

**Response to Assistant Coroner HHJ Cutler's
'Report to Prevent Future Deaths' (the
Report) following the inquest into the death
of Mark Duggan**

Introduction

1. The Independent Police Complaints Commission (the **IPCC**) received a copy of the Report on 29 May 2014 and further to Regulation 29(4) of the Coroner (Investigations) Regulations 2013 the IPCC is obliged to provide a response to the Coroner within 56 days.
2. The IPCC began its own investigation into the circumstances leading to the death of Mark Duggan (further to its statutory obligations under the Police Reform Act 2002 (the **PRA**)) on 4 August 2011 (the day of the shooting). The IPCC was an Interested Person at the inquest and has continued with its own investigation after the conclusion of the inquest.
3. The Coroner's Report includes 8 'concerns' and these concerns are directed at a number of different parties. Concerns 3, 4, 5 and 7 are addressed to the IPCC, as well as to other parties.
4. This response addresses each IPCC-related concern and also addresses concerns 2 and 8. Concern 2 is directed to the MPS and ACPO and relates to the taking of accounts from police officers at the first opportunity. The IPCC has recently released draft statutory guidance which touches upon this issue and therefore, the IPCC has commented on this concern. Concern 8, which is directed at the Home Office alone, relates to access to intelligence by the IPCC and inquest counsel and therefore the IPCC has commented on this issue.

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

5. This concern was addressed to the MPS and ACPO. In paragraphs 60–72 of his Report, the Coroner gives the background in relation to this concern. He lists a number of aspects of the process for taking accounts from police officers as it applied in this case that caused him concern, including:
 - There was considerable scope for conferring before any account was given.
 - The delay in taking statements created a real risk of evidence being lost.
 - The fact of officers gathering in a room together for many hours to compile statements created a perception of collusion.
 - Not all witnesses to a fatal shooting are asked to give full statements as soon as possible after the event, giving a detailed account of what they saw.
6. The Coroner acknowledges that what the MPS did, “[65]...was in accordance with national practice, much of it sanctioned or encouraged by ACPO. I believe it may not be the best possible practice. Indeed, I understand that the MPS has already strengthened the non-conferring warning, and a senior officer would now be present in the Post Incident Management Suite with a view to ensuring that the process is open and transparent.” The Coroner also goes on to state that, “[71] The issue whether opportunities for police officers conferring after a fatal shooting should be minimised is controversial. I am also conscious that the IPCC has issued a consultation document which touches on some of these issues.”
7. The Coroner makes reference to the IPCC consultation on post incident procedures. On 5 March 2014 the IPCC issued for consultation draft statutory guidance to the police service on achieving best evidence in death or serious injury matters (the draft statutory guidance is enclosed with this response). Paragraphs 21-24 of the draft statutory guidance set out the IPCC's preliminary position on acquiring 'detailed individual factual accounts' and addresses a number of the concerns raised by the Coroner in his Report.
8. The consultation period for the draft statutory guidance closed on 27 May 2014 and the IPCC is reviewing the many consultation responses received. The IPCC will then, taking account of the consultation responses, produce a revised document that will require the approval of the Secretary of State before being issued. Police officers will then be under a duty to have regard to

the issued guidance in exercising or performing the powers and duties to which the guidance relates.

9. However, bearing in mind that the IPCC has not issued the final version of this statutory guidance, the IPCC does not consider it appropriate to comment further on this issue until it has completed the consultation exercise and submitted its final position to the Secretary of State.

Concern 3: The IPCC had primacy at the scene but did not have the resources to conduct all relevant activities there

10. The Coroner addressed this concern to the IPCC, the Home Secretary and the MPS.

11. The Coroner provided background to this concern in paragraphs 73-80 of the Report. He detailed a number of areas of evidence gathering at the scene which he described as being "*less than ideal*." He went on to state:

"[75].....I was left with an impression of some uncertainty about precisely what was being investigated, on whose behalf, for what purpose, and by what means."

