

**MEMORANDUM OF UNDERSTANDING**  
**between**  
**THE CROWN PROSECUTION SERVICE**  
**and the**  
**AIR ACCIDENTS INVESTIGATION BRANCH,**  
**MARINE ACCIDENT INVESTIGATION BRANCH,**  
**AND RAIL ACCIDENT INVESTIGATION BRANCH.**

**Introduction**

1. This memorandum of understanding (MoU), agreed between the Crown Prosecution Service (CPS) and the Air Accidents Investigation Branch (AAIB), the Marine Accident Investigation Branch (MAIB) and the Rail Accident Investigation Branch (RAIB), sets out the principles for liaison between the CPS and the AIBs. The aim is to ensure effective investigation and decision making processes while maintaining the independence of all parties and reinforcing the role of the AIBs as the guardians of public safety when investigating transport accidents and incidents.
2. The CPS and the AIBs will ensure that all staff in their organisation are familiar with this MoU.
3. The CPS and the AIBs will review the working of this MoU every three years. Any of the parties may request a review of the provisions of this MoU.

*Basic Principles of Co-operation*

- All evidence and factual information, except where there are specific legislative bars, can be disclosed between the AIBs and the CPS. The AIBs will not share their own opinions or analysis
- The public interest requires that safety considerations are of paramount importance, the consequence of which may mean that the interests of an AIB investigation have to take precedence over the criminal investigation.
- The ability of witnesses to be able to talk openly to an accident investigator is fundamental to the operation of the AIBs
- AIBs will provide a pre-publication copy of the finalised AIB report to the CPS if it is made aware of a CPS interest. The CPS may make comments to the AIB about the report before publication.

*Dated: October 2008*

## **Roles and responsibilities**

### *The Crown Prosecution Service.*

4. The CPS is a public prosecution service for England and Wales headed by the Director of Public Prosecutions (the DPP). The CPS has 42 Areas across England and Wales, each headed by a Chief Crown Prosecutor. The Areas are coterminous with local police force boundaries, except CPS London which covers both the City of London Police and Metropolitan Police areas. A “virtual” 43<sup>rd</sup> Area, CPS Direct, is also headed by a Chief Crown Prosecutor and it provides an out-of-hours charging service. In addition, CPS HQ Special Crime Division deals, in particular, with corporate manslaughter and so-called ‘disaster’ cases. The CPS is responsible for the review and, where appropriate, the prosecution of most criminal cases following an investigation by the police. Although the CPS works closely with the police, it is independent of them.
5. Each case must pass what is known as the Full Code Test set out in the Code for Crown Prosecutors. This comprises an evidential test and a public interest test. The evidential test is that there must be sufficient evidence to provide a realistic prospect of conviction, which means that a jury or bench of magistrates, properly directed in accordance with the law, will be more likely than not to convict the defendant of the charge alleged. Only if there is sufficient evidence will consideration be given to the second part of the test which is whether a prosecution is required in the public interest. A prosecution will usually be brought unless there are public interest factors tending against a prosecution that clearly outweigh those tending in favour.

### *Accident Investigation Branches.*

6. Although part of the Department for Transport, the three Accident Investigation Branches are functionally independent. The Chief Inspector of each Branch reports directly to the Secretary of State on safety matters.
7. The purpose of each of the three Accident Investigation Branches (AIBs) is to establish the causes of accidents and incidents in their relevant transport modes. The AIBs' sole objective of investigating accidents under their respective regulations is the prevention of future accidents and serious incidents. It is not the purpose of such an investigation to apportion blame or liability.

### *The Air Accident Investigation Branch.*

8. The Air Accident Investigation Branch (AAIB) has a heritage dating back to 1915. The AAIB discharges the United Kingdoms obligations under Annex 13 to the Convention on International Civil Aviation and the European Council Directive 94/56/EC. Its legislative powers are defined by the Civil Aviation Act 1982 and the associated secondary legislation, The Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996. (SI 1996/2798).

