

<b>Date</b>	<b>4 February 2013</b>
<b>Organisation</b>	<b>Police Action Lawyers Group</b>
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**This is a response on behalf of an organisation.**

The Police Action Lawyers Group (PALG) is comprised of solicitors, barristers and legal executives who represent victims of police misconduct. Membership is contingent upon lawyers acting for complainants only, so as to ensure that we provide a wholly independent space to discuss complainant's concerns. PALG has a national reach, with its members involved in matters concerning each and every police force in England and Wales. PALG was formed in 1991 and its members are committed to pursuing all available avenues of redress on behalf of their clients. This might involve relying upon the complaint process, pursuing a claim for compensation and/or seeking judicial review of the related decision-making processes. In our experience, the primary objective of the vast majority of clients who instruct PALG lawyers is a desire to ensure that the responsible police officers are held accountable for their conduct to the rule of law.

Due to our large and varied membership, the collective experience of PALG is considerable. Members of PALG have, in recent years, acted on behalf of the families of Jean Charles de Menezes, Ian Tomlinson and many others who have died in police custody. PALG members currently represent the families of Olaseni Lewis, Mark Duggan and Sean Rigg.

As a group we have been in a position to liaise with other organisations representing complainants' interests, including INQUEST, Liberty, Justice and MIND. As you are aware, we have also developed a lobbying role, particularly in relation to the police complaints system, and most recently have provided written and oral evidence to the Home Affairs Select Committee review of the Independent Police Complaints Commission. In the recommendations made in its report of 1 February 2013, the Select Committee has adopted many of the PALG submissions.

We welcome the IPCC's commitment to reviewing its work in cases involving a death and are pleased to have the opportunity to provide this submission.

<b>1</b>	<p><b>Is there anything in the remit or structure of the IPCC which fundamentally undermines its ability to carry out effective and independent investigations?</b></p> <p>PALG is deeply concerned by the persistent failure of the IPCC to fulfil its role in investigating deaths in custody with independence and investigative rigour. Since its inception in 2004, the experience of our members in their interactions with the IPCC</p>
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has often been both disappointing and frustrating. As we explained to the Home Affairs Select Committee (HASC), "*our clients can expect islands of good practice scattered amongst a sea of ineffective conduct*". It is the view of many of our members that the IPCC is failing systemically to discharge its duties under Article 2 ECHR and repeatedly letting down the families of those who have lost loved ones in custody.

PALG believes that these failures do not stem from structural flaws in the statutory framework that governs the IPCC. Rather, the lacklustre investigations appear to be due to a culture of indifference and lack of will that pervades the IPCC. IPCC investigators are not using their existing powers properly and appear to confuse 'independence' with 'neutrality', i.e. occupying a middle ground which serves no one and being reluctant to reach controversial findings. PALG believes that the IPCC should work to foster a culture of championing the truth over all other interests.

PALG welcomes the conclusions of the Home Affairs Select Committee's report on the IPCC dated 1 February 2013 '*that the Independent Police Complaints Commission is not yet capable of delivering the kind of powerful, objective scrutiny that is needed to inspire that confidence [in the public].*' Clearly, there is a crisis of confidence on the part of the public in the IPCC and PALG hopes that this Review will assist the IPCC in reflecting upon this and opening itself up to the possibility of cultural change.

In addressing the cause of this apparent culture of indifference, PALG considers that one reason may be the disproportionate number of investigators and staff at the IPCC who are formerly police officers, and who maintain overly close relationships with departments of Professional Standards. While that lack of independence is supposedly counter-balanced by the appointment of Commissioners who are prohibited from having served with the police, evidence suggests that Commissioners are not exercising sufficient practical influence over how investigations are conducted.

PALG members report a number of recent investigations where the Commissioner has appeared weak and distant from the investigation and has failed to intervene or provide the direction and scrutiny expected, at either an early stage or thereafter. PALG has for example noted numerous instances, including the Jacob Michael, Habib Ullah and other investigations, where the investigation report has been signed off by the investigator without any mention of or apparent endorsement by the Commissioner.

Greater and more robust input by Commissioners is an essential element of ensuring quality and independence and in increasing public confidence in directing and evaluating the investigators in their work and to improve quality. PALG is aware of and supports the IPCC's current attempts to recruit and train investigators with a non police background but considers that the relationship between Commissioners and lead investigators requires urgent clarification.