"[78] I am concerned that no scene of a fatal shooting should be the subject of any confusion about the purpose of the investigation, or about what should be done to further that investigation. There is a tension, in a case such as this, between the duty of the MPS to obtain and secure evidence at the scene, its position as being under investigation, and the IPCC's obligation to investigate independently. The pragmatic approach adopted of the MPS consulting the IPCC about what should happen may not always resolve that tension. My primary concern is whether that position should persist. If it does then I am concerned that the police service has the practical control of many aspects of the scene and what happens there despite being under investigation, without the public realising that the investigation does not have full independence which the IPCC's role appears to safeguard."

"[79] If the position is to remain, I think it may be helpful to consider whether there should be a formal transfer of responsibility from police to IPCC at the scene of a death only once the police duty to obtain and preserve evidence there has been discharged."

12. The Report seems to highlight:
 - a. the tension between the police service under investigation having a practical role in evidence gathering at the scene; and

- b. the fact that the IPCC does not have the resources itself to gather all the evidence from the scene.
13. In relation to resources, the Report correctly identifies that the IPCC is heavily reliant on the local police force to provide sufficiently experienced specialist scene managers, forensic staff, exhibits officers, search officers etc, to conduct the majority of the work at the scene, because the IPCC does not have these resources itself. The IPCC does not have the resources to deploy a significant number of investigators and specialist staff to a scene soon after an incident is referred to it for investigation. While the Home Office has given the IPCC additional funding in 2014/5, this is specifically to conduct a number of additional independent investigations. The Home Office has asked that the money be separately accounted for and not used to provide additional resources for its existing caseload which includes death and serious injury matters such as police shootings. The IPCC indicated in its recent 'Review of the IPCC's work in investigating deaths' (a copy of the Review can be found at www.ipcc.gov.uk/page/review-ipccs-work-relation-cases-involving-death) that, as the IPCC expands, it is looking to recruit people from a variety of disciplines, including people with experience and expertise in a number of areas of scene management and forensics. However, to be able to deploy all necessary scene management and forensic staff at any time throughout England and Wales would require the recruitment of a very significant number of additional specialist staff. This is not provided for by the Home Office additional funding or envisaged by the IPCC Review.
14. Furthermore, when someone dies during contact with the police, the police will always be on the scene before the IPCC and therefore, in practice, best placed to begin obtaining and preserving evidence. This reality is recognised in law through paragraph 14B of Schedule 3 of the PRA which places a duty on chief officers to ensure that all appropriate steps are taken for obtaining and preserving evidence relating to a death or serious injury matter. The tension between the police service under investigation having a practical role in evidence gathering at the scene is partially addressed by paragraph 14B(6) which places an obligation on chief officers to take all such specific steps for obtaining or preserving evidence as he may be directed to take by the IPCC. This duty recognises that the IPCC has a directive role in obtaining and preserving evidence from a scene for the purposes of advancing its investigation. When a death or serious injury matter is referred to the IPCC by a police service and the IPCC decides that it will independently investigate the matter, IPCC investigators may give specific directions by phone to police officers at the scene in relation to how they wish the scene to be preserved and evidence obtained. Further directions may be given after IPCC investigators have arrived at the scene.

15. The IPCC's draft statutory guidance referred to above includes a number of paragraphs on identifying and preserving all potentially relevant evidence at scenes and outlines the principles that should be followed by the police service when preserving a scene (see paragraphs 9-12). The emphasis in the draft statutory guidance is on the police service acting to preserve and prevent any evidential loss, but not to take any actions in respect of its recovery, removal or analysis without the express agreement of the IPCC (see paragraph 10). However, the draft guidance does recognise that there may be circumstances where it may be preferable to act immediately and without awaiting IPCC approval, for example: where the immediate removal or seizure of evidence is necessary to prevent its loss or deterioration (e.g. where weather conditions may impair forensic evidence) (see paragraph 11).
16. Whilst the IPCC recognises the importance of its directive role in preserving and obtaining evidence from the scene relevant to its investigation, the IPCC also acknowledges that the evidence retrieved from a scene will also have relevance for the inquest and for any on-going criminal investigation progressed by the relevant police service. In relation to the latter, an example is the incident in Woolwich in May 2013 in which Fusilier Drummer Lee Rigby was murdered by Michael Adebolajo and Michael Adebowale and then both these men were shot by MPS CO19 officers. The police shooting was referred to, and independently investigated by, the IPCC. Evidence acquired from the scene was relevant to both the IPCC investigation and also the MPS SO15 investigation into the actions of Michael Adebolajo and Michael Adebowale. It was important that both investigations could acquire from the scene necessary evidence. This inevitably required the involvement of SO15 officers to ensure that evidence necessary for its investigation was preserved and obtained.
17. Therefore, taking into account the practical issues identified above¹ and that the evidence acquired from a scene may well be relevant to both the IPCC investigation and also on-going criminal investigations, the IPCC is not of the view that the Coroner's suggestion of a formal transfer of responsibility from the police to the IPCC at the scene of a death once the police duty to obtain and preserve evidence has been discharged, is entirely practical or the best overall solution in the current circumstances.
18. The IPCC must be able to seek to secure and retrieve the forensic evidence it requires to advance its investigations and must inject into this process as much independence as practically possible in the circumstances, but the IPCC also recognises the importance of this evidence to other on-going

