

Police and Crime Commissioner for Gwent Decision	
PCCG-2013-082	Police and Crime Commissioner for Gwent Decision Session
Subject	Health and safety
Summary	To record the decision of the Police and Crime Commissioner regarding his Health and Safety responsibilities

DECISION

1. The Chief Constable has the direction and control of the Police Force and thus has responsibility for its activities and operations (both direct policing operations and the range of support functions). The Chief Constable must discharge the general duties of an employer, under Section 2 Health and Safety at Work Act 1974 (HSWA), in respect of police officers. Section 2 'It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare of all his employees'. This will include the duty to maintain equipment that is owned by the Force e.g. vehicles. It should be noted that depending on who owns equipment within the Force, the Police and Crime Commissioner may also have a duty which it would discharge through the Force management systems. Section 3 HSWA requires 'the employer to conduct his undertakings in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not exposed to risks to their health or safety'.
2. The employer of police staff is the Police and Crime Commissioner. The Police and Crime Commissioner, as legal employer, owes a duty for the health and safety of police staff under Section 2 HSWA and a similar duty to non-employees under Section 3 HSWA, both of which it discharges through the safety management system, and by oversight through corporate governance processes. It has a duty under Section 4 HSWA to ensure that premises within the police estate owned by the Police and Crime Commissioner are safe, which is discharged through the estates and safety management systems and through oversight of the management of the police estate.

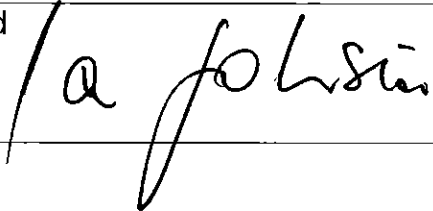
So far as the activities of the Force affect the health and safety of persons who are neither police officers nor in the employment of the Police and Crime Commissioner, it is the responsibility of the Chief Constable to ensure so far as is reasonably practicable that the health and safety of such persons are not exposed to risk. The Police and Crime Commissioner's "undertaking" for the purposes of Section 3 HSWA includes monitoring the effectiveness and efficiency of the Police Force's Health and Safety Management system.

3. Both the Chief Constable and the Police and Crime Commissioner have responsibilities under health and safety legislation. The split of responsibilities is complicated. Therefore any breaches of health and safety legislation are likely to lead to enforcement action being taken against both the Chief Constable and Police and Crime Commissioner.
4. I have therefore signed a joint Health and Safety Policy with the Chief Constable to confirm my commitment to the legal requirements.

Ian Johnston QPM, Police and Crime Commissioner for Gwent

My decision is as I have recorded in this paper

Signed



Date

10.6.13

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Background papers	Health and Safety Responsibilities of the Chief Constable and Police and Crime Commissioner.

HEALTH AND SAFETY RESPONSIBILITIES OF THE CHIEF CONSTABLE AND POLICE AND CRIME COMMISSIONER

- The Chief Constable has the direction and control of the Police Force and thus has responsibility for its activities and operations (both direct policing operations and the range of support functions).

The Chief Constable must discharge the general duties of an employer, under Section 2 Health and Safety at Work Act 1974 (HSWA), in respect of police officers. Section 2 ' It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare of all his employees'. This will include the duty to maintain equipment that is owned by the Force e.g. vehicles. It should be noted that depending on who owns equipment within the Force, the Police and Crime Commissioner may also have a duty which it would discharge through the Force management systems.

Section 3 HSWA requires 'the employer to conduct his undertakings in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not exposed to risks to their health or safety'.

- The employer of police staff is the Police and Crime Commissioner. The Police and Crime Commissioner, as legal employer, owes a duty for the health and safety of police staff under Section 2 HSWA and a similar duty to non-employees under Section 3 HSWA, both of which it discharges through the safety management system, and by oversight through corporate governance processes. It has a duty under Section 4 HSWA to ensure that premises within the police estate owned by the Police and Crime Commissioner are safe, which is discharged through the estates and safety management systems and through oversight of the management of the police estate.

