



## **MEMORANDUM OF UNDERSTANDING**

### **BETWEEN THE SPECIAL CRIME DIVISION OF THE CROWN PROSECUTION SERVICE (SCD) AND THE INDEPENDENT POLICE COMPLAINTS COMMISSION (IPCC)**

#### **Introduction**

1. This Memorandum of Understanding (MOU) sets out some broad guidance as to how the IPCC and SCD will work together to provide a high quality and robust public service. Detailed guidance on the processes to be followed by both parties to this MOU will be set out in separate documents.
2. This MOU replaces all previous agreements between the IPCC and SCD.
3. Each party shares the desire to protect and develop the independence of decision making by their respective offices but recognises the need to work together in order to provide an effective public service and the benefits of a co-ordinated approach.
4. This MOU does not cover the referral of IPCC casework that is handled by other parts of the CPS.
5. In exceptional situations, standalone arrangements between the IPCC and the CPS may be made outside of this MOU to reflect the requirements of a specific investigation.

#### **Principles**

6. The working arrangements between the IPCC and the SCD are informed by the following core principles:

- Mutual respect for each other's independent roles and functions.
- Efficient working practices, systems and processes require co-ordination to ensure that they are consistent and supportive.
- Continuous improvement requires regular review and regular dialogue.
- Early engagement and robust case progression support the delivery of a high quality service as an investigative and prosecution team.
- Both parties will have regard to the resource implications that changes within their own organisation may have on each other.
- Both parties will seek to maximise the opportunities to develop practices that involve electronic working.
- Both parties recognise that reducing delay during the progression of cases will help to raise the confidence of bereaved families, complainants, subject officers and the public generally.

## **Roles**

### **The CPS**

7. The CPS is responsible for prosecuting the majority of criminal cases investigated by the IPCC and other investigative agencies in England and Wales. The role of the CPS is to prosecute cases firmly, fairly and effectively when there is sufficient evidence to provide a realistic prospect of conviction and when it is in the public interest to do so.
8. SCD is responsible for prosecuting and assisting the prosecution of a range of the most sensitive and specialised cases within the CPS. The criteria for referral of cases to SCD are set out in Annex A to this protocol.

### **The IPCC**

9. The IPCC oversees the police complaints system in England and Wales and sets the standards by which the police should handle complaints. It is an

important principle of the way in which the IPCC operates that its decisions are entirely independent of influence by the Government or police forces.

10. The IPCC is also responsible for investigating serious incidents, complaints and conduct matters relating to police officers, police staff and contractors as well as staff at the National Crime Agency (NCA), Her Majesty's Revenue and Customs (HMRC) and Home Office immigration and enforcement staff, Police and Crime Commissioners, their deputies, and other bodies
11. It is the statutory responsibility of the IPCC is to secure and maintain public confidence in the police complaints system.

#### **Early notification of cases**

12. The IPCC will assess whether the matter is one that requires early notification to SCD in accordance with this MOU and will ensure that the matter is notified within agreed timescales.
13. Early notification will alert SCD to cases that may be referred by the IPCC or where early advice may be required. It is also an opportunity for early discussion to take place between SCD and the IPCC on the handling of cases.
14. The purpose of early notification is to encourage the IPCC Lead Investigator and the CPS reviewing lawyer to enter in to dialogue on the following topics:
  - To ascertain the brief known circumstances of the case from the outset.
  - To decide whether an early face to face meeting or other consultation should take place to provide early investigative advice.
  - To agree a timetable for the provision of the relevant evidence or a timetable for updates.And in cases involving a death in custody,
  - to discuss the appropriate timing of initial contact between the CPS and the bereaved family.