¹ For example, the fact that the police are first on the scene, that IPCC investigators may well give directions as to preservation of evidence before any IPCC investigators are on-scene

investigations. Therefore, even if the IPCC had the resources to manage a scene without any reliance on police service resources, the IPCC may need to allow police service involvement in scene management to ensure these other investigations are not compromised.

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

19. The Coroner addressed this concern to the MPS, the IPCC and ACPO.
20. In outlining the background to this concern (paragraphs 81-82), the Coroner made reference to the significant issue of how and when the gun found some distance from Mark Duggan's body got to that location and about how and when it was found there. The Coroner also refers to the failure to record where Mark Duggan's mobile phone was found. The Coroner states that the distrust that this fostered could have been avoided had the scene been video recorded in the period between the shooting and the arrival of the police helicopter (which recorded aerial footage of the scene). He notes that armed officers were in possession of a video camera and recorded the first-aid given to Mark Duggan and therefore both the availability of a camera and the manpower to operate it "*...was not a problem.*"
21. The IPCC can see the benefit of early video recording a scene as part of the process of evidencing where items have been found. Therefore, the IPCC will be considering whether reference to video recording scenes should be included in the statutory guidance. The IPCC anticipates being able to submit finalised statutory guidance to the Secretary of State for her approval by the end of March 2015.

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

22. The Coroner addressed this concern to the MPS, the IPCC and ACPO.
23. The background to this concern is whether there were further illegally-held firearms held by Mr Hutchinson-Foster (the man convicted of transferring the firearm to Mark Duggan on 4 August 2011) at premises occupied by a girlfriend in Burchell Road. The Coroner states that he does not know whether, "*[86]...fully-developed intelligence would have permitted the Burchell Road address to have been identified on 4 August with sufficient precision for it to be raided or in sufficient time for a search warrant to be obtained. My*

concern is that no consideration appears to have been given to the prospect. A starting point should have been that one of the Trident officers saw the minicab turn into Burchell Road for the handover, and that was a short cul-de-sac."

24. The IPCC agrees that on-going police investigations should continue even after a police shooting has taken place, especially if illegally-held firearms are capable of seizure. However, the IPCC would be concerned to ensure that its own investigation of the shooting itself was not compromised by any on-going police investigation and would need the police service to liaise with the IPCC to ensure that this did not occur.

Concern 7: The IPCC does not have a protocol agreed with the Chief Coroner, ACPO and the CPS

25. The Coroner addressed this concern to the IPCC. He explained that with the objective of coroners holding effective inquests as soon as practicable, the Coroner asked the IPCC to consider approaching the CPS, ACPO, the Chief Coroner and the Coroner's Society with a view to integrating their memorandum with the Memorandum of Understanding that already exists between the IPCC and the Coroners' Society.
26. The background to this concern is the interplay between the IPCC's investigation into the police shooting which may lead to an investigation being referred to the CPS to consider prosecution and the coroner who is under a duty to investigate the death. The Coroner notes that the, "[93]...IPCC report may precede the inquest, or may not. It may be necessary for the inquest to be adjourned pending criminal proceedings. It is obviously important that everyone concerned in those exercises should liaise."
27. The Coroner makes reference to a Memorandum of Understanding (MoU) between the CPS, ACPO, the Chief Coroner and the Coroners' Society of England and Wales dated June 2013 "[94]...which deals with the interplay between inquests and potential criminal proceedings. The IPCC is not a party to it. The statutory provisions...for adjourning the inquest to give priority to a prosecution make no reference to the IPCC. There is, however, a Memorandum of Understanding between the Coroners Society of England and Wales and the IPCC dated 1 April 2010 which deals with the interplay of inquests and IPCC investigations and which touches on the interplay between inquests and prosecutions."

