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**A REPORT
FOR THE CHAIR OF THE IPCC
INTO THE UNAUTHORISED DISCLOSURE OF
MATERIAL IN RELATION TO THE FATAL
SHOOTING OF JEAN CHARLES DE MENEZES**

FOLLOWING AN INDEPENDENT INQUIRY

By

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1 Executive Summary

- 1.1 The Independent Police Complaints Commission (IPCC) investigation into the fatal shooting of Jean Charles De Menezes is the most significant case yet undertaken by the organisation. The confirmation of an unauthorised disclosure of information to ITN (Independent Television News) from within the IPCC inevitably raised concerns about the efficacy of the systems in place to handle sensitive and protectively marked material and the mechanisms used to prevent and detect such risks. The disclosure created a high degree of reputation risk for the organisation.
- 1.2 An internally driven inquiry into the disclosure was established immediately and made quick progress in identifying credible evidence showing that the principal source came from within the IPCC. Ten days later the appointment of an independent lead for the inquiry brought about a re-think on the nature and direction of the inquiry, in particular, the introduction of a formal request for a police led investigation, which is still ongoing.
- 1.3 A generic review of the past and present events by the independent lead has resulted in a conclusion that mistakes were made in the analysis, approach and decisions taken in relation to the unauthorised disclosure. If the original decisions had remained unchanged they could have inhibited a proper inquiry to establish the truth behind the events.
- 1.4 Also, the review has concluded that some prevention measures and proactive action fell short of the high standard the IPCC sets and expects of those organisations it supervises. The cause of these failures was, in part, due to a combination of the IPCC being a new body; a lack of organisational preparedness and a degree of decision making naivety under the pressure of a media storm surrounding the fatal shooting and the unauthorised disclosure.
- 1.5 However, a readiness to acknowledge the weaknesses and shortcomings and a determination to learn from the events suggests a maturity within the organisation. Coupled with a strong desire to restore any loss of confidence felt by external stakeholders and its own staff the IPCC can emerge from this experience a more effective body.
- 1.6 A number of recommendations are made to deal with the gaps identified by the independent review. While human frailty suggests absolute prevention is unlikely to be achieved the recommendations introduce measures likely to inhibit future unlawful conduct by IPCC staff and strengthen the organisation's response to any future internal failures.
- 1.7 This independent inquiry was commissioned by and reports to the Chair of the IPCC, Nick Hardwick.

2 Introduction

- 2.1 The fatal shooting of Jean Charles De Menezes has provided the Independent Police Complaints Commission (IPCC) with the greatest investigative challenge since its formation. The initial delay in the IPCC assuming a responsibility for the investigation is not a matter for this inquiry but it is the case that the actual handover of materials was well organised and the investigation well advanced. The effectiveness of that transfer was due, in large measure, to the considerable past policing experience of the main participants. However, in order to ensure a proper level of effectiveness in all circumstances a recommendation is made in relation to re-visiting the protocol governing the handover processes.
(Recommendation 1)
- 2.2 The unauthorised disclosure from the IPCC of material very relevant to the De Menezes case dramatically heightened the investigative challenge by posing risks to that primary investigation, by raising questions about the efficacy of IPCC in handling sensitive (and protectively marked) material and by putting at risk the organisation's reputation. This occurred against the very significant backdrop of a worldwide media and public interest in the details of the fatal shooting. This latter focus is ongoing.
- 2.3 Initially the IPCC began an internally led inquiry into the unauthorised disclosure.
- 2.4 The introduction (ten days later) of an independent element (my appointment) into the inquiry was deemed necessary to demonstrate rigour, transparency and accountability and by extension a help to manage reputation risk. (See Annexe B for terms of reference). It immediately led to a recommendation for a change of direction and approach for the inquiry which was quickly supported and embraced by the IPCC senior management.
- 2.5 The most obvious impact of the 'independent dimension' was the introduction of policing powers to aid the inquiry (by the secondment of a Detective Chief Inspector) and shortly thereafter the separation of the inquiry into two distinct parts, namely
- 2.5.1 An investigation by Leicestershire Constabulary into possible criminal offences arising from the unauthorised disclosure; and
- 2.5.2 The continuation of the Independent Inquiry (by me) but with a more generic approach and a particular focus on the future. (See Annexe B for emended terms of reference).
- 2.6 This report does not concern itself with the detail of the investigation at 2.5.1 (which is still ongoing) save where generic issues have been identified that have a relevance.
- 2.7 The methodology for the generic report (paragraph 2.5.2) has been to have discussions with a range of people, some internal to IPCC, a number

