

[REDACTED]
13 March 2023

HM Senior Coroner
Mr Kevin McLoughlin
Wakefield Coroner's Court
Coroners Office
71 Northgate
Wakefield
WF1 3BS

[REDACTED]
Wakefield Council
Wakefield One
Burton Street
WF1 2EB

Tel: 0345 8 506 506
Typetalk calls welcome

14 MAR 2023

Dear Mr Mc Loughlin

Re: Inquest touching the death of Michael Holmes - Response to PFD report on behalf of Wakefield Council

Further to the copy of the PFD report received on 20th January 2023, please treat this letter as Wakefield Council's formal response.

The PFD report was addressed for the attention of [REDACTED], who as you are aware is currently absent from work following surgery. [REDACTED] is not expected to return to work until after the date when a response is due to your PDF report. In any event, I am able to address the matters identified within your PFD which have relevance to Wakefield Council and as detailed to you in evidence by me at the inquest on 17th January 2023.

Context of Wakefield Council's involvement at Inquest

Following request by letter dated 9th January 2023 received on 10th January 2023 for a Council Officer to attend the Inquest on Monday 16th January to give evidence, Wakefield Council provided a copy of the statement of [REDACTED] dated 12th January 2023 [Annex 1] which gives context to this response to your PFD report. Wakefield Council additionally provided to you information in a Note on 17th January 2023.

Much of the PFD report identifies national issues and so this response only addresses matters where Wakefield Council has relevant information in respect of the matters of concern you have raised. For ease of reference, we have responded to each of your concerns in red within the text of your PFD report copied below.

CORONER'S CONCERNS

During the course of the Inquest the evidence revealed matters giving rise to concern. In my opinion there is a risk that future deaths will occur unless action is taken. In the circumstances it is my statutory duty to report to you.

The **MATTERS OF CONCERN** are as follows:

1. Considerations regarding the field where the fatality occurred.

- 1.1. In an incident on 29 September 2020 Mr Holmes died after being trampled by cattle. His wife sustained major spinal and other injuries. It was a catastrophe for their family. The couple were walking on a public footpath which ran through the middle of a large field. It occurred as they were on a lunchtime walk at a time when they were working from home due to the Covid pandemic.
- 1.2. Statistics from the Health & Safety Executive ('HSE') indicate that on average 6 people have died each year from injuries sustained in cattle trampling incidents. 11 people died in 2020, one of whom was Mr Holmes. Such incidents are avoidable if walkers and cattle are separated. In my judgment, this unacceptable situation necessitates a review of the arrangements in which walkers are brought into contact with cows and their calves, by virtue of rights of way.
- 1.3. The field in which the incident occurred (the 'incident field') had been used to graze cattle for over 50 years. The public footpath had existed since the National Parks & Access to the Countryside Act 1949 recorded its existence. The logic for the precise path through the incident field has been lost in the mists of time.

Response:

It is not uncommon for public rights of way to follow the most direct route from points A to B across the countryside, including through farmer's fields, such as the "incident field". Convenient use public rights of way is one of the key aspects embedded in the Highways Act 1980, for example an application under Section 119 of the Act to deviate the route of a PROW could fail if the alternate route would cause substantial inconvenience to its users.

- 1.4. Following the fatal incident, the farmer made a formal application dated 12 January 2021, to divert the public footpath to the edge of the incident field and erect a suitable fence, so as to create a safe corridor which separates walkers from the cattle (the 'application'). All the witnesses who gave evidence at the inquest endorsed the wisdom of the application. One described it as "essential."

Response:

On the 1 October 2020, the HSE issued a prohibition notice [P/ST/30092020/1]. It prohibits the grazing of cows with calves in fields with public access because they are not segregated from the public when in these fields. Before [REDACTED] releases [REDACTED] cows with calves back into the fields with public rights of way, [REDACTED] must take steps to protect members of the public from attack.

This Prohibition remains in place. In respect of the field where Mr Holmes was killed, if [REDACTED] is to use field 5357 for grazing cattle, then the footpath and walkers using it are protected from grazing cattle by an electric fence. This was confirmed in evidence by Principal HSE Inspector [REDACTED]

- 1.5. As objections have been lodged to the application, the matter must be resolved by way of a public enquiry. The Secretary of State is asked to ensure the decision maker in such a process is aware of the unanimous views expressed in the course of the inquest. The application may well eliminate altogether the risk identified in the incident field.

Following this incident, in January 2021 [REDACTED] applied to the Council pursuant to s119 Highways Act 1980 to divert three public footpaths in Hollinghurst Farm that passed through fields that were used for grazing cattle, including Sitlington 35.