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9. The AAIB investigates aircraft accidents and serious incidents that occur in the UK or involve UK registered or manufactured aircraft overseas. It also participates in accident investigations worldwide where there is a specific UK interest. The AAIB also provides technical assistance to the Ministry of Defence in support of Boards of Inquiry investigating military aircraft accidents.
10. AAIB Inspectors have powers to investigate all civil aviation accidents and incidents within the UK. They are appointed under section 8(1) of the Regulations and have the powers under section 9 to have free access to the accident site; the aircraft, its contents or its wreckage; witnesses; the contents of flight recorders; the results of examination of bodies; the results of examinations or tests made on samples from persons involved in the aircraft's operation and relevant information or records. They also have the power to control the removal of debris or components; examine all persons as they think fit; take statements; enter any place, building or aircraft; remove and test components as necessary and take measures for the preservation of evidence.

*The Marine Accident Investigation Branch*

11. The Marine Accident Investigation Branch (MAIB) was set up in 1989. Its legislative powers are primarily contained in Part XI of the Merchant Shipping Act 1995 and associated secondary legislation with the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005 (SI 2005/881) putting the framework into effect.
12. MAIB inspectors have powers to investigate accidents involving or occurring on board UK ships anywhere in the world, and any ships in UK territorial waters including accidents that occur on UK inland waterways. They are appointed under section 267 of the Merchant Shipping Act 1995 and have the power under section 259 to enter any premises in the UK or board any UK ship wherever it may be in the world and any other ship which is present in the UK or in UK waters for the purposes of making such examination or inspection as the inspector considers necessary. They also have the power to require any person to attend for interview, obtain documents, information and records relating to any investigation and prohibit persons from gaining access to, or interfering with any ship, ship's boat or other equipment involved in an accident. Additionally, the MAIB Chief Inspector may require a ship to remain accessible within United Kingdom waters until the process of collecting or preserving the evidence has been completed.

*The Rail Accident Investigation Branch.*

13. The Rail Accident Investigation Branch (RAIB) was set up under the Railways and Transport Safety Act 2003 as an investigating body to undertake fully independent investigations of accidents and incidents to improve the safety of railways and to prevent railway accidents and incidents in accordance with the requirements for independent accident investigation contained in European Directive 2004/49. It does not have any enforcement powers in relation to any aspects of the causes of

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accidents. The Railways (Accident Investigation and Reporting) Regulations 2005 set out details of the way in which the RAIB operates.

14. The RAIB is required under the Directive to investigate serious accidents, as defined in the Directive, and has the discretion to investigate other accidents and incidents. Its remit covers all the railways, except for those in some industrial premises, museums and funfairs, of England, Wales, Scotland and Northern Ireland and tramways, except for Scotland.
15. The Chief Inspector of the RAIB has available powers under s8(5) and s8(6) of the 2003 Act to decide on the desirability of actions of other investigators, including those investigating a possible criminal act, if they are likely to adversely affect an RAIB investigation.
16. RAIB inspectors have powers to investigate all rail accidents in the UK. They may also investigate near misses and other irregularities and incidents that do not result in an accident. They are appointed under Section 3 of the Railways and Transport Safety Act 2003. Under Section 8 they have the power to enter property, land or a vehicle; make records; remove or retain evidence or samples; require the results of an examination; require access to a record or recording equipment; require a person to provide information or answer a question; and require a person to certify the truth, accuracy or authenticity of a statement made, information or a document provided or a record disclosed.

#### **The Sharing of evidence/information**

17. All three AIBs receive evidence from witnesses on the basis that what is said to them is confidential and will not be disclosed unless they are required to do so in the public interest by the relevant court. The specific legislation for each of the AIBs has some differences in detail but all are prohibited from disclosing witness statements or declarations. The ability of witnesses to be able to talk openly to an accident investigator is fundamental to the operation of the AIBs.
18. Confidential statements or declarations made by a witness cannot be disclosed by the AIB to any other party, including the police and the CPS. However, if a witness has provided a written statement or declaration, he or she will usually be given a copy of their statement or declaration and advised that he or she may share their statement or declaration with other investigators if they wish.
19. However, the three AIBs operate on a principle of openly sharing factual technical evidence obtained during an investigation with other agencies involved in investigating the same event, unless precluded from doing so as a matter of law.
20. If the CPS has decided to prosecute it should inform the Deputy Chief Inspector of the relevant AIB describing (in accordance with the current law and procedure on disclosure to third parties) the basis of the prosecution. The AIB will review its evidence and, subject to the legislation, share that evidence which can be disclosed.