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of external stakeholders with a clear locus in relation to the unauthorised release of information and some with a more general interest. (See Annexe C for a list of those persons) This report does not give a blow by blow account of the independent inquiry nor does it mention individuals by name (save where that is necessary for sensible reading of the report). It does not set out to apportion individual responsibilities or blame. It takes a view of what happened and suggests what should be done to secure improvements by way of learning – this approach being very much in keeping with the values espoused by the IPCC.

3 Conclusions

3.1 This inquiry (including taking account of the general points arising thus far from the investigation by Leicestershire Police) has concluded that

- 3.1.1 the unauthorised disclosure of information arose from an individual within the IPCC acting contrary to their duty and responsibilities – a straightforward but serious breach;
- 3.1.2 the organisation should have been better prepared to handle the challenge of this event;
- 3.1.3 there were shortcomings in the initial handling of the event;
- 3.1.4 there is work that can be done to inhibit the risks of future actions of this kind by IPCC staff;
- 3.1.5 by better preparation now any future allegations or suspicions of unlawful actions by IPCC staff can be tackled more effectively;
- 3.1.6 the IPCC have taken steps to initiate corrective/improvement action, including responding to some of the findings of this inquiry as they emerged; and
- 3.1.7 the recommendations suggested in this report (if accepted and implemented) will provide an enhanced level of confidence in the operation of the IPCC (within and outside the organisation).

3.2 The methodology for handling this report and the publication of it, in whole or in part, is a matter for the Chair of the IPCC who commissioned it. Some action may have to await the outcome of the two other pertinent investigations (Stockwell fatality and the specific unauthorised disclosure case being dealt with by Leicestershire Constabulary).

3.3 ***However I am satisfied that where failings or shortcomings have been identified the IPCC is wholly committed to making the changes necessary to secure improvement and that issues beyond their immediate remit will be supported and taken forward to others with the relevant locus.***

3.4 Although the unauthorised disclosure is a singular event in the short life of the IPCC it will not be the only occasion that the organisation is tested by internal failure but it will be stronger next time and that is the point at which to make judgements about how effective the IPCC is as a learning organisation.

3.5 This report now focuses on four specific areas.

- 3.5.1 The initial handling of the unauthorised disclosure.
- 3.5.2 How far that disclosure might have been prevented.
- 3.5.3 What might be done to inhibit further unauthorised disclosure.
- 3.5.3 Issues identified and progressed during the course of the independent inquiry.

4 The Initial Handling

4.1 The limitations of the initial handling by the IPCC of the unauthorised disclosure can be summarised as follows.

- The event was not properly identified and then managed as a critical incident. **(Recommendation 3)**
- The possibility that the unauthorised disclosure may have had the potential to be a serious crime was given too little credence.
- The consequence of not considering that a crime may have been committed created the potential for a loss of evidence (subsequent handling of the incident retrieved this position to a significant degree).
- The likelihood of an external third party involvement in any criminality did not receive appropriate attention.
- The opportunity to minimise the risk to others and the primary investigation by the use of an injunction or other legal remedy was not pursued rigourously enough. **(Recommendation 6)**
- The opportunity to manage reputation risk more effectively was not maximised.
- There was insufficient advanced planning in place in relation to the steps to be taken when or if an event involving IPCC staff might be a criminal matter. **(Recommendation 4)**

4.2 To a degree, the largely internalised initial response to the discovery of the unauthorised disclosure can be explained by the lack of a robust policy and contingency in relation to such an event (or its generic equivalent). In the absence of a clear process for critical incident handling, improvisation took the place of planned action, causing or at least encouraging a too inward looking approach. Where action was taken it was partial, too centred on disciplinary processes and considerations about the duty of care to staff to the detriment of the bigger picture.

