

## **A Death in Custody Advice from the Independent Office for Police Complaints (IOPC)**

### **Background**

Unfortunately, deaths and serious incidents occur in police custody. These may be referred to the Independent Office for Police Complaints (IOPC) and Independent Custody Visitors (ICVs) may become involved in investigations. ICVA recognises that scheme managers and ICVs may need additional support through these investigations and has submitted questions to the IOPC. This document comprises the questions and the IOPC's responses in order to help prepare scheme managers prior to an investigation, and to support them in the event of an investigation.

### **1. What incidents, within a custody environment, would be referred to the IOPC?**

The majority of complaints against the police are dealt with by the relevant police force without IOPC involvement. However, certain types of complaints and incidents must be referred by the police to the IOPC.

The 'appropriate authority' (e.g. a police force) must refer to the IOPC all 'Death and Serious Injury' (DSI) matters. A DSI matter means any circumstances 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.

The appropriate authority must also refer:

- complaints alleging that conduct has resulted in death or serious injury
- allegations of conduct which constitutes:
  - serious assault
  - serious sexual offence
  - serious corruption
  - criminal offence or behaviour which is liable to lead to misconduct proceedings and which, in either case, is aggravated by discriminatory behaviour on the grounds of a person's race, sex, religion or other status identified in paragraph 8.18 of the IOPC's statutory guidance
  - a relevant offence
- complaints which the IOPC notifies the appropriate authority that it requires to be referred.

In addition, the appropriate authority can make voluntary referrals. The IOPC encourages appropriate authorities to refer matters that do not have to be referred but where the gravity of the subject matter or exceptional circumstances justifies referral.

## **2. What is the process after an incident is referred?**

Once an incident has been referred the IOPC then decides what level of involvement it should have in any investigation of the matter. It may choose to conduct its own independent investigation, manage or supervise a police investigation, or decide that the matter can be dealt with locally by the police. The IOPC will always carry out an independent investigation if it appears that Article 2 of the European Convention on Human Rights is engaged.

In an independent investigation, our investigators will obtain evidence to establish all the circumstances. This may involve taking witness statements, interviewing police officers or members of police staff, analysing CCTV footage and obtaining other documents and records. An investigation may also include forensic analysis; the use of experts to provide independent evidence; liaison with the Coroner, Crown Prosecution Service and/or other agencies - for example, the Health and Safety Executive.

If someone dies during police contact, the police will always be on the scene before the IOPC. The local police force should immediately secure the scene and refer the matter to the IOPC. As soon as that happens, the IOPC make a decision about whether to send investigators to the scene straight away. It can take some time for their investigators to reach the scene depending on how far they need to travel. During this time, the local force is responsible for securing the scene (for example, cordoning off the area where the death occurred) under the IOPC's direction. The police must by law assist the IOPC during this process.

In an independent investigation, IOPC investigators take responsibility for direction and control of the scene - for example, deciding the extent of any forensic examination of the scene and what, if any, specialist forensic scientists are required to attend. The actual forensic examination is carried out by police crime scene examiners under the IOPC's direction. They are either from a neighbouring force or the force where the incident took place.

IOPC investigators ensure that initial accounts are obtained from the police officers and staff and arrange for police witnesses to attend interviews if required. Throughout this time, the police remain under an obligation to ensure the preservation of evidence and the integrity of our investigation, to assist the IOPC and to carry out activities as directed.

### **3. Will the IOPC notify the Police and Crime Commissioner (PCC) after they receive a complaint?**

Although complaints can be made via the IOPC, under the police complaints system all complaints against the police must be recorded by the relevant police force or, in the case of chief officers, the relevant Police and Crime Commissioner (PCC). The IOPC therefore do not ordinarily notify a PCC when they receive a complaint, unless the complaint is about a chief officer.

Statutory responsibility for informing a PCC about a matter that involves their force lies with the chief officer for the force. However, the IOPC will also provide information to PCCs / the Mayor's Office of Police and Crime on cases involving their force at regular liaison meetings.

