



Home Office

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Judge Keith Cutler
Inquest into the death of Mark Duggan
Taylor House
Fourth Floor
88 Roseberry Avenue
London
EC1R 4QU

24 JUL 2014

Dear Judge

Firstly I would like to take the opportunity to thank you for the work you have carried out in the course of the Mark Duggan Inquest. Your Schedule 5 report has provided valuable analysis of the circumstances around Mark Duggan's death and subsequent post-incident procedures. I have now had time to consider your Report and am in a position to be able to write to you with my substantive response to the concerns which you have raised.

Concern 3: The IPCC had primacy at the scene but did not have the resources to conduct all relevant activities there. (Home Secretary, IPCC & MPS)

I understand that you made this point because of concerns that there was a period after the shooting when no crime manager was present at the scene and the management of the scene was unsatisfactory. As you pointed out in your report, the fact that the box said to have contained the gun, the mini cab furniture and the mini cab were all moved risked compromising evidence.

As you will be aware, the Police Reform Act 2002 makes clear that the duty to preserve evidence at the scene of a death or serious injury (DSI) is the responsibility of the Chief Officer.

In paragraph 73 you refer to the IPCC obligation to investigate independently. The overarching duty to investigate under Article 2 is a duty on the state and it arises (in broad terms) where a person has died as a result of actions or omissions by state actors (e.g. the police). The IPCC framework in schedule 3, part 2A, para 14B of the Police Reform Act 2002 was established to ensure that there is an independent means of investigating deaths resulting from police action, and is intended to satisfy the state's Article 2 obligations in relation to the police. Therefore, the ECHR does

not necessarily require the IPCC to investigate each and every death provided it determines the mode of the investigation and has oversight over it.

In the report you suggested that there should be a formal handover of responsibility from police to the IPCC once the police duty to preserve evidence and secure the scene has been discharged. This is a question of practicality rather than resources. The IPCC does not have its own crime scene managers and therefore relies on police forces to supply trained staff to attend the scene and conduct much of the searching, seizure and exhibiting of evidence.

If the IPCC were to take primacy in the crucial minutes and hours after such an incident (which occurs rarely) its staff would need the capability to deploy with the necessary expertise to any location within minutes of being notified. The Home Office has committed to increasing the resources of the IPCC to enable it to deal with all serious and sensitive cases involving the police. However it is clear that, for practical reasons, the IPCC will continue to require at times the support of police forces, given their specialist skills and coverage.

A formal transfer of responsibility may not be a solution as there is a need to take account of the fact that IPCC investigators will often be remotely directing the manner in which the police at the scene obtain and preserve evidence prior to the physical arrival of IPCC investigators. Beside this, the police and the IPCC are likely to continue to work alongside each other at the crime scene. There may not be a clear divide between securing the scene and gathering the relevant evidence and, in complex investigations, there is a possibility of evidence being relevant to linked criminal trials or inquests.

The College of Policing is responsible for managing the Code of Conduct for the Authorised Professional Practice (APP) which deals with post-incident procedure. The APP is kept under continual review by the College and Home Office firearms leads will work with them and the IPCC to incorporate any necessary changes regarding firearms policy.

As you are aware, the IPCC has consulted on its draft statutory guidance on achieving best evidence in death and serious injury incidents. The draft guidance sets out that, whilst the police must act to preserve and control evidence, they must not take other actions without the express agreement of the IPCC. It also says that the police may act without prior approval where there is an immediate danger that the evidence may be lost or deteriorate or there is a need to protect the public (for example to remove a firearm). When finalised, this should add clarity to post-incident procedures.

Concern 8: The IPCC and Counsel to an Inquest do not have access to all intelligence (Home Secretary).

Sensitive Information and the IPCC

Section 137 of the Anti-social Behaviour, Crime and Policing (ASB C&P) Act 2014 contains additional powers for the IPCC that it has requested in order to strengthen its ability to improve public confidence in the police complaints system.

The ASB C&P Act 2014 has strengthened the IPCC's power to obtain data from third parties. The new third party data provision provides the IPCC with the power to serve an information notice on a person where it reasonably requires information for the purposes of an investigation it is carrying out. These information notices are subject to restrictions on onward disclosure that would have to be agreed with the Security and Intelligence Agencies, Cabinet Office and FCO.

The Act contains a framework under which the IPCC may not disclose intelligence service information, intercept information or information received from a government department which in the opinion of the relevant Secretary of State would damage national security or the economic interests of the United Kingdom, or any part of it, to a third party without consent of the authority that provided the information. Neither can it disclose that it has received the information without such consent. These additional safeguards are intended to enable the IPCC to continue to exercise its statutory functions whilst at the same time safeguarding matters such as national security where this is necessary.

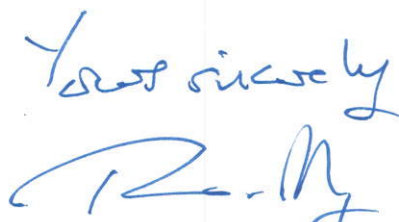
Sensitive Information and Inquests

The Government is committed to ensuring the effectiveness of the coronial system and allowing as much information as possible to be made available to the public, where it is appropriate to do so. However, there is a statutory duty on Government to protect sensitive national security information in circumstances where it may be against the law, or the public interest, to make such information available publicly.

The 2011 Justice and Security Green Paper considered the introduction of Closed Material Proceedings for inquests, and the Government, in response to the public consultation which was firmly against such an extension, decided not to propose the mechanism for inquests.

In inquests where intelligence evidence cannot be disclosed without risk to national security and public safety, the Government is able to apply for Public Interest Immunity (PII) certificates to exempt that material from proceedings, or in extremis to convert inquests into inquiries under the Inquiries Act 2005.

Finally I would like to assure you that, although risks cannot be altogether eliminated from firearms operations, we will continue to work with the police and IPCC to ensure that those risks are mitigated as far as possible.



The Rt Hon Theresa May MP