

## CONSULTATION RESPONSE FORM

This response form invites you to respond to the questions set out in the consultation document. The IPCC would also welcome any other comments that you may wish us to consider.

Please return your completed response form to [review@ipcc.gsi.gov.uk](mailto:review@ipcc.gsi.gov.uk)

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Is this a personal response or on behalf of an organisation?

Personal                       Organisation

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.

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 where necessary and work alongside them until the conclusion of the investigation, inquest and other legal proceedings. Since the IPCC was established in 2004 we have worked on more than 180 cases involving deaths in police custody or following contact with the police. This enables INQUEST 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.

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. We have seen the response of the Police Action Lawyers' Group and, as many are also members of the ILG, we would endorse a number of their observations.

INQUEST's response to the IPCC's Review of work in cases involving a death draws on this expertise of working with families and their legal representatives and our unique evidence base including surveys of bereaved families and research reports such as *Unlocking the Truth: Families' Experiences*

of the *Investigation of Deaths in Custody* (Shaw and Coles, 2007) and *Learning from Death in Custody Inquests: A New Framework for Action and Accountability* (Shaw and Coles, 2012)<sup>1</sup>.

Do you wish your response and name to be kept confidential? **No**

1	<p>Is there anything in the remit or structure of the IPCC which fundamentally undermines its ability to carry out effective and independent investigations?</p> <p>The remit and structure was the subject of detailed discussion, academic studies and parliamentary debate in the run-up to the enactment of the Police Reform Act 2002. INQUEST fully engaged in those debates and welcomed the creation of the IPCC as an opportunity to make a real difference to families' experiences by injecting more independence and transparency to the investigation of deaths in police custody.</p> <p>Eight years on, the IPCC has failed to develop an approach to investigations, internal culture and human resources necessary to fulfil its crucial role. It is this, rather than the statutory framework, that has undermined the IPCC's ability to carry out effective and independent investigations.</p> <p>INQUEST has repeatedly raised concerns about regulatory capture at the IPCC - that is, the appearance of undue influence by those it regulates, the police (see our submission to the IPCC Stocktake in 2008). In part we believe this is related to the high proportion of former police officers or former police employees in senior investigative and other positions including that (as of November 2011) 8 out of 9 IPCC Senior Investigators and 38% of Deputy Senior Investigators were ex-police officers.<sup>2</sup> This fact remains one of the most contentious issues for families. The high proportion of ex-police in pivotal and influential investigative positions also raises concerns about institutional and hierarchal independence - an essential principle for compliance with the Article 2 requirements for effective investigation of complaints against the police, (see our answer to Q2 below).</p> <p>The IPCC needs to tackle this by significantly reducing the proportion of ex-police in senior positions and give more emphasis to training investigators from a broad range of backgrounds. A comprehensive programme to train and support the development of a cadre of investigators who do not have a police background now needs to be a priority.</p> <p>It is also vital for Commissioners to play a more visible and assertive role thereby injecting authority, independence and critical oversight into investigations into contentious deaths. Current practice varies greatly between cases in relation to their contact with families and their visible involvement with investigations. In those cases where a Commissioner has engaged, this has aided communication and in some instances has helped to provide reassurance and resolve conflicts concerning the conduct of an investigation. With the recent appointment of new Commissioners, the IPCC must take the opportunity to review their role and ensure that in future they play a greater part in directing and leading investigations.</p> <p>We note there is often a gulf between the policy and objectives as stated by the leadership of</p>
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<sup>1</sup> Available to order through INQUEST's website: [www.inquest.org.uk](http://www.inquest.org.uk)

<sup>2</sup> See statistics provided by IPCC in a letter dated 29 November 2011 sent in response to parliamentary questions from David Lammy MP: [www.parliament.uk/deposits/depositedpapers/2011/DEP2011-2016.pdf](http://www.parliament.uk/deposits/depositedpapers/2011/DEP2011-2016.pdf)

	<p>the IPCC and the practice of some of those tasked to meet those aspirations. To ensure a consistent approach the IPCC must critically examine its current practices, then put in place clear, coherent and consistent national protocols setting out standards and expectations on key areas of concern we discuss in this response. Crucially, IPCC guidance and protocols must then be monitored and enforced to ensure they are working in practice. We give examples of the key areas the organisation needs to focus on below.</p> <p>Finally, we would question whether the IPCC's approach demonstrates sufficient understanding or priority being given to its wider guardianship role. Of equal importance to conducting investigations is its public interest role in upholding policing standards and ensuring that the police service is accountable to the community it serves. This needs to be given a higher priority by the IPCC. To help embed a focus on learning and change in police standards, we think that the IPCC should be empowered and resourced 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. Drawing on research for our report, <i>Learning from Death in Custody Inquests</i> (2012), INQUEST raised this in our submission to the recent Inquiry into the IPCC conducted by the Home Affairs Committee and we support the introduction of a statutory framework recommended by the Committee in their January 2013 report.</p>
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2	<p>Does the IPCC have the powers it needs to ensure that its independent investigations secure and maintain public confidence and meet the requirements of Article 2? If not, what additional powers does it need?</p> <p><b><u>Requirements of Article 2</u></b></p> <p>We think the IPCC needs to transform its approach to and conduct of investigations if it is to meet the standards envisaged by Article 2. The Council of Europe Commissioner for Human Rights has clearly set out these legal requirements<sup>3</sup>:</p> <p><i>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:</i></p> <ol style="list-style-type: none"><li><i>1. Independence: there should not be institutional or hierarchical connections between the investigators and the officer complained against and there should be practical independence;</i></li><li><i>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;</i></li><li><i>3. Promptness: the investigation should be conducted promptly and in an expeditious manner in order to maintain confidence in the rule of law;</i></li><li><i>4. Public scrutiny: procedures and decision-making should be open and transparent in order to ensure accountability; and</i></li><li><i>5. Victim involvement: the complainant should be involved in the complaints process in order to safeguard his or her legitimate interests.</i></li></ol>
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<sup>3</sup> 12 March 2009 <https://wcd.coe.int/ViewDoc.jsp?id=1417857&Site>

