

CONSULTATION RESPONSE

TO	Ministry of Justice (MoJ)
FROM	Independent Office for Police Conduct (IOPC)
REGARDING	Legal representation for families at Inquests

Our interest in this matter

1. The IOPC welcomes the review of legal representation for families at inquests. The investigation of deaths and serious injuries following contact with the police is one of the IOPC's most important functions. In the event of a death in particular, it is crucial for families that they know and understand what happened to their loved one and why. Importantly, families must also be able to participate meaningfully in the procedures that follow. This is an integral part of the state's obligations under Article 2 of the European Convention on Human Rights (ECHR). We independently investigate many deaths following police contact and will investigate where Article 2 may be engaged, such as a death in custody. In many cases we have regular contact with bereaved families from the early stages of our investigation through to the end of the inquest.
2. Investigations into deaths following police contact are often the most complex. Where the IOPC decides to conduct an independent investigation in relation to a death, it is necessary to liaise with and update the Coroner throughout the investigative process. IOPC staff will routinely attend any pre-inquest review and the inquest itself. Given the complexity of these cases, and of the formal procedures that follow, bereaved families will sometimes look to us for direction and guidance which we are not best placed to provide.
3. The IOPC has been working with the Chief Coroner with a view to developing new guidance. We hope that this will improve communication and liaison between both parties in the lead up to inquests.
4. We have been working closely with members of the Ministerial Board on Deaths in Custody to progress the Government's work programme following the publication of Dame Elish's 'Independent Review of Deaths and Serious Incidents in Police Custody'. This includes, for example, work improving support for families, healthcare in police custody and improving the timeliness of the processes that follow a death in custody.

Response to consultation

5. Broadly speaking the IOPC has for some time supported calls for free legal representation for bereaved families where there has been a death following police contact. We are of the view that legal representation is required for families to play an effective part in the relevant procedures that follow – which includes inquests. IOPC staff, including Family Liaison Managers (FLMs) who receive bespoke training, provide support to families throughout the investigation process and signpost them to specialist services. However, we cannot act for families and it is important that we maintain, and are seen to maintain, our independence. That is why we believe legal aid should be automatically available to bereaved families following deaths in custody or other state detention. This is particularly critical at inquests as legal proceedings are often by their very nature complex and other parties will ordinarily be represented.
6. As many of the questions contained in the consultation document ask for the direct experiences of families of the legal aid process and inquests, we have not provided a response to every question. However, we have commented on what we perceive to be some of the most important issues based, in part, on the feedback we receive from families.

Legal aid application process

7. The IOPC welcomes recent changes to the Lord Chancellor's exceptional funding guidance for inquests, which makes it clear that legal aid is likely to be awarded for representation of bereaved families following the non-natural death or suicide of a person detained by the police, in prison or in a mental health unit. We support any changes that are intended to increase access to legal aid for bereaved families. Additionally, we recognise that, when deciding whether to apply the financial means test, changes to the guidance allow for consideration to be given to the distress and anxiety caused to families following a death.
8. The IOPC is not in a position to comment, in detail, on the specifics of the legal aid application process. Feedback we have received from families, for example during and after independent investigations and from two Family Listening Days we have held, has highlighted that families often find it very difficult to process the vast amount of information that they receive in the immediate aftermath of a death. We understand that, in some cases, families may also require initial legal advice and assistance to complete the application process. We are of the view that families cannot be reasonably expected to undertake what can be a rigorous application process at a distressing time during the difficult period following the death of a loved one.
9. Although it is for the Coroner to make a formal decision, many of the deaths that are investigated by the IOPC will result in an Article 2 inquest. In most circumstances, this will result in public funding being granted allowing the bereaved family to be represented. However, we have seen a number of examples where families have not been awarded funding for legal aid

following the application of the means test. In such cases families have therefore either not sought representation, or have had to meet some or all of the costs themselves. We have additionally seen examples of cases where inquests have been delayed because family members have been involved in the legal aid application process. The availability of non-means tested legal aid would guarantee that families are supported from the outset. It would also reduce the burden of what many families perceive as a lengthy and challenging application process.

