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# **Briefing on the death of Ian Tomlinson**

June 2009

1. INQUEST is working with the family and lawyers<sup>1</sup> of 47 year old Ian Tomlinson who was caught up in the police response to the G20 protests while he walked home in the City of London on 1 April 2009. Alongside the provision of casework support INQUEST is conducting policy and parliamentary work on the issues arising from the death of Mr Tomlinson and its investigation. The events surrounding this death are profoundly alarming and raise questions about police powers, tactics and accountability.
2. This briefing is informed by our area of expertise – deaths in detention or following contact with state agents. As these deaths represent the most severe end of a continuum of police violence, incompetence, neglect and potential criminality, the lessons that can be learned from bereaved families and their representatives are particularly important.
3. INQUEST is concerned that the disturbing issues surrounding the death of Ian Tomlinson could have been swept under the carpet and the cause of his death dismissed as being from 'natural causes' without the benefit of the video footage and photographs that entered the public domain to challenge directly the police version of events.
4. The controversial circumstances surrounding Mr Tomlinson's death require robust, independent and transparent investigation. His death also raises wider contextual questions about:
  - a. The police planning, operation, command and control of the G20 protests;
  - b. the lines of accountability and control in relation to joint police operations;
  - c. the role of the Metropolitan Police Service (MPS) Territorial Support Group (TSG);
  - d. abuse of police powers including the use of excessive and unlawful force;
  - e. the police strategy of forcibly preventing people from leaving the area and the policy of containment known as kettling;
  - f. the police media strategy and their briefings preceding the G20 protests, during the day, and following Ian Tomlinson's death and how this affected police strategy and behaviour;
  - g. the inaccuracy of official accounts concerning the contact between police officers and Ian Tomlinson and the cause of his death;
  - h. The failure of the police to learn from the Metropolitan Police's shameful handling of the aftermath of the death of Jean Charles de Menezes;

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<sup>1</sup> Jules Carey, partner at Tuckers solicitors, London.

- i. the role of the Independent Police Complaints Commission (IPCC), including in relation to the media, and the process of investigating deaths following police contact.

## **Background**

5. Ian Tomlinson is the first person who has died in the context of a heavily-policed protest since the IPCC assumed responsibility in April 2004 for investigating deaths following police contact. There are a number of unique features regarding this case, not least the public scrutiny of police conduct through video/mobile phone footage and how it undermined the police version of events. There are, however, also striking similarities with deaths in police custody following the use of excessive force and the ability and willingness of the current investigation process to hold the police properly to account for misconduct.<sup>2</sup>
6. There is extensive information about the movements of Ian Tomlinson prior to his death (see Appendix 1).
7. Thirty years ago on 23 April 1979, Blair Peach died as a result of head injuries inflicted by police. He, along with thousands of others, was demonstrating against the National Front in Southall, west London. No police officer was ever charged or prosecuted in relation to his death which raised serious concerns about the use of excessive force and the lawless behaviour of police officers from the Metropolitan Police Special Patrol Group (the predecessors to the TSG) while policing the demonstration. The investigation into his death, conducted by Commander John Cass, has not yet been made public despite requests made to the Home Secretary and Metropolitan Police Commissioner.
8. INQUEST has written to the Commissioner requesting prompt disclosure of the Cass Report, as has the Chair of the Parliamentary Joint Committee on Human Rights. On 25 June 2009 at a meeting of the Metropolitan Police Authority the Commissioner agreed to the publication of the report into the death of Blair Peach subject to any legally necessary redactions. INQUEST and the family and friends of Blair Peach will be monitoring the progress of disclosure to ensure that it is prompt and that any redactions are legally justifiable.
9. There are evocative and disturbing parallels between Blair Peach's death and that of Ian Tomlinson given the public concerns about police conduct at the G20 demonstration. In particular the focus on the supervision and tactics of the TSG are eerily familiar. So too are concerns about the investigation processes following deaths in police custody and their effectiveness in holding police to account for misconduct and/or criminality. The investigation into Mr Tomlinson's death also must comply

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<sup>2</sup> See *INQUEST Response to IPCC Stock Take Consultation 2008* [www.inquest.org.uk](http://www.inquest.org.uk)

with the state's duty to protect life pursuant to article 2 of the European Convention on Human Rights.

