

JOINT CPS – IPCC GUIDANCE ON

PRE ARREST AND PRE CHARGE ADVICE PROCESS

This document provides practical guidance for Independent Police Complaints Commission (IPCC) investigators and Crown Prosecution Service (CPS) prosecutors dealing with the advice process on IPCC investigations and is agreed between the Director of Investigations for the IPCC (DOI) and the Head of the Special Crime and Counter Terrorism Division (SCCTD) of the CPS.

It is intended to complement the guiding principles in the MoU on working arrangements between the CPS and the IPCC (the MoU) and enhance the practical application of it. It is a tool to help both investigators and prosecutors during the process particularly at the early stages.

There are a considerable number of IPCC investigations that do not require CPS input. The DOI will decide which cases do not need referral in accordance with the relevant legislation and which cases need early notification and advice in accordance with this guidance. Where the IPCC decides that a case should be passed back to the local police force to investigate, the case will be dealt with in accordance with normal police/CPS referral criteria. From 1 April 2012¹, SCCTD will be the prosecutor for all cases retained and investigated by the IPCC

The emphasis is for there to be the early involvement of a prosecutor in appropriate cases and for investigations to be completed as soon as reasonably practicable. Early formation of a prosecution team working together to develop a strong case or to make an early decision that a case is not capable of prosecution assists victims, families of victims and suspects, leads to better use of resources and enhances the reputation of both the IPCC and the CPS.

1. EARLY NOTIFICATION POST INCIDENT

Following referral from the police, where the IPCC has decided to investigate, particularly in a case involving a death, the DOI will provide early notification² to the Deputy (Special Crime and Extradition) on SCCTD (DHOD) of any new investigation that:

1. Needs CPS input and early advice (full notification – see paragraph 1.1 below)
2. Needs a decision about whether a full notification is required (see paragraph 1.2 below)
3. May need full notification but too little is known at this early stage to make a decision (tentative cases – see paragraph 1.3 below)

This should include any case where early notification is required under the MoU or cases which are identified at paragraph 21 of the MoU. Full details of the investigation will be provided.

¹ Until 1 April 2012, only cases within the SCCTD referral criteria will come to SCCTD; others will go to the relevant CPS Area

² Initial contact will be by secure e-mail

1.1 Full Notification

Contact should always be made shortly after the death/incident in cases in the following categories:

- Deaths in custody
- Police shootings (firearms or taser) resulting in death or serious injury
- Allegations of assault resulting in death
- Potential corporate manslaughter
- Cases where there is a statutory time limit on proceedings (for example the 6 month limit to charge a summary only offence)
- Any other case where the DOI believes that a criminal offence may have been committed or where early advice from a prosecutor might be valuable
- Any case involving allegations against a Policing and Crime Commissioner, the Mayor of London in his capacity as the holder of the Mayor's Office for Policing and Crime (MOPC) and deputies appointed by PCCs and the MOPC³. Whereby the IPCC Method of Investigation decision is either "managed" or "independent".

An appropriate prosecutor will be allocated to the case from the outset and contact will be made by the prosecutor with the investigator within 7 days of the notification. This will ensure that the investigator has access to advice from the earliest opportunity and whenever it is needed, and will ensure that the prosecutor is familiar with the background and any sensitivity from the outset.

1.2 Cases where a decision is needed

In some cases, the HOI may wish to discuss what early action is necessary. He will contact the DHOD and a joint decision will be made about whether the case needs a full notification at this early stage. If the decision is that it does, a prosecutor will be allocated as above.

1.3 Tentative Cases

There may be cases where too little is known about the circumstances to make a decision on full notification but because of the sensitive or complex nature of the case, the HOI believes that early CPS input and advice may be valuable. In such a case, a prosecutor will be allocated as above.

2. EARLY ADVICE AND GUIDANCE

2.1 The Director's Guidance on charging says that:

- Crown Prosecutors will provide guidance and advice to investigators throughout the investigative and prosecuting process. This may include lines of enquiry, evidential requirements and assistance in any pre-charge procedures. Crown Prosecutors will be proactive in identifying, and where possible, rectifying evidential deficiencies and in bringing to an early conclusion those cases that cannot be strengthened by further investigation.

³ See the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2011 (anticipated in force 2012)

- Early consultation should also seek to identify evidentially weak cases, which cannot be rectified by further investigation, either at that stage or at all, so that these investigations may, where appropriate, be brought to an early conclusion.

2.2 The nominated prosecutor is able to give advice on:

- possible offences to charge or other ways of dealing with the offending, so that the investigation can be properly and efficiently focused;
- likely lines of enquiry to produce as strong a case as possible;
- the likely admissibility of evidence;
- how evidence should be gathered so that it can be best presented in court;
- the potential need for expert evidence;
- how unused material/disclosure should be collated;
- the use of special powers that require a prosecutor's consent to secure the cooperation of witnesses or a court order to obtain evidence;
- RIPA
- the extradition of a suspect;
- the restraint of a suspect's assets; and
- how to obtain evidence from abroad
- what needs to be proved to show corporate responsibility

2.3 A pre charge investigative strategy (the strategy) will be drawn up and agreed by the nominated prosecutor and investigator within 6-8 weeks of the death or incident. Where police, HSE or other investigating bodies are involved they should be included within this strategy. This strategy will follow the template already agreed and will include handling and communication both between the parties and with victims and witnesses. The template is attached as Annex 1

2.4 On a date around the 6-8 week stage, a conference will take place between the prosecutor and investigator to:

- Draft the strategy document if it has not already been agreed
- Discuss the progress of the investigation
- Discuss, in particular, any potential summary only offences
- Set a timescale for advice and file submission if not already agreed

2.5 Thereafter, there must be monthly contact between the prosecutor and investigator and a conference *at least* every three months to assess progress of the investigation and update the strategy document.