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If additional evidence or information is held, which cannot be released without an order from the relevant court, the CPS will be advised whether it potentially undermines the prosecution case. If the AIB report is available, the CPS will be directed to the relevant section of the report.

21. Information given to an AIB by the CPS will be treated as confidential and not disclosed.

### **Destructive testing of evidence**

22. In order to establish the cause of the accident or incident, the AIB may need to undertake tests to develop further evidence that will modify the condition or possibly destroy some part of the specimen. However, a criminal investigator has a statutory duty to present to a court the best evidence available. On occasions this may be considered to be the physical evidence in the state in which it was recovered from the site of the accident.

23. Therefore, if notified of the CPS's interest, the AIBs will make every effort to take into account the needs of the CPS before undertaking any destructive testing of evidence. This will include:

- giving notice before commencing any destructive testing;
- considering any reasonable representations the CPS may make as to the impact such testing may have on their own investigation;
- permitting the police (or other investigating authority, as appropriate) to be present during such testing and to take any reasonable records, photographs or video recordings that they require (or alternatively, on receipt of a request detailing the requirements, for the AIBs to make the records, photographs or video on the investigating authority's behalf); and
- making available to the CPS all factual records, and reports and analysis provided on the tests by independent technical experts.

### **Urgent safety actions**

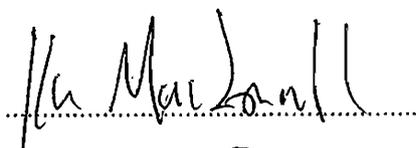
24. If, during an investigation, it is discovered that action needs to be taken to ensure that the transport system remains safe, the AIB will issue a Safety Recommendation and the necessary supporting information immediately, and in the most appropriate way, to meet the needs of public safety and the industry.

### **Action prior to the publication of the AIB report**

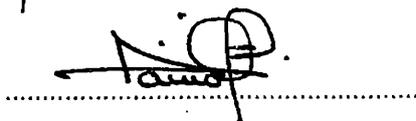
25. The three AIBs publish reports on the accidents and incidents they investigate. Reports may be published whether or not civil or criminal proceedings are in progress or may be instituted.

26. Before finalising a draft report the AIB will have carried out consultation in accordance with the requirements of the respective AIB's regulations. The purpose is to give those involved, and those whose reputations may be adversely affected, the opportunity to submit representations on the relevant parts of the report to correct any factual discrepancies or to point out any relevant considerations that they believe have not been taken into account in the draft report.
27. Whenever the CPS has, or expects to have, a file submitted to it by the police, or has already made a prosecution decision, the CPS will notify the relevant AIB of its interest in their investigation, describing the basis for the planned prosecution, if appropriate. If the AIB has been so notified, it will make available to the CPS a pre-publication copy of the finalised report at the earliest opportunity. As the AIBs have a duty to publish a report as soon as possible after it has been finalised, any pre-publication copy of an AIB report is likely to be made available to the CPS only a few days before publication. The pre-publication copy of the finalised report shown to the CPS will be treated as confidential and not disclosed before the date of publication.
28. The CPS may comment on the finalised report, in particular with regards to the timing of its publication in relation to the timing of the criminal trial or to any aspect of the report that the CPS believes may prejudice the criminal proceedings. The CPS may also make representations to the AIB where the report has not been published by the time of the trial.
29. Any comments made by the CPS will be considered before the report is published, but the relevant AIB it is not obliged to take any action as a result.

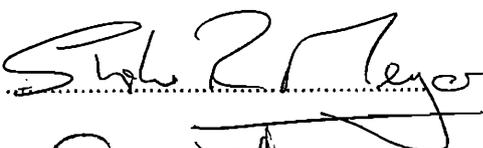
The Director of Public Prosecutions



The Chief Inspector of Air Accidents



The Chief Inspector of Marine Accidents



The Chief Inspector of Rail Accidents



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