So far as the activities of the Force affect the health and safety of persons who are neither police officers nor in the employment of the Police and Crime Commissioner, it is the responsibility of the Chief Constable to ensure so far as is reasonably practicable that the health and safety of such persons are not exposed to risk. The Police and Crime Commissioner's "undertaking" for the purposes of Section 3 HSWA includes monitoring the effectiveness and efficiency of the Police Force's Health and Safety Management system.

- Enforcement action for HSWA

A breach of the HSWA for Police officers could result in action being taken by the Health and Safety Executive against the Chief Constable. Any prosecution would be against the office of the Chief Constable in her official capacity unless it could be proved that:

- (a) the Chief Constable personally consented to the commission of the offence,
- (b) she personally connived in its commission, or
- (c) that the commission of the offence was attributable to personal neglect on her part.

If this was the case the prosecution would be against the office of Chief Constable (as a corporation sole), and the Chief Constable as an individual. Other officers within the Constabulary could also be individually prosecuted if for instance they were given a clear instruction for something to happen, be provided etc. by the Chief Constable and that officer failed to discharge that duty resulting in an incident. That officer may then be liable as opposed to the Chief Constable.

A breach of HSWA for Police staff could result in action being taken by the Health and Safety Executive against either the Chief Constable or the Police and Crime Commissioner depending on who had provided the instruction or directed the work. It is likely that enforcement action would be taken against both the Chief Constable and the Police and Crime Commissioner in their official capacities.

Most breaches affecting officers and staff would result in action being taken against both the Chief Constable and the Police and Crime Commissioner.

Enforcement action could be by way of an enforcement notice or by prosecution. Prosecution for most employers' duties under the HSWA in a magistrates' court could lead to a fine of up to £20,000, however in a Crown Court the fine is unlimited.

- Corporate manslaughter

Under s1 of the Corporate Manslaughter and Corporate Homicide Act 2007 (implemented 6th April 08), a police force or Police and Crime Commissioner will be guilty of corporate manslaughter if the way in which any of its activities are managed or organised by its senior managers:

- causes a person's death; and
- amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased.

A 'relevant duty of care' includes:

- the duty owed to employees;
- the duty owed as occupier of premises;
- the duty owed in connection with the supply of services; and
- the duty owed to those in custody .

Nearly all, if not all, police operational activities will fall outside the ambit of the Act as far as those activities impact on members of the public because:

- they fall outside the various categories of 'relevant duty of care';
- no duty of care is owed under the civil law of negligence (e.g. cases of Brooks and Hill - no duty of care owed to victims or witnesses of crime);
- there are specific exemptions under the Act relating to policing and law Enforcement activities.

The offence is committed when the organisation:

- owed a 'relevant duty of care' to the individual; and
- substantially and 'grossly' breached that duty of care as a result of the way its senior management managed or organised its activities as a whole; and
- the 'management failure' was a cause of the victim's death.

For 'gross' breach of a duty of care to be determined, the conduct that constitutes the breach must fall far below what could reasonably have been expected. It is important to note that an organisation will not be liable if the management of an activity includes reasonable safeguards but a death occurs nonetheless.

In addition, s2(2) specifies that a duty of care will also be owed to a person because they are being held in detention or custody which includes prison, holding facilities, custody areas at a court or police station and police vehicles.

Any corporate manslaughter prosecution of a police force or Police and Crime Commissioner is likely to arise out of an alleged breach of duty towards a member of police staff or a police officer. Therefore, it will involve detailed consideration of the organisation's compliance with its duties under HSWA. The Act will permit a jury that presides over the prosecution to review the corporate culture inside an organisation and its general attitude to safety enforcement and control.

A prosecution would be against the organisation, this could be against either the Gwent Constabulary or the Gwent Police and Crime Commissioner or both, depending on the nature of the prosecution. An organisation found guilty of an offence will be liable to an unlimited fine (the Sentencing Advisory Panel consultation has suggested that a starting point should be a fine of 2.5% of the offender's annual average turnover). In addition a remedial order can be issued, whereby the convicted organisation must remedy the breaches for which the organisation has been convicted within a specified period of time.

Summary

Both the Chief Constable and the Police and Crime Commissioner have responsibilities under health and safety legislation. The split of responsibilities is complicated. Therefore any breaches of health and safety legislation are likely to lead to enforcement action being taken against both the Chief Constable and Police and Crime Commissioner.