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

Foreword

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.

This guidance deals with the critical period immediately following a death or serious injury involving the police. It is crucial that appropriate steps are taken at this time to ensure that the investigation is able to fully establish the facts and that the opportunity to learn lessons is not missed.

We carried out a wide ranging consultation as part of the development of this guidance and received a great deal of detailed and helpful feedback. A response to the points raised during the consultation is available on the IPCC website.

This is a complex area. Police officers are empowered to use force, including in some circumstances lethal force, to protect the public. The IPCC recognises that there are circumstances where legitimate actions lead to injury or loss of life. However, this must be balanced against the ability of society to hold police officers to account for their actions and the ability of the police service to learn lessons to prevent future incidents and improve policing standards.

It is in the interests of all that the evidence gathering in these circumstances is transparent, capable of scrutiny and engenders public confidence. This guidance does not indicate a change in approach by the IPCC, in that police officers and staff involved in such incidents will continue to be treated as witnesses, unless and until the available evidence requires otherwise.

This guidance is not intended to prevent the police from carrying out their crucial role in protecting the public and dealing with crime. Article 2 of the European Convention on Human Rights requires the state to protect life, as well as to ensure an effective and independent investigation. The IPCC has always accepted that the need to protect life will necessarily affect some decisions such as when and whether it is operationally safe to separate officers in order for them to record their accounts, particularly in situations where there may be an ongoing threat. Where it is not possible to follow this guidance to the letter, appropriate steps should be taken to achieve the effects this guidance aims to achieve. The application of the guidance should also not prevent the welfare needs of officers and staff being addressed or their access to legal, staff association or medical advice.

Where the guidance is not followed the reasons for not doing so should be recorded as early as possible.

Whom the guidance applies to

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 or 26BA 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. If the people listed above do not follow the guidance, they need to have a sound rationale for departing from it. This rationale should be accurately recorded as soon as it is practicable to do so. Any failure to follow the guidance and the officer's rationale for not doing so may come under scrutiny in any future proceedings where the evidence-gathering process is relevant (for example an inquest or disciplinary proceedings).
3. 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 (DSI) 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 DSI matter comes to the attention of the police. If a complaint is made by a member of the public or conduct matter identified by the appropriate authority during the initial stages of handling a DSI matter, this guidance should continue to be followed.

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.

Definition of a DSI matter

A DSI matter means any circumstances (unless the circumstances are or have been the subject of a complaint or amount to a conduct matter) in, or as a result of which, a person has died or sustained serious injury and:

- at the time of death or serious injury the person had been arrested by a person serving with the police and had not been released or was otherwise detained in the custody of a person serving with the police; or
- at or before the time of death or serious injury the person had contact of any kind – whether direct or indirect – with a person serving with the police who was acting in the execution of his or her duties and there is an indication that the contact may have caused – whether directly or indirectly – or contributed to the death or serious injury. However, this sub-category excludes contact that a person who suffered the death or serious injury had whilst he or she was acting in the execution of his or her duties as a person serving with the police.

Section 12, Police Reform Act 2002

‘Serious injury’ means a fracture, a deep cut, a deep laceration or an injury causing damage to an internal organ or the impairment of any bodily function.

Section 29, Police Reform Act 2002

Duties to obtain and preserve evidence

4. Chief officers have a clear statutory duty to obtain and preserve evidence relating to DSI matters.

Where a chief officer becomes aware of a DSI matter relating to a person under his or her direction and control, the chief officer must take all such steps as appear to be appropriate for the purposes of Part 2 of the Police Reform Act to obtain and preserve evidence relating to the DSI matter.

This duty must be performed as soon as practicable after the chief officer becomes aware of the matter. The chief officer should continue to take the steps he or she thinks appropriate to obtain and preserve evidence until the chief officer believes it is no longer necessary to do so.

The chief officer must take any steps directed by the IPCC or local policing body to obtain or preserve evidence.

Paragraph 14B, Schedule 3, Police Reform Act 2002

5. 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. This guidance does not set out who exactly should carry out specified actions, this is to be determined by those present at, or aware of an incident.

Identification and preservation of all potentially relevant evidence and scenes

6. It is essential that attention and care is given to the preservation of all potentially relevant evidence as soon as is practicable. "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 an individual reasonably considers to have the potential to assist the investigation should be preserved.
7. 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.
8. 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.
9. While the police must act to preserve and control such evidence, except where paragraph 10 applies, they should not take any other actions in respect of its recovery, removal or analysis without the express agreement of the IPCC.
10. 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).
11. If a decision is taken in accordance with paragraph 10 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

12. 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.
13. 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 witnesses are not lost and their evidence will be available to the investigation. In order to achieve this, while awaiting the involvement of the IPCC, the police should seek to obtain the names and contact details of all potential witnesses together with a brief description of the nature of their evidence. Witnesses should also be advised not to discuss the incident in question.
14. 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 be relevant should also be carefully noted.

Identification and handling of key policing witnesses

15. The police should immediately identify the key policing witnesses to the death or serious injury.
16. 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;

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

- person serving with National Crime Agency.