### **The role of the IPCC**

10. Given that Ian Tomlinson died in the context of a heavily-policed and high profile demonstration that generated significant public interest, the failure of the IPCC to immediately instigate an independent investigation was an obvious error of judgement which the IPCC has refused to acknowledge. This has seriously undermined public and family confidence in the IPCC and the police complaints system more generally. Independence is vital to assuage public concerns about the police investigating themselves; precisely the reason why the IPCC was set up. As previous IPCC Commissioner John Crawley said, "how the IPCC addresses what may be increasing policing controversies associated with protest movements will be a critical test of whether it is worth preserving or is a failed model."<sup>3</sup>
11. The IPCC's failure to treat the police version of events with a healthy degree of scepticism or to probe police conduct is detrimental to its independence and credibility, particularly in light of the IPCC's lamentable track record.<sup>4</sup> The clear impression that emerged was that the IPCC and the Metropolitan Police sought to avoid an investigation into Mr Tomlinson's death by suggesting incorrectly that he had died of natural causes.
12. On 1 April 2009 the IPCC's London Regional Director agreed a Metropolitan Police press release that misleadingly failed to mention that there had been police contact with Ian Tomlinson before his death but did focus on the apparently exaggerated throwing of bottles by protesters at police administering first aid. Evidence quickly unfolded that seriously undermined the police's account of events, yet it took until 8 April before the IPCC instigated an independent investigation. That the IPCC subsequently sought to distance itself from the above press statement appears to confirm the troubling nature of the IPCC's initial collaboration with the police.
13. The family of Ian Tomlinson have concerns about how long it took before the IPCC took over the investigation and that the IPCC found itself at best reacting to events and at worst simply observing them. The Metropolitan Police assumed responsibility for forensic analysis of the scene and conducting the investigation initially. This was even though the MPS notified the IPCC that there may have been some contact between Ian Tomlinson and the police approximately one hour after he had died. The MPS referred the investigation to City of London Police in the early hours

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<sup>3</sup> 'The worst of all outcomes' John Crawley, *The Guardian*, Wednesday 8 April 2009

<sup>4</sup> National Audit Office. *The Independent Police Complaints Commission - Report By The Controller and Auditor General* HC 1035 Session 2007-2008, 14 November 2008

of 2 April. The City of London Police completely failed to persuade the Tomlinson family of its impartiality, not least when they were told by an investigating officer that he was not ruling out the possibility that the alleged assailant may be a member of the public dressed in police uniform. The IPCC were, the family has been told, carrying out "an assessment" until 6 April when they finally determined the mode of investigation should be one conducted by the City of London police and managed by the IPCC. This mode of investigation was reviewed and an independent investigation started on 8 April. The family have been dismayed by the delays in identifying the officer who apparently struck Ian Tomlinson in the video and interviewing him and his colleagues.

14. The family have expressed concern about the apparent delay of the IPCC in seizing MPS and City of London Police video footage of the incident. This was compounded by the fact that the chairman of the IPCC, Nick Hardwick, said on Channel 4 News that there was no CCTV of the incident and that there were no cameras in the location where Ian Tomlinson was assaulted. The family continue to meet the IPCC for periodic updates but are routinely advised that little can be disclosed to them on account of the ongoing investigations. As a result the IPCC have so far failed to instil confidence in the family.

### **Police planning and operation of the G20 protests**

15. It has been widely reported that prior to the G20 protests there were oral and written briefings by commanders that may well have informed officers' conduct on the day. *These oral and written briefings need to be examined alongside the command structure, briefings and orders given during the course of the day.*
16. It is reported that Commander Bob Broadhurst who led the operation spoke of possible violence by protesters, and in a briefing to the press on 26 March 2009 Commander Simon O'Brien said: "We are up to it and up for it." *There needs to be a review of these written and oral statements and what this said about the mindset of senior police management and how this was translated in guidance to officers on the ground.*
17. It appears that at a particular time in the evening and immediately preceding the assault on Ian Tomlinson an order was issued to clear out the Climate Camp protesters and a number of other areas. *There needs to be a review of this order and what was said about the use of force and related guidelines.*

### **The role of police in surveillance and intelligence gathering**

18. We are also concerned to learn more about the role played by Forward Intelligence Teams (FIT), plain clothes police officers and British Transport Police officers in the intelligence operation during the G20 protests and

who was responsible for their conduct. Their involvement must be the subject of proper scrutiny.