Importance of legal representation for families

10. The IOPC strongly supports families having access to representation at inquests, particularly those which follow IOPC investigations. We firmly believe that there should be equality of arms between all parties, and other interested persons at inquests are generally represented. A repeated theme from the feedback we receive from families is that they do not feel prepared for the inquest process. Many have expressed strong views that they are not sufficiently represented throughout proceedings and have described attending inquests where up to eight barristers have represented state actors and other interested persons.
11. Where families have not been represented they have explained to us that the presence of multiple barristers made them feel at an immediate disadvantage. They have also commented that they did not know what to expect of the inquest itself. A commonly cited example is that families did not know that officers would be present while much of the evidence was being heard. Representation for families throughout the inquest process is critical to help families know what to expect and feel more confident in engaging in and helping shape proceedings. It is our view that increased clarity and transparency for families would benefit the system as a whole.
12. Importantly, a lack of representation can also have a significant bearing on the IOPC's relationship with families. Families that do not have legal representation understandably look to the IOPC for support and advice. This can be challenging for our investigative staff who, whilst trying to provide as much support as possible, cannot act for families or provide legal advice. In such circumstances there is a risk of the relationship between the IOPC and the family deteriorating. This risk can be more significant where inquest proceedings have adversarial aspects or complex legal issues arise and families may feel that they should have been better prepared by the IOPC.
13. Not only is it important that families have equality of arms, but we believe that representation is central to ensuring that they can participate fully and meaningfully in proceedings. Inquest proceedings can be very technical and legalistic, particularly where cases are complex and involve multiple parties. Pre-inquest reviews, for example, are commonly used to agree important issues relevant to the inquest such as:
 - whether the inquest will be an Article 2 inquest

- the identification of interested persons
 - whether there are any conflicts of interest
 - the scope of the inquest
 - which witnesses will be called to give evidence
 - issues around expert evidence
 - disclosure
14. We believe it would ordinarily be unrealistic to expect families to be able to effectively represent themselves and their interests in coronial proceedings. Families who have had representation, or been signposted to organisations such as INQUEST, have commented on the positive impact of such support.
15. Following the death of a loved one, it is not only the inquest process that bereaved families must try to navigate. Families often also participate in the investigation process, they will possibly have interactions with the CPS, and may attend any subsequent criminal or disciplinary proceedings that follow. Families also need to go through the processes and procedures associated with any death. It is therefore not surprising that families regularly comment on the complexity of the entire system. The availability of legal aid, preferably throughout the investigation into a death and any subsequent proceedings, is likely to reduce some of this burden.

Other types of support

16. We are firmly of the view that whilst the availability of legal representation is crucial, it is also important that families have access to appropriate information at what is an extremely difficult and distressing time. This includes information about the value of having early legal advice on issues such as their right to view their loved one and the possibility of requesting a second post-mortem. It is imperative that communication with bereaved families is clear and effective and that families are signposted appropriately. State bodies involved in the process should ensure this information is readily available and easily accessible to families. This includes the IOPC. Recently we have been working closely with the Home Office, Ministry of Justice and other members of the Ministerial Board to produce a leaflet for bereaved families. We hope that the leaflet will help to support families and signpost them to appropriate services in the immediate aftermath of a death.
17. The IOPC has also argued more generally for a form of independent advocacy for those navigating the police complaints system, as there is in healthcare. We understand that the Government's proposed 'Independent Public Advocate' (IPA) is likely only to provide support for bereaved families following large scale public disasters. We also recognise that inquests are not exclusive to deaths following police contact. Therefore, the availability of a form of advocacy for inquests generally could provide much needed support for families.

General comments

18. We believe that it is in all parties' interests to ensure that inquests and other formal processes, such as independent investigations, are as expedient as possible. It is often the length of the entire process, i.e. from the outset of an investigation to the end of all proceedings, which causes distress for families and those who may be under investigation. This point is recognised throughout Dame Elish Angiolini's report. Timeliness is a key concern for families. This is an important focus of the IOPC's work and over the past several years we have made substantial improvements in this area. However, this work continues and we are working closely with members of the Ministerial Board to further improve timeliness.

**Independent Office for Police Conduct (IOPC)
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Annex A – The IOPC and its remit

19. The IOPC, formerly the IPCC (Independent Police Complaints Commission), came into existence in January 2018. The IPCC came into existence in April 2004.
20. The IOPC oversees the police complaints system in England and Wales and has a statutory duty to secure and maintain public confidence in it. We are independent, and make decisions independently of the police, government and interest groups. We investigate the most serious complaints and incidents involving the police across England and Wales, as well as handling certain appeals from people who are not satisfied with the way police have dealt with their complaint.
21. Over time our original remit covering police forces across England and Wales has been extended to include:
 - Police and Crime Commissioners and their deputies
 - the London Mayor's Office for Policing and Crime and his deputy
 - certain specialist police forces (including the British Transport Police and the Ministry of Defence Police)
 - Her Majesty's Revenue and Customs (HMRC)
 - staff who carry out certain border and immigration functions who now work within the UK Border Force and the Home Office
 - the National Crime Agency (NCA)
 - officers carrying out certain functions at the Gangmasters and Labour Abuse Authority (GLAA)
22. The majority of complaints against the police are dealt with by the relevant police force (or agency) without IOPC involvement. However, certain types of complaints and incidents must be referred by the police to the IOPC. These include where someone has died or been seriously injured following direct or indirect contact with police, as well as allegations of serious corruption, serious assault, and a criminal offence or behaviour liable to lead to misconduct proceedings which in either case is aggravated by discrimination on specified grounds. We then decide whether an investigation is necessary, and, if so, what level of involvement we should have in that investigation. We may choose to conduct our own independent investigation, manage or supervise a police investigation, or decide that the matter can be dealt with locally by the police.