	<p>These principles must be at the heart of all the IPCC's work if families, the public and organisations like INQUEST are to have full confidence in the IPCC in the future.</p> <p><b><u>Power to investigate private providers</u></b></p> <p>The IPCC should be given powers to investigate third party providers (such as private contractors) involved in policing. It is essential for family and public confidence that any deaths or 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.</p> <p>This requires urgent attention at a time when police forces are increasingly considering outsourcing essential police duties to private sector providers - such as running custody suites and cells and transporting people in custody. INQUEST has expressed concerns about this in our recent evidence to the Home Affairs Select Committee<sup>4</sup> where we flagged the significant questions about the role of private contractors raised by investigations and inquests into the deaths of Sharon McLaughlin and Bodgan Wilk. The IPCC's recognition of this gap in its powers is welcome as is their lobbying for a relevant extension to their powers.</p> <p><b><u>Reform of Regulation of Investigatory Powers Act</u></b></p> <p>INQUEST also welcomed the statement by the IPCC Deputy Chair that RIPA "<i>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 can not be provided</i>". However, their statement that the IPCC's "<i>hands are tied by the law</i>" is not understood and contributes to public perception that the organisation itself is hampering the disclosure of key evidence in contentious deaths (particularly following the fatal shooting of Mark Duggan).</p> <p>During extensive parliamentary discussions, including the Counter Terrorism Bill in 2008, the Coroners and Justice Bill 2009 and recent backbench debates on the issue, INQUEST have argued that how sensitive material subject to RIPA is dealt with at inquests needs to be addressed by an urgent amendment to legislation (see INQUEST's Briefing of October 2012 on the issue, prepared in advance of a recent parliamentary debate<sup>5</sup>).</p>
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3	<p>Does the IPCC effectively deploy the powers that it has in order to ensure independent and effective investigation?</p> <p>Our experience is that the IPCC does not effectively deploy the powers that it already has. It is not clear whether this is due to lack of clear guidance and leadership, lack of training, lack of confidence or whether it indicates a more ingrained institutional reluctance. An internal critical examination of the use of the IPCC's current powers to identify why these are not being fully utilised would be an important first step. Then, greater clarity in the form of published protocols, agreements and guidance would assist to maximise understanding and use of</p>
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<sup>4</sup> See INQUEST Submission to the Home Affairs Committee Inquiry on the IPCC (July 2012): [www.inquest.org.uk/pdf/briefings/INQUEST\\_HASC\\_IPCC\\_submission\\_FINAL.pdf](http://www.inquest.org.uk/pdf/briefings/INQUEST_HASC_IPCC_submission_FINAL.pdf)

<sup>5</sup> INQUEST Briefing on the inadmissibility of intercept evidence in inquests (October 2012): [http://inquest.gn.apc.org/website/pdf/briefings/INQUEST\\_Briefing\\_inadmissibility\\_intercept\\_coroners\\_courts\\_Oct\\_2012.pdf](http://inquest.gn.apc.org/website/pdf/briefings/INQUEST_Briefing_inadmissibility_intercept_coroners_courts_Oct_2012.pdf)

existing powers. Ultimately, a more robust enforcement of the IPCC's existing powers would help address a number of the issues highlighted throughout this response.

One example is around the power to conduct independent investigations and decision making about mode of investigation decisions - MOI. The current guidance is unclear contributing to systemic failures in the timing and nature of MOI decision making immediately following a death. This can also cause confusion for the IPCC and families. For instance, in the case of Sean Rigg, the IPCC were present at a meeting of three of the four arresting officers and senior management in the hours following the death at which full accounts of the officers were shared. The IPCC failed to report the full details of the meeting or have any input on the grounds that a MOI decision had not been taken and their attendance was therefore as "observers". Such confusion and delay can cause irreparable damage to an investigation forensically (given the "golden hours" following a death are critical and all initial action, evidence gathering, protection of records and so on flow from that decision) and in terms of family and public confidence in the IPCC.

Another example is the failure to interview police officers – either at all or promptly. This is one of the most contentious issues for bereaved families' and the public's lack of confidence in the IPCC. Where an individual dies after the use of force by police, for example following the use of force – restraint, the use of firearms or tasers, - and no officer is interviewed as a potential suspect has been extremely damaging to the reputation of the IPCC as a robust body capable of holding the police to account for potential wrongdoing. It is absurd that the IPCC do not operate on the (rebuttable) presumption that all such officers are to be treated as criminal suspects from the outset of an investigation and treated accordingly: the IPCC will never acquire respect or a good reputation as an effective investigative body where it carries out its own investigations while its approach to this issue remains ineffectual.

The IPCC's powers to arrest and interview under caution are triggered on a relatively low threshold. Yet the IPCC routinely fail to utilise this power even in the most serious use of force cases (see for example the investigation into Jacob Michael's death). The reluctance to use this existing power needs to be examined and understood in order to identify how such a contentious failure to act can be remedied. Again, is not clear to INQUEST whether this a matter of training or possibly a misplaced strategy in terms of evidence gathering. For example, in many recent cases, the reason given for failure to interview police officers is the need to gather evidence before the IPCC can consider whether to interview as potential suspects and concerns that officers may give "no comment" interviews. The failure to interview promptly, if at all, means that the police accounts of events do not inform the investigation, can lead to loss of evidence and a failure to conduct an adequate investigation. It can also give the appearance that there is a reluctance to investigate, that officers sit above the law or that there is collusion between the investigators and officers complained against to conceal wrongdoing.

The Police Action Lawyers' Group (PALG) has addressed this issue in detail in their response and as many are also members of the INQUEST Lawyers' Group we support their views. In particular, like PALG, we are concerned that the distinct and important power to interview under caution does not become even more obscured and under utilized by the IPCC with the new powers (being introduced with the new Police (Complaints and Conduct) Act 2012) to interview police officers as witnesses.