4.3 Initial action in the 'Golden Hour' was mixed as regards quality and direction, putting at risk evidential gathering opportunities. In effect there were two 'Golden Hour' periods. The first when the information was initially broadcast by ITN and the second when there was convincing evidence that the unauthorised disclosure had emanated from within the IPCC. This situation is, in part, surprising given the role and experience thus far of the IPCC in relation to police complaint handling, albeit the organisation is only some nine months old in real time operational mode.

4.4 The above summation is not to be interpreted as a statement that 'nothing happened' when the unauthorised disclosure was broadcast on national

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television because that is far from the reality. Good early work led to the identification of lines for investigation, an internal inquiry was set up, some stakeholders apprised as appropriate and a number of options considered. The audit trail around these processes was less good than it should have been but that situation does not prevent this inquiry making a judgement about the action and discussions that did occur.

- 4.5 The IPCC did not act wholly in isolation in that they were, quite properly, in dialogue with the Metropolitan Police and the Home Office about aspects of the unfolding events. Also, others (individuals and representative organisations) had a locus in relation to the information being improperly disclosed to ITN and might have taken action to inhibit further publication. *That said the responsibility for the action (and any inaction) must rest squarely with the IPCC as the major victims of the unauthorised disclosure and, in effect, the principal source.*
- 4.6 The initial internalisation cannot be seen as improperly defensive as it derived more from the growing strains of a new organisation facing an unwelcome storm for which they were insufficiently prepared to manage effectively. That does not seek to excuse the situation as in the eye of that storm mistakes were made that were avoidable but it is an explanation that suggests that it is readily capable of remedy. The shortcomings in the early handling of the event are unlikely to be repeated if attention is given to the lessons learned and the recommendations in this report pursued early and with vigour.

5 The Issue of Prevention

- 5.1 Preventing the unauthorised disclosure of information from the IPCC would have been given a greater chance of success if the following had applied.
- If a reasonably diligent (but corporate) risk assessment had been made of personnel to be attached to the very important and sensitive Stockwell case then it is unlikely that the principal suspect would have been employed in the MIR. Events, demands and expediency have a part in influencing why this assessment was not done.
 - Better access control to, enhanced security measures within and keener supervision of the Major Incident Room (MIR) would have reduced but not eliminated the risk. **(Recommendation 2)**
 - The general security environment and a 'need to know' approach at IPCC HQ had been more challenging and less 'self enforcing'.
 - The handling of sensitive and/or protectively marked material had been more widely understood and rigorously enforced. **(Recommendation 9)**
 - The organisation infrastructure had been further advanced at an earlier point – including the provision of a well tested MIR and the positioning of many of the security measures now being pursued. That this was not the case because of decisions on priorities and budgets – some of which, as with any publicly funded organisation, is not wholly in the hands of the management.

5.2 In a number of respects the operation of and the standards applied to the operation of the MIR are consistent with what might be found in police forces. This is not surprising because the model is that which applies in policing and those operating it mainly come from that background. However each incident handled within an MIR needs to be risk assessed and, if appropriate, particular security measures introduced.

5.3 While self evident it is the case that whatever measures are put in place to prevent malpractice or unlawful behaviour the integrity and honesty of individual(s) is a pre-requisite for the effectiveness and security of the system. The IPCC must expect and anticipate that human frailty is within their ranks and will cause harm at some point in time. This should guide their thinking and preparedness.

6 Inhibiting further Unauthorised Disclosure

6.1 Plugging the gaps identified by this review represents the bulk of what needs to be done to improve future operating conditions for the IPCC. The recommendations cover this ground. Much of that which is required has either been put in place or steps have been taken to start that work. The pace of that momentum needs to be maintained and if possible accelerated.

6.2 However there are two specific steps which are not quite so self evident but need to be taken to strengthen the effectiveness of the IPCC. Taken together they will enhance external confidence, advance the capability of the organisation, and provide an endorsement of its values – without compromising its impartiality and independence.

6.3 The first is the creation of a specific offence (arrestable) for any member of the IPCC (irrespective of status) to disclose specified information improperly and without the requisite authority. This would remove doubt about what offence may have been committed where an unauthorised disclosure occurs and make the position of an individual's action (as against the organisation's role) unequivocal. It would recognise the importance attached to the duties of members of the IPCC and put them on a 'high moral and legal ground' with those organisations for which they have oversight responsibilities. It will clarify and simplify the investigation of any future allegation of unauthorised disclosure. **(Recommendation 5)**

6.4 The second is in some respects more difficult to articulate as the purpose might, at first sight, be seen as inappropriate or too risky for the IPCC. Independence is a cornerstone of the IPCC purpose and legitimacy. However there is a need to enshrine independence without causing an inappropriate isolation from those organisations for which it has oversight responsibilities.

