

**INQUEST, INQUEST Lawyers Group and Police Action Lawyers Group**  
**response to the Independent Office for Police Conduct's draft reinvestigation**  
**policy**

**August 2025**

1. INQUEST is the only charity providing expertise on state related deaths and their investigation. For four decades, INQUEST has provided expertise to bereaved people, lawyers, advice and support agencies, the media and parliamentarians. Our specialist casework includes deaths in police and prison custody, immigration detention, mental health settings and deaths involving multi-agency failings or where wider issues of state and corporate accountability are in question. This includes work around the Hillsborough football disaster and the Grenfell Tower Fire.
2. The INQUEST Lawyers' Group (ILG) is a national network of several hundred lawyers who provide legal advice and representation to bereaved families – often acting pro bono where funding is unavailable – as well as promoting and developing knowledge and expertise in the law and practice of inquests. ILG members also regularly attend meetings with investigation bodies such as the Independent Office for Police Conduct to provide input to improve the experience of bereaved families of the investigation and inquest process.
3. The Police Action Lawyers Group (PALG) is a national organisation comprising lawyers who represent members of the public who have been victims of police and other state misconduct throughout England and Wales. PALG was formed in 1991 and its members are concerned first and foremost with the principal objectives of those we represent, to ensure that the police are held accountable for their conduct through all available avenues including: the police complaints system; inquests; inquiries and other investigative regimes; judicial review; civil actions in tort and under the HRA and Equality Act; as well as via the criminal justice system where appropriate. Although, historically, our primary focus has been on police misconduct, PALG members also represent clients in respect of misconduct by other state authorities, particularly those with the power to detain and use force, as well as representing bereaved families following state-related deaths inside and outside of the police setting.

4. Our joint response to the Independent Office for Police Conduct's (IOPC) consultation on its 2025 draft reinvestigation policy<sup>1</sup> makes clear our concerns around raising the threshold in which reinvestigations into complaints, conduct matters, deaths and serious incidents are held. As set out in this submission, the IOPC's newly proposed test for granting a fresh investigation is more restrictive than the current test and risks placing an additional barrier to truth and accountability for bereaved families and victims.
5. Our response notes the need to ensure the following: (i) greater clarity on the test for reinvestigation, including on what constitutes a reinvestigation being in the public interest; (ii) clearer guidance and timeframes on the decision-making process; (iii) genuine consultation with key stakeholders on decisions; and, (iv) learning following all reinvestigation decision-making processes.

(i) *The test for reinvestigation*

6. Pages one and two of the IOPC's new draft reinvestigation policy outline the revised test investigators must follow when determining whether they are satisfied there are "compelling reasons" to reinvestigate a complaint, conduct matter or death or serious injury as required under s.13B of the Police Reform Act 2002. There are three tests – A, B and C – where either test A or B plus test C must be satisfied "on the balance of probabilities". This language has been inserted following the High Court's judgment on the IOPC's decision not to reinvestigate the fatal police shooting of Lewis Skelton.<sup>2</sup>
7. We have concerns with the policy, including the drafting of tests A, B and C. Our concern is that, taken together, the test is placed at an unreasonably high level, not envisaged by either the statutory scheme nor the High Court in *Skelton*, which may make it harder for families and victims to see any accountability following a death or police misconduct – in circumstances where the statutory test already requires that there be "*compelling*" reasons for reinvestigation and the draft policy interprets this as an unduly high threshold. Additionally, both tests A and B in the draft policy require a conclusion to be drawn as to the likely impact of the identified 'new' information or flaw in the original investigation prior to any further investigation into that information/flaw(s)

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<sup>1</sup> <https://www.policeconduct.gov.uk/publications/re-investigation-policy-july-2025>

<sup>2</sup> For more information, see *R (Skelton) v IOPC and others* [https://assets.caselaw.nationalarchives.gov.uk/ewhc/admin/2024/983/ewhc\\_admin\\_2024\\_983.pdf](https://assets.caselaw.nationalarchives.gov.uk/ewhc/admin/2024/983/ewhc_admin_2024_983.pdf) and <https://www.doughtystreet.co.uk/news/iopc-re-investigate-death-lewis-skelton-after-family-judicial-review>

# INQUEST

taking place. We consider this to be an impossible task for the decision-maker and that it is likely to lead to greater confusion rather than greater clarity, having regard to the statutory test to be applied.