#### **Cases involving a death in custody or summary-only offences**

15. Article 2 ECHR cases are some of the most difficult and sensitive cases dealt with by the IPCC and SCD and require exceptionally careful handling and management.
16. Where cases involve potential summary only offences there is a need to adopt a co-ordinated approach on those cases from an early stage to ensure that all relevant decisions can be taken before the expiry of the summary time limit. In particular that:
  - the case papers are provided to the SCD lawyer 20 working days before the expiry of the summary time limit to allow the SCD lawyer to review the evidence and decide whether a prosecution should be commenced in relation to the summary only offences (even if there is an ongoing investigation in to other indictable offences), and
  - sufficient time is allowed for the complainant and/or family of the injured or deceased person to exercise his or her rights under the CPS's 'Victim's Right to review' policy.
17. Consequently, where investigations fall within paragraphs 15 or 16 and SCD's referral criteria (as set out in Annex A) the IPCC lead investigator will notify the relevant Unit Head in SCD of the existence of the investigation by email within 5 working days of the mode of investigation decision being taken, unless it is clear from the outset that no prosecution is likely to follow. The SCD Unit Head who receives that notification will decide whether it is appropriate to appoint a reviewing lawyer and if so will provide their name and contact details in writing to the IPCC Lead Investigator within 5 working days thereafter. If the relevant SCD Unit Head decides that it is not appropriate to appoint a lawyer at that time the IPCC lead investigator will be notified by email within 5 working days and any issues should be addressed to the relevant SCD Unit Head until such time as a reviewing lawyer is appointed.
18. Also, in cases involving a death in custody, the IPCC lead investigator and SCD reviewing lawyer will,

- hold an initial meeting within 20 working days of the notification of the case to SCD, and
- the SCD lawyer should contact the bereaved family within 10 working days thereafter to provide their contact details and an explanation of the SCD enhanced service to bereaved families in Article 2 cases..
- However both of the above steps can be delayed if it is agreed by the IPCC lead investigator and the SCD lawyer that those steps are not appropriate at that time. The reasons for not taking those steps should be agreed in writing, which can be by email.

### **Early advice during the investigative phase**

19. IPCC investigations, and any subsequent prosecution decisions, in relation to serious, complex or sensitive cases are likely to be enhanced by appropriate consultation between IPCC investigators and SCD lawyers.
20. The primary purpose of early investigative advice (EIA) is to engage early SCD input in order to:
  - build cases that are more likely to succeed;
  - reduce the time taken to bring them to court; and
  - indicate which cases are unlikely to succeed;

all through a more focussed and proportionate approach.
21. Where the IPCC investigation raises potential criminal offences in cases that do not fall within paragraphs 15 and 16, the lead investigator will need to decide whether early engagement with SCD is required.
22. Consultation will be important when a case being criminally investigated has any of the following features:
  - a death
  - a rape or other serious sexual offence
  - a Covert Human Intelligence Source,
  - evidence from a potential accomplice,

- a protected witness,
- highly specialist or unusual expert evidence,
- complex or sensitive disclosure issues,
- serious, or complex or unusual nature of the possible criminal offence.

23. Consultation may take place at any stage during the course of an investigation. Whilst the provision of EIA does not require the submission of a full evidential package, any investigator seeking advice must provide the SCD lawyer with sufficient evidential material to allow the lawyer to provide informed and accurate advice.

24. EIA can be sought from SCD on:

- Lines of enquiry.
- The legal issues that are apparent in the case and their consequences.
- Potential offences that may have been committed.
- Emerging evidential issues.
- Instruction of experts and terms of reference.
- Disclosure.
- Any other matters that fall within the remit of the prosecutor.

25. Advice on matters outside the remit of the prosecutor, such as the exercise of the duties or powers of the IPCC should be sought from the lawyers employed by the IPCC. Investigators must consult with an IPCC lawyer or other member of the legal team prior to seeking EIA from SCD to ensure that advice is sought from the appropriate source.

26. SCD lawyers will not direct the course of a criminal investigation and such matters remain decisions for the IPCC to make. Advice from a CPS lawyer that an IPCC investigation is unlikely to lead to a prosecution should be given appropriate weight when the IPCC determines whether a criminal offence may

have been committed and whether it is appropriate to refer the case to the CPS.

27. An appropriate written record of the issues discussed and any advice provided during meetings or telephone calls between the IPCC investigators and the SCD lawyer must always be prepared and shared with both parties. The written record may take the form of an electronic document or email but both parties should ensure that the record is agreed at the time it is made.
28. Requests for EIA from the IPCC to SCD will be acknowledged and a timetable for the provision of that advice agreed with the IPCC within 10 working days of the request being received.
29. Whenever IPCC investigators submit a request for EIA the investigator should set out in writing what advice is sought and whether that advice is sought in a case conference or in writing.