4	<p>Is the way the IPCC deals with referrals and makes decisions about which cases to independently investigate sufficiently clear and appropriate?</p> <p>See our comments in Q3 above about MOI decisions. In a number of contentious deaths, INQUEST has noted delay and a lack of clarity over the way these decisions are made including those of:</p> <ul style="list-style-type: none"><li>• Sean Rigg</li><li>• Ian Tomlinson</li><li>• Jacob Michael</li><li>• Demetre Fraser</li></ul> <p>As we expand on in answer to Q5 below, INQUEST thinks it is vital that any contentious death where there may have been police contact automatically starts as an independent investigation even if it is later downgraded once further information is gathered.</p>
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5	<p>Does the IPCC investigate the “right” cases to secure and maintain public confidence?</p> <p>We are not sure what is meant by the “right” cases. INQUEST believes the IPCC should investigate all deaths in police custody or following police contact including fatal shootings by the police and deaths involving police vehicles. In addition all deaths where concerns are raised about possible police failings should be investigated – including domestic violence homicides and deaths like those of Arsema Dawit where she had reported to police that she had been threatened by the man who later went on to kill her. These include cases which are not necessarily high profile or where family members are not traced.</p> <p>People die in police custody in a broad range of circumstances including in police cells as a result of medical neglect or self-inflicted harm and following the use of force by police officers (including CS spray, batons, firearms and restraint techniques). Many of these deaths raise complex 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. Unless and until these deaths are properly investigated the underlying issues can not be drawn out, understood and acted on to prevent further deaths in similar circumstances. Not all deaths are preventable and will not raise significant concerns but any investigation must ensure the identification of individual or systemic failings or risks that if rectified could protect the right to life of others in the future.</p> <p>As touched on in our answer to Q4 above, the IPCC’s initial decisions about investigating cases are crucial. INQUEST believes that all deaths in police custody and following police contact should trigger an independent investigation and as the full evidence emerges, if appropriate, could later be changed to a less resource-intensive investigation. To approach investigations the other way around runs the risk of missing crucial evidence or issues and thus damaging public confidence in the system. The handling of the immediate aftermath of the death of Ian Tomlinson illustrates how the integrity of the IPCC investigation, the subsequent inquest and public confidence can all be critically affected by initial decision-making (see INQUEST’s</p>
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	<p>Briefing on the death of Ian Tomlinson<sup>6</sup>).</p> <p>Incongruously, however, some families and lawyers have found great comfort in unstinting, effective investigations by another police force (for example, Humberside in two cases) in IPCC managed investigations, which contrasted sharply with IPCC failures, referred to elsewhere, properly to study and analyse evidence and to discover vital discrepancies between claimed police actions and actuality. We do not think that managed investigations are appropriate in death in custody cases but it is regrettable that the IPCC has not learnt from the good practice in those investigations.</p>
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6	<p>Does the way the IPCC deploys staff to the scene of incidents maintain public confidence?</p> <p>Recent cases INQUEST has worked on have revealed huge variations and serious shortcomings in the way that the IPCC currently deploys staff to the scene of incidents. Ensuring there is 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 evidential foundation for CPS 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. For all these reasons the IPCC's initial deployment of staff to the scene of incidents is pivotal.</p> <p>It is not clear what organisational systems and methodology the IPCC has in place to direct the actions of staff deployed to an incident scene in terms of collation and protection of vital evidence, identification of witnesses and so on. The IPCC must ensure that working protocols, guidance and checklists exist to ensure consistency of approach and that these are reviewed in light of experience so that learning and understanding is developed from case to case about what is needed at this critical stage in the investigation. In the case of Jacob Michael, the IPCC Senior Investigator decided not to send an investigator immediately to the scene after being briefed shortly after he died in police custody. Given the IPCC was supposed to be conducting a robust and effective investigation, this should have happened in order to secure evidence, attend the police debriefing to offer independent scrutiny and ensure that officers complied with procedures around conferring and making notes.</p>
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7	<p>Are the current post incident management processes sufficient to maintain public confidence in the independence and effectiveness of the investigation?</p> <p>See also our answer to Q6 above.</p> <p>INQUEST questions what current post incident management processes the IPCC has in place</p>
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<sup>6</sup> INQUEST's Briefing on the death of Ian Tomlinson (June 2009):  
[http://inquest.gn.apc.org/website/pdf/INQUEST\\_ian\\_tomlinson\\_briefing\\_jun\\_2009.pdf](http://inquest.gn.apc.org/website/pdf/INQUEST_ian_tomlinson_briefing_jun_2009.pdf)