### **The role of the Territorial Support Group**

19. Serious concerns are raised about the constitution, role, training and management of the TSG and we are aware that a number of officers have been identified as being involved in alleged assaults during the G20 protests. Camera and CCTV evidence which has emerged since the death has highlighted what appear to be wholly unprovoked or excessive assaults with complete disregard for the public or cameras surrounding them.
20. We note that in the recent case of Babar Ahmed the Metropolitan Police Commissioner accepted liability for assault after a pattern of allegations emerged about TSG officers from a particular unit. The *London Evening Standard* reported on 13 May 2009 that a total of 283 TSG officers had been investigated over 547 allegations of misconduct during the last year. Of these, 159 allegations were of assault.
21. As of 10 June the IPCC have received 276 complaints in relation to the policing of the G20 protests relating to both police tactics and use of force.
22. *The cumulative effect of the past conduct and record of TSG officers, and of the impact of the internal disciplinary procedures following complaints, needs to be addressed and open to public scrutiny as do any recommendations made to the Metropolitan Police and their implementation.*

### **Events following the death of Ian Tomlinson**

23. It appears that many of the initial decisions about the investigation of Ian Tomlinson's death were taken by the MPS, City of London Police and the City of London Coroner. Particular concerns relate to:
  - a. misleading statements made by the Metropolitan Police Commissioner and City of London Police immediately following the death and the content and timing of these;
  - b. responses to the 999 call made by a member of the public and whether police officers prevented the ambulance from getting through;
  - c. what information was originally given to the IPCC by the City of London Police and MPS and its accuracy;
  - d. the decision-making process within the IPCC that led them to choose not to instigate an independent investigation;

- e. the employment of the City of London Police in key evidence-gathering roles by the IPCC in its initial managed investigation starting on 6 April 2009;
- f. the failure of the IPCC to initiate an independent investigation until 8 April 2009, seven days after the death, leading to the potential for the loss, suppression and/or distortion of crucial forensic evidence in the 'golden hours' following Mr Tomlinson's death;
- g. the identity of the person who made the decision to identify Ian Tomlinson from his fingerprints and not to seek identification from the family;
- h. the identity of those who decided to refuse the family access to his body for six days, and after the post mortem had been completed;
- i. the reason why the City of London Police failed to inform the family of their rights to seek independent advice or to provide them any advice booklets or to notify them of the availability of free, independent, specialist advice from our charity, INQUEST;
- j. the role of the pathologist Dr Freddy Patel who conducted the first post mortem, including: the decision to instruct him; what he was told about what had happened to Mr Tomlinson; and who else was present at the post mortem;
- k. the failure of the City of London Coroner to inform the family of the fact that a post mortem examination was being carried out and of their right to attend;
- l. the refusal of the coroner to allow the IPCC to attend the first post mortem and on what basis was this decision made;
- m. the decision to place into the public domain the findings of the first post mortem that Ian Tomlinson died as a result of a heart attack and the failure to mention other injuries, including blood in his abdomen - thus reinforcing the police narrative that he had died of natural causes;
- n. after the first post mortem was disclosed on 3 April 2009 the IPCC reported that the MPS "maintained" that there had been no contact with Ian Tomlinson. Who maintained this and is there a written record?;
- o. the failure by the MPS and the IPCC to correct the false information put into the public domain regarding the assault on Ian Tomlinson.