**Case study:**

In the investigation into the death of Olaseni Lewis, a decision by the investigator not to assess the investigation as subject to special requirements at the outset – a decision subsequently accepted to be incorrect - was not challenged or addressed by the Commissioner. This meant that no officer was notified that their conduct was under question and no officer was interviewed under caution.

**Case study:**

	<p>In the investigation into the death of Rafal Delezuch, the family made a detailed complaint to the Commissioner about the Investigator's conduct of the investigation. Instead of responding to them, she simply passed the letter to the Director of Investigations for a response. One part of their complaint was that they considered the Investigator's reluctance to subject the officers accounts to scrutiny was linked to the fact that he was an ex-police officer. Given the Director of Investigation's extensive police background, his assurances that he felt the investigation had been conducted in a thorough and impartial fashion were essentially meaningless to them.</p>
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<b>2</b>	<p><b>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?</b></p> <p>In the main, PALG considers that the IPCC does have the powers that it needs to secure and maintain public confidence. Its persistent failure to do so is interpreted by PALG as stemming from a lack of will on the part of investigators to conduct rigorous investigations and a misplaced attempt to appear 'neutral' rather than independent.</p> <p>There are however some areas where PALG practitioners believe that the IPCC lack the necessary powers to discharge their duties under Article 2 ECHR, as follows:</p> <ol style="list-style-type: none"><li>1. The power to investigate civilian employees of privately contracted firms; and</li><li>2. The power to disclose documents to a family when RIPA prevents them from doing so.</li></ol> <p><b><i>Investigatory powers re employees of privately contracted firms</i></b></p> <p>PALG is increasingly concerned that the IPCC does not have sufficient powers to investigate the staff of private companies who are contracted to perform policing functions.</p> <p>The statutory regime which governs complaints does not properly address the fact that private employees performing police functions can fall outside the jurisdiction of the IPCC. It is of great concern that police forces are avoiding accountability through the privatisation of police staff and that the state is accordingly failing to discharge its duties under Article 2 ECHR. Urgent statutory change is required to address this concern, which is only going to increase in importance as the privatisation of policing to companies such as G4S and Reliance becomes more commonplace.</p> <p>Section 39 of the Police Reform Act 2002 provides that where police forces enter into contracts with third parties for the provision of police services, the Chief Officer of the relevant police force may "designate" the relevant employees to be detention or escort officers. In doing so the Chief Officer essentially delegates police powers to the employee of the private company. Such designation entitles for example the employee of the private company the power of a constable to use reasonable force<sup>1</sup>. The Chief</p>
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<sup>1</sup> Section 39(8) Police Reform Act 2002

Officer must be satisfied that the civilian employee is a suitable person to carry out those functions<sup>2</sup>, that s/he is capable of carrying out the functions<sup>3</sup> and that s/he has had sufficient relevant training<sup>4</sup>.

Regulation 35 of the Police (Complaints and Misconduct) Regulations 2012 provides that the complaints regime outlined in the Police Reform Act 2002, including the oversight of the IPCC, applies to such staff who are designated as detention or escort officers. In other words, if the relevant Chief Officer has properly 'designated' the staff of the relevant private company then the IPCC will have the jurisdiction to investigate them, including by way of an interview under caution.

PALG notes that neither the PRA 2002 nor the 2012 Regulations cover the following category of outsourced staff:

1. Employees who are contracted by police forces but not as either detention or escort officers.
2. Outsourced detention or escort officers who have not been 'designated' for the purpose of s39 Police Reform Act 2002 as a result of a failure of the Chief Officer to do this, or otherwise.

If either of the above apply, the privately contracted company will be in a position to refuse to co-operate with any IPCC investigation even if their employees are material witnesses to a death in custody. In those circumstances, any investigation concerning the actions of the relevant employee may fall to the private company who will by definition not be independent and will probably not have the skills, relevant resources or will to undertake a proper investigation. It is understood that G4S have volunteered to incorporate in their staff contract of employment mandatory co-operation with the IPCC. This however is clearly not sufficient to discharge the state's Article 2 ECHR duties. It also creates a worrying situation where different police forces will have varying levels of accountability depending on the extent to which they outsource policing functions and which private companies they outsource to.