#### **Case progression reviews**

30. Whenever a case is notified by the IPCC to SCD in accordance with this MOU or otherwise referred to SCD for a charging decision in accordance with paragraph 20 of Schedule 3 of the PRA 2002, the IPCC investigator and SCD lawyer must provide regular updates to each other. During the investigation phase the investigator should provide an update report by email to the SCD lawyer at least once every month. In addition, the SCD lawyer and investigator should meet face to face at least every three months to fully review the progress of the case and to ensure that delay is being minimised.
31. A face to face meeting need not take place every three months if both the IPCC investigator and the SCD lawyer agree that delaying the meeting would be reasonable given the circumstances of the investigation.
32. After provision of evidence for early investigative advice by the IPCC the SCD lawyer will provide written advice within 20 working days from the date of the request or, if that advice cannot be provided within that time frame, a date by

which it will be provided and if necessary a progress update at least once a month.

#### **Submission of cases for a charging decision**

33. Upon completion of an IPCC investigation the Commission Delegate will decide whether there is an indication that a criminal offence may have been committed and if so whether it is appropriate to refer the case to SCD. If their conclusion is that it is, the IPCC will formally refer the case in writing to SCD within 10 working days of the decision being made.
34. If the Commission Delegate refers a case to SCD in accordance with paragraph 33 they will do so in writing setting out who it is considered may have committed an offence and what they consider those offences to be. The SCD lawyer appointed to the case will nevertheless consider whether the Full Code test is met in respect of any offence that they feel is apparent from the evidence supplied by the IPCC.
35. The SCD lawyer will provide a charging decision within 20 working days of the submission of a complete file. If the SCD lawyer considers that further information is required, the 20 working day period will run from the date the requested material is provided. If the SCD lawyer is unable to provide the charging decision within 20 working days he/she will provide a written update to the IPCC investigator each month.
36. In any case where the IPCC refer a case to SCD for a charging decision before the IPCC final report has been prepared the IPCC will provide a written explanation of the exceptional circumstances that apply.

#### **The form of file submissions**

37. File submissions from the IPCC to SCD should comply with the National File Standard.



38. If a case is to proceed to court, the prosecution file must be proportionate to the requirements of that hearing whilst at the same time providing the lawyer with sufficient information to be able to conclude the case if there is a guilty plea. It must also enable the lawyer to conduct an effective case management hearing if a not guilty plea is entered. The National File Standard provides for a staged and proportionate approach to preparation of case files.

### **Compliance with the Criminal Procedure Rules and the Better Case Management process**

39. Compliance with both the Criminal Procedure Rules and the Better Case Management principles is obligatory in 'volume crime' cases for both the CPS and the IPCC. Both parties agree to actively assist each other to meet their obligations. The steps required to comply with these obligations will be set out in Annex C.

### **Media**

40. The IPCC deals with a number of cases that require liaison with the CPS. The cases which require this level of liaison are likely to be the subject of significant public and media scrutiny.
41. The key principles that should underpin IPCC and CPS media liaison are as follows:
- A commitment to sharing press lines and public statements on cases of mutual interest before such lines and public statements are given to the media and/or other parties and with sufficient time for representation to be made if necessary
  - Both organisations will maintain independence and ownership of their own lines. However, where necessary both the IPCC and the CPS, having shared lines, will consider carefully any potential issues that might have a significant impact on the investigation/case or organisation.
  - Absolute confidentiality will be maintained of any charging decision made by the CPS prior to it either being made public by the CPS, or agreement

from the CPS that the IPCC can make it public in a press release or to any person by a member of IPCC staff.

42. Where there is to be a public announcement regarding a charging decision the CPS will notify the IPCC, the appropriate authority and interested parties of the date their decision will be announced. This will allow for support and handling arrangements to be put in place.
43. At any stage in the investigation the IPCC may consider drafting and publishing an early statement containing findings of the investigation where:
- Significant media interest and public awareness of the incident or complaint leading to the investigation has already been demonstrated; and
  - Initial investigation has yielded evidence which can be the basis for clear and incontrovertible statements as to relevant facts.

In such cases the IPCC will consult with the CPS press office about the potential prejudicial effect of any such statement before it is published.

44. There will be a pressing need to consider such a statement where there is information already in the public domain or likely to reach it and which needs to be corrected in the public interest.
45. When the IPCC refers a case to SCD, it may choose to announce this action, as an outcome of the IPCC investigation. Such a statement should not raise expectations that any charge will necessarily follow. In order to make this clear, all statements detailing a referral should include the following line:

“A referral to the CPS is made when the IPCC investigation indicates that a criminal offence may have been committed. It does not mean that criminal charges will necessarily follow. The CPS will decide whether charges should be brought, based on the test set out in the Code for Crown Prosecutors.”