The application was made in the “interests of the owner” to enable best use of the grazing land whilst separating the public from the cattle.

The Council made 3 Diversion Orders on 8 March 2021.

One of the Orders [Annex 2] relative to the PROW through the incident field had 5 objections and work was done to address these. Two objections relating to the incident field PROW have not been resolved.

Where there are unresolved objections, the Council must refer the Order to the Secretary of State who will appoint an Inspector to consider the Contested Order and whether to confirm the diversion or not.

The final decision maker on confirmation of the Order is the Inspector appointed by the Secretary of State.

If the Contested Order is confirmed, the right of way will be diverted. If the Order is not confirmed the right of way will remain on its current alignment.

However, the Prohibition remains in place. In respect of the field where Mr Holmes was killed, if [REDACTED] is to use field 5357 for grazing cattle, then the footpath and walkers using it are protected by an electric fence. This was confirmed in evidence to be the position by Principal HSE Inspector [REDACTED]

It is likely that there will be a public inquiry, hearing, or written representations, to enable an Inspector to make their decision in respect of the contested Diversion Order. Wakefield Council has suggested, considering the nature of the two remaining objections, that it believes the Planning Inspector could resolve the matter through written representations and without the need for a public inquiry.

The Contested Order, and all associated documents, have been sent to the Secretary of State with the Council's request that the Order. There is a backlog within the Planning Inspectorate in respect of Diversion of rights of way.

Public Footpath Sitlington 35 – Diversion Application and Order Timeline

Site meeting attended by PROW Officers and landowner to discuss possible diversion of footpath.	15 December 2020
Informal consultation undertaken on:	8 January 2021
[REDACTED] applied to the Council to divert public footpaths at Hollinghurst Farm that passed through fields that were used for grazing cattle.	12 January 2021
Orders made on:	8 March 2021
Orders advertised:	18th March 2021
Objections received within statutory notification period	
2 Outstanding objections (concerning various aspects of new route and a preference for the diverted path to take another route)	

3 objections made and then subsequently withdrawn 5 representations in support received

Unconfirmed Order for which objections remain submitted to Secretary of State for determination.

3 January 2023¹

¹ I apologise to HMSC as in the material provided to the court we had detailed in error that the submission had been made to the Secretary of State in March 2022.

Subsequent to the inquest concluding, on the 23rd January 2023 [REDACTED] a Public Rights of Way Officer with Wakefield Council updated the planning inspectorate in respect of the inquest outcome by email, provided the Record of Inquest and requested an update as to the application to the Planning Inspectorate and confirmed that he would provide the PFD report once it had been provided to Wakefield Council and requested:

"Any means of expediting this case that is available to the Inspectorate would therefore be appreciated. Wakefield Council would be happy to make its case by written representations if the Inspector is minded that this is appropriate."

A response to this email was received on 24th January 2023 from [REDACTED] - Rights of Way Caseworker and Charting - DEFRA Team of the Planning Inspectorate. [REDACTED] confirmed that the email and the Record of Inquest had been added to the file and that he would look for the file in the backlog of case.

On the 26th January 2023, [REDACTED] confirmed by email to [REDACTED] that: *"We have recruited 4 new case officers who start in early February 2023 which will mean our backlog will eventually reduce. However, taking training and since they will be lower at the start of employment into account, my estimate is that it is unlikely to be actioned before Easter. If your Council wishes to make a case for this Order to be expedited and for it to be processed as soon as possible you can write to me with your reasons."*

On the 27th January 2023, [REDACTED] provided the PFD report to [REDACTED] by email and highlighted Section 5 and sub section 1.5 of the PFD report detailing HMSC's concerns and requested that: *"As a result of the specific concerns raised in the Coroner's report we confirm that we would wish for this Order to be determined at the earliest possible time."*

On the 30th January 2023, [REDACTED] acknowledged and noted the request for the Order to be expedited.

On the 28th February 2023, [REDACTED] emailed [REDACTED] confirming that the Council was finalising this response to the PFD report and asked: *"Further to my email in January are you able to give us any further information on the timetable for determination of the Order? Anything further you are able to tell us would be appreciated and enable us to respond to the Coroner as accurately as possible."*

[REDACTED] responded by email the same day confirming: *"We have recently recruited 4 new case officers to replace staff who moved on during and since lockdown with the aim of bringing down the backlog of cases to start. They are currently in training so it may be 4-5 weeks before we start to see results. Currently the oldest cases I have are from March/ April 2022. As the Order was received in January 2023, there are 9 months of older cases before it. I am hopeful that this Order will have been started within 4 months as opposed to 9."*

On the 1st March 2023, [REDACTED] emailed [REDACTED] and requested again the decision to be expedited:

"We appreciate the situation concerning backlog and timescales however, we again request for special expedited consideration of this case. This is further to the Coroner's view as detailed in the Prevention of Future Death report, that the Order "may well eliminate altogether the risk identified in the incident field".

