

**Respecting fundamental rights in the context of the fight against terrorism –  
an IPCC perspective.  
Presentation to Independent Police Complaints Authorities' Network (IPCAN)  
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Thank you for inviting me to speak to you today.

As you will all be aware, the United Kingdom has this year suffered the worst series of terrorist attacks seen on mainland Britain since 2005.

Four attacks, one in Manchester and three in London, have resulted in the tragic deaths of 35 men, women and children, including a police officer stabbed to death defending the House of Commons from attack.

Many more people suffered life-changing and serious injuries.

Five perpetrators of the attacks also died. One was the suicide bomber in Manchester and four were fatally shot by police officers in London.

And of course, we are not alone. There have been many such tragic deaths from incidents of terrorism, both in Europe and worldwide.

Terrorism presents us with many challenges. First and foremost: how to stop the attacks from happening; and how to tackle the radicalisation within our communities that induces some of our young people to condone and support the use of violence rather than democratic processes.

But terrorism also presents a wider challenge to all of us who support liberty, tolerance and human rights, the keystones of our post-war democracies.

Because the way that the state responds to the threat of terrorism may necessitate exceptional measures. Getting the balance right between enabling our security services to keep us safe and preserving the human rights that form the bedrock of our societies is crucial.

At a time when we look ever more to the police and the government to protect us and those around us, it is vital that we reaffirm our commitment to the fundamental freedoms and human rights that allow a liberal democratic society to thrive. We must never lose sight of what it is that we are striving to protect.

We, as police oversight and complaint bodies are fully engaged with this challenge. We should be sensitive to the public's understandable support for the actions of the

police in these terrible circumstances, and the risks that our police services face, but we must not shy away from our duty to scrutinise the deaths of individuals at the hands of the state – no matter what the circumstances.

So, we must ensure that our investigations accurately examine the police's use of force in these acute incidents; and that rather than undermining the police, as some claim, they serve to reassure the public that the police are accountable for their actions. Whatever the circumstances, the police cannot and do not have impunity – but we must ensure that they are treated justly and fairly, recognising the circumstances and risks to themselves and the public.

So here I will turn to the role of my organisation, the Independent Police Complaints Commission, which operates across England and Wales.

I will consider how we have responded in the aftermath of recent terrorist attacks; and answer the questions: how, in these horrific circumstances, are we assisting the state to fulfil its obligations under Article 2 of the ECHR?

And what challenges does fulfilling our statutory duties present?

We were established in 2004 and we operate independently from the police and from the government. Our primary purpose is to secure and maintain public confidence in the police complaints system. One of our most high profile responsibilities is to investigate serious and sensitive matters involving the police – chief among which are deaths and serious injuries resulting from contact with the police.

The state has to ensure an effective and independent investigation if a death may have been the result of its own actions, or failures to act. Following a death or serious injury to a member of the public, police forces must, by law, refer the case to the IPCC and we decide if the matter requires investigation.

The circumstances where members of the public die or are injured include pedestrians killed by cars involved in police pursuits, people who are in police custody for alleged criminal offences, and terrorists intent on or engaged in multiple murder. Nevertheless, our responsibility does not alter. The IPCC assists the state in fulfilling its obligations by independently investigating the circumstances of the incident, and whether the use of force by police officers was necessary and proportionate in the circumstances.

However, investigations following a terrorist attack pose particular challenges, as I will explain.

We are still notified straight away when someone is killed by the police during a terrorist attack, as we were in the Westminster and London Bridge incidents, and we

immediately start an independent investigation. But that does not mean that we immediately step in.

During a terrorist attack, it may not be clear whether it is a one off incident or part of a series of linked attacks.

It simply may not be possible for the IPCC to gain access to the site of the incident and speak to the officers involved straight away, as we would seek to do in normal circumstances.

The officers who fired the fatal shots may need to be immediately redeployed to another incident; they have a job to do and we would not wish to get in their way.

We therefore need to co-ordinate closely with the police who will inevitably have started a counter terrorism investigation.

We need to ensure that we obtain evidence without compromising each others' investigations.

For that reason, we have taken part in exercises alongside counter-terrorism officers and other agencies examining how we would respond in situations just like Westminster and London Bridge. And we and the police agreed a protocol that enables us to fulfil our responsibilities while allowing the police to fulfil theirs.

The protocol's overriding priority is the protection of the public and the preservation of life while both:

- Ensuring the effective investigation of terrorist activity by the police and bringing offenders to justice, and
- Enabling the maintenance of public confidence by supporting an independent, effective and timely investigation of the police use of force by the IPCC.

In both the Westminster and London Bridge investigations the protocol has served us well. The police have commended our approach, and we have been able to get full statements from the firearms officers involved.

Modern terror attacks in urban areas also have an added dimension. London is one of the most CCTV-covered cities in the world and nearly everyone now owns a smart phone. Police vehicles and police officers are often equipped with cameras.

While this can be very helpful in establishing events this footage can make its way into the public domain via social and traditional media and frame public opinion while the investigation is ongoing.

We have to balance the need for being true to our value of openness with the need to protect our investigation and its integrity.

