

CONSULTATION RESPONSE

TO	Ministry of Justice (MoJ)
FROM	Independent Office for Police Conduct (IOPC)
REGARDING	Consultation on establishing an Independent Public Advocate (IPA)

Our interest in this matter

1. 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, as well as handling certain appeals from people who are not satisfied with the way police have dealt with their complaint. We also have a broader role in sharing learning to help the police service develop and improve. For further information about our role, see Annex A.
2. The IOPC has undertaken major investigations into the police response to Hillsborough disaster and more recently into the police response to child sexual exploitation allegations in Rotherham. During these investigations we have worked closely with bereaved families and survivors. In many cases we have therefore witnessed first hand how families and individuals experience the system as a whole, this includes for example, the investigatory process, coronial system and any subsequent criminal proceedings.
3. The majority of incidents that the IOPC investigates are not large-scale public disasters. Many of our cases do, however, have a considerable impact on families, survivors and more widely on communities or members of the public. 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, families need to know and understand what happened to their loved one and why. Crucially, families must be in a position to participate meaningfully in all proceedings. This is a fundamental principle of the state's obligations under Article 2 of the European Convention on Human Rights.

Response to consultation

4. The IOPC welcomes the Government's consultation on the establishment of an Independent Public Advocate (IPA). We are strongly in favour of any proposal to increase support for members of the public following large-scale disasters, such as those involving fatalities or serious injuries. The availability of an IPA

could provide much needed support for families and facilitate their effective participation in the processes that follow tragic incidents.

5. The IOPC is not an emergency service and, generally speaking, our remit is restricted to incidents that involve contact with the police. We have therefore not provided a response to each question in the consultation, rather, we have provided comments where we believe we can add the most value in light of our experience. Our response has been heavily influenced by the experiences of those families involved in our investigations.

The need for the Independent Public Advocate (IPA)

6. The IOPC is firmly of the view that there is more that could be done to support families following large-scale tragedies or disasters, particularly where there is loss of life, or the distress caused to those affected is severe and likely to have a lifelong impact. The framework that exists to investigate the tragic circumstances behind incidents such as the Hillsborough disaster and the Grenfell Tower fire, is complex and will often involve multiple agencies. Families can face an enormous challenge in understanding the roles of various agencies and to participate meaningfully in the numerous legal or investigative procedures. They must do this at the same time as coming to terms with what has happened to them. This is likely to be overwhelming and to add to the suffering of bereaved families and/or survivors. A recurring theme from the feedback received from families during investigations, such as that into the Hillsborough disaster, is that without support these processes can compound and prolong the impact of a tragic event.
7. Bereaved families and survivors have commented on the value of having a single, and independent, point of contact or support. This was emphasised during the IOPC's investigation into the Hillsborough disaster, where 'family forums' were chaired independently by Bishop James Jones, to help represent the interests of families and survivors. These forums were independent from the IOPC. They provided an opportunity to update families on the progress of the investigation, provide clarification on any issues raised and build an understanding of the processes involved. It is our view that having a consistent point of contact who was known to families was beneficial to the investigation and all parties involved. Furthermore, from our experience, early contact is also important for successful family engagement. It is therefore critical that appropriate support is available from the outset. We believe that an IPA, operating in a similar way to the forums, would help to ensure that families can participate fully and meaningfully in proceedings.
8. We are conscious that the existing framework for the investigation of disasters or emergencies can be complex, with the involvement of multiple public bodies and agencies. We believe that there is an important role for an IPA to play. However, consideration also needs to be given to the risk of creating additional layers of bureaucracy or barriers for bereaved families and/or survivors to overcome.

