INQUEST submission to the Home Affairs Committee Inquiry on the Independent Police Complaints Commission

July 2012
INQUEST’s expertise

1) INQUEST is the only independent charitable organisation in England and Wales that provides a specialist, comprehensive advice service on contentious deaths, their investigation and the inquest process to bereaved people, lawyers, other advice and support agencies, the media, parliamentarians and the wider public. It has a proven track record in delivering an award-winning, free, in-depth complex casework service on deaths in state detention or involving state agents. It works on other cases that also engage article 2, the right to life, of the European Convention on Human Rights and/or raise wider issues of state and corporate accountability.

2) Our specialist casework service gives INQUEST a unique perspective on how the whole system operates through our monitoring of the investigative and inquest process. We work with bereaved families from the outset, facilitate their legal representation and work alongside them until the conclusion of the investigation, inquest and other legal proceedings. It enables us to identify systemic and policy issues arising from avoidable deaths and the way they are investigated and ensure this is fed through to government, policymakers and parliamentarians. Our evidence to this HASC draws on this expertise and, in particular, our evidence base from Family Listening Days and our surveys of bereaved families including Unlocking the Truth: Families’ Experiences of the Investigation of Deaths in Custody (2007), an extensively researched and referenced report which describes the experiences of families bereaved by deaths in custody from the time of death to the conclusion of the investigation and inquest and situates them within the political, recent historical and legal context.

3) Reflecting our expertise, INQUEST was the sole non governmental member of the Forum for Preventing Deaths in Custody and was represented on the Ministerial Roundtable on Prison Suicides and the Independent Police Complaints Commission Advisory Board. It now participates in the Ministerial Council on Deaths in Custody through representation on the first tier, the Ministerial Board on Deaths in Custody which has replaced both the Forum and Roundtable. INQUEST’s co-director Deborah Coles is also a founding member of the cross government sponsored Independent Advisory Panel on Deaths in Custody, the second tier of the Ministerial Council.

4) INQUEST also co-ordinates the INQUEST Lawyers Group (“ILG”) which is a national network of over two hundred lawyers who are willing and able to provide preparation and legal representation for bereaved families. Membership is open to all lawyers who represent bereaved families. INQUEST, and members of the ILG, have worked with a large number of families where their relative died in police custody or following contact with the police. We have seen the response of the Police Action Lawyers’ Group and (particularly as many members of INQUEST Lawyers’ Group are also members of PALG) would endorse a number of their observations.

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1 INQUEST’s co-director Deborah Coles gave evidence to a predecessor Home Affairs Committee inquiry into the IPCC in February 2010 (alongside Marcia Rigg whose brother Sean Rigg died in police custody in August 2008): http://www.publications.parliament.uk/pa/cm200910/cmhaff/366/10022302.htm

2 Available to order through INQUEST’s website: www.inquest.org.uk
Introductory comments and statistics

5) We address a number of questions posed in the HASC’s Terms of Reference for this inquiry including:

- Whether the Commission has improved the scrutiny of police practices
- Whether the Commission has the right powers and resources to carry out its role effectively
- Whether investigations lead to improvements in police practices
- The Commission’s role in scrutinising third parties commissioned to carry out policing duties
- How the work of the Commission could be effectively scrutinised

6) Since the IPCC was established in April 2004 there have been 448 deaths relevant to our work. Of those 247 were custody-related deaths and deaths following police contact, 23 fatal shootings, and 178 deaths relating to police vehicle incidents. We have worked directly on 111 of the custody-related deaths and deaths following police contact and 16 of the fatal shootings by police, as well as 10 police pursuit-related deaths and seven road traffic incidents. INQUEST therefore has both a broad overview and detailed experience of the IPCC’s investigations into these deaths as a direct result of our complex casework service.

7) Statistics gathered from INQUEST’s Casework and Monitoring show that a high percentage of those who die in police custody are from black and minority ethnic communities (BAME). For example, in 2008 BAME deaths accounted for 32% of all deaths in police custody. In 2009 this figure dropped to 27%, fell to 7% in 2010 and rose dramatically to 38% of all deaths in 2011. The IPCC’s recently published statistics on deaths in police custody for 2011/12 revealed that nearly half (7 out 15) of those who died in or following police custody were identified as having mental health problems.

8) People die in police custody in a broad range of circumstances including in police cells as a result of medical neglect, as a result of self-inflicted harm and following the use of force by police officers (such as CS spray, batons, firearms, restraint techniques). Many of the deaths raise issues of: negligence; systemic failure to care for vulnerable people; inappropriate use of police cells as ‘places of safety’; institutional violence, racism, sexism and inhumane treatment.

