

## **IPCC Guidance on achieving best evidence in death or serious injury matters**

### **IPCC response to consultation feedback**

#### **BACKGROUND**

The IPCC has developed guidance on how evidence should be collected in the immediate aftermath of an incident where a member of the public has died or been seriously injured during contact with the police. For some time the IPCC has raised concerns over procedures around initial steps taken by the police in obtaining and preserving evidence following a death. These concerns were brought into focus following an independent review into the IPCC's investigation into the death of Sean Rigg and the IPCC's own review of its investigations into deaths.

The actions taken to secure evidence immediately after someone has died are crucially important in finding out what happened as swiftly as possible. They can also affect the level of confidence that families and the wider public have in the independence, findings and outcome of the investigation.

There is currently guidance for the police on the post incident process, including gathering evidence. This is primarily in Authorised Professional Practice issued by the College of Policing for armed policing situations although there is also guidance elsewhere. The IPCC's view is that this guidance does not currently go far enough to preserve the integrity of evidence and ensure public confidence and that a single set of principles should apply clearly to all deaths and serious injuries following police contact, not just those involving firearms.

When this process works well, officers provide statements with a sufficient level of detail as soon as possible after the incident. This helps the IPCC, particularly with early investigative steps to make sure that we are alert to any possible avenues of inquiry and can secure evidence.

#### **KEY PRINCIPLES**

The issue of conferring, in particular, has the potential to undermine the integrity of police officers' evidence and to damage public confidence in the investigation. One of the key principles we have maintained during the development of the guidance is to minimise the potential for conferring or any suspicion that it has taken place. For this reason, the guidance sets out that as soon as it is operationally safe to do so, officers should be separated. This is designed to ensure that officers provide individual accounts of what they themselves saw, heard and did without any communication with others which could, intentionally or unintentionally influence their account.

We have also continued to insist that key policing witnesses should provide their initial accounts promptly, before going off duty. This not only minimises any risk of contamination of evidence but allows the IPCC to identify lines of enquiry and secure evidence that might otherwise be lost.

The guidance is written from the perspective that those who witness a death or serious injury in a professional capacity should cooperate fully with an investigation, and that failure to do so damages not only the effectiveness of the investigation but also the public's confidence in the police service. It does not treat those witnesses as suspects, but as people whose individual accounts are essential to the investigation.

## **DEVELOPING THE GUIDANCE**

As part of the development of the guidance and in accordance with section 22(30) of the Police Reform Act 2002, the IPCC carried out a three month formal written consultation on the draft guidance. The consultation was carried out from 4 March to 27 May 2014. In total we received 27 responses to the consultation. These included responses from individual police forces, officer and staff associations, the Association of Chief Police Officers (now the NPCC), Police and Crime Commissioners, academics, lawyers representing families and complainants and individual members of the public. We are grateful to all those who submitted considered and helpful feedback as part of the consultation.

Generally, respondents accepted and agreed with the principle of the guidance: increasing the transparency of the evidence gathering process to promote public confidence and ensure effective and timely investigation.

A number of responses supported the measures set out in the guidance, stating that it would reduce the risk of conferring and collusion, increase public confidence and aid compliance with Article 2 of the European Convention on Human Rights.

Some responses expressed the view that the application of this guidance would cause officers to feel as though they were being treated as suspects and might lead to more officers saying nothing until they had sought staff association and legal advice and even then possibly declining to comment. It was also noted that there is no legal basis to prevent officers from leaving a post incident process when they are being dealt with as witnesses. The IPCC's view is that police officers and staff, as professionals and public servants, should cooperate fully with our investigations. For that reason, we have argued that police officers should be under a duty of candour during investigations, like healthcare professionals, and this is currently being considered as part of the reforms to the police complaints and discipline systems. When officers do provide a full initial account, this can be a positive benefit for them, as it may mean that they do not need to provide any further information to the investigation. Some stakeholders stated that the current staged approach to officers providing statements, as set out in APP, was preferable to the IPCC's proposed Detailed Individual Factual Account. The IPCC's experience is that many of the statements provided during the post incident process lack detail and that this impedes the progress of an investigation. In some cases, they simply confirm that

the officer was present and on duty at the time of the incident. This delays or constrains our investigation. Conversely, when we get detailed initial statements, this assists us in closing off an investigation speedily, which is to the benefit of all concerned, including officers.

Moreover, the less that is said in the initial account, the greater is the scope for contamination (or perception of contamination) of the detailed account, taking into account the unsupervised gap of 48 hours between the two accounts in the current process. There is conflicting scientific evidence about whether a 48 hour gap improves memory. The IPCC is not persuaded that there is sufficient evidence to outweigh the benefits of obtaining information at an early stage. In addition, the IPCC's guidance does not preclude officers from clarifying or providing further information at a later stage if they wish to add to their initial account.

The IPCC accepted feedback that there may be practical issues in applying the guidance, particularly in relation to separation. We therefore met some policing stakeholders to explore these practical issues. In the final draft, we have made clear that we still expect separation to be the default and preferred position. However, if this is not operationally possible straight away – the example often given is of a major and continuing terrorist incident - there are next best courses of action which forces can take. Forces will be expected to provide the rationale for the actions taken.

The IPCC was also able to take into account the Court of Appeal's observations and ruling in the linked judicial review applications of Pamela Duggan and Ryszard Delezuch. These applications challenged the lawfulness of post incident management of investigations into deaths that follow the use of force by police officers. The court considered the College of Policing Authorised Professional Practice (APP) guidance on post incident management and the draft guidance that the IPCC had released for consultation. While the court held that the APP guidance was lawful the judgment held that it left open a greater risk of collusion than the IPCC draft guidance.

At the time of writing, the IPCC's draft guidance is with the Home Secretary, awaiting her decision as to whether she will approve it as statutory guidance. There is no obligation for police forces to have regard to this guidance unless and until the Home Secretary approves it. The College of Policing APP remains the guidance which police forces will follow.

**IPCC**

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