

October 2016

# Deaths in Custody

FAQ for the families of victims



## Foreword from the Director of Public Prosecutions

When I was appointed Director of Public Prosecutions in 2013, I said that the Crown Prosecution Service (CPS) would do all it could to make victims' experiences of the criminal justice system easier and better, and I acknowledged the improvements that could be made in terms of how we communicate with victims. I know how one bad experience as a result of confusing and unsympathetic communication from the CPS can undermine someone's confidence in the whole system.

We need the confidence of those we are here to serve. This is especially true when a person dies in custody.

When a person dies in state custody, their family and other loved ones will – quite rightly - expect the criminal justice system to deliver a fair, thorough, transparent and independent investigation. By the same token, they should expect clear, sympathetic communication, and to be treated with respect at all times.

Building public understanding, trust and confidence in our decision making is vital. I hope that this booklet succeeds at explaining the processes which the CPS and its partners in the criminal justice system have in place regarding deaths in custody. A longer publication, 'Deaths in Custody: a Guide to the Role of the CPS,' is also available, and offers more detail on some of the processes referred to here.

**Alison Saunders CB**

**Director of Public Prosecutions.**

## Is this booklet for me?

This booklet has been produced by the CPS, and offers an overview of the processes which can follow the death of a person in custody. It is primarily for the benefit of anybody whose loved one has died in the custody of the state, or following contact with the police. However, it is hoped the information contained within will be of interest to anybody with an interest in the CPS and wider criminal justice system. It tells you about the roles and responsibilities of those who investigate deaths in custody, and offers practical advice to close relatives of the deceased (who are considered 'victims' in these cases).

## What is a 'Death in Custody?'

The CPS definition of a "death in custody" includes deaths in police custody, prison, secure hospitals, immigration detention and secure detention for young people. We also consider deaths that occurred in connection with police action (whether the deceased was technically "in custody" or not). In real terms, this can mean any death which can be directly linked to police contact such as a fatal police shooting.

Deaths which arise from road traffic accidents are not regarded as having occurred in police custody.

## I've been notified of the death in custody of my family member or friend. What will happen next?

The exact sequence of events will vary according to the circumstances in which death occurred. For that reason, every effort will be made to establish the cause of death. This may require an **inquest**. If, in attempting to establish the cause of death, it appears a criminal offence may have been committed, a **criminal investigation** will be triggered. You can expect to be contacted by the investigators during this time.

### Who will determine how my loved one came to die?

If the death appears to have been violent or unnatural, or the cause of death cannot be determined, it will be referred to the coroner. The coroner is a judicial officer, appointed by the local authority in the area where his or her court lies. In these circumstances, the coroner may decide to hold an inquest. This is a legal procedure to establish the circumstances in which somebody died, but not whether anyone is guilty of a criminal offence. In conducting his or her enquiries, the coroner will consider the evidence gathered during the criminal investigation as well as from his/her own investigation.

### Is an inquest the same as a post-mortem?

No. A post-mortem is a medical examination of the deceased, to determine the exact cause of death. Although the coroner may order a post-mortem as part of the inquest, they are quite separate processes.

### What happens at an inquest? As the bereaved, do I need to do anything?

Full guidance on the inquest process is available online at <https://www.gov.uk/government/publications/guide-to-coroner-services-and-coroner-investigations-a-short-guide>. There is also useful general information on what to do following a death on the Government's own website, at <https://www.gov.uk/after-a-death/overview>

### Will the outcome of the inquest effect the decision of the CPS on whether to charge?

No. Although the inquest is an investigation of sorts, it is independent from the Crown Prosecution Service. The coroner will usually suspend his or her inquest until after any criminal investigation has completed.

### What about the criminal investigation; who will conduct that?

This will depend on the circumstances of the death. If the death took place in prison, or in another non-police setting, the police will conduct the investigation. If the death has taken place in a police station, or following contact with the police, the investigation will be conducted by the Independent Police Complaints Commission (IPCC). The IPCC is wholly independent of the police and CPS. Information on how the IPCC conducts its investigations can be found on its website (<http://www.ipcc.gov.uk>)

If, during the course of the investigation, it appears that breaches of health and safety legislation may have led to the death, the Health and Safety Executive (HSE) may also make enquiries. Information on the work of HSE can be found on its website (<http://www.hse.gov.uk>)

### When does the Crown Prosecution Service get involved?

The CPS will become involved only under certain circumstances. During the initial investigation stage, specially qualified senior lawyers from the CPS may be asked for legal advice by the investigator. The CPS cannot direct the investigator, but can advise them on their enquiries.

During the investigation the CPS and investigators will work closely together to ensure a thorough investigation takes place. If the CPS considers that there is no prospect of a prosecution against some or all of the suspects then it may advise the investigator. It always remains for the investigator to decide whether to start, continue or stop investigating.