PALG welcomes the findings of the HASC that the jurisdiction of the IPCC should be extended to cover private sector contractors in their delivery of policing functions and that appropriate funding should be made available to cover this.

**Case study:**

Sharon McLaughlin died in Worthing Custody Centre on 16 May 2010. The custody suite in which she died was manned by both officers acting under the direction and control of the Chief Constable of Sussex Police and by civilian staff of Reliance Secure Task Management. As the Chief Constable had not "designated" the civilian employees of Reliance to act as detention officers pursuant to s39 PRA 2002, they did not fall under the jurisdiction of the IPCC and after Ms McLaughlin's death Reliance refused to co-operate with the IPCC investigation. Instead Reliance conducted its own investigation which lacked independence and crucial information concerning the death was lost. There were therefore significant gaps in the evidence put before the jury at

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<sup>2</sup> Section 39(4)(a) Police Reform Act 2002

<sup>3</sup> Section 39(4)(b) Police Reform Act 2002

<sup>4</sup> Section 39(4)(c) Police Reform Act 2002

the eventual inquest.

The case is an example of the state failing to discharge its obligations under Article 2 ECHR due to the IPCC lacking the power to subject to rigorous scrutiny the employees of private companies who are contracted by the police. Where such individuals may be materially involved in a death in custody this is unacceptable and is an issue which needs to be urgently addressed. Whilst judicial review may be available to the family, it is not the family's responsibility to force the state to properly investigate a loved one's death when Article 2 is engaged, especially where they may not have the emotional or financial resources to undertake a legal challenge to the state. It is clear from the relevant jurisprudence<sup>5</sup> concerning the obligations imposed on the authorities pursuant to Article 2 ECHR that the authorities must act on their own motion.

PALG considers that there needs to be urgent statutory change to address this issue and ensure that the public can expect the same level of accountability whichever police force they encounter. The IPCC must be given powers to properly investigate all employees of private companies who are contracted to work in a policing context, whether as a detention officer or an escort officer or otherwise.

#### ***Regulation of Investigatory Powers Act***

Section 17 of the Regulation of Investigatory Powers Act 2000 prevents disclosure of certain information in connection with legal proceedings. This provision prevents the IPCC from securing public confidence and complying with Article 2. It means the IPCC cannot disclose restricted information that is relevant to a death to the family, and indeed is prevented from making disclosure to its own investigators where that would breach section 17. There appears to be a general consensus that this is contrary to the interests of the family, the public at large, and the state bodies involved. For example, the IPCC noted on 29 March 2012 that:

"The impact of this is that not only can some information not be disclosed, we cannot even explain why we cannot disclose the information, as this itself would be a breach of the law...

PALG considers that this places investigatory bodies in the invidious position of being unable to provide families, and the public, with meaningful information on the investigation or even explain why that information cannot be provided. We believe this law needs to be changed.

See [http://www.ipcc.gov.uk/news/Pages/pr290312\\_ripa\\_statement.aspx](http://www.ipcc.gov.uk/news/Pages/pr290312_ripa_statement.aspx).

#### ***Conferring***

See also our response to Question 6 below .

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<sup>5</sup> For example Jordan v UK (2001) 31 EHRR 6 at paragraph 105

**3 Does the IPCC effectively deploy the powers that it has in order to ensure independent and effective investigation?**

As outlined above in response to Question 2, PALG believes that there is a crisis of public confidence in the IPCC due to the fact that investigators are failing again and again to properly deploy their existing powers. We would refer to the survey conducted by the BBC Panorama programme recently of 15 families of people who had died in police custody. 14 of the 15 families they spoke to expressed significant concern over how the investigation was handled. These families and others have been let down by repeated failures by the IPCC to properly and rigorously investigate deaths in police custody.

The IPCC has lobbied Parliament to the effect that it has insufficient powers to conduct effective investigations and has succeeded in obtaining new powers to interview officers even where no misconduct or criminal offence is identified.

PALG believes that the IPCC's failure to conduct independent investigations has little to do with a lack of powers and is much more likely to be rooted in a lack of will. Again, we query whether this is an inevitable consequence of an organisation so closely connected to the individuals it is supposed to investigate, and without robust checks on that relationship.