### **4. How long would an IOPC investigation be likely to take?**

The length of an investigation will depend on many elements, such as the scope of the investigation and the volume and complexity of the evidence.

### **5. What information might the IOPC request from a scheme manager as part of an investigation?**

This would depend on what information a scheme manager has about the incident under investigation and what their connection is to the incident. They might be asked for any information they have that is relevant to the investigation.

### **6. Who can ICV scheme managers contact in the IOPC to ask questions about the investigation and seek clarification on the involvement of ICVs and scheme managers?**

If an ICV and / or scheme manager is a witness in an IOPC investigation they will be provided with the contact details of an IOPC investigator. The investigator will be able to answer questions about the process of the investigation, but cannot provide information about the investigation itself.

### **7. What might ICVs be expected to do if they are involved in an investigation? For example, will ICVs written notes be used in court? What will ICV involvement look like? Will ICVs' data be used as part of disciplinary proceedings?**

If someone has died in the custody of the police, or immediately following their release, or as been involved in a serious incident, and an ICV has recently spoken to or seen them, or reviewed their custody record, it is possible that the IOPC might wish to talk to the ICV as part of the investigation.

If contact has been significant the ICV might be treated as a witness. This might involve the IOPC asking the ICV to provide a statement and / or asking them for any relevant notes they might have taken during their visit to the custody centre.

It is possible that the ICV could be asked to give evidence to a court if any prosecution takes place or at disciplinary proceedings. If their evidence is not in dispute written evidence might be agreed by the parties without the need for the ICV to give evidence in person.

An ICV might also be asked to give evidence to an inquest in person or by providing a statement. This would be the same for any member of the public who has significant evidence about what happened. The Coroners' Society and office of the Chief Coroner can provide more information about the inquest process.

**8. How should ICVs and scheme managers interact with custody staff following an incident? Do they face any restrictions?**

There is a risk that if witnesses discuss an incident their evidence could be contaminated, whether consciously or unconsciously. There are guidelines for police officers and staff in relation to not conferring following a death or serious injury. Non-police witnesses are also routinely warned not to discuss the incident either before or after they have given their accounts.

**9. What might happen if it becomes clear that ICVs have made recommendations for change that have not been implemented by custody staff and have contributed to a problem? Will ICVs data be used as part of disciplinary proceedings?**

If it became apparent that a recommendation relevant to the investigation had previously been made by another party this would be considered alongside the other evidence in the case.

If the IOPC considered it appropriate, in light of the evidence in the case, it may wish to make a recommendation. The IOPC can make recommendations both in relation to disciplinary proceedings for individuals, and in relation to organisational learning - for example if the IOPC thinks a change to policy or practice is required to help prevent a similar matter happening again.

Organisational learning recommendations might be made to a single police force or organisation, or on a national level - i.e. where the recommendation relates to a change to the law, national policy or national practice.

National recommendations relating to policing may be made to organisations such as the College of Policing or the National Police Chiefs' Council (NPCC). By law, the recipient of an organisational learning recommendation must respond to the IOPC. With some limited exceptions, the IOPC publish organisational learning recommendations and the responses of the recipients on its website.

It is possible that an ICV could be asked to give evidence at disciplinary proceedings. If their evidence is not in dispute written evidence might be agreed by the parties without the need for the ICV to give evidence in person. Evidence might include ICV data if it is relevant to the proceedings. However, please be aware that as the employer, the police force will be responsible for arranging disciplinary proceedings.

**10. What, if any, feedback or recommendations can volunteers or OPCCs expect from an investigation?**

The IOPC is able to make organisational learning recommendations. Recommendations can be made to any relevant organisation.

It is unlikely that the IOPC would provide feedback about an individual investigation to an ICV scheme manager or volunteer. However, the IOPC are always happy to discuss our work more generally with stakeholders wherever we are able to do so.

**Further information**

You can read about the process of IOPC investigations more generally on its website, here:

<http://www.policeconduct.gov.uk/>

And about organisational learning recommendations here:

<https://www.policeconduct.gov.uk/research-and-learning/learning-and-recommendations>