6.5 Currently, there is considerable exchange and contact between policing and the IPCC at both a strategic and tactical level – outside the statutory

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requirements of an investigation. This includes the operation of an Advisory Board where other external organisations are also represented.

6.6 However in order to maintain effectiveness it may be necessary for the IPCC to look again at the level and nature of the relationship with policing. This is particularly pertinent in respect of joint training, maintaining awareness of each others methodologies for investigation, learning from each other and increasing the understanding of what independence means in practice – it cuts both ways. While not couched in the form of a specific recommendation it is suggested that this matter receives early management attention. (The thinking will also need to embrace the fact that IPCC will take on responsibilities for other organisations in 2006 namely HMRC (Her Majesty's Revenue and Customs), SOCA (Serious and Organised Crime Agency) and UKIS (United Kingdom Immigration Service).

7 Issues Identified and Progressed During Independent Inquiry

7.1 As part of the independent inquiry advice was offered on matters that should be progressed without waiting for the final report. This aspect was managed by the provision of a number of notes to the Chief Executive of the IPCC, Susan Atkins. For the obvious reason of security management they are not reproduced in whole in this report. However they are, in part, reflected in the recommendations and the essence of the notes can be summarised as follows.

7.1.1 Direction and approach to the investigation of the unauthorised disclosure.

7.1.2 Provision of resources and facilities to support the investigations.

7.1.3 Immediate actions to deal with a further (or similar) event.

7.1.4 Specific security issues at 90 High Holborn.

7.1.5 Comments on the detail of the security reviews established by IPCC.

(Recommendation 8).

7.1.6 Identified areas where specific protocols should be established.

7.1.7 Identification of training needs.

7.2 On receipt of the notes action was initiated by the IPCC and I have been able to monitor the progress. Much has been achieved but momentum needs to be maintained to ensure that where closure is possible this occurs as speedily as possible

7.3 A review of the general security environment and provisions raises the issue of whether the IPCC merits its own Departmental Security Officer (DSO). The latter is a designation given to an individual who is a part of the arrangements in place to manage the security of Government Departments. As a Non Departmental Public Body (NDPB) the IPCC looks to the Home Office to provide this over-arching cover and therefore share in a DSO's time. However, given the nature of the organisations the IPCC supervises now (and into the future), its regular possession of sensitive and classified material and recognising it faces targeting by organised crime the issue merits consideration. Despite its numerical size

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it is clear that the IPCC requires extensive and effective security against a variety of risks. Thus a recommendation to consider the appointment of a dedicated resource. **(Recommendation 7)**

8 Final Comments

- 8.1 The independent inquiry has concluded that there were failures and shortcomings, while recognising that much was done to investigate the unauthorised disclosure. The remedial steps have begun and the recommendations need to be implemented as a whole to secure the necessary improvements.
- 8.2 There are two major risks for the IPCC in achieving that improvement. The first is that not enough speed and effort is applied to the tasks identified in the recommendations. The second risk is that posed by the demands of the additional organisations for which they assume a responsibility in 2006 (identified at paragraph 6.6 above). These risks have an obvious degree of inter-dependence. Together they represent a significant challenge for the IPCC.

William Taylor

Annexe A

RECOMMENDATIONS

1 It is recommended that the current protocol addressing the handover processes for each of the three types of IPCC investigation is re-visited by ACPO and the IPCC to ensure that in the wake of operating experience the guidance is sufficiently comprehensive and effective. (See paragraph 2.1)

2 It is recommended that the IPCC take the initiative in inviting key Holmes users and organisations operating an MIR to early discussions on current best practice and how any gaps might be managed. (See paragraph 5.1)

3 It is recommended that Critical Incident Training for relevant staff is undertaken following adoption of an appropriate model. (See paragraph 4.1)

4 It is recommended that a protocol is developed with the police for handling the investigation of cases where it is alleged that members of the IPCC may have committed a criminal offence in circumstances arising from their duties and responsibilities. (See paragraph 4.1)

5 It is recommended that a specific offence (arrestable) is created for the unauthorised release of information by a member (temporary, seconded etc) of IPCC staff in relation to the IPCC role. (See 6.3).