9) Whilst the number of deaths involving the use of force by the police is a small proportion of the total number of deaths in custody, these deaths have often been the most controversial. Since 1990, inquests into deaths in police custody have resulted in 9 unlawful killing verdicts, none of which has yet resulted in a successful prosecution.

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3 Throughout this evidence we use the term “death in police custody” to mean a death in police custody or following contact with the police or fatal shooting by police
4 Available from www.ipcc.gov.uk
5 Of the 9 unlawful killing verdicts, 3 were subsequently overturned following legal challenges. There have been 6 attempted prosecutions of police officers but none have been successful. At the time of writing, PC Simon Harwood is currently on trial for the manslaughter of Ian Tomlinson. For fuller details of these figures and the deaths please see the details on INQUEST’s website: http://www.inquest.org.uk/website/statistics/unlawful-killing-verdicts
10) People from BAME communities and people with mental health problems have been disproportionately represented in our casework on deaths involving the use of force or gross medical neglect. These deaths have revealed a use of violence on some occasions that is greatly disproportionate to the risks posed raising questions about the attitudes and assumptions of some state officials and pre-conceived ideas about the propensity to violence of particular groups of people. This has also profoundly impacted on police and community relations, resulting in a lack of confidence in the investigation system and considerable public anger.

11) We welcome the HASC inquiry into the IPCC and hope it will have a central focus on the investigation of deaths in police custody given the particular parliamentary and public disquiet about these deaths.

12) Finally, we would also draw the HASC’s attention to the importance of measuring the IPCC’s handling of investigations into deaths in custody against the standards set out in law: including the right to life in Article 2 and the prohibition on torture, inhuman and degrading treatment in Article 3 of the European Convention on Human Rights (as incorporated by the Human Rights Act).

13) The Council of Europe Commissioner for Human Rights, Thomas Hammarberg, has clearly set out the legal requirements concerning independent and effective determination of complaints against the police. In relation to an Independent Police Complaints Body (IPCB), the UK equivalent to which is the IPCC, he said:

29. An independent and effective complaints system is essential for securing and maintaining public trust and confidence in the police, and will serve as a fundamental protection against ill-treatment and misconduct. An independent police complaints body (IPCB) should form a pivotal part of such a system.

30. Five principles of effective police complaints investigation have been developed in the jurisprudence of the European Court of Human Rights on Articles 2 and 3 of the ECHR:
   1. Independence: there should not be institutional or hierarchical connections between the investigators and the officer complained against and there should be practical independence;
   2. Adequacy: the investigation should be capable of gathering evidence to determine whether police behaviour complained of was unlawful and to identify and punish those responsible;
   3. Promptness: the investigation should be conducted promptly and in an expeditious manner in order to maintain confidence in the rule of law;
   4. Public scrutiny: procedures and decision-making should be open and transparent in order to ensure accountability; and
   5. Victim involvement: the complainant should be involved in the complaints process in order to safeguard his or her legitimate interests.

14) Throughout our evidence we refer to these principles as we believe they are an important touchstone against which to measure the work of the IPCC.

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6 12 March 2009 https://wcd.coe.int/ViewDoc.jsp?id=1417857&Site
Whether the IPCC has improved the scrutiny of police practices

15) 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 a predecessor Home Affairs Select Committee Inquiry into Police Disciplinary and Complaints Procedure (January 1998) 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.

16) 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. Indeed we warned in our publication Unlocking the Truth: Families Experiences of the Investigation of Deaths in Custody that:

The new processes are evolving. Experiences of the previous processes described by families are important indicators of what can go wrong and how damaging the consequences can be. In any new process there will be initial problems. The reformed system needs to be open and prepared to face the challenges and difficulties that may arise and to review, revise and develop new policies and procedures if necessary. It is important that the same flawed culture and systemic failings that undermined public confidence in the past is not recreated...

17) So far these aspirations have not been met and there has not been a corresponding development of trust and confidence in the new system amongst bereaved families and other complainants with which it has the most direct contact.

18) Whilst it is inevitable that the IPCC, as the visible investigator, may become the focus of anger and dissatisfaction that more appropriately belongs with the police whose acts or omissions may have contributed to or caused a death, family complaints cannot merely be explained away in this manner. There has been poor practice and flawed decision making involved in the IPCC approach to some investigations and it is this which has affected overall confidence in the complaints system.

19) The problems with the IPCC were underlined by the formal disengagement from the IPCC’s advisory board by representatives of PALG in February 2008. This highly publicised move had been precipitated by “dismay and disillusionment” at “the consistently poor quality of decision-making at all levels of the IPCC” and unsuccessful attempts to raise concerns through the IPCC Advisory Board where “follow-up on agreed action points has been pitifully poor”.