We see the apparent lack of will to use their existing powers manifest most frequently in the IPCC's repeated failure to interview officers under caution.

***Failure to interview under caution***

***Officers as suspects***

PALG is mindful of concern amongst officers that they should not be treated as murder suspects when a person dies in the course of the performance of their police duties. PALG is also aware of the argument, frequently made by the IPCC, that since officers have powers to use force that are not available to ordinary citizens, they should be treated differently from ordinary suspects in investigations into deaths. PALG's view lies to the contrary: the additional powers granted to officers mean that they should accept that they should be subject to additional scrutiny in the event of a serious injury or death.

Lawyers representing the bereaved families of individuals who have died in custody find that police officers are rarely interviewed under caution in the course of IPCC investigations. This single issue has caused immense damage to the confidence that families have in the integrity and independence of the IPCC. Families quite understandably feel that the failure to interview officer under caution shows a lack of impartiality on behalf of the investigator, who will of course often be a former police officer. Families also feel that officers are treated differently from ordinary people.

The explanation that is often provided is that many of the cases in which we are instructed are not being recorded as 'conduct matters' i.e. classified from the outset as not being the type of case where officers "may have committed criminal and/or misconduct offences". Accordingly, the investigation is not subject to special requirements, no officer is notified that their conduct is in question and the investigator therefore does not have the power to interview the officer under caution.

There are plainly occasions where it is right for an investigator to conclude that there is no possibility of misconduct and/or criminal outcomes in, for example, some self-inflicted deaths. What we see on the ground however is that even in cases (for example restraint related deaths) where it is obvious that officers 'may have' committed a misconduct and/or criminal offence, they are not being classified as such. By making this assumption the IPCC investigator denies itself the power to interview officers under caution.

Although reassurance is offered that the investigator is under a duty to keep this decision under review, the reality is that this does not happen, in all probability because the assumptions made at the outset that the conduct does not meet the test for recording mean that any opportunity to test police officer accounts is lost. The investigator therefore often concludes his/her report without interviewing the relevant officers at all, let alone in a manner which might produce evidence to form the basis of a prosecution or disciplinary proceedings. It is then not until an inquest many months or even years after a death that the officers' accounts are provided under oath and tested.

PALG's very real concern with regard to the powers which have been introduced is that they will simply provide a further excuse for IPCC investigators to do what they are already doing: not interviewing officers under caution even when the low threshold of "may have committed criminal and/or misconduct offences" is met.

Whilst the new IPCC Statutory Guidance 2012 does provide some guidance on special requirements<sup>6</sup> it is the view of PALG that there needs to be legislative change to ensure that the threshold is applied properly and appropriately and without relying on the discretion of the investigator. Unless there is change in this area, we anticipate further ineffective and unsatisfactory IPCC investigations and further families left in the dark as to how their loved ones have died.

PALG welcomes the findings of the Home Affairs Select Committee in their report dated 1 February 2013:

85. *The issue of interviewing officers in cases involving death and serious injury is indicative of a culture of treating officers differently from members of the public. Where officers are not interviewed promptly under caution, this can lead to weaker evidence and loss of confidence in the process of investigating serious matters such as deaths in custody. The application of the threshold test for special requirements should be reviewed, so that officers are routinely interviewed under caution in the most serious cases, exactly as a member of the public would be.*
86. *The Government should revise the legislative definition of the threshold. One option would be that death and serious injury cases should be treated as "conduct" matters with special requirements and officers interviewed under caution except where it is "beyond reasonable doubt" that a misconduct or criminal offence has not been committed.*

Lawyers acting for families are also seeing IPCC investigators taking a view not to interview officers under caution on the basis that they have second-guessed what an officer's defence may be – even when that officer has not actually put forward the

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<sup>6</sup> Paras 9.29 – 9.34 of IPCC Statutory Guidance 2012