## **Misinformation**

24. After working with families bereaved by deaths following police contact for 30 years it comes as no surprise to INQUEST that the initial reports of the death of Ian Tomlinson were at best partial and at worst an attempt to deflect attention from the potential wrongdoing of police officers.
25. The family of Ian Tomlinson is concerned about information that has entered the public domain via the press and that much of it appears to have been given to the press by public authorities.
26. This kind of misinformation and spin has been a feature of other contentious deaths in custody where we have seen concerted attempts by the authorities to deflect attention away from official incompetence or wrong doing. Four hours after Ian Tomlinson's death the Metropolitan Police issued a statement announcing the death, which included the claim that police officers administering first aid were impeded by protesters throwing missiles. These allegations are strenuously denied by protesters who had gone to his aid and called an ambulance.
27. Many bereaved families INQUEST works with describe feeling that their loved one is under investigation, rather than the police or other officials. Family members' private lives and that of their relative are often subjected to intense scrutiny in an attempt in order to smear the deceased and deflect attention away from those who may be responsible.
28. This pattern further underlines the importance of a robust and immediate independent investigation. There is an obvious risk that if police officers (who may be motivated towards protecting their own) have conduct of the early stages of an investigation their approach may taint this process.
29. The matter of misinformation is now the subject of formal complaint by Ian Tomlinson's family and a second IPCC inquiry into media handling by the MPS and City of London police.

## **The failure to involve the IPCC immediately after the death**

30. It is now a matter of record that the coroner sought to prevent the early involvement of the IPCC in the investigation into Ian Tomlinson's death by refusing to allow them access to the first post mortem examination. Whatever occurred in relation to the IPCC's initial understanding of the events of Ian Tomlinson's death, operational control did not pass to the IPCC until seven days after his death and five days after the findings of the first post mortem were disclosed.
31. One of the most long-standing complaints we receive from families of those who lose their lives in custody is the failure to investigate deaths following the use of force on the basis that a potential crime may have

been committed. This has been a major cause of lack of public confidence in the police complaints system. The task for the IPCC in the aftermath of a contentious death following police contact is clear: to immediately begin an independent, effective, accountable, prompt, public and inclusive investigation so that the rule of law is seen to be upheld and applied equally to all citizens including those in the police uniform. Without this there can be no hope of public confidence, not least in the aftermath of a heavily-policed protest and the abundance of camera and CCTV evidence of excessive force by police officers.

32. The fact that the IPCC was unable to take immediate control of the potential crime scene or indeed to have any input at all during the golden hours and early days of the investigation means that the suspicion of a cover-up will always linger. This is detrimental to public confidence even if that suspicion is ill-founded. There are ongoing concerns about the seizure and preservation of evidence and the need for prompt interviewing of witnesses, in particular of police officers.

### **The treatment of Ian Tomlinson's family**

33. We have specific concerns that:

- a. The family were not informed about the death until over nine hours following the death. There is no conceivable reasonable explanation for this delay;
- b. That the first post mortem examination was conducted on behalf of the coroner on 2 April 2009 before the family were advised that it was going to take place. A sergeant from the City of London Police was present at this post mortem;
- c. The pathologist instructed by the coroner was Dr Freddie Patel, who was discredited following his conduct over the death of Roger Sylvester (who died following police restraint) for speculating about cocaine use by Roger to press reporters at the opening of the inquest - a matter for which he was reprimanded by the General Medical Council. Experienced pathologists who conduct post mortems into cases of death in custody have been more cautious about including untested police versions of the events leading to a death in their report prior to the outcome of any investigation.

34. Deaths in custody and following police contact have been a source of tremendous pain and anger for citizens throughout this country, not just Londoners. Public confidence in the police must not be undermined by any suggestion that the rule of law should not apply in relation to police officers. The stark fact remains that an innocent man died after being assaulted by police.

35. It is imperative that the conduct of policing in England and Wales is demonstrably compliant with the law, including human rights law. Police officers in England and Wales cannot operate with impunity. The level of public disquiet about the conduct of some police officers during the G20 protests was directly related to the public availability of visual evidence. However for groups who have been subject to repressive policing such as people from BAME communities, trade unionists and protesters, allegations of police harassment and misconduct and excessive use of force come as no surprise.
36. The role of politicians and their constituents is to scrutinize and ultimately make informed decisions regarding the policy framework in which the police make vital operational decisions. It is undemocratic and sets a very worrying precedent for the police to be allowed to perform those functions unchecked. Concerns about police accountability mechanisms still exist thirty years after the death of Blair Peach. INQUEST will continue to raise critical concerns, insist on rigorous scrutiny of police conduct and support the family of Ian Tomlinson in their quest for justice.