The proposed scope of the IPA

9. We note the proposed scope of the IPA is to include 'emergencies' such as those defined in the Civil Contingencies Act (2004). It is important to consider to what extent this definition, or any definition which may be used, will take into account the variation in the roles and responsibilities of investigatory bodies. As an example, the IOPC will usually only become involved in an investigation once the emergency has passed. Additionally, we are concerned that the statutory definition of 'emergency' appears to be narrow in focus and may potentially exclude a wide range of significant incidents whereby, for example, there are a small number of fatalities but proceedings are similarly complex to those that follow large-scale disasters. Whilst we appreciate the context behind the current proposal and the understandable focus on large-scale tragedies and disasters, we are mindful that there are other types of incidents that may warrant the involvement of the IPA.
10. Crucially, it is not only the scale of an incident that has an impact on the participation of bereaved families or survivors, and the extent to which their voices are heard. This is also likely to be influenced by the nature of the incident itself; the complexity and impact of proceedings; public interest in the matter; the individual circumstances of families or survivors; the number of parties involved and how well they are represented. It is our strongly held view that the IPA should have discretion in how it applies any criteria used to determine the need for support. This should include the ability to decide whether aspects of their support could be made more widely available to members of the public under certain circumstances.
11. Apart from major investigations such as Hillsborough, the majority of our investigations do not involve multiple victims or complainants. We would welcome a form of independent advocacy to support families in cases where there has been a death following police contact. Some of these incidents are likely to be relevant to the aims of the IPA, but are unlikely to meet the definition of a 'disaster' or statutory definition of 'emergency'. This is especially pertinent in complex cases where multiple agencies are involved. This includes, for example, an IOPC investigation, coronial proceedings, and potential misconduct and/or criminal proceedings. These incidents and the resulting processes can be very traumatic and add to the distress of individuals. They also have the potential to increase tensions and generate significant concerns amongst communities.
12. Given the complexity of these cases, and of the formal procedures that follow, bereaved families understandably look to us for direction and guidance. IOPC staff, including our Family Liaison Managers (FLMs), provide support to families throughout the investigation process, and also signpost them to specialist services. However, the IOPC is an independent investigatory body. We cannot act for families.
13. The feedback we have received from families has highlighted the difficulties they face in processing the vast amount of information that they receive in the

immediate aftermath of a death. Families have also commented that they feel overwhelmed and disadvantaged by the number of state actors and representatives involved, for example, at an inquest. In addition to legal representation, the availability of advocacy in such circumstances could help to support and prepare families for complex proceedings. This point is also recognised in the findings of Dame Elish Angiolini's '[Independent Review of Deaths and Serious Incidents in Custody](#)'. We therefore strongly support the IPA having the flexibility to work with families in cases such as these, where it is appropriate.

Availability and type of support provided

14. The definition used to determine what is a qualifying 'disaster' or 'emergency' will have a significant bearing on the availability of support. It is our view that it would be valuable to have a set of developed factors, akin to those included in paragraph 38 of the consultation document. Decisions should be made on a case-by-case basis and such factors should be used to assist the IPA in deciding whether their support should be made available. Whilst a clear definition, and relevant factors, should ensure a consistent and fair approach, we believe there must also be the flexibility to apply discretion in deciding how and when support can be provided. This includes, for example, where a disaster or incident has occurred in the past and where the circumstances or scale of an incident have only just come to light. We also do not believe the IPA's role should be restricted to incidents involving fatalities only. Many survivors of disasters or sexual exploitation and abuse may suffer from severe physical harm and psychological trauma. We would therefore favour the support of the IPA being available in such circumstances, regardless of whether there have been fatalities.
15. The development of bespoke terms of reference in each case would avoid any overlaps between the IPA and other bodies and set clear expectations about the support that will be provided. In our view, these should be produced at the earliest opportunity, following discussions with relevant stakeholders, including families or survivors. The review '[The Patronising Disposition of Unaccountable Power](#)' conducted by Bishop James Jones into the experiences of Hillsborough families, included a Charter for families bereaved through public tragedy. We believe that this type of Charter could be a useful framework for how the IPA would work with other organisations.
16. In terms of the support provided to bereaved families or survivors, we believe that this should be responsive to the needs of individuals. We would imagine that, where appropriate, the support available should cover many of the responsibilities set out in paragraph 58 of the consultation document. This includes acting as a conduit between families and government agencies in the early stages of an incident, as well as, explaining the role and statutory powers of each organisation. In addition, we believe that there should be an emphasis on the IPA providing practical support and impartial information, including on an individual's rights, such as, the right to view a loved one following death and to request a second post-mortem.