	<p>defence him or herself. PALG considers that IPCC investigators should not consider a potential defence unless a misconduct interview has taken place and a defence is put forward. This is set out clearly in <i>D v IPCC</i> [2011] EWHC 1595 (Admin) in a case where the IPCC decided that the officers might co-operate more as witnesses than as suspects. However the officers still refused to attend for interviews (as witnesses). The IPCC was found to have erred in assuming what defences the officer may put forward. The court found that the IPCC should have treated the officer as a suspect, carried out an interview under caution. The IPCC can then either consider a defence put forward or consider the evidential value of an adverse inference if the officer gives a no comment interview.</p> <p>In addition the IPCC do not appear to be seeking explanations or making complaints to relevant forces where officers refuse to attend for interviews, under caution or otherwise. PALG submits that an officer who fails to attend an interview has clearly breached the Standards of Professional Behaviour and investigators or Commissioners should be making complaints where appropriate.</p> <p><b>Case study:</b></p> <p>An example of the lack of will in the IPCC to use its full powers can be seen in the e mail of 16 July 2008 from Deborah Glass, Deputy-Chair of the IPCC both then and now, to Mike Franklin, the Commissioner overseeing the investigation into the death of Habib Ullah. Deborah Glass advises caution about serving Regulation 9 Notices on the officers because they might not co-operate and because in future incidents officers will be much more reluctant to co-operate with IPCC investigators. She adds that the IPCC has 'good contacts with the Federation and it may be worth bringing them on board'. In our view, the e mail shows that the IPCC is not properly taking into account the fact that a 'no comment interview' is in itself valuable evidence and is prejudging how the officers might respond. Perhaps more seriously, it indicates a reluctance at senior level to use its full powers as rigorously as it should.</p>
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<p><b>4</b></p>	<p><b>Is the way the IPCC deals with referrals and makes decisions about which cases to independently investigate sufficiently clear and appropriate?</b></p> <p>There is a need for clear and enforceable guidelines to ensure that forces make referrals as soon as possible (within a specified number of hours) after a death. Worryingly, there is then an in-built bureaucratic delay while the mode of investigation (MOI) decision is made. This contributes to a situation where the IPCC is not mobilised on the ground quickly enough and therefore fails to take control of the scene and investigation and the collection and preservation of evidence. Very significantly for families, they often miss the opportunity of ensuring that officers write their early first accounts without collusion or ensuring that any debriefing meetings are not merely an opportunity for officers to rehearse their evidence in front of each other (getting their story straight) before recording their accounts. We expand on this later.</p> <p>An urgent reform to IPCC practice is required to address this issue, so important evidence is secured by the IPCC and time is not lost while it ponders the mode of investigation. They must ensure that resources are allocated urgently to preserve and</p>
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collect vital time sensitive evidence as close to the time of death as possible.

In our view the IPCC should assume from the moment a death in custody is referred [at least where shots are fired or physical force has been used] that they are going to conduct an independent investigation. A senior IPCC investigator – either someone without a police background or accompanied by a senior colleague without a police background should arrive promptly upon referral accompanied by a suitable team, including a loggist and exhibits officer, at all such incidents to run an independent investigation at the outset. An MOI review after 48 hours (or sooner with good cause) could then determine whether the investigation should continue on that basis or be down-graded to a managed or supervised investigation.

**Case study:**

The IPCC duty officer who attended the police station initially on the Sean Rigg case was previously the head of City of London Police Directorate of Professional Standards. The Rigg family were extremely concerned by his lax and 'collegiate' manner in dealing with his former police colleagues involved in the death. Although he was not subsequently involved in that investigation, his conduct at a crucial stage had a major impact on the evidence gathered in the first 24 hours after that death.

**Case study:**

In the IPCC investigation concerning the death of Jacob Michael, there was a delay overnight before the IPCC attended the police station where the death occurred. The family has had no explanation for this delay, which may be due to or contributed to by the delay in making the mode of investigation decision.

The decision-making log of Superintendent Armstrong says that the on-call senior investigator of the IPCC, Amanda Rowe, was briefed about the death at 19.25 on 22 August 2012. For reasons unknown, at 20.50 Ms Rowe confirmed that she would not send an investigator to attend the police debriefings that took place later that evening.

Given that the IPCC was supposed to be conducting a robust and effective independent investigation of a death in police custody, an IPCC investigator should have been sent to the scene of the incident immediately in order to secure evidence, attend the police debriefing and ensure that officers complied with procedures around conferring and making notes.