	<p>and whether they are consistent and fixed. Our experience is that they vary widely depending on the Investigator and Commissioner charged with leading the investigation. Again, this is an area where critical appraisal of current practice followed by the implementation of clear, consistent protocols and standards is needed.</p> <p>Examples of the type of concerns that routinely arise in the IPCC’s post incident management include:</p> <ul style="list-style-type: none"> <li>• The failure to ensure prompt seizure and preservation of evidence (including forensic, CCTV, other evidence from the scene and airwaves communications);</li> <li>• The use of scenes of crime officers from the police force being investigated;</li> <li>• The inadequate completion of Evidence and Action Books (EAB’s). Although it remains a requirement for every officer to record anything that may be of evidential value following a death, it remains common for officers not to do so, causing the loss of important, contemporaneous evidence. Even if the IPCC cannot compel officers to complete EABs, greater action is needed on this point, for example, the recommendation of disciplinary action where this does not occur;</li> <li>• The failure to promptly gather statements and accounts, in particular from interviews with police officers, has been an ongoing issue in a number of deaths 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). Often the only statements provided (to the IPCC, coroner and families) will be those drawn up weeks or months after the death through Police Federation solicitors;</li> <li>• Lack of effective action to prevent conferring. INQUEST remains concerned about the controversial practice of officers involved in a fatal incident conferring with colleagues before providing an account and the seeming inability of the IPCC to prevent it which undermines family confidence. The IPCC should be doing all that it can to enforce this requirement through its own practices, for example, instructing officers (and their senior managers) not to confer from the moment the IPCC is notified of a death (and advising of the consequences if they do), attending post incident briefings to offer independent scrutiny and ensure the rules are enforced. In addition, every officer interviewed should be asked whether they have discussed the case with anyone else.</li> </ul> <p>We have seen the detailed submissions and case studies prepared by the Police Action Lawyers’ Group on the practice of conferring and would endorse their analysis and comments. The examples they give are from cases that INQUEST has worked on with families and their legal representatives.</p>
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8	The IPCC does not have its own scenes of crime officers, forensic scientists or other experts. Does this affect the integrity or perceived independence of the investigation? If so, what could be done to ensure that the IPCC is able to
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	<p>respond in a way which secures public confidence?</p> <p>One of the ongoing concerns of families is the failure to treat deaths in custody or following police contact as potential crimes and the failure to ensure that vital evidence is gathered at the beginning of the investigation. 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. INQUEST believes 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.</p> <p>However, we recognise that the IPCC suffers from a lack of adequate resources in this area, resulting in their reliance on scenes of crime officers from the investigated force being responsible for preservation of evidence. Consideration should 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.</p> <p>We address the question of other experts (such as pathologists) in detail in Q9. However, the role of any expert involved in the immediate aftermath of a contentious death (whether scenes of crimes officers, forensic scientists or pathologists) must be to ensure and protect the integrity and independence of the IPCC investigation.</p>
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9	<p>Are there particular kinds of case where the IPCC should bring in other outside experts, e.g. health, social care or substance abuse professionals?</p> <p>There is a role for both external <i>and</i> internal experts to ensure IPCC investigations result in high quality reports.</p> <p>The choice of external experts by the IPCC and the quality of their instructions to those experts has impacted on the quality and outcome of investigations. For example it is common for the IPCC to select currently serving officers to act as restraint experts. As well as raising concerns around conflicts of interest and lack of independence, resulting reports can appear biased, of a poor quality and do not add to the investigation and subsequent inquest. Indeed, at the inquest into the death of Jacob Michael, the IPCC's use of force expert was not called by the coroner (or put forward by the police) to give evidence because his report was so unhelpful and his findings were impossible to reconcile with CCTV evidence.</p> <p>Moving forward, 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 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. IPCC staff and/or commissioners making decisions about selecting experts must be sufficiently trained so that they can exercise good quality professional judgement within the framework described below. We suggest the IPCC set up a panel (or panels) of trusted, independent experts (from which investigators and Commissioners would be able to select and approach the relevant specialists for particular</p>
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	<p>investigations). Panel members should be appointed through an open and transparent process according to specific criteria designed to underpin their role as independent experts. Details of panel members and their expertise should be made freely available as necessary to IPCC staff, bereaved families and their legal representatives. An internal database should be set up and maintained to enable investigators to record their use of experts in individual cases, details of their instructions, observations on the quality of reports and the evidence given to inquests. This could be a valuable resource for investigators to share knowledge and learning and improve IPCC practice in this area</p> <p>On individual cases, it would be helpful if there could be greater agreement and discussion about how and when to use experts so that objections can be raised and addressed. The IPCC should also be clear about what they can use experts for – and what they should not. For example, the use of an independent, external expert to provide a report on restraint techniques may be appropriate. Asking that expert to comment on whether that use of force is necessary in an individual case is not. That judgement is one for the IPCC investigators and Commissioner based on knowledge of the whole investigation. In addition, Instructions to experts should be written, shared and open to discussion.</p> <p>In terms of developing the IPCC’s internal expertise, a model to build on might be provided by HM Inspectorate of Prisons where specialist teams of inspectors examine different issues that arise in prison inspections – for example the experiences and treatment of children and young people. Consideration should be given to the development of specialisation within the IPCC across key areas to enable better learning and a more targeted approach e.g. mental health, restraint, drugs/alcohol etc. Regular development and training days focussing on key thematic issues should take place for all IPCC investigators. The IPCC should set up a working group to inform further thinking in this area including how best to ensure that the organisation is able to develop specialist knowledge and expertise in specialist areas that frequently are raised in deaths – for example, mental health, learning disability, drugs and alcohol misuse, healthcare, the use of restraint and police shooting protocols.</p>
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10	<p>Are there any improvements the IPCC can make to the interaction it has with other organisations involved in a death (including the police, coroners and the CPS) at the start of, during and after an investigation?</p> <p><b><u>Police</u></b> Bereaved families have repeatedly told us that they are concerned that IPCC investigations fail to treat untested police versions of events with caution. Addressing this is essential if the IPCC is to re-build the confidence of families and the public in their independence.</p> <p><b><u>CPS</u></b> A more effective MOU setting out the expectations and working arrangements between the two organisations should be put in place. Recent cases have revealed poor understanding of the referral criteria on part of some Investigators and Commissioners and failures to review referrals throughout the investigation as evidence emerges. This needs to be addressed by training and clear guidance around referrals for IPCC staff. In addition, consideration should be given to earlier referral to the CPS in cases raising potential issues around the use of force or possible medical negligence so that a more collaborative relationship is developed around, for</p>
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	<p>example, the appointment of experts. However, although early involvement of the CPS is important in informing the IPCC investigation, the decisions of prosecutors should not replace the judgements of investigators or impose limits on the direction of the investigation.</p> <p><b><u>Coroners</u></b>          Again a MOU between the IPCC and the Chief Coroner setting out standards and expectations would be helpful. Issues to address could include: post-mortem examinations; disclosure; timing of IPCC investigations; pre-inquest reviews; use of experts’ evidence; and avoiding delays.</p> <p><b><u>Health and Safety Executive</u></b>          In light of the death in custody provisions of the Corporate Manslaughter and Corporate Homicide Act 2007, the IPCC should give consideration to involving the HSE at an early stage in investigations.</p> <p><b><u>Other relevant agencies</u></b>          It is important in every case that the IPCC identifies where the policing role sits within the wider range of other relevant agencies, e.g., a case involving policing and mental health should define the wider landscape including the interface with other relevant bodies e.g. social services, mental health services, NHS Trusts etc, so that the issue of joint protocols, policies and good practice etc are properly identified and addressed. This is also crucial for the IPCC’s oversight role in drawing public and policy attention to issues arising from the investigation of deaths and complaints.</p> <p><b><u>Community groups</u></b>          Although not formally “involved” in the investigation, in contentious cases that arouse significant public interest and concerns around wider policing issues, the IPCC should quickly recognise and respond to the need for wider community involvement and interact more meaningfully with community groups. Work on this by the IPCC should include identifying and then consulting on different methods and strategies for engaging and informing the community throughout the course of an investigation. Consideration should be given to developing a community reference group to consider how best to liaise more effectively with members of the community. This could include those working on, for example, issues concerning police accountability, mental health, domestic violence, anti-racism, advice centres.</p>
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11	<p>Is the IPCC’s role in decisions on disciplinary action understood by the public and those involved in investigations? Should the IPCC have a greater role in deciding whether disciplinary action should follow from an investigation?</p> <p>The ability of officers to continue in operational duties without any apparent consequence or impact on their careers is a matter of incomprehension for many families and the IPCC’s role in disciplinary action is not clearly understood by families and the public. Although the organisation’s role is only part of the picture, it is important the IPCC is seen to have sufficient powers around the issue of suspension and disciplinary action. The IPCC, as the independent investigator in possession of the evidence relating to a case, should have a much stronger role in recommending when and what disciplinary action should follow an investigation.</p>
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	<p>It is not uncommon for IPCC conclusions that officers involved in a death in police custody should be disciplined for “gross misconduct” to be eventually watered down by police forces to “words of advice” (see the case of Lloyd Butler). Or in too many cases we see officers recommended for disciplinary action retiring before such action can take place. In a recent controversial restraint related death, although the IPCC recommended the suspension of officers, this was refused by the Deputy Chief Constable of the relevant police force, to the dismay of the family. Most people’s experience of workplaces would lead to the expectation of an immediate suspension pending investigation. The fact that this almost never happens is something families cannot understand and leads to a belief that officers are above the law. These cases do not give either families or the public confidence that police officers implicated in acts or omissions leading to someone’s death will be held accountable.</p> <p>Finally, for similar reasons of public confidence, we recommend that the IPCC should encourage and push for misconduct hearings to be routinely held in public. It is the lack of accountability and redress that cause families most difficulty, anger and frustration in the face of clear evidence of wrongdoing and failures of professional duty. The more the IPCC can do make these procedures robust and transparent, the greater the likelihood that a family will believe the system is capable of delivering truth and justice.</p>
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12	<p>Should there be a statutory basis for IPCC recommendations, so that police forces must respond formally and declare what action they are taking?</p> <p>Yes. We agree 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.</p> <p>INQUEST has welcomed the shift in the IPCC’s work towards a more integrated approach that tries to ensure lessons are learned systemically. Although the IPCC has produced a number of useful and important thematic reports and led some impressive work on the <i>Learning the Lessons Bulletins</i><sup>7</sup>, the promotion of good practice alone is insufficient. At present the accountability void means that matters are in danger of disappearing into the ether without a framework from which to monitor and audit change taken as a result. Essential to this role is the need for the IPCC to ensure greater integration of IPCC recommendations made following death investigations, inquest verdicts and Coroners Rule 43 recommendations<sup>8</sup>. This would ensure that issues emerging that have both local and national learning potential can be identified. These should be an integral part of the IPCC’s learning function: both in terms of external learning and for use in future investigations. It is important that the IPCC is empowered to take more targeted steps to follow up and challenge individual police forces who do not implement specific recommendations made following investigations. Drawing on our report, <i>Learning from Death in Custody Inquests</i> (2012), INQUEST raised this in our submission to the Home Affairs Committee Inquiry into the IPCC and we support the introduction of a statutory framework recommended by the Committee in January 2013.</p>
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<sup>7</sup> [www.learningthelessons.org.uk](http://www.learningthelessons.org.uk)

