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Date: 03 July 2024

Dear Madam,

**HSE RESPONSE TO PREVENTION OF FUTURE DEATHS REPORT FOLLOWING INQUEST TOUCHING ON THE DEATH OF GRAHAM FAULKNER IN 2019**

Thank you for your Regulation 28 report to prevent further deaths dated 13<sup>th</sup> June 2024 addressed to [REDACTED], Chief Executive of the Health and Safety Executive (HSE), following the inquest touching on the death of Graham Faulkner. I have been asked to respond to you on the issues raised as I lead the operational teams that undertake inspections and investigations at major hazard sites such as that of Industrial Chemicals Limited (ICL), Thurrock. May I take this opportunity to once again pass on our condolences to Mr Faulkner's family.

**1. HSE investigation decision making**

HSE has previously communicated with your colleague Mr H Westerman (Assistant Coroner) during inquest preparation, however, I would like to explain a little further our decision making approach in relation to the incident to Mr Faulkner.

The initial Reporting of Injuries, Diseases and Dangerous Occurrences report (RIDDOR) received from ICL on 10<sup>th</sup> November 2015, advised that the nature of the injury was a caustic burn to the foot leading to an absence from work for more than 7 days. As you correctly highlight this did not meet our Incident Selection Criteria and as such no HSE investigation was instigated.

HSE did receive some limited further information from ICL regarding Mr Faulkner's health in November 2015, however, this was not linked to the initial injury circumstances and at that time understood to be related to Mr Faulkner's separate underlying health conditions. HSE received no further RIDDOR report or update from ICL confirming Mr Faulkner's injury deterioration was due to the incident. Thus it was a very significant time later in 2019, following the death of Mr Faulkner, that the Police on behalf of Cheshire Coroner's office, contacted HSE and notified us that sadly Mr Faulkner had passed away.

Through initial discussions with the Police, HSE offered what limited information we had obtained from linked inspection enquiries at the site relating to the handling of caustic substances and confirmed to the Police that we had not conducted an investigation. We advised the Police that should more evidence come to light from their enquiries at that time HSE would of course review any decision. At that time HSE also conducted a further review of the original decision making around the incident selection criteria taken in 2015. This concluded that the incident selection procedure had been correctly applied given the limited information available at that time.

We also considered whether there was any realistic possibility of conducting an investigation at that time in 2019, however concluded that unfortunately too much time had passed meaning key evidence was unavailable to be able to conduct a meaningful investigation. We updated both the Police and Coroner's Office of that decision at that time. We also updated Mr Faulkner's next of kin and more recently met them jointly with the Police, ahead of the inquest, to further respond to their questions.

HSE's Incident Selection Criteria(ISC) [incidselcrits \(hse.gov.uk\)](https://www.hse.gov.uk/incidselcrits) is a publicly available procedure which HSE uses to help guide it's investigation resource to the most serious incidents. These as you highlight more often being the ones where there is more learning which can prevent future injuries. HSE is unable to investigate all incidents reported to it via the RIDDOR process and this triage approach has been successful in prioritising our investigation work over many years.

Thus based on the information available to HSE in the early months following Mr Faulkner's injury we feel that decision making reflects our incident selection criteria policy and thus we were unable to conduct a meaningful investigation at that time.

## **2. Incident Selection Criteria RIDDOR Categorisation**

You refer to Regulation 4(2) of the Reporting of Injuries, Diseases and Dangerous Occurrences 2013, and your perceived absence of this injury type from our Incident Selection Criteria.

There is more information about the ISC's application within HSE Investigation Procedure which is also publicly available at [Investigation - Stage 2: Decide whether to investigate \(hse.gov.uk\)](https://www.hse.gov.uk/investigation-stage-2). The ISC is focussed on RIDDOR reports under Regulation 4(1) to ensure highest injury type incidents are prioritised for investigation consideration. However, the ISC also includes an option at section 4 which allows for any type of RIDDOR to be considered for investigation should it indicate a likelihood serious breach of health and safety law. Thus our view is that the ISC already has the type of flexibility you are suggesting to help learn lessons from incidents where standards are far from where they should be, including linked to a Reg 4(2) notification.

Unfortunately in the case of Mr Faulkner's incident, it is less about having the means via the ISC to investigate, and more about information availability. In particular, not having the full information about the underlying cause for his deteriorating condition being linked to the incident. As HSE was not updated in a timely manner, a successful investigation could not be completed.

Regardless of what incidents HSE decides to investigate, the primary duty is for employers to monitor and review the adequacy of control measures identified in their risk assessment to ensure they remain effective. Accident investigation is therefore an important part of an effective health and safety management system by employers.

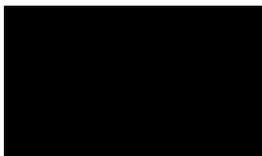
You highlight that 'paraplegia' is not specifically included within the specific Section 2 ISC categories, as I am sure you can appreciate this guidance cannot list all potential severe injuries. It focusses on the most common severe injuries based on HSE's investigation experience. As part of HSE's review of RIDDOR Regulations over the years in supporting the better regulation principles we have continued to streamline regulation details in line with government guidelines.

However, I can assure you that the Principal Inspectors who are reviewing such RIDDOR reports would not hesitate to consider paraplegia as being a severe injury just because it is not specifically listed. Our staff are trained to be pragmatic in the application of the ISC to ensure that we respond where appropriate to serious injury incidents and are not restricted solely by examples. HSE staff can seek advice from line managers should they be unsure of ISC application and regularly do so.

HSE guidance is reviewed to reflect emerging issues and concerns in response to learning and recommendations following incidents. Reviewing our ISC approach has been a recent area of work for HSE and we are moving away from selecting incidents by harm outcome and instead selecting by risk. So although I have passed your suggestion for 'paraplegia' to be specifically named in the ISC to HSE's policy team for consideration at the time of the next ISC review, it is likely that we will focus more in future on risk rather than injury.

Thank you for raising your concerns with us. I hope this offers some further explanation behind HSE's decision making and reassures you that HSE is making significant changes to help improve the effective prioritisation of incident investigation. However, on this occasion we are unable to take any further action to change our procedures.

Yours faithfully,



Head of Operations CEMHD Unit 3  
HSE