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INQUEST RESPONSE TO IPCC STOCK TAKE CONSULTATION 2008

October 2008

Introduction

1. Founded in 1981, INQUEST is the only charity in England and Wales that provides a specialist, comprehensive advice service on contentious deaths and their investigation to bereaved people, lawyers, other advice and support agencies, the media, parliamentarians and the wider public. Its casework priorities are deaths in custody. This includes deaths at the hands of state agents and in all forms of custody; police¹, prison, young offender institutions, secure training centres, immigration and psychiatric detention. The focus on deaths in custody and the monitoring of such deaths means that INQUEST is at the forefront of uncovering patterns and trends. Arising from this it has particular concerns about the deaths of women, black people, children and young people, and people with mental health problems. This is both in terms of the treatment and care received by the deceased in custody and the experience of bereaved relatives following the death.
2. As a result of its knowledge, experience and expertise developed through its casework, INQUEST has a unique overview of how the whole system operates from the perspective of bereaved families and their advisors and is widely consulted at a governmental level. Alongside its casework service INQUEST supports families and empowers them to meet and present their cases directly to parliamentarians and policy makers. INQUEST develops policy proposals and undertakes research to lobby for changes to the inquest and investigation process, reduce the number of custodial deaths, and improve the treatment and care of those within the institutions where the deaths occur.

¹ We use the generic term death in custody to cover all deaths in custody, following police contact or following police shootings.

The Stock Take

PART ONE - Evaluating the IPCC

3. The opening paragraph of *Building on Experience* explicitly makes reference to the “aspirations for an independent police complaints system” and that “the purpose of the Stock Take was to check how well the system is delivering against the original aspirations, whether those aspirations are still appropriate in the current environment and to continue to improve the system based on evidence and learning from the last four years operation.” The document also expresses a desire to conduct an analysis of what works well and what does not work so well in the current system.
4. With that in mind we set out our assessment which is drawn from the direct experiences of our casework service. In considering whether the original aspirations have been met and will be met by the current proposals they need to be measured against the following: will they result in better results for complainants; timely resolution of their complaint and facilitate learning within the police service that results in a reduction in serious complaints and deaths; and also in a better police service to the public. Our comments are informed by our area of expertise - deaths in custody. However as these deaths sometimes represent the most severe end of a continuum of police incompetence, neglect and potential criminality, the lessons that can be learned from the experiences of bereaved families and their representatives are particularly important. We have therefore drawn on the experiences of families and lawyers with whom we work and on our direct experience of contact with IPCC staff members and Commissioners.
5. Since April 2004 we have worked directly on 80 cases - 62 custody-related deaths, 8 fatal shootings by police, 7 police pursuit-related deaths and 3 road traffic accidents. Given the particular disquiet about deaths in custody and some high profile cases giving rise to considerable concern, we think an opportunity has been missed with the

approach taken to the Stock Take and would have welcomed more focus on deaths in custody and other issues that merit independent investigation. It appears that the approach taken is implicitly driven by pressure on resources and the need to meet recent legal requirements rather than the need to ensure the Commission meets its objectives. We also think that the issue of regulatory capture needs to be considered in relation to the IPCC – the culture and approach of the organisation appears to have been unduly influenced by those it regulates, i.e. the police, rather than being fair and impartial – a key objective in moving from the discredited Police Complaints Authority (PCA).

6. *Building on Experience* recognises that any evaluation of the IPCC must begin with consideration of the context in which the organisation was established and the climate of distrust and lack of public confidence in the police complaints system. The conclusions of the Home Affairs Select Committee Inquiry into Police Complaints and Discipline and the Stephen Lawrence Inquiry in 1999, coupled with many years of campaigning by bereaved families, lawyers, complainants, police monitoring groups and human rights organisations led to the Police Reform Act 2002, which established the Independent Police Complaints Commission in 2004. The new Commission was welcomed and everyone involved, whilst retaining a healthy scepticism, hoped that it would make a real difference to the independence and transparency of the investigation of complaints against the police. In particular INQUEST hoped that bereaved families would have more confidence in the new system and that the approach of the IPCC would be fair and impartial resulting in just outcomes of the investigations. However, many of these aspirations have not been met and there has not been a corresponding development of trust and confidence in the new system amongst those complainants with which it has the most direct contact.
7. Despite INQUEST's best efforts to contribute and assist the IPCC by sharing our experience and positively contributing to its understanding of the issues arising from our casework it has not been a fruitful experience. Too many times we have seen a failure by the IPCC to understand or appreciate the historical context from which it

came. This has been sometimes been exemplified by an over-eagerness to adopt highly defensive positions when faced with any criticism - a reaction which, if made public, only serves to strengthen critical perceptions of the police complaints system. Our positive contribution as a critical friend has received this kind of response, which raises an important question - can an organisation that finds it difficult to hear criticism and learn lessons about its own functioning ensure lessons are learned by the police from the issues and cases it investigates?

8. We have identified worrying trends in the way the families have been treated by the IPCC that are reminiscent of previous discredited practices. Without a thorough awareness and honest examination of these trends, their links to past problems and what caused them, it is not possible for a new system to avoid the same bad practices or to recreate the same flawed culture and systemic failings that previously undermined public confidence. We suggest that consideration is given to a Stock Take process that looks specifically at the IPCC's handling of 'high' level cases. If the IPCC is to have more direct involvement in all such cases we think it is important that it addresses how it has performed on these cases to date as a matter of urgency.
9. Our key observation about whether the IPCC has delivered against the original aspirations is that there is a dislocation between the stated policy and objectives set out by the leadership of the organisation both at a Commissioner and Executive level and the practice of some of those tasked to meet those aspirations. This is not helped by a lack of agreed protocols that frame the approach to the investigation of deaths.