<sup>8</sup> For more detail, see the discussion and recommendations at pps 24-25 of *Learning from Death in Custody Inquests: A New Framework for Action and Accountability* (Shaw and Coles, 2012)

13	<p>How can the process for learning lessons contribute to improvements in policing and help to prevent deaths from occurring in the future?</p> <p>See our answer to Q12 above.</p> <p>We have considered this issue in detail in INQUEST's submission to the ongoing Casale Review of the IPCC's handling of the investigation into the death of Sean Rigg. In our response to that Review we note that, as well as immediate learning following a case, a significant problem continues to be sustained learning in police forces. Current cases suggest that learning has not resulted in long term changes to practice. The fear is that shocking, contentious cases generate an immediate response and learning but that is not embedded and the same patterns repeat themselves. For example, INQUEST is deeply concerned by the recent high numbers of deaths involving mental health and restraint, including the use of prone restraint, which are reminiscent of cases from ten years ago.</p> <p>The IPCC has a unique role in terms of access to evidence about policing standards and an important guardianship role. The IPCC should be playing a central role in identifying those repeat patterns and ensuring these issues remain a priority for sustained learning and training.</p> <p>The IPCC could also, and should, be more proactive in enforcing police standards to prevent ill treatment and misconduct and promote better policing care (particularly of vulnerable detainees). The IPCC needs to use the knowledge gained from investigations to speak out more about concerns raised by deaths and serious injuries and to alert police service and other agencies to these. In addition, the IPCC should adopt a more integrated approach and liaise closely with inspection bodies such as HMIC to help inform their work in inspecting police custody and ensure that recommendations from investigations into individual deaths are implemented. Similarly, better liaison with Independent Custody Visitors could play an important role in picking up and observing the practical application of IPCC recommendations.</p> <p>As well as external learning, internal learning is critical for the IPCC to ensure that its effectiveness and impact continues to be built upon. It is important to examine whether effective mechanisms and systems are in place for increasing knowledge and expertise from case to case within the IPCC. For example, by holding de-brief sessions with all IPCC staff involved at the conclusion of an investigation (Commissioners, investigators, family liaison managers) to consider what has or has not worked, to evaluate the use of experts, identify issues for follow-up and reflect on what might be done differently to improve future investigations. Such an approach would help embed learning in the IPCC and start the development of an organisational memory so that where a death occurs in similar circumstances it triggers a review of what happened to previous IPCC recommendations on these cases.</p>
14	<p>What more could the IPCC do to ensure that the way it carries out its investigations is independent and effective and secures and maintains public confidence?</p>

Implementing the recommendations INQUEST makes in this response would be an important step forwards for public confidence in the IPCC.

Bereaved families have repeatedly told us that they are concerned that IPCC investigations are not thorough, 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 recorded their complaints<sup>9</sup> 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”.