### **Electronic working**

46. Where it is not prevented by Government Security Classification marking, correspondence between SCD and IPCC should be by secure email over the Government Secure Intranet (.gsi) network.

### **Family liaison**

47. The IPCC has trained Family Liaison Managers (FLM) whose role it is to establish a relationship with families in cases where there has been a death or serious injury. It is their role to act as a conduit between the lead investigator and the family. In such cases where there is a FLM appointed, the IPCC will inform SCD of this and provide the contact details of the FLM.
48. SCD will consult with the FLM as to how and when SCD will communicate its decisions or other information to families to ensure that both SCD and the IPCC are aware of any potential issues and can handle the contact sensitively. If SCD wishes the IPCC FLM to communicate with a family on its behalf, or to facilitate an introduction to the bereaved family this should be discussed at an early stage.
49. Communication strategies with families and complainants should always be assessed on a case by case basis and consultation with the FLM at all stages is essential due to the sensitive nature of the investigations.

### **Inquests**

50. In some cases an inquest may be held in addition to criminal proceedings as a result of the investigation. In such circumstances the IPCC lead investigator will liaise between the coroner and the SCD lawyer to avoid any prejudice or conflict between the two sets of proceedings.
51. If, the Lead Investigator becomes aware of new evidence that has come to light during an inquest or there is an issue which might require advice from

SCD or impact on previous CPS decisions or advice they will inform the relevant SCD Unit Head.

### **Post-inquest Handling**

52. Where an inquest has been held in an investigation in which SCD is engaged the IPCC investigator will provide written confirmation to the relevant SCD Unit Head of the conclusion of the inquest. The IPCC investigator and the relevant SCD Unit Head will liaise to arrange a debrief or decide how to proceed with that case.

### **Escalation**

53. In any case when a dispute arises between those responsible in the IPCC and CPS for the handling of an individual case then in order that there can be a timely resolution of the dispute the issue should be escalated up respective management lines. In exceptional circumstances, the Deputy Head of SCD and the IPCC Chief Operating officer will discuss and agree matters.

### **IPCC Reports**

54. Where it becomes apparent that an IPCC investigation report does, or is likely to contain criticism of the CPS, a copy of the relevant sections of the report will be sent to the CPS as soon as possible and in any event prior to publication.
55. Where a CPS employee is or is likely to be directly criticised in an IPCC report, the IPCC will give consideration to allowing the CPS employee an opportunity to comment on the criticisms in advance of the publication unless it is agreed between the Deputy Head of SCD and the relevant IPCC Deputy Director of Operations that notification might prejudice the interests of justice.
56. Where it becomes apparent that the review of a case by SCD is likely to result in the production of a public report that includes criticism of the IPCC, a copy of the relevant sections of the report will be sent to the IPCC to provide the

opportunity to comment as soon as possible and in any event prior to publication of any public statement on the investigation.

57. Where an IPCC employee or Commissioner is or is likely to be directly criticised in a public SCD report, SCD will give consideration to allowing the IPCC employee an opportunity to comment on the criticisms in advance of the publication of any public statement on the case unless it is agreed between the Deputy Head of SCD and the relevant IPCC Deputy Director of Operations that notification might prejudice the interests of justice.

#### **Management of this MOU**

58. In order to ensure this MOU is made effective:

SCD will:

- Have a nominated single point of contact for liaison with the IPCC.

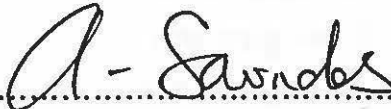
The IPCC will:

- Have a nominated single point of contact within the Investigations Directorate for liaison with SCD.

59. Regular meetings will be maintained between appropriate managers in SCD and IPCC with a view to monitoring the progress of cases that have been referred to SCD for early investigative advice and/or charging advice, compliance with this MOU and to identify any other lessons learnt.
60. An annual review of this MOU will take place attended by the Deputy Head of SCD and the IPCC Chief Operating Officer.

**Commencement and Review**


61. This MOU will take effect from 6 May 2016 and is to be reviewed after one year or before at the behest of either party.

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**Alison Saunders**  
**Director of Public Prosecutions, Crown Prosecution Service**

..... 17/5/2016 .....

**Date**

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**Jan Todd**  
**Acting Chief Executive, Independent Police Complaints Commission**

..... 16/5/2016 .....

**Date**