



ASSOCIATION OF CHIEF POLICE OFFICERS

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Monday 21 July 2014

National Policing (ACPO) response to your report to prevent future deaths arising out of the inquest into the death of Mark Duggan

Your Honour

In accordance with paragraph 7(2) of Schedule 5 of the Coroners and Justice Act 2009 and s.29 (4) of the Coroners (Investigations) Regulations 2013 we set out here the response of the National Armed Policing and the National Policing Professional Standards Portfolios to your report to prevent future deaths arising out of the inquest into the death of Mark Duggan.

We should perhaps at the outset point out that national policing work through ACPO is now conducted through a number of national policing business areas, each of which takes lead responsibility for a broad area of policing and is headed by a serving chief officer.

There has been a high degree of collaborative working in recent years between the work of the respective portfolios for armed policing and professional standards in managing the police service's response to incidents involving death or serious injury (DSI). More particularly, and of relevance to this response, is that in May this year these two portfolios collaborated to submit the national policing response to the IPCC's consultation on its draft statutory guidance to the police service on achieving best evidence in death or serious injury matters.

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In paragraph 72 of your report, you invited ACPO to send you a copy of its response to this IPCC consultation. We are pleased to do so, and append to this correspondence a copy of that response dated 27 May 2014, (Appendix A). I can confirm that upon reviewing this response in light of the matters you set out in your report under Concern 2: (*Comprehensive accounts were not taken from police witnesses at the first possible opportunity*), as you anticipated, the earlier response to the IPCC of 27 May 2014 does indeed deal in some detail with the concerns you articulate.

We set out here some additional explanatory context to deal with the specific matters raised under Concern 2 and also under Concern 4: (*The scene of the fatal police shooting was not video recorded*), Concern 5: (*The planned operation to seize weapons was not pursued after the fatal shot was fired*), and Concern 6 (*The armed police operation was not recorded after State Red was called*) and upon which you required a response from National Policing (ACPO).

Concern 2: Comprehensive accounts were not taken from police witnesses at the first possible opportunity

Paragraphs 64 and 65

In paragraph 64 of your report, you summarise the reasons for your over-arching concern that fatal police shootings are not as rigorously examined as they should be and that doubts about the accuracy of police accounts are not minimised. In paragraph 65 you make clear your belief that the national best practice as sanctioned or encouraged by ACPO may not be the best possible practice.

For some considerable time the Armed Policing Portfolio has been at the forefront of the police service's handling of post incident procedures. Indeed, the formal post incident procedures that have evolved over the last decade or so – and which continue to evolve - are a direct result of the police service's own desire to secure and preserve the best available evidence, and to bring structure and control to critical incident management in events where there is understandable public concern over the legitimacy of police action or omission to act. These procedures are designed to serve the best interests of an IPCC's independent investigation and the accountability of officers to the law.

The National Policing portfolios quite properly maintain these post incident procedures under constant review, particularly in light of learning from the thankfully rare fatal police shootings and other deaths in or during police contact.

The current post incident guidance in place has been revised since the events of August 2011 and is now set out in Module 7 of the Authorised Policing Practice (APP) for Armed Policing; guidance which is endorsed and published by the College of Policing.

It is important to confirm in this response that both the ACPO guidance in place in August 2011 and the existing APP expressly state that officers should not confer (i.e. speak to each other about their evidence) after any death or serious injury incident, and I emphasise here that the National Policing portfolios do not approve of officers conferring, save where strictly necessary for the express purpose of a police operation.

The National Policing portfolios are currently undertaking a further review of these procedures, in part at least as a direct result of the issues arising from the death of Mark Duggan. We have already taken steps to ensure that as part of immediate post incident procedures, a senior officer is present when officers are preparing initial accounts. This senior officer will be in a position to confirm and reassure that either conferring did not take place or, if it did, it was for a necessary purpose as provided by the APP, which sets out in clear terms that an officer should not confer about any honestly held belief relating to the use of force. In addition, we have made clear the post incident process can and should be more transparent to both a host force's initial investigating officers and to the IPCC's investigators.