Key policing witnesses

17. A key policing witness is anyone from the above categories who has had a significant involvement and/or witnessed, or claims to have witnessed, visually or otherwise, all or part of a death or serious injury, or events closely connected with it. This may include people who are indirectly involved for example a call handler or tactical firearms advisor. Steps should be taken to identify key policing witnesses at the outset. Further key policing witnesses may be identified as more information comes to light during the course of the investigation.
18. Unless there is any indication that a key policing witness may have committed a criminal offence or behaved in a manner which would justify the bringing of disciplinary proceedings, they should be dealt with as a witness. If at any stage during the investigation such an indication becomes apparent, this should be recorded as a conduct matter and a notice of investigation served.³

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. There is a risk that if officers discuss an incident their evidence could be contaminated, whether consciously or unconsciously. A truthful account may be doubted by a jury at a criminal trial or inquest where there has been extensive conferring. 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 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, save for the explicit purpose described in paragraph 21. The person giving this instruction should make a record of when it was given and the content of the instruction.
21. The only legitimate exception to this is where it is necessary for key policing witnesses to discuss the incident with each other because, and only to the extent that, it is necessary for the safety of members of the public or police

³ Paragraph 19B, Schedule 3, Police Reform Act 2002. See IPCC statutory guidance for additional explanation <http://www.ipcc.gov.uk/page/statutory-guidance>

officers. The extent to which such discussion has taken place, the justification for doing so and the content of that conversation, must be recorded by the key policing witnesses as soon as possible. Information that is relevant to the resolution of ongoing operational matters, should be provided to other police officers who are not key policing witnesses.

Ensuring that officers' accounts are not contaminated by other evidence

22. In order to achieve public confidence, police must demonstrate that they have taken steps to ensure that personal initial accounts (see below) provided by key policing witnesses have not potentially been contaminated by evidence from any other source (except indisputable factual information, see paragraph 33 below), or explain their rationale for not doing so.
23. The best way of achieving this is to keep key policing witnesses separate from the moment it is operationally safe to do so, until after they have provided their personal initial account and this should be usual approach subject to below.
24. If there are practical reasons which prevent key policing witnesses from being separated, alternative measures should be taken to ensure demonstrable integrity of their evidence and a transparent process. This may include for example prioritising the separation of certain individuals or using Body Worn Video to record the journey of a group of key policing witnesses from a scene to a post incident process. This guidance does not prescribe the alternative measures which should be taken. The most appropriate measures must be selected to fit the individual circumstances. This decision and the rationale for it should be recorded.
25. The separation of officers should not prevent their welfare needs from being considered or prevent them having access to support such as a colleague who was not involved in the incident, legal or medical advice.

Personal Initial Accounts

26. 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. 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.

27. Nothing in this guidance affects police officers' right to be provided with support by other people not involved in the incident, including the right to obtain legal advice, support from a staff association and medical advice.
28. 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 involved in a serious incident. Where a key policing witness has been examined by an appropriate health professional and certified as medically unfit to provide an account, they will not be required to provide an account until they are fit to do so.
29. Officers have 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 may be taken into account in the investigation and, where relevant, in any subsequent proceedings.
30. A personal initial account will be expected from each policing witness (unless medically unfit) 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 details⁴;
 - the officer's understanding of the nature of the incident, including any information they received before and/or during it
 - the role they played in relation to the death or serious injury, and/or related incident(s)⁵;
 - their decision making in respect of the incident or related incident(s), particularly when they have used force and/or have exercised any other police powers;
 - their recollection of the incident and/or related incident(s) (it should be their honestly held belief of the facts, and their reasons for holding such a belief, including what they did and what they observed others doing).
31. The objective of the personal initial account is to provide sufficient information to give a clear picture of all facts which may be relevant to the death or serious injury and to enable the investigating officer to analyse these accounts

⁴ 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. This is for the purpose of carrying out an effective investigation and does not prevent the chief officer of the force from making representations to the courts or coroner about anonymity in any proceedings.

⁵ Related incidents will include any relevant briefings and previous contact with or knowledge of the deceased or injured party.

in order to secure other potentially relevant evidence in the early stages of the investigation (such as retrieving forensic evidence from the scene of the incident). Key policing witnesses will have the opportunity to provide further accounts should they recall additional detail. They may refer back to the personal initial account when providing any further accounts. They may also be requested to provide further information in the form of witness interviews or further statements during the course of the investigation. However, if a first account is provided sufficiently clearly and the officer does not wish to add to it, there may be no need for further interviews or statements.

32. Following a death or serious injury, the officers involved should not view any BWV footage until they have completed their personal initial account in relation to the incident. There is a risk that watching BWV footage may affect, consciously or unconsciously, the recollections of an officer even about matters of perception, matters off camera and states of mind. The personal initial account should be based solely on the officer's own recollection of the incident, unaffected by anyone or anything else. The investigating officer will provide an opportunity for the officers to view the BWV footage at an appropriate time after personal initial accounts have been provided and once the BWV has been downloaded.
33. It is acknowledged that in some incidents officers will have been unable to make a contemporaneous note of their actions or decisions. In such cases, to assist with the compilation of their personal initial account, they may be provided with indisputable factual information, such as times taken from a CAD or details of any recorded commentary that they themselves gave during the incident.
34. The format of the personal initial account can be determined depending on what is most appropriate in the circumstances but may for example take the format of a statement written by the officer, a self-administered interview, a pro-forma with questions to guide the account or a written account taken by another officer who was not involved in the incident. Regardless of the format, the personal initial account should include all the relevant information.