considered a significant incident. Whether or not an incident or event should be treated as a significant incident is a matter of discretion for the CFRAW, who may carry out some preliminary work to establish the facts of an incident, before deciding whether to mount an investigation following the principles set out below.

Notification of significant incidents

The CFRAW may become aware of a significant incident through media reports, Police or the Health and Safety Executive (HSE), or direct communication from one of the Welsh FRS's or the public. Decisions about whether an incident is 'significant', and whether the CFRAW should or should not investigate, should be made as soon as possible by the CFRAW having discussed the details of the incident and rationale for investigation with a Welsh Government Director General. A separate memorandum of understanding with the Welsh FRS will be desirable in order to provide a formal arrangement for Welsh FRS to notify the CFRAW of circumstances that are or might amount to a 'significant incident'.

Should CFRAW investigate?

Just because a significant incident has occurred does not necessarily mean the CFRAW should investigate. There are a number of other stakeholders including, Police, HSE, the Welsh FRS itself, and trade unions, any of whom may seek to carry out their own investigation. CFRAW should, where possible, avoid duplication of investigation work being done elsewhere.

A decision about whether or not to investigate needs to take into account a number of variables. It is not straightforward to predict what the answer should be in any given case: but the considerations to be taken into account before making a decision will be the same. They are set out below but are not necessarily an exhaustive list. The CFRAW will apply professional judgment in seeking Ministerial approval to conduct an investigation paying regard to the criteria below.

The existence of the Inspectorate role leads to an expectation on the part of government and the public that the CFRAW will make it his/her business to look into matters of concern. If it is considered unnecessary to do so, perhaps because another competent body will be investigating, then a short public statement to that effect may be appropriate.

The advantages that a CFRAW investigation can bring include:

- A public report;
- Independence both from Welsh FRS and Government;
- Professional and technical expertise;
- Impartiality with no 'agenda' to pursue (see discussion below);
- Police or HSE investigations tend to focus on criminal actions or breaches of legislation and may not necessarily be focused upon producing a safety focused or lessons learned report. As a result, CFRAW may be able to produce separate safety-oriented 'lessons learned' report before such lessons emerged from a criminal investigation;
- A 'lessons learned' focus which does not seek to fix liability or blame, and so can consider the facts in the round without having to fit them into a context such as a prosecution brief.

There may be scope for the CFRAW to be involved in an internal Welsh FRS investigation as an adviser or in an oversight role, without having to duplicate the steps of that investigation itself.

Where a significant incident involves a fatality or possible criminal offence, the CFRAW will discuss with Police, and where involved the HSE, in order to ensure that there is no conflict with Police or HSE interests.

Where criminal proceedings may take place, there is a possibility that CFRAW officers could be drawn in as expert witnesses by the fact of having carried out an investigation. Although this is not of itself a reason not to investigate, it should be clearly understood that this could happen. In making a decision about whether or not to lead an investigation, the CFRAW would consider:

- What are the ‘real issues’ from the point of view of the CFRAW statutory function?
For example, whether a particular area of Welsh FRS doctrine is working well and/or was properly applied at the incident. Could a third-party investigation address those issues equally well?
- What are the logistics of an investigation and is it proportionate for the CFRAW to investigate given the expected involvement of other bodies?
- Has the CFRAW got the relevant technical expertise to conduct an investigation, for example in relation to technical testing of PPE and equipment?

If a consideration of these factors leads the Deputy Permanent Secretary to conclude that an investigation by the CFRAW is proportionate in all the circumstances and may offer benefits that investigation by another body will not, the CFRAW will proceed with the investigation. If on the other hand a CFRAW investigation does not appear to be proportionate or would not add value, a short statement to that effect on the Welsh Government website may be useful to publicise the reasons for this decision.

Where a decision to proceed with an investigation is made by the CFRAW, the matter will be discussed with the respective CFO before commencing the investigation.

The impartiality of the CFRAW is referred to above as a potential benefit of conducting an investigation. There may nonetheless be perceived conflicts of interest if the circumstances of an incident relate to advice that the CFRAW has given in the past to Welsh Ministers, or if the CFRAW is seen to have expressed or to hold a view on relevant issues. Before commencing any investigation CFRAW will carefully consider if any such perceived conflict might exist. If so, this does not mean that CFRAW cannot or should not investigate. Instead, any investigation report should contain a clear declaration of the possible conflict and outline the steps that have been taken to mitigate its effects. By being transparent in this way, the impact of any perceived conflict may be reduced.

Any investigation undertaken within the scope of this protocol must follow several key principles. An investigation should:

- Avoid attributing blame;
- Seek to establish the immediate and underlying causes of the incident;
- Identify measures that FRAs and others may take to prevent a reoccurrence;
- Make appropriate recommendations to FRAs and promulgate findings;
- Report clearly and authoritatively respecting the position of victims and their families.

Consulting Welsh Government Ministers

All investigations in relation to significant incidents that are carried out by the CFRAW will be sanctioned by the Minister or Director General on the basis of initial advice provided.

Liaison with other investigating bodies

Once the other investigating organisations have been identified, the lead inspector should make contact with them. Pragmatic decisions need to be taken about matters such as interviewing, and all efforts should be taken to avoid people who have been involved in a significant incident from being interviewed repeatedly. Existing protocols dealing with joint agency co-operation on significant incidents which have been jointly agreed by CFOA, ACPO, CPS and HSE, namely "*Guidance for the Investigation of Fire fighter Fatalities arising from work activities*" should be considered.

Consultation with other bodies before publication

It is also important that before any CFRAW report on a significant incident is published, that other investigating bodies should be consulted and offered the opportunity to comment on the report or the intention to make it public. This is particularly important in relation to HSE, and to CPS which might be contemplating legal proceedings in relation to the circumstances. As a general rule it will always be appropriate to consult CPS before publication, even if their involvement has apparently ended.

The CFRAW will consult the respective FRA and allow an opportunity to comment before publishing an investigation report.

Requests for assistance from prosecuting bodies

There may be occasions where the CFRAW is asked to provide advice, or work with other statutory bodies on the investigation of significant incidents. Consideration should be given to the potential to undermine the independence of the CFRAW and the prospects of a potential 'no blame' investigation.

Risk management associated with this protocol

The timely investigation of significant incidents involving a Welsh FRS by the CFRAW is beneficial in providing an impartial expert view of events and identifying safety-critical issues at an early point. The CFRAW may decide, in relation to any significant incident, that the investigations that will be carried out by third parties will (either with or without CFRAW oversight or other involvement) be sufficient to meet the interests of the Minister, in which case a short statement to that effect may be issued. Where it is decided that the CFRAW should undertake its own investigation, the associated risks, and possible mitigation and control measures should be considered.

Publication of Investigation Report

On concluding any investigation into a significant incident, consideration will be given to the timely publication of the report of findings.

Every effort will be made to release the investigation report in a timely manner and will be done so following consultation with stakeholders and approval by the Minister.

Consultation

During the development of this protocol, the following people or bodies have been consulted:

- North Wales Fire and Rescue Service
- Mid & West Wales Fire and Rescue Service
- South Wales Fire and Rescue Service
- The Crown Prosecution Service
- Welsh Police Services
- HM Inspector of Constabulary in Wales
- The Health and Safety Executive
- Fire and Rescue Service representative bodies
- Police and Crime Commissioners