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7 Chapter 4
8 INQUEST was also represented on the IPCC Advisory Board that was eventually disbanded
9 [http://www.guardian.co.uk/politics/2008/feb/25/police.law1](http://www.guardian.co.uk/politics/2008/feb/25/police.law1)
20) INQUEST has continued to engage, contribute and try to assist the IPCC by sharing our experience and enhancing their understanding of the issues arising from our casework with bereaved families. However, it has not been a positive experience. Echoing the experience of PALG, INQUEST has repeatedly raised issues about the conduct of investigations in meetings with the IPCC with the frustrating end result being no discernible change. In addition, 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 only serves to strengthen critical perceptions of the police complaints system.

21) We have identified, in recent cases, 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 difficult for the IPCC to avoid the same bad practices or to recreate the same flawed culture and systemic failings that previously undermined public confidence.

22) INQUEST welcomed the appointment of Dame Anne Owers’ as the new Chair of the IPCC in February 2012. Her track record in being challenging, independent and committed to improving prison regimes during her time as Chief Inspector of Prisons was exemplary. The early signs are that she will be similarly robust at the IPCC and we have noted a positive change in tone in the organisation’s approach since she started work. We have also welcomed the Chair’s direct leadership of the review of the IPCC’s handling of investigations into deaths following police contact and her commitment to it involving families, community groups and legal representatives.

23) However, one of INQUEST’s key observations about whether the IPCC has delivered against the original aspirations is that there is often a gulf between the stated policy and objectives set out by the leadership of the organisation and the practice of some of those tasked to meet those aspirations. This dislocation between policy and practice is not helped by a lack of clear, agreed protocols that frame the approach to the investigation of deaths. To ensure a uniform approach the IPCC should put in place clear, coherent and consistent national protocols setting out standards and expectations on key areas of concern we discuss below. Crucially, IPCC guidance and protocols must then be monitored and enforced to ensure they are working in practice.

24) The new Chair, together with the appointment of new Commissioners later this year, offers a valuable opportunity to bring about a wholesale change in culture and effectiveness at the IPCC so that the aims stated in their new business plan of “Independence, Excellence and Accountability” are realised throughout the IPCC at all levels and the organisation, finally, starts to fulfil its statutory purpose.

Issues relevant to the HASC inquiry arising from INQUEST’s casework

25) Although there have been some examples of good practice in the conduct of IPCC investigations into deaths and serious injury (“DSI”) there is still great inconsistency of approach. The following issues arise directly from our casework with bereaved families and their legal representatives and INQUEST have previously raised them with IPCC Commissioners and staff.

A. Failure to treat deaths in custody as potential crimes

26) A thorough and well conducted IPCC investigation is of obvious importance. First it is crucial if bereaved families are to have confidence in the investigation of their relative’s death. Second, it provides the foundation for decisions on whether to prosecute anyone in relation to the death – either at an individual or senior management level. Third, the investigation also informs the subsequent inquest into the death. INQUEST’s experience is that a poorly conducted investigation directly impacts on the ability of the coroner’s court to properly examine all the relevant circumstances of the death. If the IPCC is to meet the principles set out for effective police complaints (see para 13 above) and for their investigations to be “adequate” they “should be capable of gathering evidence to determine whether police behaviour complained of was unlawful and to identify and punish those responsible”.

27) The task for the IPCC in the aftermath of a contentious death following police contact is clear: to immediately begin an independent, effective, accountable, prompt, public and inclusive investigation so that the rule of law is seen to be upheld and applied equally to all citizens including those in the police uniform.

28) In particular, IPCC investigators should be able to take immediate control of a potential crime scene during the crucial “golden hours” and early days of the investigation. However, as INQUEST’s co-director Deborah Coles noted in her oral evidence to the HASC in February 2010:

One of the ongoing concerns of families in these kinds of cases is the failure to treat deaths in custody or following police contact as potential crimes and do that important evidence-gathering at the beginning of the investigation. Certainly in terms of the death of Sean Rigg, the lawyers involved have made a number of complaints to the IPCC about what they believe are failings in securing crucial forensic evidence.

29) INQUEST is still concerned about the IPCC’s prompt seizure and preservation of evidence (including forensic, CCTV and other evidence from the scene). Many of the issues with the quality of the IPCC’s initial investigations relate to the guiding approach to these deaths and to the promptness with which they are carried out. However, INQUEST also recognises that the IPCC suffers from a lack of adequate resources resulting in their reliance on scenes of crime officers from the investigated force being responsible for preservation of evidence. We do not think this meets the standards for an effective police complaints system highlighted at paragraph 10 of this evidence: particularly the need for “practical independence” and no “institutional or hierarchical connections between the investigators and the officer complained against”.
30) This is an area where consideration could be given to greater specialist resources for the IPCC including, for example, the possible establishment of a vetted IPCC panel of specialist scenes of crimes officers from police forces around the United Kingdom from which a “flying squad” could be quickly selected and deployed following a death.