We firmly believe it to be in the interests of the public, the police service and all individual officers involved in any such incident that there is both transparency and integrity in mutually dependent post incident imperatives of providing a necessarily high degree of welfare support to all officers in what are often highly complex and challenging operational circumstance and the duty to facilitate a thorough and impartial investigation into the circumstances surrounding the incident.

Paragraph 66

In paragraph 66 of your report you set out your concern that not all witnesses to a fatal police shooting are asked to give full statements as soon as possible after the event, and refer to the existing guidance that recommends that at least 48 hours should elapse before full accounts are taken from police officers.

There is nothing in the APP to prevent police witnesses who are not designated as principal officers from making detailed notes at the earliest practicable opportunity. Nor does the guidance seek to prevent officers from providing as detailed accounts as may be necessary. Investigators can properly seek to obtain statements of evidence from officers not designated as principal officers. The post incident procedures are designed to ensure that the initial investigating authority can identify exactly who is included as a principal officer and the rationale for such inclusion will be dependent upon the prevailing circumstances. As an investigation unfolds, it may well be the case that others involved in the operation, whose actions or decisions were involved in informing or making critical decisions, may be regarded as principal officers.

In the initial stages all actions taken by, and in respect of, principal officers in relation to securing evidence, discussion undertaken and notes made should be documented, and there are four clear stages setting out the provision of information and accounts. The last stage, (Stage 4) sets out that detailed accounts (including statements or interviews) should not normally be obtained immediately, but should be left until the officers involved in the shooting are better able to articulate their experience in a coherent format. This is usually after at least forty-eight hours.

This period of time is indicative and not prescriptive and will of course be a matter for individual case circumstances, and will depend upon factors including the availability of investigators. Police officers should rightly be considered professional witnesses and should be treated as such, and in any fatal police shooting it is a matter for the senior investigating officer of the investigating authority to determine and negotiate how to secure and preserve relevant witness accounts and testimony.

Insofar as principal officers are concerned, you raise a question over the distinction made between the seeking of accounts from a police officer and a civilian who uses lethal force in defence of himself or another. I think it right to acknowledge that firearms officers can and do face situations of risk and threat with dilemmas that should not be underestimated in the enormity of the consequence and responsibility of their actions and decisions. Unless there are any reasonable grounds to believe the contrary may be the case, firearms officers who act in accordance with their powers, duties and responsibilities are professional witnesses who place themselves at risk of death or serious injury to protect the public, to reduce and mitigate threat and harm to others, and to bring offenders to justice, and fully deserve recognition as such. Initial investigating officers and indeed the IPCC have sufficient and robust powers to determine prospective culpability and to hold to account any officer using or being involved in the use of lethal force in the event either criminality or misconduct is considered.

Where a civilian uses lethal force in defence of self or another, it is also invariably the case the attendant circumstances of the incident are fully taken into account in making a decision as to the prospective culpability for any criminality, and of course, any such person benefits from legal safeguards and guidance for achieving best evidence in securing evidence by way of account taken, statement or interview.

In respect of your concern over the extent to which the academic research underpinning the practice of allowing a period between a traumatic event and a statement being given can or should be relied upon, it is beyond the scope of this response to fully place into context the relevant academic studies that provide strong evidence for the basis that best evidence is achieved by taking into account the effective recall and the impact on memory.

These issues are expanded upon in detail in the Metropolitan Police Service (MPS) submission to the IPCC's consultation (May 2014), and we would therefore respectfully draw your attention to this submission as I am aware the MPS will be forwarding to you this response in accordance with your request at paragraph 72 of your report.