Wakefield Council will provide this response and the PFD report to [REDACTED] so that he

ensures the decision maker allocated to consider the Order is aware by this response of what is described by the Senior Coroner as: *"the unanimous views expressed in the course of the inquest"* and that in the Senior Coroner's view, *"The application may well eliminate altogether the risk identified in the incident field."*

2. The general position in relation to dogs on Rights of Way

- 2.1. HSE Information sheet No 17EW (rev1) published 05/19 states the two most common factors in trampling incidents are cows with calves and walkers with dogs. Mr & Mrs Holmes had two dogs on leads at the time. The inquest heard evidence about four previous incidents in the incident field, three of which involved walkers accompanied by dogs. There appears to be a strong correlation between trampling incidents and walkers with dogs.
- 2.2. The conclusion to be drawn is that cows with calves and dogs do not mix well, particularly when the calves are young.
- 2.3. Evidence was given at the inquest to the effect that dogs are regarded as a 'usual accompaniment' and are thus entitled to be brought onto a Right of Way. This proposition lacks clarity. There is also uncertainty as to whether dogs are required to be on a lead when on a public footpath.

Response:

These are identified as national issues requiring consideration and response by the Secretary of State and wider engagement with key stakeholders. Wakefield Council, as with other local authorities, is a creature of statute where its authority and powers arise from a statutory framework. In the case of Public Rights of Way (PROW), these statutory duties and powers arise from the Highways Act 1980 and any associated case law. It is proposed that Wakefield Council could not act in isolation without a change in the legal framework within which the Council operates.

Wakefield Council confirmed in evidence to the inquest that dogs are considered and regarded as a 'usual accompaniment' on a PROW and therefore dogs are permitted to with be a keeper/controller on a PROW.

Although legislation does not require that dogs be on a lead whilst on a public right of way, the owner must ensure that they are fully in control of the dog at all times.

The dog is not entitled to roam away from the path and if it does so, the owner could be guilty of committing trespass against the landowner.

The Dogs (Protection of Livestock) Act 1953 makes it a specific offence to allow a dog to be at large in a field or enclosure where there are sheep, and a farmer may have a defence in any civil proceedings for killing or injuring a dog which is caught worrying sheep.

In short, the walker with dog must ensure their dog is under close control near livestock and if the owner has any doubts at all about their ability to control their dog they should keep it on a lead.

The one exception to this rule is if the dog walker is in a field with cattle, especially with calves where the general advice is that if cows become aggressive towards the walker and their dog stay calm and let the dog off the lead.

- 2.4. Consideration should be given in the HSE Information Sheet to a clarification of the legal position of dogs brought onto rights of way where it is foreseeable they will interact with cows and their young calves

Response:

This is identified as a national issue requiring consideration and response by the HSE. No

action is proposed by Wakefield Council in the absence of a change to the statutory framework within which it operates.

However, as was the clear evidence at the inquest, including in submissions by [REDACTED] who confirmed that the obligation under health and safety law, is on the duty holder, i.e. that of the farmer to control the risk presented by cattle and calves to members of the public undertaking their right to use the PROW.

As I detailed in evidence, it is for landowners, managers, owners and occupiers of the land to risk assess activities being conducted by them on their land and any attendant risks their use of their own land could pose to members of the public exercising their legal rights to walk on a public right of way

3. The power to restrict dogs on public footpaths, at certain times.

3.1. It is difficult to predict whether a particular cow will react aggressively to the presence of a dog in a field. It was suggested during the inquest, the risk of such a reaction is highest in the months after the birth of a calf.

3.2. To neutralise this risk, consideration should be given to empowering Local Authority Footpath officers (on an application made by a farmer in relation to an identified field), to prohibit dogs being taken onto the field for a specified period. In short, a temporary prohibition order. The rationale for a temporary expedient of this nature is the imperative to protect the safety of the public, when set against the relatively brief interference with any right a walker may have to be accompanied by a dog

Response

This is identified as a national issue requiring consideration and response by the Secretary of State having identified that it would require statutory change. No action is proposed by Wakefield Council in the absence of change to the statutory framework within which it operates.

3.3. An alternative approach would be to authorise landowners to post notices at the entrance to particular fields, alerting walkers to the presence of cows with young calves and advising them not to bring dogs into the field (whether on a lead or not) between specified dates. The objective of preventing harm may not, however, be achieved if walkers ignore the advice or the suggested signs are vandalised.

