

Draft statutory guidance to the police service on achieving best evidence in death or serious injury matters

1. This statutory guidance is issued under section 22 of the Police Reform Act 2002 and applies to all 43 Home Office police forces in England and Wales. Local policing bodies, chief officers, police officers, special constables and police staff working within those forces must all have regard to the guidance. It also applies to the National Crime Agency and those agencies and non-Home Office forces that have entered into agreements with the Independent Police Complaints Commission (IPCC) under sections 26, 26A or 26B of the Police Reform Act 2002, subject to any particular provisions contained within those agreements. Any references to police or police officers should be read as applying equally to these agencies and their staff.

2. A failure to have regard to the guidance is admissible in evidence in any disciplinary proceedings and any appeal proceedings following a disciplinary decision. Any failure to have regard to the guidance in a case involving the death of an individual is highly likely to come under scrutiny at the resulting inquest into that individual's death. If the people listed above do not follow the guidance, they need to have a sound rationale for departing from it or risk legal challenge. The rationale for any departure from the guidance should be recorded.

3. Chief officers have a clear statutory duty to obtain and preserve evidence relating to matters described in the Police Reform Act 2002 as death or serious injury matters (DSI).

Paragraph 14B, Schedule 3, Police Reform Act 2002: Duty to preserve evidence relating to DSI matters –

14B(1) Where –

- (a) a DSI matter comes to the attention of a local policing body, and
- (b) the relevant officer in relation to that matter is the chief officer of the force maintained by that body,

It shall be the duty of that body to secure that all such steps as are appropriate for the purposes of Part 2 of this Act are taken, both initially and from time to time after that, for obtaining and preserving evidence relating to that matter.

(2) Where

- (a) a chief officer becomes aware of a DSI matter, and
- (b) the relevant officer in relation to that matter is a person under his direction and control,

It shall be his duty to take all such steps as appear to him to be appropriate for

the purposes of Part 2 of this Act for obtaining and preserving evidence relating to that matter.

(3) The chief officer's duty under sub-paragraph (2) must be performed as soon as practicable after he becomes aware of the matter in question.

(4) After that, he shall be under a duty, until he is satisfied that it is no longer necessary to do so, to continue to take the steps from time to time appearing to him to be appropriate for the purposes of Part 2 of this Act for obtaining and preserving evidence relating to the matter.

(5) It shall be the duty of a local policing body to comply with all such directions as may be given to it by the Commission in relation to the performance of any duty imposed on it by virtue of sub-paragraph (1)

(6) It shall be the duty of the chief officer to take all such specific steps for obtaining or preserving evidence relating to any DSI matter as he may be directed to take for the purpose of this paragraph by the local policing body maintaining his force or by the Commission.

4. Given that statutory duty, chief officers have a responsibility to ensure that everyone under their direction and control is aware of the principles set out in this guidance, to ensure that sound procedures and systems are in place to give effect to those principles and that relevant officers and staff are trained on how to operate according to this guidance.
5. When a person dies or is seriously injured during or after contact with the police, it is essential that the facts surrounding that incident are fully and effectively investigated. The investigation should be comprehensive and capable of establishing the circumstances in which the incident occurred. This can only be achieved if every effort is made to ensure that the best evidence is available to the investigation and that the integrity of that evidence is preserved.
6. This statutory guidance aims to make everyone to whom it applies fully aware of their duties and responsibilities in achieving the most effective investigation into a death or serious injury case. There is already a clear statutory duty on the police to refer all death or serious injury matters to the IPCC without delay and in many cases it will be necessary for the IPCC to undertake an independent investigation.¹ However, this guidance applies from the moment a death or serious injury matter comes to the attention of the police.

¹ For example, where the injury or death occurs while the individual is in police detention, or where there is an indication that the police contact may have been a contributory factor in the death or serious injury.

Identification and preservation of all potentially relevant evidence and scenes

7. It is essential that immediate attention and care is given to the preservation of all potentially relevant evidence. “Evidence” can include, but is not limited to, any information drawn from personal accounts, a document, or a material object, which may potentially be used to establish facts in an investigation. The relevance of some evidence to an investigation may not be immediately apparent, so anything that has the potential to assist the investigation must be preserved.
8. Everyone in the police service has a responsibility to bring any potential evidence to the attention of the investigation throughout the life of the investigation.
9. From the point at which the police become aware of a DSI matter, they have the responsibility to ensure that evidence is not lost or compromised in any way. This may include, but is not limited to establishing a perimeter to control and protect any scene and maintaining an accurate scene log recording details of everyone who enters and leaves, protecting samples of forensic evidence from damage or contamination and preventing the overwriting of visual or audio footage.
10. While the police must act to preserve and control such evidence they should not take any other actions in respect of its recovery, removal or analysis without the express agreement of the IPCC.
11. It is recognised that in the following circumstances it may be preferable to act immediately and without waiting for IPCC approval:
 - where the immediate removal or seizure of evidence is necessary to prevent its loss or deterioration (for example where weather conditions may impair forensic evidence);
 - where action is necessary to protect the public from harm (for example where a firearm is placed within reach of members of the public).
12. If a decision is taken in accordance with paragraph 11 above, details of any actions taken in respect of evidence, and the justification for doing so, must be clearly documented by the decision maker.