31) Bereaved families have repeatedly told us that they are concerned that IPCC investigations lack a thorough approach, do not pursue avenues of inquiry properly and fail to treat untested police versions of events with caution. At a Family Listening Day organised by the Independent Advisory Panel on Deaths in Custody, families have also recorded their complaints of “incompetence” and inefficiency with one participant saying “we found that we had to investigate ourselves – the IPCC took seven months to interview the police officers, and nine months to interview the ambulance call takers”.

32) The need for prompt interviewing of witnesses, in particular of police officers, has been an ongoing issue in a number of death in custody cases the IPCC is investigating. The direct, first hand accounts of police officers who were at the scene at the time of death clearly constitute important evidence – particularly when a death occurs in police custody where they may be the only accounts of what happened available. It is an ongoing concern for INQUEST that this evidence is not more routinely gathered and available to IPCC investigators and – at a later stage – to those considering disciplinary charges or possible criminal charges (particularly the Crown Prosecution Service).

B. Failure to interview police officers

33) The failure to interview police officers – either at all or promptly – is perhaps the most significant reason for bereaved families’ and the public’s lack of confidence in the robustness of IPCC investigations.

34) The importance of police officers being interviewed after the use of lethal force or following a death in their custody is an essential part of the checks on their powers. It would help assure the public (including bereaved families, communities and wider society) that those police officers will be called to account and their acts or omissions will be assessed against the law.

35) Currently the IPCC has powers to arrest and interview under caution if they have reason to believe that a criminal offence may have been committed. As discussed in detail in their evidence to the HASC, the experience of members PALG (many of whom are also members of ILG) suggests the legal changes in 2008 mean that it is now even less likely that police officers are interviewed because of the application of a revised threshold test. We would echo their comments – especially PALG’s response to recent statements made by Dame Anne Owers about the interviewing of police officers (at paras 14 to 18 of their submission).

36) Additionally, we note that Council of Europe’s Commissioner for Human Rights’ statement (see paragraph 13 above) sets out that the requirements of a thorough and comprehensive police complaints investigation include: “where issues of criminal culpability may arise, interviewing police officers accused or suspected of wrongdoing as a suspect entitled to due

process safeguards\textsuperscript{12} and not allowing them to confer with colleagues before providing an account’’ [our emphasis]. INQUEST would endorse these comments and urge that the controversial practice of officers conferring with colleagues when writing up notes be tackled.

\textit{C. Instructions to experts}

37) INQUEST believes that choice of experts by the IPCC and the quality of their instructions to those experts has impacted on the quality and outcome of investigations.

38) Firstly, we would expect the IPCC to have an in-depth knowledge of the work of relevant experts in relation to contentious deaths (including those in any form of custody or following contact with state agents) and about their professional practice and standing. It is crucial that any experts that are instructed by the IPCC (including pathologists, medical experts, specialists asked to comment on the use of force and police procedure) have a broad expertise and understanding of contentious deaths. Our experience is that there is currently an over-reliance on experts that predominantly carry out work for police forces. INQUEST suggests consideration be given to the IPCC setting up a panel of trusted, independent experts (from which investigators and Commissioners would be able to select and approach the relevant specialists for particular investigations).

39) Secondly, we are concerned about the poor quality of instructions given by the IPCC to experts. Investigators should be cautious about including untested police versions of events in their instructions and should be aware that, during investigations into deaths, events and circumstances can evolve and change as information comes to light. As well as selecting experts who understand this and are experienced enough to deal with this context, investigators should ensure their instructions reflect this and are reviewed as the circumstances require. In the most contentious cases we would suggest that consideration be given to obtaining experienced counsel’s opinion on IPCC instructions to experts.

\textit{D. Access to information and disclosure}

40) For a bereaved family trying to engage in an IPCC investigation the organisation’s reluctance to provide early and full disclosure (or to clearly explain why they can not provide this at early stages of investigations and when they expect to do so) fosters mistrust and is alienating and unhelpful. IPCC guidance provides that contact on the progress of the investigation should be made every 28 days. Families have repeatedly told us that what they want most, and what they understand being informed about progress to mean, is that they will be told what has occurred and be given documents relevant to the investigation which they can consider. However, families we have worked with feel they were not kept up to date and involved in the progress of the investigation. Of the others who felt they had been involved and informed, many were dissatisfied because the information given was inadequate, difficult to obtain or delayed.

41) Currently IPCC practice varies according to the complexity of the case, the relationship that is built up with the investigator, whether the family is legally represented and the quality of that representation. Obtaining disclosure of documentation is a complex and time-consuming task even for the most experienced lawyers. The lack of consistent application of

\textsuperscript{12} para 330, Ramsahai v The Netherlands, Judgment 15 May 2007
their own policy *Making Information Available* and standard practice about disclosure of evidence during the investigation to bereaved families should be addressed as a matter of urgency. As part of this process, the IPCC should seek the input and experience of INQUEST and members of the ILG who represent bereaved families.