In paragraph 66 you make specific reference to the apparent inconsistencies in findings between earlier Home Office Study Papers (which lends some support to the practice of allowing a period between a traumatic event and a statement being given) and a more recent paper by Dr William Lewinski. As part of the National Policing response to the earlier IPCC consultation, we recently commissioned Professor Gudjonsson, Emeritus Professor of Forensic Psychology at King's College, London to conduct a review of the conclusions of Home Office Study Papers of 1986 and 1993, taking into account subsequent relevant studies. Professor Gudjonsson affirms support for the position that where an officer is likely to be in a state of physical and mental shock and suffering some degree of confusion, statements taken under these conditions may be of limited forensic value, and that some form of delaying the formal investigative procedure should be considered in order to give the officer the time and opportunity to recover from the initial effects of his experience.

Furthermore, Professor Gudjonsson highlights his serious concerns about unwarranted assumptions and expectations regarding officers being able to produce a detailed and reliable account of events immediately after major firearms incidents. Whereas the gist of what took place is likely to be reasonably clearly recalled, details may take time to recall and on many occasions may never have been properly observed and processed, making any retrieval attempts futile.

Professor Gudjonsson also concluded that in view of the likely state of high emotional arousal and confusion, firearms officers involved in shooting incidents that cause serious injury or fatality should only provide an initial account of what happened and what they clearly recall before going off duty with a detailed account being given later after a period of rest. Professor Gudjonsson's finding tends to strongly support the National Policing position and reinforces that adopted in the APP. When providing a statement, officers should be in a sufficiently sound mental/emotional state to provide a clear, detailed and coherent account of events. The key is to optimize their capacity to provide their 'best' and most reliable account of events.

We have appended a copy of this paper to this response (Appendix B).

Paragraph 67

The APP provides that officers who were in the immediate vicinity of the discharge of firearms or other munitions should be examined by a registered medical practitioner (FME) as a matter of course, subject to their consent, as they may have suffered an injury of which they are not aware.

We agree with your view articulated in paragraph 67 that it should be a matter for the officer concerned and the FME as to whether the officer is in a fit state to give an account. Nothing in the APP should preclude any officer – principal or otherwise – from making an account in whatever level of detail he or she thinks fit. The post incident procedures are designed to accommodate and facilitate the needs of the investigation with the welfare considerations, and whilst medical advice and other welfare considerations are properly made available to principal officers under these procedures, they are under no obligation to follow such advice or guidance.

It is perhaps salient to point out here that in his recent review, Professor Gudjonsson remarks that forensic medical examiners are generally not trained to consider the impact of the psychological state of a witness following a traumatic incident, as this kind of assessment requires specialist expertise over and above those of a primary care physician.

Paragraph 68

We understand the fact that some police officer witnesses who perceived a threat from the person who was shot did not set that out in their statements was subject of significant scrutiny during the course of the inquest into the death of Mark Duggan. The existence or otherwise of a threat, real or perceived, would appear to be a matter of some critical importance to an investigator and any subsequent inquiry or proceedings to determine. From a national policing perspective, it will be prudent to take steps to reinforce this issue through both National Armed Policing and through the College of Policing.

Paragraph 69

The National Policing perspective is that there does remain a very important purpose in determining the status of a 'principal officer' from that of a general policing witness. Police officers are entrusted with unique powers of coercion over fellow citizens. Both the public and the police service remain committed to the principles of policing by consent and a largely and routinely unarmed police presence in our communities. Authorised Firearms Officers are right at the very high end of specialist policing; they are volunteers and are trained and expected to deal with situations of extreme violence and significant threat to life where the application of lethal force may be necessary to protect the public and themselves.

It is from this context that the term 'principal officer' has developed as a result of the police services' commitment to effective post incident procedures that meets the exacting scrutiny of independent investigations and the requirements of an Article 2 ECHR investigation.

In the National Policing response to the recent IPCC consultation on its draft statutory guidance to the police service on achieving best evidence in death or serious injury matters also set out our view that the distinction in Module 7 of the APP between 'principal officers' and other police witnesses to a death or serious injury (DSI) incident should be retained.