8. Test A states:

*“the original investigation was flawed to the extent that **but for the flaw** a different end of investigation conclusion on discipline, performance and/or referral to the Crown Prosecution Service (CPS) **would have been reached, or**”* (emphasis ours)

9. This means that an identified flaw in the IOPC’s original investigation must have had a definitive impact on the conclusion of an investigation on discipline, performance and/or referral to the Crown Prosecution Service (CPS). Not only is this a higher threshold than the current policy, which states that an identified flaw in the original investigation must have had a “material impact” on the investigation decision, rather than leading to a different conclusion, but it is unclear how a decision maker comes to the conclusion that a different conclusion on discipline, performance and/or referral to the CPS **would** have been reached without carrying out any investigation. To consider if a different conclusion would have been reached the flaw(s) would need to be considered within the evidence as a whole.

10. Similarly, Test B in the new draft policy states:

*“there is significant new information that **requires further investigation** which, had it been available, **would have led** to a different end of investigation conclusion on discipline, performance and/or referral to the CPS; and”*

11. The test therefore requires that, where significant new information has become available, had it been available at the time of the original investigation (in respect of which, see below), that new information or evidence “*would have led to a different end of investigation*”. Again, this is a higher and narrower test for investigators to meet than the previous policy, which stated that investigators need be satisfied only that there is a “real possibility” new information “would have led wholly or partly” to a different investigation decision.
12. It also requires the decision maker, faced with new information “*requiring further investigation*”, to reach a conclusion as to the likely outcome of any reinvestigation,

prior to any such investigation having taken place. As above in respect of Test A, how will an investigator make a decision on whether a flaw or new evidence would have led to a different outcome without, in effect, conducting a new investigation? Alternatively, anything short of a full investigation means relying on the investigator's presumptions about the predicted outcome of an investigation. This could result in an overly cautious approach from investigators given the high evidential bar that needs to be met.

13. One concern with these changes is that they impose a higher bar for families and victims to pass to enable a reinvestigation to occur. Our joint experience is that reinvestigations at present are rare. According to INQUEST's casework, we know of approximately ten successful IOPC reinvestigations following a police related death.<sup>3</sup> Many of these reinvestigations were triggered after deficiencies in the IOPC's original investigation were brought to light by families and their legal teams, such as in the cases of Olaseni Lewis and Sean Rigg. Aside from the need to ensure greater clarity for investigators post-*Skelton*, we are unclear what the IOPC's rationale is for raising the threshold and what evaluation has been done on the implications for public trust and police accountability of frustrating the path to a reinvestigation on families and victims.
14. As currently drafted, the revised policy places too great an emphasis in tests A and B on an assessment of either identified *flaw(s)* in the original investigation, such that the outcome would have been different, or whether new *previously unavailable* information would do so. As the Law Commission has highlighted in the context of assessments by the Criminal Cases Review Commission of referrals to the Court of Appeal, rather than requiring an assessment of the impact of the identified *flaw(s)* or *new information* alone on the outcome, the test should instead consider the evidence as a whole, as informed by the new evidence/'flaws'.
15. **Our recommendation would be to revert to the wording in test A and B of the current reinvestigation policy (page three). The IOPC could also consider replacing the word "would" used in both tests A and B with "could" to provide more flexibility for the investigator and less emphasis on a predicted conclusion. This would provide the investigator with greater discretion and has less of a focus on the outcome of an investigation which is difficult to prove at the outset of a request for reinvestigation. This is particularly important in circumstances**

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<sup>3</sup> This is an approximate figure taken from an analysis of INQUEST's casework and is likely an underestimate as we do not hold data on every IOPC reinvestigation request.

where tests A and B necessarily presume that the identified flaws/new information/evidence require further investigation. In such circumstances, requiring the decision-maker to determine whether that flaw/evidence *would* lead to a different outcome, cannot be correct.