42) In parallel, there needs to be a concerted focus across the IPCC to improve, standardise and speed up processes around disclosure.

43) The introduction by the IPCC of statutory guidance in 2010 (directed at police forces) which deals with disclosure of evidence is to be welcomed but, as the evidence to the HASC from PALG demonstrates, there are serious ongoing issues about how this is applied in practice and, worryingly, how the IPCC deals with breaches of the statutory guidance by police forces.

**E. Poor treatment and communication with bereaved families**

44) The involvement of bereaved families in the investigation and inquest process after a death engaging Article 2 of the ECHR is enshrined in law (*Amin; Jordan v United Kingdom*). The Council of Europe Commissioner for Human Rights has stressed that “victim involvement” is an important principle of an effective police complaints system and bereaved people should be involved “in order to safeguard his or her legitimate interests”. It is a source of concern that families have consistently complained of poor communication and treatment by the IPCC during investigations.

45) Again, clear protocols are needed from the IPCC which deal with the provision of written and oral information to families. A list of relevant recommendations INQUEST has previously made is included at Appendix A. This sets out specific suggestions including the importance of a full discussion with the bereaved family at an early stage of the IPCC investigation to set out clearly what type of information they can expect and when it is likely to be provided to them. There have been worrying incidences in recent cases where initial advice and information given by the IPCC to families on the circumstances of death and the investigation has later transpired to be inaccurate or based on opinion rather than fact. This has resulted in the setting up of unnecessarily confrontational and suspicious communication processes between IPCC investigators and families.

46) Inadequate provision of information, in particular about where to obtain independent advice and support impacts directly on the capacity of families to effectively participate in the investigation process. An important way to increase bereaved people’s involvement is by the IPCC enabling access to that advice and support – in particular the unique specialist services of INQUEST.

47) Deaths following contact with the police are likely to be highly contentious and raise difficult and disturbing issues for all involved in dealing with the aftermath. From our recent experience INQUEST is concerned that this has not been recognised by the IPCC and that staff and investigators need to be better supported by the organisation (including by senior colleagues and Commissioners). In addition we query whether those working in front-line roles at the IPCC have been able to access good quality training which better equips them to

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13 Available from IPCC website
plan for and manage meetings, set agendas and deal professionally and sensitively with bereaved families.

F. IPCC media handling and announcements

48) For many families the timing of public 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. While issuing statements and giving clear information to the media is to be welcomed it must be clear what information in these statements is fact and what is assumption. All statements made should be subject to a harm test.

49) Worryingly, IPCC information put in the public domain has sometimes been misleading. In March 2012 INQUEST submitted evidence to the Leveson inquiry which examined misinformation following deaths involving the use of lethal force by the police. We have observed a pattern, particularly in relation to contentious deaths in police custody or following contact with the police, where partial and untested information about the initial post mortem findings (conducted on behalf of the coroner and sometimes reported before the report is complete) is reported by the media as fact, thereby creating an impression that acts or omissions of the police have played no part in the death. The IPCC have a role to play in ensuring that the information they provide to the media is accurate and based on fact alone and that any misinformation (from the police or the IPCC itself) is corrected immediately.

50) The most recent example of how damaging this can be for the public’s confidence in the IPCC can be found in their media handling following the death of Mark Duggan on Thursday 4 August 2011. Whilst the IPCC later put out a statement that said one of their staff members had ‘inadvertently’ misled the media, the damage in terms of family and community confidence in the independence of the investigation had been done. INQUEST has repeatedly reported to parliamentarians, policy makers and investigators that ensuring that the early stages of an investigation are handled with absolute integrity and propriety is crucial to the family having any confidence in the process.

51) The IPCC has recently issued new guidance on “Communicating with the media and the public in IPCC Independent and Managed Investigations”. The guidance, directed at the

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14 For more detailed analysis see INQUEST’s submission to the Leveson Inquiry: www.levesoninquiry.org.uk/evidence/?witness=inquest

15 INQUEST have previously described how similar high profile cases – for example the deaths of Ian Tomlinson and Jean Charles de Menezes (see Briefings on www.inquest.org.uk) - had been ‘mismanaged’. The public had been assured following costly IPCC investigations into media handling that the same process of allowing inaccurate information to remain in the public domain uncorrected would not happen again. The Metropolitan Police Authority Stockwell Scrutiny report of 2008 asserted ‘The MPS is a very different organisation than it was in July 2005... Both the organisation and individuals within it have learned from the experience. The shortcomings shown up in Stockwell Two will not re-occur.’ But despite the impression being given following Stockwell 2 and the media handling report following the death of Ian Tomlinson that lessons were learned the same damaging process of inaccurate information being given to the media occurred again.