Response:

This is identified as a national issue requiring consideration and response by the Secretary of State having identified that it would require statutory change. No action is proposed by Wakefield Council in the absence of change to the statutory framework within which it operates.

3.4 It is acknowledged that statutory change would be required to create powers of this nature. The Secretary of State will doubtless reflect upon the balance to be struck between the imperative of protecting the safety of the public and the relatively brief interference this would impose on the right of walkers to bring their dog into any field affected. It should also be borne in mind that the people whose safety is currently jeopardised under existing arrangements are the dog walkers themselves.

Response:

This is identified as a national Issue requiring consideration and response by the Secretary of State. No action is proposed by Wakefield Council in the absence of change to the statutory framework within which it operates.

4. The role of public bodies.

4.1 The current potential for a hazard to be created by walkers on public footpaths moving in proximity to a farmer's grazing cattle, requires management of these competing

interests. It was contended at the inquest that the farmer is subject to a statutory duty to carry out a risk assessment in accordance with the Management of Health & Safety at Work Regulations 1999. It was contended that a landowner must conduct his business around the existing public footpath, irrespective of which came into existence first. Whilst not disputing the legal duty imposed on a farmer in these circumstances, the potential mischief left unguarded in that analysis, is that Small & Medium Enterprises (SME's) such as small family farms may lack the expertise to recognise the problem, carry out an effective risk assessment in relation to cattle trampling risks and devise reasonably practicable control measures.

- 4.2. To avoid the harm envisaged by further deaths in comparable circumstances, the HSE and Local Authorities should explore ways to apply their expertise in collaboration with landowners (of the type involved in this inquest), whether on a paid or voluntary basis. The maintenance of safe public rights of way could be said to require oversight and management by public bodies as well as the landowners concerned.

Response:

This is a national Issue that would require response by the Secretary of State and the HSE. No action is proposed by Wakefield Council in the absence of change to the statutory framework within which it operates.

It is proposed that the hazard is created by the presence of the cow with calves in the vicinity of members of the public, thus creating a risk to their safety. It is for landowners, managers, owners and occupiers of the land to risk assess activities being conducted by them on their land and any attendant risks their use of their own land could pose to members of the public exercising their legal rights to walk on a public right of way. The responsibility is the duty holders and not that of the HSE or local authority.

To suggest that the HSE and LAs could apply their expertise to landowners on a paid or voluntary basis would not be workable and could be said to dilute the responsibility of the duty holder. Advice on how to assess and manage risk is provided through the HSE and as with any other business it is incumbent on the duty holder to manage those risks.

Oversight and management by public bodies as well as the landowners concerned is not the current position and would be unworkable. A public body cannot be expected to know what landowners are doing on their land from hour to hour or day to day, which is why the obligation is placed on the duty holder to risk assess activities being conducted by them on their land and any attendant risks their use of their own land could pose to members of the public exercising their legal rights to walk on a public right of way.

- 4.3 One example of pragmatic help to eliminate cattle trampling risks would be for the HSE to draw attention to the process available under section 119 of the Highways Act 1980 to apply for a public footpath to be re-routed, so as to separate cows with calves and walkers. Consideration could be given to highlighting this option in a future edition of the HSE Information Sheet.

Response:

This is a national Issue that would require response by the HSE. No action is proposed by Wakefield Council in the absence of change to the statutory framework within which it operates.

A Diversion Order application process takes time and has regard to the test contained in s119 Highways Act, "*in the interests of the owner, lessee or occupier of land crossed by the path...it is expedient that the line of the path or way or part of that line should be diverted.*"

The duty holder's health and safety responsibilities are quite separate and clear. A landowner, lessee or occupier of land is well aware of a public right of way on their land and that at any time a member of the public may be present on the PROW exercising their legal

right. It is for the landowner therefore to ensure that by their use of the land they do not create risks to those members of the public exercising their legitimate rights to walk over the PROW.

4.4 This report will be sent to special interest groups thought to have an interest in this issue, in the hope of enlisting their assistance in educating all who use the countryside in relation to the risk and the ways in which it could be eliminated.

Response:

Engagement with wider stakeholder groups on this issue is welcome.

I trust this information is of assistance to you. Please do not hesitate to contact me if you require any further assistance.

Yours sincerely

[Redacted signature]

[Redacted name]

Service Director Environment, Street Scene & Climate Change

cc. [Redacted] – Rights of Way Caseworker and Charting – DEFRA Team. The Planning Inspectorate by email [Redacted]