We see some merit in subdividing the balance of the policing witnesses as key policing witnesses and other policing witnesses, with the caveat that the definition of a key policing witness need not be constrained to those present at the actual scene of the death or serious injury sustained. For instance, as in the inquest into the death of Mark Duggan, firearms commanders, tactical advisors and intelligence officers may be equally key to any decision to use force.

Paragraph 70

The National Policing portfolios appreciate the real and tangible welfare support invariably offered by representatives of the Police Federation (and indeed the Superintendents' Association) to principal officers during the course of the immediacy of post incident procedures and particularly during then later phases of post incident management, complex and thorough investigations and exacting inquires and inquests.

Many police forces in England and Wales quite properly and responsibly ensure staff association representatives receive accredited training in post incident management. Whilst such representative play a crucial part in these post incident procedures under the direction and control of the post incident manager, it is equally important that such representatives do not duplicate or intrude into the provision of legal advice.

It will be prudent to take steps to ensure the APP reflects and reinforces that any intervention by staff association representatives prior to an officer's full account being recorded be restricted to welfare considerations. We will take this matter forward through the National Portfolios in conjunction with the College of Policing.

Paragraph 71

Paragraph 71 rightly and understandably describes the issue of opportunities for police officers to confer after a police shooting as being controversial. The National Policing perspectives on this issue are set out in some detail in its earlier referred to response to this IPCC consultation of 27 May 2014. It may assist if we set out here some salient points from that response.

It is noted that your concerns as set out in paragraphs 64 to 72 do not include mention of a requirement to separate officers prior to the provision of a first account, a position taken by the IPCC in its draft consultation.

It is unequivocally in the interests of the public, the police service and all individual officers involved in any such incident that there is both transparency and integrity in mutually dependent post incident imperatives of providing a necessarily high degree of welfare support to all officers in what are often highly complex and challenging operational circumstance and the duty to facilitate a thorough and impartial investigation into the circumstances surrounding the incident.

The National Policing portfolios contend that there are four important factors to be born in mind in considering post incident procedures: (a) the safety of the public and police officers; (b) achieving best evidence; (c) transparency and public confidence; and (d) safeguarding the welfare of officers, particularly in the case of fatal police shootings (due to the traumatic effect of a fatal shooting on the firearms officers concerned).

The IPCC's draft guidance promotes the third factor at the expense of the first, second and fourth factors. The National Policing portfolios' view is that post incident procedures should strike an appropriate balance between all four factors, a position that Module 7 of the APP seeks to achieve.

There are certain elements of the IPCC's draft guidance that could usefully be included in the existing APP. There are other concepts in the IPCC's draft guidance that the National Policing portfolios do not support for the reasons set out in detail in that response.

Seeking to ensure the separation of officers engaged and involved in a critical incident for what may prove to be a significant period of time before an opportunity to rationally collect thoughts and compose an initial account – no matter how brief - is of course a legitimate and laudable aim but one that has to be set into context. Where officers have been together at the time of such an incident, as is in the case of many armed policing operations, the separation of officers may prove operationally or logistically impractical, as there are often large numbers of officers who will fall into the definition of a key policing witness. Such officers may have been together for a substantial period of time before it is practical to separate them, negating the rationale for separation.

Where officers who may be key policing witnesses or designated as principal officers have been at different locations in the events leading to the DSI matter, it will of course be easier to ensure separation prior to the recording of an initial account both in the immediate aftermath and in subsequent post incident procedures.

To simply state that officers identified as key policing witnesses should be kept separate prior to completion of a detailed individual first account without any acknowledgement of the very real practical, resourcing and logistical problems of doing so is setting the police service - and indeed the IPCC - up to fail and will only serve to undermine the effectiveness of any investigation and ultimately will adversely reflect on IPCC and police service credibility. Chief officers are rightly concerned that having to pay due regard to guidance that is difficult if not impossible to practically follow without detracting from operational imperatives will have undue adverse consequences for public safety and public confidence.