16 The matter of misinformation was the subject of a complaint by Mark Duggan’s family and this was formally recorded by the IPCC. A formal apology was made in writing to the family by Amanda Kelly, Director of Business Services at the IPCC.

17 IPCC Guidance on Communicating with the Media and the Public in IPCC Independent and Managed Investigations (14th February 2012) available from:
police, recognises that “in the early stages of an investigation, the information which is available is likely to be incomplete and/or unverified” and recommends that if the police “identify material misinformation or areas of concern regarding rebuttal, they should immediately bring them to the attention of the IPCC by contacting the Press Office.” It does not specifically deal with the issue of misinformation in the press from police sources but recommends that “any briefing or comment should be attributed to a named police spokesperson. Unattributed comment or off-the-record briefings should be avoided” whilst finally stating that the timing and content of any statements issue by the police are “a matter for the police, for which a named senior officer should be responsible”. Though the IPCC guidance encourages the police not to make unattributed comments it does not prohibit either that practice or off the record briefings. Given its limited scope and tentative language, the guidance is unlikely to tackle the long established pattern of misinformation.

52) However, as a minimum the IPCC must review their communications strategy following a death or serious injury to ensure that they do not continue to be implicated in (and damaged by) this process of misinformation.  

G. Delay

53) Delays to inquests are a feature of police custody deaths. The length of time that the IPCC takes to conduct investigations contributes to this. Giving evidence to the HASC in February 2010, INQUEST’s co-director said:

_Sadly, it is an important point for the Committee here, the delay both in the IPCC investigation and then, once the report is finished, the coroner can set the inquest date. One of the big problems at the moment in these kinds of cases—because they are Article 2 jury inquests—is that there is serious delay in these inquests taking place. It is not uncommon for families to wait two or three years before that inquest takes place which … adds to the grieving process._

54) The HASC will be interested to note that the inquest into the August 2008 death of the brother of Marcia Rigg, who gave evidence alongside INQUEST, finally started in June 2012: nearly 4 years after his death and 2 years after she originally gave evidence to the HASC.

55) The Rigg family’s experience is, sadly, not an isolated one. Families who took part in the Independent Advisory Panel on Deaths in Custody Listening Day in March 2010 detailed similar experiences of delays. One person noted “if the police and IPCC had been more open, done things quicker and properly then we would have trusted them more”. Another bereaved mother noted: “The investigation was lengthy and traumatic. On two occasions I had to take the IPCC and the police to judicial review because of the way they conducted themselves during the investigation and the bias that was shown. We wanted the investigation to be carried out in a fair and just manner but found the process extremely


18 For example, less than a week after the IPCC Guidance was issued and following the police shooting of a 25 year old man in Forest Hill on 19 February 2012, the Metropolitan Police Service released a general statement which asserted “a number of knives were recovered from the scene” without attributing this to a named police spokesperson (see http://content.met.police.uk/News/Man-shot-by-police-in-Lewisham/1400006745524/1257246745756). The IPCC investigation into this incident is ongoing.
exhausting at a time of deep bereavement as we were fighting a system that was still marginalising families of victims of deaths in custody. It took five years to reach the inquest.”

Whether the IPCC has the right powers and resources to carry out its role

56) Before considering whether the IPCC needs additional powers and resources we would stress that it is of crucial importance that the organisation critically examines their use of their current powers and provides clarity (in the form of published protocols, agreements and guidance) about how they carry out these powers. In addition, a more generous interpretation and robust enforcement of their existing powers would help address a number of the issues INQUEST has highlighted in this submission.

57) Given the need for the IPCC to be (and appear to be) organisationally independent and, critically, to embed a culture of independence in those who work there, we question whether the IPCC currently has the right human resources to carry out its statutory role. Injecting independence and fairness was a key objective in moving from the discredited Police Complaints Authority (PCA) and is crucial in ensuring public confidence in the IPCC. INQUEST has long been concerned by regulatory capture at the IPCC - that is, 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.

58) In part we believe this is related to the high proportion of former police officers or former police employees in senior investigative positions including that (as of November 2011) 8 out of 9 IPCC Senior Investigators and 38% of Deputy Senior Investigators are ex-police officers. INQUEST welcomes both the new Chair’s recognition that “it is very important that we get the balance right in our investigative teams and staff” and her reference to an extensively researched report published by Liberty in 2000 which accepted that up to a quarter of investigators could be ex-police staff without compromising the principle of independent oversight.

