

## REGULATION 28: REPORT TO PREVENT FUTURE DEATHS

	<p><b>THIS REPORT IS BEING SENT TO:</b></p> <ol style="list-style-type: none"><li>1. The Rt Hon Dr Therese Coffey MP, Secretary of State for Environment Food and Rural Affairs.</li><li>2. J A Mitchell &amp; Sons</li><li>3. Wakefield Council – [REDACTED]</li><li>4. Health and Safety Executive – [REDACTED] Principal Inspector</li></ol>
1	<p><b>CORONER</b></p> <p>I am Kevin McLoughlin, Senior Coroner for the Coroner area of West Yorkshire (East)</p>
2	<p><b>CORONER'S LEGAL POWERS</b></p> <p>I make this report under paragraph 7, Schedule 5, of the Coroners and Justice Act 2009 and regulations 28 and 29 of the Coroners (Investigations) Regulations 2013.</p>
3	<p><b>INVESTIGATION and INQUEST</b></p> <p>On 1 October 2020 I commenced an investigation into the death of Michael John Holmes, aged 57. The investigation concluded at the end of the Inquest on 18 January 2023. The conclusion of the Inquest was Accidental Death.</p>
4	<p><b>CIRCUMSTANCES OF THE DEATH</b></p> <p>On Tuesday 29 September 2020, Michael John Holmes and his wife were walking dogs belonging to other family members on leads in a field at Hollinghurst Farm, Netherton, Wakefield. Cattle in the field approached them, knocked them down and trampled them, causing serious injuries. Emergency treatment was provided by a doctor who arrived by helicopter. Mr Holmes could not be revived and was pronounced dead at 12:56 that day at the scene of the incident.</p>
5	<p><b><u>CORONER'S CONCERNS</u></b></p> <p>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.</p> <p>The <b>MATTERS OF CONCERN</b> are as follows:</p> <p><b>1. Considerations regarding the field where the fatality occurred.</b></p> <p>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.</p> <p>1.2. Statistics from the Health &amp; 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</p>

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.

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."

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.

## **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.

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.

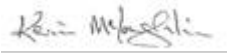
## **3. The power to restrict dogs on public footpaths, at certain times.**

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.

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.

	<p>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.</p> <p><b>4. The role of public bodies.</b></p> <p>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 &amp; 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 &amp; 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.</p> <p>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 <u>public</u> rights of way could be said to require oversight and management by <u>public</u> bodies as well as the landowners concerned</p> <p>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.</p> <p>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.</p>
6	<p><b>ACTION SHOULD BE TAKEN</b></p> <p>In my opinion action should be taken to prevent future deaths and I believe you and your organisation have the power to take such action.</p>
7	<p><b>YOUR RESPONSE</b></p> <p>You are under a duty to respond to this report within 56 days of the date of this report, namely by 31 March 2023. I, the Coroner, may extend the period.</p> <p>Your response must contain details of action taken or proposed to be taken, setting out the timetable for action. Otherwise you must explain why no action is proposed.</p>
8	<p><b>COPIES and PUBLICATION</b></p> <p>I have sent a copy of my report to the Chief Coroner and to the following Interested Persons:</p> <p>██████████ via CFG Law Solicitors</p> <p>I have also sent it to:</p>

	<p>The Ramblers' Association National Farmers Union Country Land Owners Association The Access and Rights of Byways and Bridleways Trust Open Spaces Society Rights of Way Review Committee [REDACTED] – ITV Reporter [REDACTED] – BBC Reporter</p> <p>who may find it useful or of interest.</p> <p>I am also under a duty to send the Chief Coroner a copy of your response.</p> <p>The Chief Coroner may publish either or both in a complete or redacted or summary form. He may send a copy of this report to any person who he believes may find it useful or of interest.</p> <p>You may make representations to me, the coroner, at the time of your response, about the release or the publication of your response by the Chief Coroner.</p>
9	 <b>Kevin McLoughlin</b> <b>Senior Coroner</b> <b>West Yorkshire (East)</b> <b>20th January 2023</b>