28. The IPCC will certainly consider carefully whether it should make this approach bearing in mind the need identified by the Coroner for proper liaison between parties involved in investigating these types of incidents and potentially prosecuting thereafter, coupled with the need for coroners to hold effective inquests as soon as practicable. The IPCC is also mindful that its MoU with the Coroners' Society is in need of up-dating to reflect changing working practices at the IPCC and also implementation of parts of the Coroners and Justice Act 2009 and the Coroners (Inquests) Rules 2013 and Coroners (Investigations) Regulations 2013 which change the way coroners investigate deaths.
29. However, the IPCC notes that the purpose of the MoU between the CPS, ACPO, Chief Coroner and Coroners' Society is to, "...*establish a common understanding of the roles and responsibilities of the CPS, police and coroners where an investigation gives rise to a suspicion that a serious criminal offence (other than a health and safety or other regulatory offence) may have caused a death.*" Therefore, this MoU understandably focuses on the interplay between an inquest and in particular, a prosecution.
30. By contrast, the purpose of the MoU between the IPCC and the Coroners' Society is to give clarity to the working relationship between the IPCC and coroners in circumstances where the IPCC is involved in an investigation into a death of a person which involved contact with the police and this investigation may, or may not, involve the suspicion that a serious criminal offence may have caused the death. Therefore, the IPCC investigation may not be criminal in nature² and thus, the focus of this MoU is different from the MoU referred to above. However, the IPCC recognises that there is an overlap and will carefully consider whether these MoUs can be appropriately amalgamated. This will occur before the end of 2014.

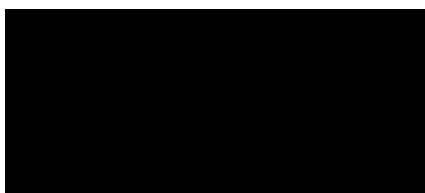
Concern 8: The IPCC and Counsel to an inquest do not have access to all intelligence

31. The Coroner addressed this concern to the Home Secretary alone, however, the concern relates to access to intelligence by both the IPCC investigation as well as access by inquest counsel. It is therefore appropriate that the IPCC comments on this concern.
32. In the background to this concern the Coroner states that there was intelligence relevant to Mark Duggan's death which the jury could not see. He

² The investigation may remain an investigation into a death or serious injury matter (as defined by section 12 of the PRA)

states that exceptionally the IPCC lead investigator was permitted to see it but that a senior police officer in an independent police service (i.e. not the MPS), from whom the IPCC had sought an expert opinion, was not so permitted and “[96]...[t]hat prevented her from forming a fully-informed view about the planning of the operation. I would have liked to put her report before the jury and to call her to give evidence but did not do so because she had not seen the intelligence picture. Furthermore, the IPCC is plainly being hampered in its task by not having the benefit of her expertise.”

33. The Coroner goes on to state that whilst he was allowed to see the intelligence, his leading counsel was not, despite holding the highest security clearance. The Coroner makes reference to these limitations giving rise to understandable suspicions in the minds of those not party to the intelligence but also “[98]...plainly create a risk that an intelligence-led operation which results in death will not be fully investigated so that lessons may be learned.”
34. The IPCC shares the Coroner's concern. The IPCC is best placed to determine who from within the IPCC investigation (including appropriately security cleared external advisors) should have access to the intelligence. This is necessary both to ensure that intelligence-led operations which result in death are investigated as fully and independently as possible and to maintain public confidence in the police complaints system which is the IPCC's statutory function.
35. The IPCC considers that there should be a clear legal right of access by IPCC investigations to all relevant intelligence material, to ensure that IPCC investigations can consider all information which has influenced police operations under investigation.



[Redacted]

Acting Chief Executive

Independent Police Complaints Commission

24 July 2014