59) To address the current imbalance we think there is a greater role for Commissioners to play in injecting authority, independence and critical oversight of investigations. With the appointment of five or six new Commissioners expected in November 2012 the IPCC must take the opportunity to review the role of Commissioners.

60) Earlier in this evidence we highlighted how a lack of adequate resources for the IPCC has resulted in a reliance on scenes of crime officers from forces being investigated (paras 29-30) and suggest this is an area where consideration be given to the provision of extra resources.

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21 Dame Anne Owers in “Independent Oversight of Police Complaints: The IPCC Eight Years On”, John Harris Memorial Lecture, 3 July 2012
INQUEST submission to the Home Affairs Select Committee Inquiry on the IPCC

**RIPA reform**

61) The issue of how sensitive material subject to the Regulation of Investigatory Powers Act 2000 (“RIPA”) is dealt with at inquests has been a matter of concern for government and parliament and is increasingly posing problems for the IPCC. It has been debated twice in parliament in the last five years (in both the Counter Terrorism Bill 2008 and the Coroners and Justice Bill 2009). Intercept evidence is currently inadmissible in all legal proceedings including coronial proceedings. INQUEST has previously argued that a change in the law is required so that inquests that necessarily involve intercept material are not stalled as a result of the general bar on the admissibility of this type of evidence. To date there has been one fatal shooting by police where the inquest was unable to proceed – that of Azelle Rodney who died in 2005. The problem has also potentially been raised in relation to the death of Mark Duggan.

62) On 29 March 2012 IPCC Deputy Chair Deborah Glass said

“As a general rule we seek to find ways round any such obstacles. However, in some circumstances our hands are tied by the law. One such provision is s.17 of the Regulation of Investigatory Powers Act 2000. The impact of this is that not only can some information not be disclosed, we cannot even explain why we cannot disclose the information, as this itself would be a breach of the law. In our view this places investigatory bodies in the invidious position of being unable to provide families, and the public, with meaningful information on the investigation or even explain that the information cannot be provided. We believe this law needs to be changed”.

63) INQUEST supports this call for a change in the law.

**Whether investigations lead to improvements in police practices**

64) We support the shift in the IPCC’s work towards a more integrated approach that ensures lessons are learned systemically. We think the IPCC has made some significant and positive progress in this area. However, INQUEST argues that the IPCC should be empowered to monitor, follow-up and challenge police forces where issues raised in investigations are not adequately addressed – particularly where this failure may have contributed to further deaths.

65) This recommendation is informed by the fact that, although the IPCC has produced a number of useful and important thematic reports and lead some impressive work on the *Learning the Lessons Bulletin*, the IPCC promotion of good practice alone has not had as much of an impact as it should.

66) *Learning the Lessons Bulletin* is a well-designed and carefully compiled series of digests drawing out systemic issues and learning from investigations and inquests into deaths in police custody to help forces improve their policies and practices. Topics covered recently

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23 The inquest into his death was withdrawn from the coronial jurisdiction/court and a public inquiry headed by a high court judge starts in September 2012. The inquest was unable to proceed because the redactions required as a consequence of RIPA rendered the evidence meaningless. The redacted matters went to the heart of explaining the reasons why Azelle Rodney was shot.

24 [www.learningthelessons.org.uk](http://www.learningthelessons.org.uk)
INQUEST submission to the Home Affairs Select Committee Inquiry on the IPCC

include “dealing with people who are drunk and incapable”, “recognising when a person needs medical attention”, “protocols with the health and ambulance services”. But there has not been a sufficiently robust strategy to disseminate and promote those projects beyond IPCC key stakeholders and ensure that the good practice set out in publications such as Learning the Lessons actually trickles down to police forces and leads to change in practice on the ground. For example, a recurring theme in the “Learning the Lessons” bulletin has been the treatment (and deaths) in police custody of people with mental health or substance abuse issues. We note that the most recent statistics published by the IPCC have once again highlighted the high proportion of deaths in police custody of this vulnerable group of people. The figures echo INQUEST’s recent casework experience where people who were clearly vulnerable or in distress have been taken into police custody rather than to a hospital or mental health unit.

The IPCC’s role in scrutinising third parties commissioned to carry out policing duties

67) INQUEST is concerned that police forces are increasingly considering outsourcing essential police duties such as running custody suites and cells and transporting people in custody to private sector providers.

68) Recent investigations and inquests into deaths raise significant questions about the role of private contractors in:
   - The provision of police custody suites (for example: the death of Gary Reynolds in March 2008 in Brighton Police Custody Centre in Hollingbury where Reliance provided custody assistants whose standard of care was inadequate; the death in May 2010 of Sharon McLaughlin in the Reliance-run Worthing Custody Centre where the inquest found officers had failed to properly care for her; the March 2012 inquest into the death of Bogdan Wilk following his detention in Preston Police Custody Centre where the jury criticised the care provided by Medacs);
   - the running of Secure Training Centres for children and young people in custody (for example, the January 2011 inquest into the death of 14 year old Adam Rickwood at the Serco-run Hassockfield STC);
   - UK Border Agency escorting services (for example, the October 2010 death of Jimmy Mubenga whilst being escorted by G4S staff); and,
   - healthcare provision in a number of prisons (for example the June 2012 inquest into the death of Shaun Beasley in the G4S and Primecare-run healthcare facility at HMP Parc).

