

Agreement between the Independent Police Complaints Commission and the Health and Safety Executive for liaison during investigations

November 2007

ARRANGEMENTS FOR LIAISON BETWEEN HSE AND THE INDEPENDENT POLICE COMPLAINTS COMMISSION

INTRODUCTION

1. In this agreement “police” means Home Office police forces, Serious and Organised Crime Agency (SOCA), National Policing Improvement Agency (NPIA) and any non-Home Office police force within the jurisdiction of the IPCC.

Role of IPCC

2. The IPCC has a broad remit in relation to police misconduct and complaints about the conduct of the police in England and Wales. This remit extends to police officers, special constables, police staff employed by the police authority, and (in respect of Home Office police forces only) designated contract escort and detention officers.

3. Its functions include the investigation of certain matters of a serious nature. The Police Reform Act 2002 (as amended) requires that any death of or serious injury to a member of the public following some form of direct or indirect contact with the police where there is reason to believe that the contact may have caused or contributed to the death or serious injury (Statutory Guidance defines serious injury as a fracture, deep cut, a deep laceration or an injury causing damage to an internal organ or the impairment of any bodily function) must be referred to the IPCC, regardless of whether there has been a complaint or any question of misconduct. Allegations of certain serious misconduct must also be referred. The Act also requires referral of death or serious injury to a person serving with the police if it occurs while that person is under arrest, in custody or it arises from conduct of someone serving with the police where that person may have committed a criminal offence or behaved in a manner that would justify disciplinary proceedings. The IPCC can also call in complaints or conduct matters and does so where significant matters involving public confidence are concerned.

4. Matters to be considered in the course of an investigation include the conduct of individuals (including whether any crime may have been committed) and recommendations as to police practice. An investigation may therefore extend not only to questions about compliance with police local or national policies but also whether the policies themselves are defective.

5. The IPCC determines how the conduct or matter in question is to be investigated. An investigation may be independent (conducted by the IPCC itself), managed (conducted by the same or a different police force but managed by the IPCC), supervised (conducted by the same or a different police force but supervised by the IPCC) or conducted by the police force itself. Complainants can appeal to the IPCC if dissatisfied with the result of a supervised or local investigation.

6. If the IPCC concludes as a result of the investigation that anyone serving with the police may have committed a criminal offence, it refers the matter to the Crown Prosecution Service (CPS) for the CPS to consider criminal proceedings. Where, therefore, the alleged offender is someone serving with the police and the IPCC

undertakes an independent or managed investigation, the IPCC effectively replaces the police as the body investigating the alleged offence.

7. The IPCC has comparable powers in respect of:

- (a) HM Revenue and Customs (HMRC) except that they extend only to deaths and serious injuries and allegations of serious misconduct that have to be referred to the IPCC
- (b) Borders and Immigration Agency (BIA) (from a date to be decided but anticipated to be 1 January 2008) except that they will extend only to:
 - (i) conduct on the part of BIA personnel with police-like powers
 - (ii) deaths and serious injuries following contact with such personnel and allegations of serious misconduct on the part of such personnel that have to be referred to the IPCC

8. The IPCC's remit only extends to England and Wales. These arrangements do not therefore apply in Scotland.

Role of HSE

9. HSE is responsible for the enforcement of health and safety legislation concerning the police, HMRC and BIA. This includes the obligation on employers to:

- (1) ensure so far as is reasonably practicable the health, safety and welfare at work of employees and
- (2) conduct their undertaking in such a way as to ensure, so far as is reasonably practicable, that non-employees who may be affected are not exposed to risks to their health and safety.

10. Certain injuries to members of the public are reportable by the police, HMRC and BIA to HSE under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR). These are injuries that occur as a result of an incident which arises out of or in connection with the work of the police, where the injured person dies or is taken from the site of the incident to hospital for treatment. Suicides in police custody are not accidents as defined in RIDDOR, and are therefore not reportable.

11. HSE's appointed inspectors have the power to investigate reported injuries, dangerous occurrences and complaints. HSE's objective in investigating incidents and complaints is to determine the underlying causes and ensure lessons are learned to ensure:

- That action has been taken by the duty holder to manage any ongoing risk and prevent similar incidents in the future;
- Wider lessons can be shared with other duty holders;
- HSE can determine whether there has been a significant failure to comply with health and safety law and consider whether enforcement action is appropriate.

12. HSE's primary focus is to determine whether there have been organisational or systemic failures, although the duties of individuals will be considered where appropriate.

13. HSE does not normally investigate deaths of, or injuries to, persons in custody unless there are clear indications of health and safety management failures at the outset.

Potential overlap

14. In the course of the work of IPCC and HSE there will be issues that are also potentially within the remit of the other:

(1) The police must refer incidents to the IPCC where persons not serving with the police (members of the public) have died or have been seriously injured following some form of direct or indirect contact with the police and there is reason to believe that the contact may have caused or contributed to the death or serious injury. These may or may not also be reportable to HSE under RIDDOR.

(2) The police must refer to the IPCC the death of, or serious injury to, a person serving with the police if:

- (i) it occurs to that person while under arrest (and before release) or detained in custody; or
- (ii) it arises from conduct on the part of someone serving with the police where there is an indication that that person may have committed a criminal offence or behaved in a manner that would justify disciplinary proceedings.

(3) Except where death or serious injury occurs as a result of a road traffic collision or as the result of a suspected self harming incident, HSE will also be informed immediately about work related deaths by the police force involved in accordance with the Work-Related Deaths Protocol.

(4) HSE may receive and investigate complaints from the public relating to police activity.