Because of this, after initial statements declaring our involvement we tend to say little while an investigation is ongoing.

Before these attacks, our government committed to boosting the numbers of firearms officers to cope with the terror threat.

Senior police leaders repeatedly aired concerns that IPCC investigations could lead to a shortage of officers willing to carry firearms because, they claimed, we treat officers like suspects. They claimed that the response to terrorism would therefore be compromised. There have been calls for a strengthening of the law to protect firearms officers from prosecution – calls which tend to receive a more supportive hearing from the public when the terrorism threat is as tangible as it is now.

But the facts of our investigations don't bear out these concerns.

We always begin by investigating the incident and treating officers as witnesses, unless there is an indication they may have committed a criminal offence or acted in a way which would justify disciplinary proceedings. Only then would officers be put under investigation as individuals.

That has only happened three times from 27 investigations into police shootings since 2010. It is rare for our police to use firearms. In the year ending March 2016 there were 14,753 police firearms operations in England and Wales, out of which there were only seven incidents when police discharged firearms, resulting in three fatalities. There were six such deaths in 2016/17, the highest ever recorded by the IPCC. We almost always find that the use of lethal force was necessary and proportionate in the circumstances. And we have always found that to be the case in a terrorist incident.

But the post incident procedures – where those officers involved give us their initial accounts of what happened – could be improved.

Improvements that we believe would increase public confidence in our work and in policing.

We believe that key policing witnesses should be separated as soon as it is operationally safe to do so and not allowed to confer following an incident, unless this is necessary for the safety of members of the public or police; that they should provide personal initial accounts of what happened as soon as possible; and that they should not view body worn video footage before giving their initial accounts.

These recommendations are currently with the UK Home Secretary for approval and we await her decision.

So terrorism poses practical challenges to our work and reputational challenges in explaining our role to the public, who are naturally grateful for the protection provided by police officers.

But the wider response to terrorist actions also raises key human rights issues.

In the UK, as well as the IPCC, there is also an independent reviewer of counter-terrorism legislation.

He produces helpful annual reports monitoring use of counter terrorism powers and legislation by the police and other state agencies.

I would highlight one area of concern in those reports: police use of powers to question and detain travellers at airports, railway stations and ferry terminals.

Schedule 7 of the Terrorism Act 2000 allows such stops and for travellers to be detained and questioned, so they are known as Schedule 7 stops.

There is no 'reasonable grounds' threshold as there often is for police stops.

And this can clearly give rise to concerns about racial profiling.

In 2010, stakeholders raised these concerns with us and the effect they were having on ethnic minorities. Particularly on British Muslims.

We then investigated over 50 complaints about the use of these powers.

The police and the intelligence agencies were initially reluctant to share information with us. There was a concern we would disclose sensitive or secret information to the complainant.

Following an application for judicial review to the High Court, the IPCC and the Metropolitan Police agreed a consent order to allow us access to relevant background material.

In December 2012 we formally responded to a government consultation on the use of Schedule 7 powers making a number of recommendations based on what we had seen in cases:

- Travellers should be given a reason for being stopped
- Use of the powers should be consistent with current threat levels

- Travellers should be detained for the minimum time possible
- Travellers should be able to notify someone if detained for more than 15 minutes
- Formal detention rights should be considered after initial screening
- All examinations should be recorded and reviewed
- Officers using these powers should be trained and accredited
- There should be a more limited use of strip searches

In response to our concerns, and those of other review organisations, the legislation was amended and a revised Code of Practice was introduced.

A number of positive changes were made, including the reduction of the maximum period of detention, and the introduction of reviews of detention by senior officers.

While use of these powers declines each year, concerns remain.

These were highlighted by the then Independent Reviewer David Anderson QC in 2016:

There still remains no suspicion threshold for use of more intrusive powers and the Independent Reviewer has highlighted a general concern that the powers may be misused for counter espionage rather than counter terrorism.

The Reviewer has also suggested that there need to be better safeguards for sensitive information and clearer rules on data taken from electronic devices.

Again, there is a need for a balance: to give the security forces the tools they need to prevent attacks, without sowing the suspicion and fear amongst certain communities that strengthen the hand of those who would radicalise young people.

Schedule 7 cases highlight the challenges we face as an organisation.

The need for effective independent oversight of the police.

The balance between tackling terrorism and the need to protect the fundamental rights that terrorists seek to undermine.

Working alongside stakeholders and other regulatory bodies to enact change.

Terrorism legislation can be far reaching. It can impact heavily on public confidence in the police.

It can have lasting ramifications especially in minority communities.

As a policing oversight body, we play a key role in ensuring these powers are exercised effectively and proportionately.

In June, leaders of the legal profession, human rights advocates and the Independent Reviewer of Terrorism Legislation jointly wrote to the Times newspaper to argue against a watering down of human rights legislation. They wrote:

*“Human rights exist to protect us all. Weakening human rights laws will not make us safer.”*

I am convinced that our ongoing willingness to respect and protect human rights and freedoms, even in the face of violence, is the most effective way we can deny victory to the ideology of terror.

Thank you.