17. Families and survivors should be signposted to specialist support or advice by the IPA where available, and all relevant information should be repeated throughout the process. It is also important to consider if there is a role for the IPA to play in providing advice on interactions with the media, particularly in the early stages of a high-profile incident. Survivors involved in investigations into child sexual abuse and exploitation in Rotherham had the opportunity to opt-in to the support of an 'Independent Sexual Violence Advisor' (ISVA). The Home Office's [framework for ISVAs](#) sets out clear expectations for the role and could be used as the basis for the type of support provided by the IPA. In our view, one of the early challenges for the IPA will be to build trust and confidence with those involved. We believe consideration should be given to how this could be reflected in the responsibilities of the IPA.
18. The support provided by the IPA must not be in lieu of the availability of legal representation. Whilst we recognise that the proposal distinguishes between the potential role of the IPA, and that of a legal representative, there is a risk that members of the public may not identify the additional need or benefits of having legal representation. Advocacy cannot be a replacement for independent legal support for bereaved families and survivors of disasters.
19. Consequently, we believe that a key responsibility of the IPA must be to explain to members of the public the advantages of having legal support during the course of the potential proceedings that may follow a disaster. They should also signpost members of the public to, and provide information on, the legal aid application process. The IOPC has for some time supported calls for free legal representation for bereaved families where state actors will be represented, this includes, for example, deaths in police custody, police shootings or road traffic incidents. It is our view that legal representation is required for families to play an effective part at inquest, and should be available during other proceedings.
20. The IPA should be required to report on their work in the interests of transparency and accountability. The purpose of the reports should be to outline significant learning, recommendations, good practice and identify gaps in provision of support. It would also be an opportunity to capture the experience of those who have been supported by, or otherwise involved with their work. The government, or relevant agencies involved, should have a responsibility to respond to the IPA's report, preferably within a proposed time limit.

How the Independent Public Advocate should operate

21. We believe it may be problematic for a single person to deliver the role of the IPA. The proposed role has the potential to include a number of challenging functions; such as, providing support to a large number of bereaved families and survivors; involvement across a range of investigation types; and an advisory role to Ministers. The appointment of a single IPA may limit their capacity to fulfill this role where inquiries and/or incidents are take place at the same time, and where incidents occur in different parts of the country. This

would restrict the IPA's ability to develop strong and meaningful relationships, including with the local community. Whilst we would support the use of multiple IPAs, or deputies, steps would need to be taken to ensure consistency in decision-making and support.

22. The skills and experience required for the role of the IPA will be heavily influenced by the exact scope of the role. We believe that the IPA must have demonstrable experience of providing advocacy and support to members of the public. In particular, they would need experience of dealing with difficult and distressing events. They should have evidence of having done this successfully, and in a way that met the needs of potentially traumatised individuals. Whilst we recognise that the IPA will not provide legal support, knowledge and awareness of legal procedures is likely to prove valuable. Consideration would also need to be given to the sensitive nature of information and evidence that is likely to be handled by the IPA, and how the requirements of the role should reflect this.
23. The IPA must operate flexibly and in a way that is responsive to the needs of bereaved families and/or survivors. The level of support should be determined on a case-by-case basis and the IPA should ascertain how the needs of each family or individual can be best met. Importantly, the approach to engagement should always be agreed with bereaved families and survivors - insofar as it is possible. For example, family members may not want to meet in person during the early stages of a disaster or incident. Other families may have legal representation from the early stages of an incident and therefore may not require regular contact from the IPA.

Annex A – The IOPC and its remit

1. The IOPC, formerly the IPCC (Independent Police Complaints Commission), came into existence in January 2018. The IPCC came into existence in April 2004.
2. 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.
3. As part of our role to secure public confidence we also have a broader role in sharing learning to help the police service develop and improve. We issue statutory guidance to the police service on the handling of complaints, carry out research, publish learning from real life cases, and work to improve local handling of complaints through our oversight work.
4. 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, the Civil Nuclear Constabulary 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)
5. 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.