(5) The IPCC may call in a complaint or conduct matter, or receive an appeal against a decision in a supervised or local investigation, that involves health and safety matters or may in the course of an investigation uncover potential breaches of health and safety legislation.

(6) The HSE may in the course of an investigation uncover misconduct or criminal behaviour on the part of someone serving with the police that should already have been referred to the IPCC or which is judged to be of sufficient significance for referral to IPCC.

(7) The position is the same in relation to HMRC and BIA within the limitations set out in paragraph 7 above.

15. This Protocol has been agreed to reduce any duplication of effort between the two authorities, to enable an efficient, effective and timely investigations to be carried out and to ensure all parties concerned with the investigation and enforcement of any breaches of the law are fully involved.

16. This Protocol aims to enable co-ordinated action and liaison; it does not specifically deal with the operational practices and organisational requirements of the parties concerned.

INVESTIGATIONS

Death and serious injury of members of the public as a result of contact with the police, HMRC and BIA

17. It is the responsibility of the IPCC to decide whether there should be an independent, managed, supervised or local investigation. In independent and managed investigations of deaths, IPCC will, subject to the provisions of this Protocol and its legal obligations, have regard to the Work Related Deaths Protocol (WRDP) obligations of the police to the extent that they have not already been fulfilled and HSE will deal with the IPCC in the same way as it deals with the police under WRDP. The decision about whether there should be an investigation into a possible serious criminal offence, should be made by the IPCC.

18. In independent or managed investigations, IPCC will assume primary responsibility for the management of the investigation, for contact with the family of the deceased (where relevant), and for arrangements to be made (insofar as not already made by the police) to preserve the scene of the incident and secure evidence. The police will assume primary responsibility for the management of the investigation in respect of a supervised or local investigation.

19. If in the course of an independent or managed investigation it materialises that the matter is subject to RIDDOR (i.e. involves the death of, or serious injury requiring hospital treatment to, a member of the public arising from contact with the police, HMRC (or BIA from the relevant date)) but has not been reported, the IPCC investigator will advise the police force to make a RIDDOR report, and in that report to note the involvement and contact details of the IPCC investigator.

20. If HSE become involved in the investigation of a death or serious injury that occurred during or after contact with the police, HMRC (or BIA from the relevant date) which should have, but has not, been referred to the IPCC, the HSE will advise the police force or body in question to refer the matter to the IPCC, noting the involvement and contact details of the HSE appointed inspector.

21. IPCC in the case of an independent or managed investigation, or the police in respect of a supervised or local investigation, will retain responsibility for the investigation. Neither body can relinquish to another body its responsibility to investigate. However, where it appears to the IPCC investigator that there are significant health and safety management failings, the IPCC investigator will advise the relevant HSE Principal Inspector and liaise to establish their respective roles and who will take the lead in investigating possible health and safety management failings. HSE will not normally carry out a separate investigation, although there may be circumstances where separate lines of enquiry are appropriate along with the need to preserve and gather evidence relating to these. There is no duty on IPCC to actively seek evidence of health and safety management failings.

22. Where the investigation is independent or managed, arrangements will be made between the IPCC investigator and the HSE Principal Inspector for appropriate on-going liaison during the investigation. This should include regular discussion and an appropriate hand-over procedure if it is agreed that HSE should take the lead in investigating possible health and safety management failings.

23. Where HSE and IPCC are both involved in an investigation they will share relevant information. Unless legally barred, IPCC and HSE will in an independent or managed investigation provide all relevant evidence and reports to the other, when agreed to be necessary.

Deaths and serious injuries to Police Officers and Staff

24. IPCC will have an investigatory role in the death and serious injury of police/HMRC/(BIA from the relevant date) officers and staff in relatively rare circumstances. If the IPCC determines that there should be an independent or managed investigation into such a death it will be undertaken with regard to the WRDP as described in paragraph 17.

25. Where IPCC are conducting an independent or managed investigation of police, HMRC (or BIA from the relevant date) officers or staff, paragraphs 17 to 23 apply.

Other conduct matters and complaints

26. Both IPCC and HSE may receive complaints from members of the public or police officers and staff about the policies, procedures or actions of the police. These may be as a result of injuries or otherwise.

27. Where HSE receives a complaint about an issue within the remit of the IPCC, the complainant should be referred to the relevant force to put the complaint directly to them. HSE will not normally be involved in the investigation of such matters, but may be consulted by IPCC about any health and safety management issues that arise. If HSE is involved in investigating such matters, liaison arrangements will be set up for coordination and sharing of information. These will be between the relevant HSE Principal Inspector and either the relevant IPCC investigator (in the case of an independent investigation), or the police Investigating Officer (in the case of managed, supervised or local investigations).

28. Where the issue is outside the remit of the IPCC, then HSE will deal with the matter using its normal policies and procedures for complaint handling.

29. If in the course of a complaint investigation HSE uncovers misconduct or criminal behaviour on the part of someone serving with the police, HMRC (or BIA from the relevant date) that should have been referred to the IPCC from the outset, or which appears to be of sufficient significance, the relevant HSE Principal Inspector will inform the IPCC.

30. Where the IPCC is involved in a complaint or conduct matter involving health and safety issues that are not being investigated by HSE, the HSE will provide advice to IPCC on those matters.

LIAISON ARRANGEMENTS

31. HSE's Public Services Sector will maintain liaison arrangements with the IPCC.

32. HSE and IPCC will consult over instructions, guidance and training needed to enable their staff to liaise effectively and efficiently.

REVIEW OF ARRANGEMENTS

33. HSE and IPCC will arrange to meet at agreed intervals to ensure this agreement remains up-to-date and reflective of the needs of the joint working arrangements.