

MEMORANDUM OF UNDERSTANDING BETWEEN THE RAIL ACCIDENT INVESTIGATION BRANCH, THE BRITISH TRANSPORT POLICE AND THE OFFICE OF RAIL AND ROAD RELATING TO THE INVESTIGATION OF RAIL ACCIDENTS AND INCIDENTS IN ENGLAND AND WALES

1. FRAMEWORK OF UNDERSTANDING

1.1 INTRODUCTION

1.1.1 This Memorandum of Understanding (MOU) has been agreed between the Rail Accident Investigation Branch (RAIB), the British Transport Police (BTP) and the Office of Rail and Road (ORR) and covers England and Wales; Scotland is the subject of a separate MOU. In cases where BTP may not immediately be involved (for example accidents and incidents on heritage railway networks or tramways) Home Office police will apply principles similar to those contained in this MoU.

1.1.2 The fundamental purpose of this MOU is to ensure effective investigation of railway accidents and incidents, while allowing each party to pursue the separate aim of its investigation. It is not legally binding and each party has its own separate investigatory functions and responsibilities. The specific legal framework of each party must still be considered to ensure that the working arrangements promoted in this MOU do not impinge on any party's ability to fulfil its own legal requirements, including the RAIB's requirement of independence.

1.1.3 Cooperation and coordination are the fundamental principles underlying this MOU, necessary for the effective and efficient management of the scene and the subsequent criminal and safety investigations. Effective and regular communications are key to this. These principles should be applied at all stages of the investigation.

2. PARTICIPANTS IN THE MOU

2.1 THE RAIL ACCIDENT INVESTIGATION BRANCH (RAIB)

2.1.1 RAIB is the independent railway accident investigation body for the United Kingdom. Its statutory functions are set out in Part 1 of the Railways and Transport Safety Act 2003, together with the Railways (Accident Investigation and Reporting) Regulations 2005, as amended ("the 2005 Regulations").

2.1.2 RAIB is required to investigate serious railway accidents and has discretion to investigate other accidents and incidents. It conducts investigations into railway accidents and incidents to identify their causes and make recommendations to improve railway safety, prevent railway accidents and incidents, and inform the industry and public. RAIB investigations do not consider or determine blame or liability for an accident or incident.

2.1.3 Further information about the role and scope of RAIB's work can be found on its website at www.gov.uk/government/organisations/rail-accident-investigation-branch.

2.2 BRITISH TRANSPORT POLICE (BTP)

2.2.1 BTP is the national police force for the mainline railways in England, Scotland and Wales and will work closely with the local Home Office police force on whose geographic area an incident occurs. In addition, it is responsible for policing the London Underground, Docklands Light Railway, Midland Metro Tram, Tyne & Wear Metro, Glasgow Subway, Emirates Airline cable car and Croydon Tramlink.

2.2.2 The police's responsibility is to protect life, property, prevent and investigate criminal offences, and prosecute offenders.

2.2.3 Further information about the role and scope of BTP's work can be found at their website at www.btp.police.

2.3 OFFICE OF RAIL AND ROAD

2.3.1 ORR is the independent safety and economic regulator for Britain's railways. It works to maintain and improve railway safety by operating a system of safety certification and authorisation, actively monitoring and ensuring compliance with relevant legislation, and by developing the regulatory framework.

2.3.2 One of its statutory functions is to investigate potential breaches of health and safety legislation related to railway operations, including those arising from railway accidents and incidents. Where appropriate this can result in enforcement action ranging from advice up to prosecution.

2.3.3 Further information about the role and scope of the ORR's work can be found at their website at orr.gov.uk

3. AREAS OF MUTUAL INTEREST AND GENERAL PRINCIPLES

3.1 RAIB, BTP and ORR should establish and maintain liaison and cooperation throughout their investigations into an accident or incident, so that each can proceed in parallel without obstruction. The following are areas of mutual interest requiring liaison and cooperation:

- Notification of accidents and incidents;
- Preservation, recording, collection, storage and disposal of evidence;
- Insofar as permissible, sharing of evidence and interpretation/analysis of evidence (Note: RAIB's powers to share such information are restricted by law);
- Testing of evidence including forensic examinations and facilitating attendance of specialists to assist;
- Sharing of costs related to physical evidence, including its collection, management (for example, storage) and testing where these are of mutual interest;
- The welfare and management of witnesses and victims;
- Interviewing of witnesses;

- Dialogue with the bereaved and injured and the use of Family Liaison Officers throughout and beyond the investigation/s;
- Release to the media of information obtained in the course of the investigations;
- Timing of RAIB investigation report publication in the event of possible prosecutions;
- Role of RAIB inspectors in court proceedings.