To address these concerns, the IPCC should focus on improving the robustness and quality of their investigations through a process of training, awareness raising, challenging of established approaches and the recruitment of appropriate skills and expertise. INQUEST’s observations from investigations have revealed:

- The need to develop systems, structures and methodology at all stages. Even now the IPCC’s initial contact with a family appears ad hoc and chaotic suggesting a basic lack of systems and approach: some families are consulted on initial press releases, some are not; on some cases the family will be invited to meet with the commissioner, on others they are not. It is common to attend an initial meeting with a family following a death where there appears to have been little pre-meeting planning, no agenda (or it has not been agreed), no clear explanation of roles and what the IPCC can and cannot do. The room for anger and frustration in such poorly prepared meetings is considerable. Those leading these meetings for the IPCC need to be appropriately skilled and trained in chairing and running highly sensitive meetings.
- The need to ensure that all contentious features in a case are properly identified and addressed. For example, if restraint has featured in a case, this should be fully and robustly examined through evidence gathering and analysis at report stage. In Sean Rigg’s case, concerning the use of restraint, a proper analysis of the evidence by the IPCC should have shown (as it did at the inquest hearing) that Sean Rigg was initially restrained by officers for 8 minutes rather than for a matter of seconds as claimed. In stark contrast to the IPCC’s findings, the jury found that the restraint used amounted to excessive force and more than minimally contributed to his death.
- In many cases, the IPCC appears to quickly form a fixed picture of events. Evidence can become selected and reviewed according to that fixed view; a view which is often sympathetic to, or informed by, the police account and an uncritical acceptance of their evidence. This helps contribute to a family belief that the IPCC lacks rigour and independence and is not impartial in its approach. There is also the danger that important evidence, lines of inquiry and witnesses can become overlooked and minimised.
- The failure to robustly collate, analyse, review and challenge evidence. It is unclear whether this is due to lack of will or an issue of skills and training but it can appear as an uncritical acceptance of police accounts. It is common in the majority of cases to see poor quality evidence gathering or analysis. For example, in the 2012 inquest into

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<sup>9</sup> The report from the Family Listening Day in March 2010 can be found on the IAP website: <http://iapdeathsincustody.independent.gov.uk/wp-content/uploads/2010/09/IAP-Family-Listening-Day-Report-Aug-2010.pdf>