2.6 Interim submissions of evidence may be made in order to take early decisions about progress and in particular at key stages where the provision of advice may bring an investigation to an early conclusion.

2.7 Where a decision is taken by the IPCC to discontinue an investigation or not to refer a previously notified case for advice, the investigator will notify the prosecutor in advance of any public announcement or communication outside of the IPCC.

3. SUBMISSION OF FILE FOR CHARGING DECISION

3.1 As outlined in paragraph 28 of the MoU, when an investigation report is complete, the IPCC Commissioner may decide that the investigation indicates that a criminal offence may have been committed by the subject of the investigation; in which case, a copy of the report will be sent to the SCCTD. This will apply whether or not there has been a previous notification and early advice provided.

3.2 In all cases where such a referral is made, the investigator should submit an electronic file⁴ of all the key evidence together with the report. The following are examples of what might be included:

- Witness statements (except continuity where statements have yet to be taken)
- Surveillance evidence
- Extracts of all relevant probes
- Analysis of communications data in agreed format
- Relevant CCTV footage
- Any scientific reports
- Expert evidence
- Documentary exhibits
- Translations of any key documents
- Any other key material including unused material that the investigator believes might undermine the prosecution case or assist the defence

4. TIMING OF THE CHARGING DECISION

4.1 When the file has been delivered, the prosecutor will provide the investigator with a date by which they will aim to provide advice on the evidence submitted within 7 days of receipt. This may or may not amount to final charging advice depending on whether any further evidence is required.

4.2 A discussion will take place between the IPCC and the CPS as to the communication of a charging decision to the IPCC in advance of any public announcement or communication outside of the CPS.

5. GENERAL

5.1 Regular three monthly operational meetings will take place between the HOI and the DHOD to provide oversight of all casework, agree lines on high profile cases and discuss any other issues of joint interest or concern.

5.2 Media issues will be dealt with in accordance with the MoU. Whilst generally the press lines and statements will be shared but separate, consideration will be given to making joint press announcements in appropriate cases.

5.3 Post case reviews will be arranged for all but the most straightforward cases. The prosecutor will invite the investigator and any other interested parties to attend and all lessons learnt and

⁴ Where exceptionally it is not possible to submit exhibits in electronic format, i.e. CCTV, another format can be used

good practice identified will be shared with a view to improving future investigations and cases.


5.4 A joint training day will be held annually on a date to be agreed.

6. **DISPUTE RESOLUTION**

6.1 The aim of this guidance is to facilitate working level collaborative working between the IPCC and the CPS, but in the event of any disagreement, issues should be referred through line management at the earliest opportunity.



Susan Hemming
Head of SCCTD,
On behalf of the CPS



Director of
Investigations.
On behalf of the IPCC

PRE-CHARGE STRATEGY – DEATH IN CUSTODY VERSION 7.7.11

Suspect(s) / Operation name	
Name and dob of deceased	
Police SIO/ IPCC lead investigator	
CPS Reviewing lawyer	
URN / SCD Ref	

Background and Overall Investigative Strategy
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For example:

- *Date and brief description of events leading to death*
- *Date of commencement of investigation and whether any other investigation (e.g. Prison Ombudsman) has been held*
- *Police/IPCC to gather evidence to determine culpability for potential criminal offences including e.g. Gross Negligence Manslaughter, Misconduct in Public Office, False imprisonment, Assault and (rarely) Corporate Manslaughter⁵*
- *SCD to give written advice as to evidential requirements for all potential criminal offences and to suggest lines of enquiry*
- *If appropriate, SCD to give early written investigation advice ruling out criminal offences (and enquiry to continue as discipline/coronial)*
- *Otherwise, SCD to give full written charging advice/review note at conclusion of investigation*
- *Coroner and family of deceased to be kept updated by police/IPCC*
- *SCD to also contact family and offer 'early' and 'issues' meetings*

Early Engagement

Summarise initial Police/IPCC enquiries and advice given by SCD to date

Proposed Police/IPCC Investigation timetable

This will be subject to amendment as investigation progresses, but list in order of priority, for example:

- *Secure and examine crime scene and retain exhibits*
- *Identify potential defendants (by xx date)*
- *Obtain key witness statements and documentary evidence (by xx date)*
- *Obtain expert evidence (by xx date)*
- *Identify and gather relevant police/prison policies, protocols and home office guidance etc (by xx date)*

⁵ Under the CMCH Act 2007 – when in force for deaths in custody

- *Conduct PACE interviews of individual suspect(s) (by xx date)*
- *Invite organisation rep(s) for Corporate Manslaughter PACE interviews (by xx date)*

Proposed Provision of Evidence and Advice timetable

This will be subject to amendment as investigation progresses, for example:

- *Initial key evidence to be provided to SCD (by xx date)*
- *SCD to advise as to feasibility of all identified potential charges and further necessary enquiries (by xx date)*
- *SCD to assist, if requested, with interview strategy*
- *SCD to assist in identifying experts and drafting terms of reference*
- *Case conference(s) to be held subject to need*

Proposed Communication strategy

For example:

- *Who needs to be informed/kept up to date?*
- *CPS Area/CCP*
- *Other organisations*
- *Victims/families/solicitors*
- *When and how often should that take place?*
- *By whom?*
- *Escalation policy and to whom?*

Proposed Media strategy

For example:

- *Agree 'if asked' lines and direct any media enquiries to police press office at pre-charge stage*
- *Agree media strategy in the event either of charge or NFA following charging decision/full review*

Dated	
Signed: (for police/IPCC)	
(for CPS)	