3.2 The general underlying principles that will be applied by the three parties to ensure that the above areas of mutual interest are managed effectively are:

- early contact will be established between RAIB, BTP and ORR lead investigators as soon as is practicable after an accident or incident has been reported;
- each party will cooperate to ensure the others have immediate and unrestricted access to the site of an accident, working through third parties such as the infrastructure owner and Home Office police forces where necessary; and
- effective arrangements for co-operation will be maintained throughout the conduct of their respective investigations by regular dialogue between RAIB, BTP and ORR.

3.3 These general principles shall apply for all types of accident and incident where all three participants have an interest, but the respective investigation leads will determine the actions necessary to implement and respect the principles on a case-by-case basis.

4. SPECIFIC PRINCIPLES

4.1 NOTIFICATION

4.1.1 Each participant in this MOU will notify the others when it deploys to an accident or incident that it considers is likely to be of interest to one or both of them.

4.2 SCENE

4.2.1 The police will usually be the first at the scene of an accident and will secure the site.

4.2.2 Before the arrival of RAIB on site, where practicable, BTP and ORR should notify the RAIB of their intention to enter the site and agree with RAIB any steps they intend to take to secure evidence on the accident site.

4.2.3 A major incident scene will be managed in accordance with the Joint Emergency Services Interoperability Principles (JESIP) <https://jesip.org.uk/five-principles>, one of which is that all commanders of emergency services at the scene should co-locate to assist in communication and shared understanding of hazards and risk. Access to the initial scene is dictated by the Fire Service who are responsible for making the site safe and any rescue effort. Access to the scene will be through the co-located command posts.

4.3 COMMENCING AND CARRYING OUT PARALLEL INVESTIGATIONS

4.3.1 At the outset of an accident or incident the cause may not be clear so RAIB, BTP and ORR will initially commence parallel investigations to fulfil their respective statutory investigative duties. These will continue until the likely cause of the accident or incident is known and future involvement can be more clearly determined.

4.3.2 RAIB will normally lead on conducting scene investigations, evidence recovery and any testing and analysis to establish the cause. However, if it is evident that serious criminality was the cause of the event, it is likely to be agreed that the police will lead on conducting their investigation on site, in which case the police will deploy resources to conduct the investigation and to recover evidence. RAIB will have access to the accident or incident site and evidence, plus early access to witnesses, as necessary for it to identify whether a safety investigation may benefit railway safety, and gather additional evidence as necessary for its own investigation.

4.3.3 RAIB has trained and appointed 'accredited agents' from the railway industry to record and preserve evidence on site before RAIB inspectors arrive. The accredited agents' access to the scene will be facilitated by BTP and ORR. They can be accompanied on site by BTP or ORR and their activities witnessed. They are not allowed to conduct interviews, or alter evidence, and can only move evidence in the interests of its preservation with the agreement of BTP and ORR.

4.3.4 ORR, as the relevant enforcing authority, will conduct its own investigation into any potential breaches of health and safety law and will advise on any site safety issues when on site.

4.3.5 Where applicable, BTP and ORR will work jointly in accordance with the Work Related Deaths Protocol <http://www.hse.gov.uk/pubns/wrdp1.pdf> throughout an investigation (which is a matter dealt with outside of this MOU).

4.4 COORDINATION AND COOPERATION

4.4.1 To enable each party to fulfil its statutory role and to carry out their respective investigations to best effect while investigations run in parallel, the participants will agree early initial arrangements to cover:

- the liaison, communication and mutual co-operation required to enable the investigative needs of all parties to this MOU to be met;
- how site access is to be achieved by those who need it;
- how the lead role in any investigation will be decided and implemented - such that it will not inhibit each party's role - and how any changes in this will be managed as the investigation/s go forward; and
- co-ordination of the taking of statements, collection of evidence, analysis and examination of evidence.