	<p>the death of Jason Jones, police behaviour in a custody suite was described by the IPCC investigator as “appropriate and professional” yet the inquest heard evidence that an officer had been seen and heard on CCTV to mimic and ridicule the prisoner before his death and aim a kick at his retreating figure.</p>
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15	<p>Does the IPCC keep complainants, families, interested parties and those subject to an investigation appropriately informed of progress?</p> <p>It is a source of concern that families have consistently complained to INQUEST of poor communication and treatment by the IPCC during investigations. Part of this stems from the attitude of IPCC investigators whereby the process is one of “informing” families rather than engaging in a dialogue, listening to their concerns and explaining the IPCC’s work and findings. A cultural shift in the organisation’s approach to families is required.</p> <p>A list of relevant recommendations INQUEST has previously made in our 2007 evidence based research <i>Unlocking the Truth: families’ experiences of the Investigation of Deaths in Custody</i> is appended to this response. 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. In addition, we think clear protocols are needed for IPCC staff which deal with the provision of written and oral information to families. There are examples of good practice which the IPCC can build on. In the cases of Andrew Sheppard and Reece Staples, a good relationship was maintained during the investigations largely due to the willingness of the senior investigators to engage with and work fully with the families and their legal teams throughout the process.</p> <p>However, 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.</p> <p>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. Our experience is that such information is not routinely given. The IPCC should be clearer with families about the need for independent support and ensure that families are aware that in all cases lawyers will be representing the interests of others involved such as the police force, individual officers and so on. Information should be given at different stages through the process as families initially often difficult to take in, too often INQUEST is contacted at a very late stage, in some cases such as that of Leonard McCourt, when the inquest has taken place without the family being supported or legally represented which causes considerable distress.</p> <p>Consultation with families should be meaningful. Although families should be updated throughout the investigation, the report is not generally circulated and consulted upon before being finalised. In contrast investigation reports drawn up by the Prisons and Probation</p>
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	<p>Ombudsmen are initially circulated in draft form with an eight week response period. This is important in identifying any issues that the family do not think have been adequately explored. This is also sometimes the first time that the family properly understand what the IPCC have been doing and an unrepresented family may decide at this stage to seek legal representation.</p>
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16	<p>Where information is withheld for “harm test” reasons, is this clearly explained? How might this be improved?</p> <p>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. 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.</p> <p>Currently IPCC practice seems to vary 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. This appears to be partly because there is a rigid approach to the “harm test” which is routinely used as a reason for background facts to be withheld from families (including in a recent case the briefing given to pathologists). In cases where the “harm test” is cited when refusing to share even basic details with bereaved families, there is always a danger that the information vacuum will be filled with suspicion and mistrust. In several cases this has left families and their legal representatives with no alternative but to challenge the lack of disclosure through time-consuming and costly judicial review proceedings.</p> <p>These practices around disclosure to bereaved families and their legal teams should be addressed as a matter of urgency including a review of current practice and fresh guidance to IPCC staff about the proper application of the harm test. Compounding this is the amount of time it takes for the IPCC’s processes around disclosure. As a result we suggest there also needs to be a concerted focus across the IPCC to ensuring disclosure is speedier and more effective. Delay in disclosure also causes delays in inquests being held. In January 2013 the inquest into Andrzej Rymarzak’s death was adjourned at the last minute due to the IPCC disclosing significant amounts of previously unseen material to the coroner three days before the hearing was due to take place. Delays have also been responsible for undermining public confidence in the IPCC as, for example, in the Mark Duggan case where the coroner complained in open court about the delays in disclosure by the IPCC and how it impacted on his ability to set an inquest date.</p>
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17	<p>Does the IPCC involve the family of the person who has died appropriately in the investigation? Is it sufficiently sensitive to their needs? How might its work with families be improved?</p> <p>See our answers to Qs 15 and 16.</p> <p>There have been a few examples of good practice where the IPCC has worked well with families and their legal teams (for example investigations into the deaths of Andrew Sheppard, Callum McLean and Reece Staples). These are isolated instances and overall the way the IPCC involves bereaved families in their investigations is poor.</p> <p>As a starting point, the IPCC needs to be clear that family involvement in an investigation following a death involving police is not about “appropriate involvement” but is a legal requirement enshrined in Article 2 of the ECHR (as set out in the House of Lords case of <i>Amin</i> and the European Court of Human Rights’ judgment in <i>Jordan</i>). “Victim involvement” is one of the five standards included in the Commissioner for Human Rights’ principles for effective police complaints investigation (see Q2). In part, these legal standards recognise that families are often experts in that they are well placed to give investigators invaluable information about their relative. These legal standards for involvement must underpin all the work of the IPCC and particularly their approach to families.</p> <p>Common to many family and IPCC relationships are:</p> <ul style="list-style-type: none"><li>• early breakdown of trust;</li><li>• poor communication or embattled and often hostile communication including 'institutional defensiveness' which does not allow the family to raise important concerns and grievances;</li><li>• a perceived lack of professionalism to do the job properly and fairly including fears of collusion and cover up when inaccurate information is given or information is withheld (see our answer to Q16). By contrast, other families have felt overwhelmed by the timing and nature of contact from the IPCC in the immediate period after a death. In a recent case, a family explained several times that they could not cope with discussing the death during a phone call but the IPCC officer continued the conversation regardless. In the end, the mother of the deceased had to put the phone down. Asking a family how and when they want to be contacted and receive updates would be helpful.</li></ul> <p>Above all families want professionalism, and honest, direct communication. Meaningful communication and engagement from the outset which properly takes on board family concerns and grievances could do much to re-frame the often fraught relationship with families. The IPCC must also recognise that deaths in police custody or following contact with the police can be highly contentious and raise sensitive, emotional and often disturbing issues for all involved in dealing with the aftermath. From our recent experience INQUEST is concerned that IPCC staff and investigators need to be better supervised and supported by the organisation (including by senior colleagues and Commissioners) to deal with this and we query whether those working in front-line roles at the IPCC have been able to access good quality training which equips them to deal professionally and sensitively with bereaved families.</p> <p>As INQUEST first suggested in <i>Unlocking the Truth</i> and re-iterate in our submission to the</p>
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	<p>Casale Reivew, the IPCC should ensure their staff can access specialist training on working with bereaved people who have suffered a traumatic bereavement. This should involve those who have been through the investigation process who can best offer insight into how things could be improved. Some of the issues that need to be addressed include: fear and anxiety about dealing with recently bereaved people; how to be professional yet sensitive; communicating information clearly; managing expectations; the importance of appropriate body language and behaviour.</p> <p>Finally we think the IPCC should recognise the important role families can play in helping the IPCC learn from their own good and bad practice. Since it was established there has never been any formal family feedback undertaken in contrast for example to the Prisons and Probation Ombudsman who conducted a survey of bereaved families. The organisation should systematically seek feedback from families following an investigation and consider interviewing families as part of an internal learning the lessons process for the IPCC to help improve their interaction and communications with bereaved families (see our answer to Q13). In addition, the IPCC should consider setting up a Family Panel or Standing Commission of Families to establish a formal mechanism for families to give input or feedback to the IPCC.</p>
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18	<p><b>Does the IPCC strike the right balance in its communications with the media?</b></p> <p>For many families the timing of public announcements about information and decisions relating to their relative's death and the language used in those announcements is highly sensitive. The impact of IPCC public statements on family confidence in 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 and, for example, how deceased persons are referred to (i.e. what biographical details are included). All statements made should be subject to a harm test.</p> <p>Worryingly, IPCC information put in the public domain has sometimes been misleading. In March 2012 INQUEST submitted detailed evidence to the Leveson Inquiry which examined misinformation following deaths involving the use of lethal force by the police<sup>10</sup>. 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 must ensure that the information it provides to the media is accurate and based on fact alone and that any misinformation (from the police or the IPCC itself) is corrected immediately.</p> <p>INQUEST has previously described how high profile cases of deaths following police contact have been 'mismanaged'. For example the deaths of Ian Tomlinson and Jean Charles de Menezes (see individual Briefings for each death on <a href="http://www.inquest.org.uk">www.inquest.org.uk</a>). Following costly IPCC investigations into media handling, the public were told that the same process of allowing inaccurate information to remain in the public domain uncorrected would not happen again.</p>
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<sup>10</sup> For more detailed analysis see INQUEST's submission to the Leveson Inquiry: [www.levesoninquiry.org.uk/evidence/?witness=inquest](http://www.levesoninquiry.org.uk/evidence/?witness=inquest)

	<p>But following the death of Mark Duggan similar problems with inaccurate information from the IPCC occurred. A short statement from the organisation after the event said one of their staff members had ‘<i>inadvertently</i>’ misled the media<sup>11</sup> but 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.</p> <p>Given the damage to public confidence in the IPCC caused by these recurring problems, 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.</p> <p>A recent, welcome change has been the IPCC increasingly consulting with families before issuing press releases. However, this practice appears to vary from case to case. It is not clear whether this variation because of geographical location, the involvement of family lawyers, and the approach of different Commissioners (the practice seems to happen more consistently in London). It would be helpful for this practice to apply across all cases. Engaging a family in this process and getting the language, tone and accuracy of a press release right at the outset can greatly assist a family’s relationship with the IPCC at this early stage.</p>
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19	<p><b>How should the IPCC work with communities and community groups to secure and maintain public confidence in the investigation?</b></p> <p>Many of the recommendations we make in this response would help to restore confidence in the IPCC with communities and community groups.</p> <p>The bottom line is that families, INQUEST and community organisations want to see properly independent, transparent investigations into deaths in police custody or following police contact so that those responsible are held accountable for their actions or omissions and, where needed, changes are made to practice and policy to prevent further deaths. Delivering on its statutory purpose would be the best way for the IPCC to restore public confidence in its work.</p> <p>In addition, a more robust and proactive response to the issues raised by investigations would enable the public to see a policing watchdog willing to draw matters of concern to the public, policy makers and Government.</p>
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20	<p><b>Do IPCC investigations take sufficient account of equality and diversity issues?</b></p> <p>No. In INQUEST’s experience the issue of discrimination and whether the death can be linked</p>
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<sup>11</sup> 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.

to discriminatory attitudes and practices is never adequately considered by the IPCC in its investigations.