69) We would urge caution in the further outsourcing of the government’s custodial responsibilities unless significant improvements are made to the transparency, accountability and responsiveness of these private bodies (not least to ensure proper compliance with the legal obligations imposed by Articles 2 and 3 of the ECHR).

70) The IPCC must be given powers to investigate third party private contractors involved in policing – particularly in the context of deaths in custody. It is essential that any deaths or

25 Available from www.ipcc.gov.uk
26 For fuller details see www.independent.co.uk/news/uk/crime/a-force-for-good-the-rise-of-private-police-7561646.html.
serious injuries that occur in police settings run or managed by third party contractors are subject to the same scrutiny and investigation as those that take place in the custody of conventionally run police services.

**How the work of the IPCC could be effectively scrutinised**

71) We welcome the HASC Inquiry as an opportunity for parliamentarians to scrutinise the approach and work of the IPCC. INQUEST thinks this full-scale inquiry should be a regular occurrence – perhaps once every 2 to 3 years. In addition, the Chair and senior management of the IPCC should appear before the HASC once a year in conjunction with the publication and laying before parliament of the organisation’s annual report.

**Concluding comments**

72) The lessons that can be learned from the experiences of bereaved families and their representatives are important to any scrutiny of the work of the IPCC. In 2007 INQUEST made a number of recommendations for improvements to IPCC practice in our research report *Unlocking the Truth: Families’ Experiences of the Investigation of Deaths in Custody*. Although we made these recommendations 5 years ago they are as pertinent today as they were then because the pace of change has been regrettably slow. We include these as **Appendix A** to this evidence.

73) Finally, as part of our input into the IPCC’s ongoing review of its handling of Article 2 cases, INQUEST is collating the views and experiences of families and members of the INQUEST Lawyers’ Group. We look forward to giving oral evidence to the HASC later in the year when we hope to be in a position to share some of that information and would be able to expand on some of the issues highlighted in this written evidence.

INQUEST
APPENDIX A – INQUEST RECOMMENDATIONS FOR THE IPCC
(extracted from Unlocking the Truth: Families' Experiences of the Investigation of Deaths in Custody (2007)\(^{27}\))

The Independent Police Complaints Commission ... must:

- recognise that the expectations of families are very different from those of the state institutions involved;
- understand that in the immediate aftermath of the death there can be tension between the need to proceed with the investigation and the potential and actual intrusion into the human experience of the aftermath of sudden and unnatural death;
- 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;
- ensure that investigations follow an agreed basic protocol;
- ensure investigators are explicit about the purpose of their initial meeting with the family and approach it as a two step process: first to provide families with information about themselves and the investigation process and second to get information from families about their relative to provide background to the investigation;
- complete investigations within agreed time limits;
- offer a meeting with the family and their lawyer to discuss the investigation report;
- update investigation reports following the inquest to take into account inquest evidence, jury findings and any coroner’s comments or rule 43 reports prior to publication;
- publish the reports and the authorities’ responses to them;
- use the reports and findings both to inform subsequent investigations and to promote better practice.

IPCC Commissioners, all investigators and Family Liaison Officers and Family Liaison Managers should:

- receive training on the specific needs and concerns of families bereaved by deaths in custody;
- receive such training with specific input from those organisations working with such families;
- ensure there is clear demarcation between meetings at which the family are an equal stakeholder and interviews where the families are required to provide information to assist the investigation process.

Bereaved families should be entitled to:

- an oral explanation of and a letter about the investigation process from its beginning outlining their rights and the role that they can play including reference to legal representation, proposed timescales for disclosure of information and completion of the investigation, sources of support and advice including information about INQUEST, advice on funerals, expenses, etc;

\(^{27}\) Available to order through INQUEST’s website: [www.inquest.org.uk](http://www.inquest.org.uk)
• clear explanations about the purpose of any meetings;
• funding to enable them to attend meetings with the investigators and/or their lawyers;
• information about progress of and full involvement in the process;
• a choice as to how they receive information gathered as part of the investigation;
• receive information about the investigation irrespective of whether they are involved;
• adequate time to absorb findings of the investigation in order to raise any concerns they might have about the draft report;
• mandatory disclosure of the investigation report\(^{28}\).

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\(^{28}\) See Chapter 4 for full text