16. The third test, C, addresses that provided the tests in A or B are met (i.e. the original investigation was flawed or there is new evidence requiring investigation, which would have led to a different outcome), the IOPC should consider whether reinvestigation is “necessary in the public interest”. We note that this proposed draft states the public interest test needs to be “in respect of either condition A or B”, a caveat which is not included in the current reinvestigation policy. As drafted, the policy does not include any further information about what constitutes ‘public interest’.
17. While an exhaustive list of situations which might engage the public interest would not be appropriate, it is important this guidance sets out some areas which investigators should take into consideration to inform their decisions. This should include the impact of a decision on whether to reinvestigate, including the impact on specific communities, given the wider impact of decisions on police accountability to local communities and racialised groups. **We recommend the IOPC include a non-exhaustive list of issues to consider regarding test C on the public interest.**

(ii) *The decision-making process*

18. Page three of this draft reinvestigation policy outlines the ways in which the IOPC might be alerted to new evidence or a flaw in the original investigation, such as the conclusions of an inquest or criminal trial. Page four goes on to list some of the considerations an investigator should apply in their review into whether a reinvestigation is warranted, as well as the timings involved in the process.
19. The wording of these considerations is overly broad. The draft policy states that the “strength, reliability and *significance*” of new evidence needs to be considered (emphasis ours) yet it is unclear from the drafting what is meant by “significance”. We are concerned it will be difficult for investigators to properly apply this consideration, potentially resulting in inconsistency across reinvestigation reviews. Furthermore, the “reasons why [the new evidence or information]...was not considered” (if any) will rarely be a relevant consideration, albeit it is clearly important for the IOPC as an organisation to learn from any potential mistakes made in the original investigation,

such as failure to ask a relevant question or obtain important evidence which may have been subsequently gathered.

20. Further, the examples given as to what “significant new information” might be are overly restrictive. Whilst it is understood this is not an exhaustive list, as above in respect of tests A and B, the reference to “not available to the IOPC during our investigation” is extremely concerning. It appears to suggest that if, for example, video or audio evidence had been available during the IOPC investigation, but the IOPC had failed to consider it, that would not be “significant new information”. That cannot be correct.
21. Similarly, we are troubled by the way in which disagreement between the reviewer and the original decision-maker is dealt with. In particular, the assertion that: *“the fact that the reviewer disagrees with a decision or outcome will not necessarily mean that it is wrong... It is reasonable to expect that two decision makers might have differing opinions, especially when engaging in complex decision-making involving analysis of extensive evidence. The focus will be on whether the original decision-maker had considered all relevant issues and came to a well-reasoned and justifiable decision.”*
22. As a starting point, it is quite possible to foresee cases where there may be more than one decision that might be argued to be well-reasoned and justifiable in the circumstances. Whilst some divergence of opinion is an inescapable aspect of human decision-making, if two IOPC investigators trained in the same way and adhering to the same principles come to two different opinions this in itself signals that there are complex issues requiring careful analysis and handling. We agree that disagreement with a previous decision doesn’t *necessarily* mean that it was wrong, but – importantly – neither does it mean that it was right. **We would suggest that, given the gravity of matters subject to IOPC investigation, this scenario warrants either (a) a reinvestigation being triggered; or (b) escalation for a determination by a third, more senior, decision-maker to make the final determination on reinvestigation.**
23. We are also concerned about the absence of any guidance on timeframes an investigator should follow, or at the very least be mindful of, throughout the decision-making process. In the experience of INQUEST, ILG and PALG, the reinvestigation process can take several years to complete and we have worked on cases where the IOPC have failed to provide regular updates to families and/or victims on the review, adding to the stress of an already extremely lengthy process. Delays can impact the

quality of an investigation, and we have seen police officers and their representatives use the fact of lengthy investigations to argue there has been abuse of process. In some cases, these arguments have led to the termination of an investigation or disciplinary proceedings which would otherwise have taken place being halted by the disciplinary panel.