When the initial investigation is complete, the investigators may ask the CPS to make a decision on whether criminal charges should be brought in relation to the death. This is known as a '**charging decision**'. Only the CPS can decide whether or

not a suspect should face charges (besides breaches of the health and safety legislation, for which the Health and Safety Executive is responsible).

### What does 'face charges' mean? And how does the CPS decide?

To 'face charges' means to stand trial in court for a criminal offence. In deciding whether or not to prosecute, the CPS prosecutor must decide whether or not there is enough evidence against the defendant for a realistic prospect of conviction. This is known as the 'evidential test,' and is a compulsory part of the consideration process. If the prosecutor is satisfied that enough evidence exists, they will then consider whether or not a prosecution would be in the public interest. This is known as the 'public interest' test.

Together, the evidential and public interest tests form the two-stage test set out in the CPS's *Code for Crown Prosecutors*, which can be read in full at [https://www.cps.gov.uk/publications/code\\_for\\_crown\\_prosecutors/decision.html](https://www.cps.gov.uk/publications/code_for_crown_prosecutors/decision.html).. These are the only tests that will be applied in making this decision.

Given the seriousness of these cases, CPS lawyers will often seek the advice of very experienced barristers in making the decision. All cases are also reviewed personally by the Director of Public Prosecutions for her approval.

In addition to criminal charges brought by the CPS, the Health and Safety Executive (HSE) can bring a prosecution if they think that offences have been committed against the Health and Safety at Work Act 1974.

### Will charges be brought against an individual as well as the institution in which the death occurred?

The charges brought will depend on the evidence obtained during the investigation. In cases of a death in custody, it is possible that either a named individual or an

organisation, such as a police force, could be prosecuted. Only an organisation can face charges of corporate manslaughter.

### Will I be given the opportunity to meet the CPS prosecutor?

The CPS's service to victims is one of the organisation's core values. Bereaved families are considered 'victims' in cases of deaths in custody, and can benefit from an enhanced level of service from the CPS.

When the CPS first gets involved in a case the prosecutor will contact you to explain his or her role in the case and offer an initial meeting, where appropriate. The prosecutor will explain the respective roles of the investigator and the prosecutor, the offences that are under consideration and what has to be proved for each offence.

Following any initial meeting, the CPS lawyer will keep you informed (usually via the investigator) of the progress of the CPS's work, and will normally offer a meeting before a final decision is reached on whether or not there should be a prosecution.

If the prosecutor decides that there should be a prosecution, you will be informed and kept up to date as the case progresses.

### What support will be made available to me during the investigation?

The CPS and its partners in the criminal justice system recognise that the investigation process, and any possible trial, can be a very stressful time for victims. During the investigation, support will be made available to you by the investigating agency. Firstly, the investigators will offer to meet the family of the person who died. This provides an opportunity for bereaved families to ask questions about the circumstances of the death. You are also entitled to the support of a family liaison officer (in the case of a police investigation) or family liaison manager (if the IPCC are investigating). These are specially trained officers who will keep you apprised of

issues relating to the investigation, and provide specialised care and non-legal support, should you require it.

### If the CPS decides that charges should be brought, what will happen next?

If a person or organisation is charged with a criminal offence at any stage, they can be tried either in a magistrate's or Crown Court, depending on the charges and whether they plead guilty or not. There is information available online to help you understand how a trial works, including at the Government's Judiciary website (<https://www.judiciary.gov.uk/you-and-the-judiciary/going-to-court/>).

### If the CPS decides not to bring charges, can I challenge their decision?

Under the 'Victims Right to Review' (VRR) scheme, which was first launched in June 2013, victims are allowed to seek an internal legal review of a decision by the CPS not to bring charges, in certain cases. Since December 2013, the scheme has been open to 'close relatives of a person whose death was directly caused by criminal conduct.' Further information on the VRR scheme is available on the CPS website ([http://www.cps.gov.uk/victims\\_witnesses/victims\\_right\\_to\\_review/index.html](http://www.cps.gov.uk/victims_witnesses/victims_right_to_review/index.html)).

Remember – even if the CPS does not bring a prosecution, the Health and Safety Executive may decide to.

### Where can I find further advice and information?

There is a wealth of support available to victims who find themselves unexpectedly having to engage with the criminal justice system. You may be able to receive support from Inquest<sup>1</sup>, a charitable foundation which is entirely independent from Government. Inquest provides a "specialist, comprehensive advice service to

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<sup>1</sup> <http://www.inquest.org.uk/site/home>

bereaved people, lawyers, other advice and support agencies, the media, MPs and the wider public on contentious deaths and their investigation.”

Finally, the CPS has produced comprehensive guidance entitled, ‘Deaths in Custody: a Guide to the Role of the CPS.’ You may request a copy of this guidance in your initial meeting with the CPS prosecutor.

For information about the Crown  
Prosecution Service, and to view or  
download an electronic copy of this  
guidance, please visit our website:

[www.cps.gov.uk](http://www.cps.gov.uk)