4.4.2 Throughout, each party should remain cognisant of the needs of the others and ensure that they are:

- kept informed of matters that might be relevant to their investigation where permissible;
- offered the opportunity to examine evidence and to witness tests on physical evidence, and to carry out their own forensic examinations that may be relevant to their investigation as far as possible; and
- in agreement as to when the site can be handed back to the duty holder.

4.5 EVIDENCE

Preservation, recording, collection, storage, sharing and disposal of evidence

4.5.1 Evidence from accident and incident sites will be of interest to each investigating body. Evidence will be collected in a manner that ensures continuity and its admissibility as evidence in court. The respective lead investigators from RAIB, BTP and ORR will agree between themselves an evidence handling plan which will assign responsibilities for preservation, recording, collection and storage of evidence, using plans and photographs of the site as necessary to ensure clarity over the areas to be examined and the sequence of activities. If applicable, the evidence handling plan will consider whether the RAIB needs to examine the site before any body recovery takes place.

4.5.2 Factual information will generally be exchanged between the three parties, but RAIB has some legislative limitations on what information it can exchange:

- it cannot make available witness statements, witness details and medical records; and
- it cannot be required to make available opinions unsubstantiated by evidence, commercially sensitive information, inspectors' working notes or working documents of the Branch, should RAIB consider that it is necessary to withhold them.

Such material can only be disclosed by order of a relevant court.

RAIB's Regulations permit witness statements and witness details to be shared if the witness consents to such disclosure. Where an individual gives consent to disclosure of information to BTP/ORR where it would otherwise be prohibited by regulation 10(2), the necessary arrangements will be made for that information to be provided to the interested party.

4.5.3 Each party will obtain the agreement of the other participant(s) involved before returning any evidence to its owner.

Sharing of interpretation/analysis of evidence

4.5.4 Investigation teams will conduct the interpretation and analysis of evidence they consider necessary for their own investigations. The principles applying to RAIB's sharing of its interpretation/analysis mean the following may be shared:

- inspectors' simple statements of fact on matters relating to evidence continuity and on basic interpretation of evidence (e.g. the OTDR shows that the driver applied the tram's brakes x seconds before the data recorder stopped working);

- comparisons between hard facts such as measurements and defined requirements (such as prevailing standards)
- conclusions that can be directly linked to evidence, without the possibility of any other conclusion being feasible.

4.5.5 RAIB cannot offer a separate analysis of the evidence, provide opinion or act as expert witnesses. Where permissible, it will, however, facilitate BTP and ORR with access to evidence it holds.

Testing of evidence including forensic examinations and the employment of specialists to assist

4.5.6 The respective lead investigators from RAIB, BTP and ORR will notify each other of any intention to carry out investigative actions that may alter evidence. Testing that alters the condition of evidence will only take place after consultation with all parties. Where deemed necessary, the three parties will collaborate on the preparation of a testing plan.

4.5.7 Each party will invite the other to attend investigative activities such as operational trials, metallurgical tests and forensic examinations.

4.5.8 Each party may appoint its own specialists to advise on or conduct testing or examination, analysis and interpretation of evidence and each party will cooperate with appointed specialists to ensure their needs are taken into account.

4.6 WITNESSES AND VICTIMS

4.6.1 Witnesses are likely to be asked to give an account to RAIB, BTP and ORR. The taking of witness statements will be co-ordinated between each party, where possible. In the case of vulnerable witnesses such as children, ORR will use the expertise of BTP to help conduct interviews.

4.6.2 RAIB will normally interview persons before BTP and ORR. Early access for RAIB inspectors should be facilitated. RAIB will carry out their own separate interviews of witnesses without others being present, and cannot play a part in the interviews conducted by BTP or ORR.

4.6.3 BTP and ORR will cooperate to agree who will interview witnesses and what questions need to be asked to avoid carrying out separate interviews of the same witnesses where possible. The necessity of using section 20 powers under the Health & Safety at Work etc. Act 1974 by ORR Inspectors in a joint investigation with BTP should be discussed between the respective lead investigators for any implications for the sharing of evidence and witness statements.