24. In this light, it is completely inadequate that the only mention of timeframes in this new draft policy is that the “time it takes to complete a review will depend on the circumstances of the case”. Moreover, we do not believe it is fair for stakeholders to be given just 14 days to make representations on the IOPC’s provisional decision about a reinvestigation given how long the IOPC’s own decision-making can take.
25. While the applicable police complaints and conduct regulations should apply to both IOPC investigations *and* reinvestigations, the new draft policy does not make this clear. **We recommend the IOPC make clear reference to the regulations on timeframes for investigations in this new draft policy and include a requirement for investigators to set target dates throughout the decision-making process. While it may not be possible in all circumstances to meet timeframes or target dates, we believe it is important target dates are agreed and set to focus the minds of investigators and prevent delay. In line with other IOPC investigations, we also recommend the reinvestigation policy makes clear the duties to keep complainants/interested parties adequately informed on the progress of the review as in any other investigation, and to provide explanations for any delay or extension to the target. We further suggest that a KPI be set up to monitor compliance with these targets. Finally, we recommend the deadline for stakeholders to respond to the IOPC’s provisional decision on a reinvestigation be extended to at least 28 days.**

(iii) *External consultation*

26. Other than the mention noted above of the need for stakeholders to respond to the IOPC’s provisional decision within 14 days, this new draft policy contains no guidance on how investigators should engage key interested parties in their decision about whether to reinvestigate a case.
27. This is in contrast to the current reinvestigation policy which includes guidance on consulting external stakeholders and being considerate of the impact of a decision on



them throughout the reinvestigation process. The current policy contains a dedicated section on external consultation which includes: a duty for the investigator to consider whether it is necessary to consult with affected people to invite them to make representations on the decision to investigate; guidance on instances where an investigator may need to consult with external parties to assess the “likely impact on them of any re-investigation”; a requirement for the investigator to consider the “impact of a re-investigation on any complainant and/or interested person” when making their initial recommendation about whether to reinvestigate; and, a requirement for the investigator to “demonstrate how representations made by or on behalf of the affected people have been carefully considered” in their final decision.

28. Our collective work with families, victims and complainants has shown the deep impact decisions on whether to reinvestigate a case can have and how they can often feel left in the dark about this complex process. **We therefore think it crucial the IOPC outline the need for investigators to account for the considerations given to stakeholder’s views throughout the entire process in their revised reinvestigation policy. We believe this could be done by inserting the section on ‘External consultation’ included in the current reinvestigation policy into this revised policy.** Ensuring more meaningful consultation with stakeholders will also be aided by instating clearer guidance on providing written updates (see section (ii) above).

*(iv) Learning*

29. The process of reviewing cases to consider whether a reinvestigation should take place can reveal important learning for IOPC investigators on, for example, lines of enquiry that should have been pursued.

30. The current policy on reinvestigations includes a section on ‘Identifying learning’ which states that “it is essential” identified learning gathered over the course of conducting a reinvestigation is communicated to individuals or the IOPC more widely, “where it appears we [the IOPC] have got things wrong”. Therefore, **we recommend the section on ‘Identifying learning’ included in the current reinvestigation policy is inserted into the new, revised policy.**



## *Conclusion*

31. Our experience is that there is great inconsistency in the IOPC's handling of reinvestigations, resulting in variability in the length and quality of reviews.
32. Changes to the IOPC's reinvestigation policy are even more concerning given recent developments to the police accountability framework. The Crime and Policing Bill includes provisions that will raise the threshold for cases which the IOPC can refer on to the CPS and introduce a blanket presumption of anonymity for firearms officers who are charged with offences relating to the discharge of a firearms.<sup>4</sup> Alongside this is the ongoing review by Tim Godwin and Sir Adrian Fulford into the legal tests used to hold the police accountable for use of force and to reach a conclusion of unlawful killing at an inquest.<sup>5</sup> While we await its outcome and the Home Office's response, we believe the review represents further resistance to proper accountability of police misconduct.
33. In this context, it is clear the IOPC's new reinvestigation policy will not address persistent issues but may in fact further impact the ability to effectively hold the police to account and the public's confidence in the IOPC to do this.

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<sup>4</sup> For more information see INQUEST and JUSTICE's briefing on the Crime and Policing Bill, <https://www.inquest.org.uk/Handlers/Download.ashx?IDMF=287a0250-943d-40ef-af05-ecca93ab468b>

<sup>5</sup> For more information, see the joint submission to the Police Accountability Review of Tim Godwin OBE QPM and the Rt Hon Sir Adrian Fulford PC from INQUEST, ILG, PALG, StopWatch and the Centre for Women's Justice, <https://www.inquest.org.uk/Handlers/Download.ashx?IDMF=9ecf0b64-1e43-4cfb-bd90-f26ed976d48b>