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## Appendix 1 – Ian Tomlinson's movements on 1 April 2009

1. Ian Tomlinson was a much-loved father, grandfather and husband. Despite his struggles with alcohol problems that drove him away from home, he always remained committed and loving to his family and they remained loving and supportive to him.
2. Media accounts, video footage and observations of the family of Ian Tomlinson show that he left Monument underground station, where he was assisting an *Evening Standard* newspaper vendor called Barry, at about 7pm to make his way home. He was first blocked at the top of King William Street by a line of police officers. He can be seen talking with police officers and pedestrians before sitting on a wall by some railings. He then made his way down Lombard Street before being stopped by a second line of officers. He then attempted to navigate his way through Change Alley, where he apparently encountered a third police road block where he was turned away. Video footage shows Ian Tomlinson coming out of Change Alley and crossing Cornhill and making his way into Royal Exchange. The video shows Ian Tomlinson as sure-footed, weaving in and out of the crowd. He clearly knew the area and short cuts well. Despite there being public record of Mr Tomlinson's battle with alcoholism there is nothing in the way he moved towards Royal Exchange to suggest that he was the worse for wear. He made his way up Royal Exchange and video footage shown by Channel 4 News shows him in Royal Exchange standing still by a cycle rack as a line of police officers sweep down Royal Exchange from Threadneedle Street. In the Channel 4 footage it looks as though Mr Tomlinson is standing motionless as the police line approaches.
3. The video footage and photographs released to *The Guardian* newspaper show the last moments of Ian Tomlinson alive. The footage shows that the officers did not sweep past Mr Tomlinson. They show him walking away from the officers with his back to them and his hands in his pockets. The line of officers included Metropolitan Police officers, officers from the Territorial Support Group (TSG) as well as City of London Police dog handlers. On the video footage the dogs can be seen to go for Ian Tomlinson on at least two occasions. Ian Tomlinson did suffer an injury to his right calf which may prove to be evidence of a dog bite. The video then shows an officer in a riot helmet holding a raised asp (police baton) approach Ian Tomlinson and apparently strike him before violently pushing him to the ground. No officers went to Ian Tomlinson's assistance. A bystander helped him to his feet. Video footage shows Ian Tomlinson staggering away from Royal Exchange Passage along Cornhill clutching his side looking dazed. Photographs record that he does not make it far down Cornhill before he collapses.

## Appendix 2 - INQUEST

1. INQUEST is unique in working directly with the families of those who die in all forms of state custody - in which we include deaths in prison, young offender institutions, immigration detention centres, Mental Health Act detention, and in police custody or while being detained, pursued or shot by police.
2. We have accrued a unique and expert body of knowledge on issues relating to deaths in custody and seek to utilise this towards the goal of proper post-death investigation and the prevention of custodial deaths. INQUEST has been at the forefront of working alongside bereaved people to bring the circumstances of the deaths into the public domain and under public scrutiny and to hold the relevant authorities to account. We have reported our concerns about custodial deaths and their investigation at a national and international level.<sup>5</sup>

## Appendix 3 – the INQUEST Lawyers Group

1. The INQUEST Lawyers Group supports and advances the work of INQUEST in three main ways:
  - a. It is a national group of lawyers that provides preparation and legal representation at coroner's inquests for bereaved people;
  - b. It promotes and develops knowledge and expertise in the law and practice of inquests, provides training, and acts as a forum for the exchange of ideas and experience;
  - c. It campaigns for law reform and for public funding to cover legal costs for bereaved people at inquests.
2. INQUEST and the INQUEST Lawyers Group publish the journal *Inquest Law* three times a year which informs practitioners about recent legal and policy developments relating to the inquest system, the investigation of sudden deaths and related areas.

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<sup>5</sup> Helen Shaw and Deborah Coles, *Unlocking the Truth – Families' Experiences of the Investigation of Deaths in Custody*, INQUEST 2007.