4.6.4 RAIB is unable to share its witness statements with BTP and ORR (unless the person who made the statement consents, in which case the arrangements described in paragraph 4.5.2 apply), but there is no such restriction on BTP and ORR sharing their witness statements with RAIB.

4.6.5 BTP's Family Liaison Officer (FLO) will normally be the single point of contact between bereaved families, relatives and investigators as an investigation proceeds. The FLO's purpose is to gather evidence and information from families to contribute to the

investigation and also to provide support and information at a sensitive time for families of victims. It may be that the BTP investigation concludes with no further action on the part of BTP in which case ongoing family liaison arrangements should be agreed. Where investigations of RAIB and ORR are continuing then maintaining such established arrangements for liaison with families may be appropriate to continue via BTP.

4.7 SUSPECTS

4.7.1 On occasion, where there is evidence of criminality, the police may be required to exercise their power to detain a person who is a suspect; a suspect who is held in custody and their treatment is governed by the Police and Criminal Evidence Act 1984 (PACE).

4.7.2 Such action may be required prior to any interview of the suspect by another party. However, the police will normally co-ordinate this detention with RAIB such that RAIB's ability to conduct its early independent interview is not jeopardised. If it is not practicable to do this, the police will inform RAIB of the action as soon as possible after it has taken place.

4.8 RELEASE TO THE MEDIA OF INFORMATION OBTAINED DURING INVESTIGATIONS

4.8.1 The respective lead investigators or their representatives from RAIB, BTP and ORR will consult each other on aspects of mutual concern or interest in respect of contact with the media while on site, and inform or consult them as appropriate in subsequent phases of the investigation. If necessary, the advice of individuals acting in the capacity of 'Strategic commander' for each of the organisations will be sought.

4.9 INQUEST PROCEEDINGS

4.9.1 Following a fatal accident each party is required to assist the relevant coroner, which may require the disclosure to the coroner of certain information and provision of investigation reports. On completion of its investigation RAIB may share its report with the coroner.

4.9.2 RAIB inspectors will attend a coroner's inquest only for the purposes of substantiating the factual findings of its investigation. To facilitate understanding, they may provide technical explanation of the material included in the RAIB report. They will also answer questions on factual matters contained in the report. If RAIB attends the scene of a fatal accident, but does not proceed to a full investigation or produce an investigation report, it will instead prepare a note for the coroner setting out the basic facts of the accident as established at the point when the decision to terminate the investigation was made. In these circumstances, BTP will advise RAIB when the inquest is to be held

4.9.3 The police and the ORR's assistance to the coroner will differ on a case by case basis. Some investigations may only involve the provision of a pre-inquest factual report, disclosure of relevant material and summary of statements taken. Others may require more assistance, for example attendance at pre-inquest hearings, provision of a final report and attendance at the inquest to give evidence.

5. RESOLUTION OF ISSUES

5.1 Any disagreement about the practical application of this MOU that cannot be resolved locally will be referred to the Chief Inspector of RAIB, the HM Chief Inspector of Railways of the ORR and the Chief Constable of the BTP for resolution. In the event of their absence, a designated deputy may assume this responsibility.

5.2 Should it still not be possible for agreement to be reached, the Chief Inspector of RAIB (or a senior inspector acting on behalf of the Chief Inspector) will determine the course of action which best serves the public interest in accordance with sections 8.5 and 8.6 of the Railways and Transport Safety Act 2003. The Chief Inspector will only exercise this power where there is conflict with a RAIB investigation.

6. MONITORING OF THIS MOU

6.1 The working and text of this MOU will be reviewed at least every five years, or as circumstances dictate, by the Chief Inspectors of RAIB and ORR and the Chief Constable of BTP. Other persons or organisations may be invited to contribute as appropriate. Any proposed amendments will be agreed by the three organisations.

<p>Signed</p>  <p>Chief Inspector of Rail Accidents (RAIB)</p> <p>Date: 24 January 2020</p>	<p>Signed</p>  <p>Chief Constable (BTP)</p> <p>Date: 24 January 2020</p>
<p>Signed</p>  <p>HM Chief Inspector of Railways (ORR)</p> <p>Date: 24 January 2020</p>	

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