Identification of all non-policing witnesses

13. References to “witnesses” in this section refer to those who have not played a policing role in the incident for example members of the public, emergency services staff and healthcare professionals.

14. Anyone who has witnessed (visually or otherwise) any part of the death or serious injury (or events connected with it) will be a potential witness. It is vital that the police act immediately to help ensure that the testimony of all witnesses will be available to the investigation. In order to achieve this, while awaiting the involvement of the IPCC, the police should obtain the names and contact details of all potential witnesses together with a brief description of the nature of their evidence.

15. The police are not expected to obtain detailed statements from potential witnesses. Detailed statements will be obtained in the course of the subsequent investigation. However, the police should obtain and note the following basic information about the nature of the information the witness can give:
 - whether s/he has witnessed all or part of the incident, or a connected incident;
 - a concise description of what s/he has observed;
 - any relationship to any of the persons involved in the incident;
 - descriptions of individuals referred to, along with the factors to be considered when assessing that identification evidence (amount of time under observation, distance, obstructions etc.²).

Any observations about the witness which may impact the credibility of his/her account, for example intoxication, should also be carefully noted.

² The factors set out in the case of *R v Turnbull and Camelo* [1976] 63 Cr App R 132.

Identification and handling of key policing witnesses

16. The police must immediately identify the key policing witnesses to the death or serious injury.
17. For the purpose of this guidance a **policing witness** is a:
 - police officer;
 - special constable under the direction and control of a chief officer;
 - member of police staff (which will include those with designated powers under section 38(2) of the Police Reform Act 2002: community support officers, detention officers, investigating officers and escort officers);
 - member of contracted out staff;
 - person serving with National Crime Agency.

Key policing witnesses

18. A key policing witness is anyone from the above categories who has witnessed, or claims to have witnessed, visually or otherwise, all or part of a death or serious injury, or events closely connected with it. Such individuals must be treated as a key policing witness at the outset.

Separation and prohibition on conferring

19. Any conferring between witnesses has the potential to undermine the integrity of their evidence, and to damage public confidence in the investigation. As a result, non-police witnesses are routinely warned not to discuss the incident in question either before or after they have given their accounts. The same should apply to policing witnesses.
20. Once the key policing witnesses have been identified:
 - 20.1 They should be instructed not to speak (or otherwise communicate) about the incident with each other, or any other potential witnesses, both before and after they have given their accounts.
 - 20.2 If it is necessary for key policing witnesses to discuss the incident with each other to avert a real and immediate risk to life, the extent to which such discussion has taken place, the justification for doing so and the content of that conversation, must be recorded as soon as possible.

20.3 From the moment it is operationally safe to do so, they should be kept separate until after their detailed individual factual account (“DIFA”) is obtained.

Detailed Individual Factual Accounts (DIFA)

21. All key policing witnesses will be expected to assist in the investigation into the death or serious injury by providing a full and detailed account at the earliest opportunity. Nothing in this guidance affects their right to be provided with support by other people not involved in the incident, including the right to obtain legal advice and the right to refuse to provide any statement. However, a decision not to provide an account when asked to do so will be noted and will be taken into account in the investigation and in any subsequent proceedings.

22. A DIFA will be required from each policing witness before s/he goes off duty. It should be headed with the appropriate statutory declaration (in accordance with section 9 of the Criminal Justice Act 1967, sections 5A(3)(a) and 5B of the Magistrates’ Court Act 1980, and rule 70 of the Magistrate Court Rules 1981) and should include the following as a minimum:
 - the witness’ full personal details³;
 - his/her full and detailed recollection of the incident and/or related incident(s) (it should be his/her honestly held belief of the facts, and his/her reasons for holding such a belief, including what s/he did and what s/he observed others doing);
 - the information s/he received before and/or during the incident;
 - the role s/he played in relation to the death or serious injury, and/or related incident(s)⁴;
 - his/her decision making in respect of the incident or related incident(s), particularly when s/he has used force and/or has exercised any other police powers.

23. The objective of the DIFA is to obtain a clear picture of all facts which may be relevant to the death or serious injury.

24. It is accepted that no one can be compelled to give an account and that consideration must be given to the welfare of those who have been directly

³ In specific circumstances the use of ciphers may be agreed by the IPCC, but those investigating the death or serious injury shall be given the names of all policing witnesses.

⁴ Related incidents will include any relevant briefings and previous contact with or knowledge of the deceased or injured party.

involved in a serious incident. However, the public rightly expects that those who witness a death or serious injury, or incidents relating to it, whilst acting in a professional capacity, should co-operate fully with an investigation, offering up all relevant information in a prompt and open manner. Failure to do so damages not only the effectiveness of the investigation but also the public's confidence in the police service.