6 It is recommended that the IPCC have in place a contingency to deal quickly with the application for Injunctions or other legal remedies as a 'tool in the box' for managing the integrity of their investigations. (See 4.1)

7 It is recommended that the question of a 'dedicated' Departmental Security Officer for the IPCC be considered – given that the information held, risks faced, threats to and the importance of the role performed is wholly disproportionate to the size of the organisation. (See paragraph 7.3)

8 It is recommended that the areas identified and accepted for inclusion in the security reviews already started are given due priority, resourced to secure the outcomes identified and formally reviewed by senior management on a monthly basis until the actions are discharged. (See paragraph 7.1.5)

9 It is recommended that a protocol is established between the IPCC and ACPO (and other relevant organisations) in relation to the handling of sensitive and protectively marked material. (See paragraph 5.1)

Annexe B – Terms of reference

Terms of reference for William Taylor

FATAL SHOOTING OF JEAN CHARLES DE MENEZES

DISCLOSURE OF UNAUTHORISED MATERIAL BY IPCC PERSONNEL

TERMS OF REFERENCE FOR INDEPENDENT INQUIRY

The inquiry will examine the unauthorised disclosure of material from the IPCC relating to the investigation into the fatal shooting of Jean Charles de Menezes and the effectiveness of the arrangements the IPCC has in place to prevent such unauthorised disclosure by

- 1) Reviewing the IPCC internal inquiry and findings to date
- 2) Overseeing the future work of the inquiry and in the light of the review referred to above directing new lines of enquiry and other matters as appropriate
- 3) Making recommendations on any criminal or disciplinary action as appropriate relating to any staff who may have been involved in the unauthorised disclosure
- 4) Making recommendations for any improvements necessary to prevent such unauthorised disclosure in future
- 5) Producing a report for publication and briefing Police, Home Office and other stakeholders as appropriate on the findings of the inquiry

The report to be submitted to the Chairman of the IPCC as soon as possible.

Revised terms of reference for William Taylor

Following on from your initial report and discussions it has been agreed that Leicestershire Constabulary will undertake an investigation into the possible criminal aspects of the unauthorised disclosure of material in relation to the shooting of Jean Charles De Menezes. This means that there is a need to change your terms of reference to the following.

‘To examine the policies, procedures and practices at the IPCC which are impacted by the unauthorised disclosure of material in relation to the shooting of Jean Charles De Menezes and make a report to the Chairman. The report will also be published and ‘key stakeholders’ are to be briefed.

To maintain an appropriate liaison with Leicestershire Constabulary (and their investigation) in order to inform the production of that report.

To make such interim reports that you consider necessary.

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Annexe C – List of persons

Internal to IPCC
IPCC Director of Corporate Services
IPCC Head of Facilities
IPCC MIR Manager London and S E Region
IPCC Director of Legal Services
Formerly Director of Investigations IPCC
Deputy Chair IPCC
Chief Executive IPCC
Chair IPCC
Senior Investigator IPCC
Acting Director of Investigations IPCC
Deputy Senior Investigator IPCC
Senior Lawyer IPCC
Investigator and PCS Representative London and SE Region IPCC
Receiver MIR IPCC London and SE Region
Director of Communications IPCC
Personal Assistant IPCC
Head of HR IPCC

External to IPCC
Deputy Commissioner Metropolitan Police
Clerk and Chief Executive Metropolitan Police Authority
President of Association of Chief Police Officers (ACPO)
Deputy Chief Constable Leicestershire Constabulary
Detective Superintendent Leicestershire Constabulary
Chief Constable British Transport Police and Chair of ACPO Crime Area
Head of Powers and Integrity PLPU Home Office
Acting Director of Policing Policy Directorate Home Office
Professional Standards Co-ordinator Superintendents Association
National Secretary Superintendents Association
Vice Chairman Police Federation
Chief Constable Gloucestershire – Chief Police Officers Staff Association role
Branch Secretary Durham Police Branch Unison
Assistant Commissioner Metropolitan Police