We have already taken steps to ensure that as part of immediate post incident procedures, a senior officer is present when the officers are preparing their initial accounts. This officer should be in a position to confirm that either conferring did not take place or, if it did, the APP was complied with. In addition we have made clear the process can and should be more transparent to both host force initial investigating officers or to the IPCC's investigators.

Chief officers quite properly contend that ordinarily, police officers who act in full accordance with their powers, duties and responsibilities are professional witnesses and fully deserve recognition as such. Many chief officers have argued in previous instances that where there are no grounds to consider any criminal conduct or any breach of any standard of professional behaviour on the part of any officer or member of staff, the explicit separation of officers is wholly disproportionate and unjustified and is both morally wrong and legally questionable. In the absence of prima facie evidence to suggest otherwise, principal officers are witnesses and should be treated accordingly. If grounds exist to suspect an officer of a criminal or misconduct offence, investigators have a wide range of powers available to satisfactorily deal with officers.

A point we reinforced in this response was that we remain keen to engage with the IPCC to seek to establish an evidence-based approach to the issue of capturing and presenting best evidence from officers who are party to dynamically unfolding and often unanticipated traumatic events during the course of their duties. It is important to consider all the academic research on the subject of whether separation actually produces better evidence, or indeed whether the production of a detailed initial first account is a basis upon which to contend best evidence is predicated.

Our concern is that the draft IPCC guidance pays no heed to the extent of the authoritative research on the ability to provide best evidence, and that seeking the wholesale separation of officers as a starting point without any recourse to a flexible and considered approach that takes into account the specific circumstances of the DSI matter will not achieve the best evidence sought by both the police service and the IPCC. As set out in our response, we do not believe the 'one size fits all' approach to separation of officers in the draft guidance is fit for purpose to deal with the complexities of an armed policing operation and other instances in operational policing where members of the public tragically lose their lives or receive serious injury during or following police contact.

Concern 4: The scene of the fatal police shooting was not video recorded

The National Policing portfolios concur with your view that it is important to minimise distrust in the police in connection with fatal shootings, and notwithstanding any development over the use of body worn video (BWV), will consider how best to reflect changes in the College of Policing's APP on post incident procedures to ensure standard operational procedures encompass the benefits of the earliest possible commencement of the video recording of scenes, subject of course to ongoing operational imperatives to protect public and individual safety and to continue to mitigate any risk of harm.

A distinction has of course to be drawn between the responsibilities of an ongoing firearms operation and post incident scene management and the necessity of securing and preserving relevant evidence.

Concern 5: The planned operation to seize weapons was not pursued after the fatal shot was fired

The issue you set out in paragraphs 84 to 86 is one for wider operational policing and for senior investigating officer and operational commander and the National Policing portfolios will ensure liaison with the College of Policing to incorporate, reiterate and reflect in its operational training.

Concern 6: The armed police operation was not recorded after State Red was called

The National Armed Policing Portfolio has already commenced work to determine whether the introduction of body worn video (BWV), recently trialled in a number of forces in England and Wales might be included in armed policing operations. This work is progressing and is likely to lead to some pilot initiatives later in 2014 to assess its validity and feasibility. The Portfolio is keen to establish an evidence based approach upon which BWV might provide best evidence, and as importantly public confidence and reassurance in such operations.

The wider issues of data recording and tracking on covert police vehicles likely to be used in armed policing operations is currently being considered by the National Police Interoperability Working Group and at present I am unable to provide any more definitive response. I will of course ensure you are apprised of any progress or developments.

In conclusion, we hope these responses herein provide you with reassurance that the National Policing Portfolios and the wider police service is and remains committed to ensuring that any action that can reasonably be taken to eliminate or reduce the risk of death of any person in any policing operation is properly considered and acted upon.

Yours faithfully



Deputy Chief Constable, Civil Nuclear Constabulary
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