As we have said in our submission to the Casale Review, INQUEST has documented particular concerns about the disproportionate number of deaths of people from BAME communities following the use of force by the police. Likewise our casework has revealed deep-seated issues around the police's treatment and care of people with mental health issues. These issues are not being properly identified or addressed in IPCC investigations. They are central, contentious issues and should be explicitly raised from the start. The IPCC should not be afraid to identify the primary, contentious features in a case such as race, mental health and restraint. This is not to prejudge the investigation or with the purpose of ruling those issues in or out but to make clear the IPCC is aware of and has identified the primary concerns and issues that need to be pursued. This would help to put on public record that the IPCC recognises the important questions and issues to explore and is there to conduct a robust investigation will go some way to satisfying the public interest and concern about these deaths.

In the context of black deaths in custody the issue of race/racism is not referred to by the IPCC or included in the terms of reference. Evidence of racial stereotyping by the Metropolitan Police led to the most damaging censure of the police when a public inquiry attributed the bungled police investigation into the racist murder of Stephen Lawrence to institutionalised racism. INQUEST is concerned that racial stereotyping has been a contributory factor in some of the deaths in custody resulting from restraint/use of force and medical neglect. The question of racism is therefore the 'elephant in the room' neither part of the investigation process nor inquest. Similarly INQUEST is not aware of investigations that look specifically at whether discriminatory treatment of people with mental health problems may have contributed to the death. With the increasing concerns about mental health and policing, this is an urgent issue that needs addressing. INQUEST is also concerned with the double discrimination experienced by black people with mental health problems.

It is also important that the IPCC recognises the danger of using 'value laden' language in, for example, press releases, Terms of Reference or investigation reports. This is particularly important in cases that have involved the use of force or in the context of mental health. It is common in Terms of Reference and investigation reports to see references to 'violent' and 'aggressive' - behaviour as described by police officers – in many cases found subsequently to be language used to justify their actions that other evidence suggests is 'disorientation' and 'agitation'. As well as being offensive to families, such language risks distorting the picture of events and the prejudging of evidence.

Ultimately, there must be greater recognition by the IPCC of the context in which the organisation was established and the broader political and social policy context in which deaths occur. In particular, the historic lack of confidence in the investigation process and untold anger particularly among the BAME communities about the number of deaths following the use of force or medical neglect and the failure to hold the police to account for wrongdoing. The IPCC needs to make a concerted effort to establish a reputation for being robustly independent, willing to tackle the underlying issues through high-quality investigations and committed to using the expertise gained from investigations to speak out about systemic problems in policing.

21	<p>Could IPCC reports, or their accessibility, be improved in order to contribute to securing and maintaining public confidence in the IPCC and its work?</p> <p>In terms of the written investigation reports, significant changes are needed to improve the quality of these reports.</p> <ul style="list-style-type: none"><li>• A report should situate a case within a broader historical and policy context: identifying key or concerning themes, addressing broader policing concerns, addressing other relevant cases raising similar issues and also setting the case within the context of the IPCC's own policy landscape in terms of its published statistics, thematic reviews, previous investigations, <i>'Learning the Lessons'</i> bulletins. The IPCC should identify patterns, common themes and concerns, displaying a political awareness of what has come before.</li><li>• Failure to test evidence or resolve conflicts and gaps in the evidence is common to many reports. It would be better for the report to acknowledge evidential conflicts or gaps and state these have not been possible to resolve rather than leave them without explanation. Such conflicts or gaps in evidence can also help inform the conduct of any inquest.</li><li>• Breakdown and evidential analysis of every contentious aspect of the case should appear in a report. It is common to see significant issues, for example restraint, largely glossed over by the IPCC. In a recent police case, there was no attempt to identify the period of restraint and no comment was made about the involvement of members of the public in the restraint.</li><li>• Detailed time lines/chronologies would be a useful way of exposing evidential gaps or conflicts around timing between the individual accounts, which should in turn aid evidence gathering and interviewing. This would help to identify and potentially narrow the key issues to be addressed at inquest stage. The current failure to address or adequately resolve many or any of a case's contentious features at investigation stage is resulting in longer and more complicated inquest hearings which must seek to close this Article 2 gap.</li><li>• Policies/protocols: All relevant legislation, policies and protocols (national and local) should be identified and considered in the investigation. Reports should show detailed consideration of police action against those documents. If policies are inadequate, this should be addressed as a recommendation.</li><li>• Training: should be addressed with respect to all key features of the case e.g. mental health, restraint. This should include the identification of all training that has occurred, any refresher courses, a consideration of training materials, and an identification of any gaps or shortcomings<sup>12</sup>.</li></ul>
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### General comments

Please let us know if there are any other comments you would like to make.

<sup>12</sup> INQUEST has also made these points as part of our submission to the Casale Review.

Since the IPCC's was established in 2004, INQUEST has continued to engage, contribute and try to assist the organisation by sharing our experience and enhancing their understanding of the issues arising from our casework with bereaved families. However, it has not always been a positive experience.

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, or other agencies such as the CPS or the coronial system, family complaints cannot merely be explained away in this manner. As we have set out in this response, 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. 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 exemplified by an over-eagerness to immediately adopt highly defensive positions when faced with any criticism - a reaction which only serves to strengthen critical perceptions of the police complaints system.

We have welcomed both the appointment of Dame Anne Owers as the IPCC's new Chair and this Review into the IPCC's work in relation to cases involving a death. These processes must result in fundamental change. INQUEST believes this is a critical, perhaps last, opportunity for the IPCC to bring about a paradigm shift in its culture, approach and effectiveness so as to finally fulfil its statutory purpose and deliver an efficient, effective police complaints system which secures public confidence.

## **APPENDIX A – INQUEST RECOMMENDATIONS FOR THE IPCC**

*(extracted from Shaw and Coles "Unlocking the Truth: Families' Experiences of the Investigation of Deaths in Custody" (INQUEST: 2007)<sup>13</sup>)*

*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;*
- *clear explanations about the purpose of any meetings;*
- *funding to enable them to attend meetings with the investigators and/or their*

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<sup>13</sup> Available to order through INQUEST's website: [www.inquest.org.uk](http://www.inquest.org.uk)

*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<sup>14</sup>.*

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<sup>14</sup> See Chapter 4 for full text