INQUEST's casework themes

10. A number of recurring themes continue to arise from families' experiences. Although there have been examples of good practice there is still great inconsistency of approach. To ensure a uniform approach the IPCC should put in place clear, coherent and consistent national protocols for the structure of the relationship between the investigating officials and all others in direct contact with bereaved people and ensure

that investigations follow an agreed basic protocol. We have made clear the detail of the issues arising from our casework on a number of occasions. We have raised the issues both in direct meetings and seminars with IPCC Commissioners and staff and in our publications.²

11. The thematic issues include:

- a. Failure to treat deaths in custody as potential crimes at the outset of the investigation, resulting in loss of forensic evidence and misleading statements being made to the media;
- b. Inconsistency of approach to investigations;
- c. Communication failures with bereaved families;
- d. Lack of agreed corporate understanding and practice about disclosure of evidence during the investigation to bereaved families;
- e. Lack of agreed procedure about managing meetings with bereaved families resulting in the IPCC, perhaps inadvertently, setting up confrontational and suspicious communication process;
- f. Bereaved families' low confidence in the IPCC;
- g. Concerns about decision making on related disciplinary/misconduct matters.
- h. Concerns about the quality of advice to families which has later transpired to be inaccurate or based on opinion rather than fact.

PART TWO: Stock Take proposals

12. We share the views of members of the Police Actions Lawyers Group (PALG) and of Dr Graham Smith, Rapporteur to the Council of Europe Commissioner for Human Rights, that it is conceptually mistaken to think that public confidence in the complaints system will be met by focussing IPCC resources on high level investigations to the detriment of proper oversight of the whole complaints system. How more routine

² Our book *Unlocking the Truth: Families' Experiences of the Investigation of Deaths in Custody* (INQUEST 2007) makes a series of detailed relevant recommendations.

complaints are dealt with is both an important indicator to the public about the standard of service expected from the police and also an important brake on the development of a culture that tolerates abuse and poor behaviour. As we have said earlier the deaths we deal with are at the extreme end of a continuum.

Proposal 1

13. We agree with this proposal but it is important that both individual culpability and systemic failure are able to be addressed within the police complaints system. Many families feel that justice is not done following deaths in custody and that police officers are not held properly to account. The IPCC's framework for its decision making, particularly in relation to recommending disciplinary action/criminal prosecution, the extent and any limitations to its powers, needs to be more clearly and accessibly explained. There is popular perception that there is an institutional reluctance to hold people to account through disciplinary action or criminal prosecution after a serious incident. There needs to be more clarity about what power the IPCC does and does not have in relation to outcomes. Families find it difficult to understand, as do many of the concerned public, the limitations placed on the IPCC in relation to 'misconduct' versus addressing systemic problems.

Proposals 2 - 9

14. INQUEST believes as a matter of principle that investigations of all complaints against the police should be fairly and impartially investigated, even if they are minor. The historical legacy and particular culture within the police means there is distrust that they are capable of keeping themselves in check. 'Minor' complaints like rudeness to members of the public can have a significant impact on the community if they happen on a regular basis. We agree with members of the PALG that credible local resolution would result in less damage being done to complainants and greater public confidence. However, for this approach to be credible it requires resources and built-in safeguards.

We do not agree with the current proposals as they stand but with some qualification we could give cautious support as the direction of travel is theoretically the right one.

15. Two additional elements should be included in the process:

- a. Complaints dealt with at a local level should require the informed consent of the complainant – so in effect they have a veto on their case being dealt with at that level if they feel uncomfortable about the local process and/or unconfident that it will be dealt with fairly and impartially.
- b. There should be a requirement for all matters assessed for local management to be reported to the IPCC. This would afford the IPCC the opportunity to be aware of what is happening at local level and also an incentive for those matters to be dealt with properly. The IPCC should have the power to call a complaint in or intervene if they feel the matter warrants their attention. Notification and recording is crucial – the IPCC should record all complaints and determine the procedure for handling them. The police should not delay and all minor complaints should be dealt with immediately, but the matter should be recorded by the IPCC and it should confirm or review the decision. The IPCC should routinely evaluate this procedure.

16. Given the very serious concerns that have arisen from our casework about the quality of decision making we would be cautious about suggesting that there should be a much greater use of discretion but the stark line drawn between 'high' level issues and those appropriately dealt with at local level is too restrictive. We agree with Dr Graham Smith's proposals that all complaints that engage Section 1 of the European Convention on Human Rights (ECHR) should be dealt with by the independent system alongside all those that give rise to possible criminal and/or disciplinary charges. Those complaints that don't should be dealt with by the police at a local level as long as this is done within the safeguards outlined above.

17. We support the shift towards a more integrated approach that ensures lessons are learned systemically. We think the IPCC has made some significant and positive progress which relates to two of the five shifts *a Fix the problem not just the culpability* and *c Instil a learning culture*, and have been particularly impressed by the thematic reports and *Learning the Lessons Bulletins* which point to systemic issues and learning much of which is relevant not just for the police but across other custodial institutions. However we think there has not been a sufficiently robust strategy to disseminate and promote those projects beyond IPCC key stakeholders.

Proposal 10 – Should the IPCC make more information available earlier on in investigations

18. We do not think this should be considered until the procedure and practice around disclosure of information to those most closely affected by an incident has been clarified. For many families the timing of announcements about information and decisions relating to their relative's death is highly sensitive. The impact of IPCC public statements on family confidence with the system is highly significant.

19. Many of the families we work with have to wait an unnecessary amount of time to find out basic details of the circumstances surrounding their loved one's death. Therefore issuing additional statements is to be welcomed, provided it is clear what information in these statements is fact and what is assumption. All statements made should be subject to a harm test. IPCC information put in the public domain has sometimes been misleading.