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Report to: Professional Standards Committee

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Agenda Item: 9

Subject: BTP and BTPA Legislative Compliance - Custody

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For: Information

1. Purpose of paper

1.1 Following the enactment of s.2(1)(d) of the Corporate Manslaughter and Corporate Homicide Act 2007 (the 2007 Act) papers 9a and 9b provide the Committee with reassurance that the BTP and BTPA respectively are compliant with their duties and responsibilities in respect of BTP custody facilities.

1.2 This paper provides the background to

2. The new Duty under the 2007 Act

2.1 The 2007 Act came into force on 6 April 2008 across the UK. The Act sets out a new offence for convicting an organisation where a gross failure of their duty of care in the way activities are managed or organised results in a person's death. The duty of care relates to the working environment, the conditions of worksites, and the standard of equipment that is used within the custody environment

2.2 All custody environments were given a three year grace period to ensure robust management procedures were put in place to mitigate the risks and provide training to all persons working within a custody environment. This work has been carried out in conjunction with the NPIA. This Act became relevant to all custody related environments in September 2011.

2.3 In summary, the organisation would be guilty of the offence of corporate manslaughter if the way in which its activities are managed and organised causes a death and amounts to a gross breach of the relevant duty of care to the deceased. The way in which the organisation's activities were managed by senior management must have been a substantial part of the breach. This is the case as the purpose of the offence of corporate manslaughter is to target management failings that can fairly be associated to organisation as a whole, rather than local failures.[1]

2.4 The term "senior management" is defined as those persons who play a significant role in the management of the whole or a

[1] 5 Essex Court (2011) Police Law Update. Issue 28 pg 14

substantial part of the organisation's activities[2]. This covers both those in the direct chain of management as well as those in strategic or regulatory compliance roles[3]. Therefore, in the case of an alleged gross breach it is likely that BTP and BTPA would be jointly prosecuted. It should be noted that there is no personal liability under this act.

2.5 A gross breach is defined as where *"the conduct alleged to amount to the breach falls far below what can reasonably be expected of the organisation in the circumstances".*[4]

2.6 If a case of this nature reaches court a jury will consider (e.g. in the case of a death in police custody), how the situation was managed. This will include looking at systems, processes, practices and procedures that are in place and whether a substantial part of the failure to adhere to them was at a senior level in the organisation.

3. Recommendations

3.1 The Committee needs to be satisfied that it has sufficient reassurance that both BTPA and BTP are fulfilling their statutory duties.

[2] 2007 Act Section 1(4)(c)

[3] Explanatory Note to 2007 Act paragraph 17

[4] 2007 Act Section 1(4)(b)