Instead the police and detention officers were able to confer and listen to each others' accounts with their union representative and senior officers present without any independent scrutiny. They did not put their early accounts in writing and no police officers were ever interviewed.

**Case study:**

Likewise, following the death of Habib Ullah during police restraint in High Wycombe at about 7.30 pm on 3 July 2008, the IPCC was informed of his death by Thames Valley Police at about 12.30 am on 4 July 2008. The officers had already been allowed to attend a de-brief that evening and go home. The IPCC investigator attended in the morning at 8 am for the purpose of a 'full briefing'. He allowed the officers to prepare witness statements in a room together. The officers were attended by their Police Federation representative and a solicitor from Russell Jones and Walker. The officers

	<p>were not actually interviewed by the IPCC until January 2009.</p> <p><b>Case study:</b></p> <p>At about 7 pm on 1<sup>st</sup> April 2009 Ian Tomlinson died in circumstances that were subject to wide media coverage and public scrutiny. The IPCC were informed of the death during the initial hours of the investigation but took a decision not to investigate the matter independently despite the death having occurred in the midst of an extensive policing operation of a very large and prominent demonstration. A decision to independently investigate was not in fact taken until the 8<sup>th</sup> April, 7 days later. This was despite evidence from members of the public and police being made available as early as 3<sup>rd</sup> April that demonstrated that there had been police contact.</p> <p>The failure of the IPCC to take full control of what was plainly an Article 2 investigation in the early stages was the cause of significant failings in the investigation as a whole. In particular, the investigation into Mr Tomlinson's death and subsequent inquest and criminal proceedings were plagued by issues arising out of the first post mortem.</p> <p>The family subsequently lodged complaints about the misleading briefing given to the first pathologist by the initial investigating officers (of City of London Police) and their failure to notify key parties of statements from officers in Royal Exchange passage detailing the assault on Mr Tomlinson moments before his death. In addition the IPCC was refused access to the post mortem by the coroner, a fact that would likely have been altered had the IPCC had conduct of the investigation in those early stages.</p> <p>There remain significant questions about the flow of information in the early stages of the investigation. The family lodged complaints about the misleading information that was provided to the media, the withholding of key details from the family by police appointed family liaison officers and the failure to respond quickly to witness statements detailing a probable assault on Mr Tomlinson. The family feel strongly that the failure of the IPCC to initiate an independent investigation in the initial stages allowed for circumstances in which police-appointed investigating officers made at best significant failings and at worst deliberately misleading and obstructive decisions about the course of the investigation.</p>
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<p><b>5</b></p>	<p><b>Does the IPCC investigate the “right” cases to secure and maintain public confidence?</b></p> <p>While recognising that securing and maintaining public confidence is an important part of the IPCC's remit, PALG would clearly not support a practice of the IPCC 'cherry picking' cases as part of a media-driven strategy to secure and maintain public confidence. For us, the guiding principle should be that investigation of all deaths in custody should be independent, effective and timely and that families of individuals who have died in or following police custody are fully involved in the investigation so that they can be confident in the IPCC's work and be provided with a full and reliable account of how their loved one died.</p>
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**6 Does the way the IPCC deploys staff to the scene of incidents maintain public confidence?**

There is some overlap between responses to this question and to Question 4 above.

**Management of the scene/taking charge**

In many cases the IPCC does not take charge of the scene. In fact, it is often the case that when IPCC investigators attend they play a “secondary role” to that of the force involved and as such while it is said that they are in attendance – they appear to be merely onlookers rather than proactive/dynamic decision makers. In many cases the lead investigator does not attend the scene for many hours.

Self-evidently, speed and effectiveness are of the essence in managing the scene of a death in order to secure the best evidence. In a great many of the cases in which we are instructed, the accounts of the police officers involved in the death are the most important pieces of evidence at this stage. This is because they are usually the only witnesses to key events preceding the death. Therefore, prompt steps to ensure that the integrity of these accounts are maintained is central to securing and maintaining the confidence of the family and the public at large. The concern otherwise is that the integrity of the whole investigation is in doubt.

**Obtaining first accounts**

However, in many cases the IPCC permits police officers involved in an incident leading to a death (including where use of force has caused or contributed to the death) remain together following an incident, under the supervision of the home force and with officers receiving early joint and shared input from Police Federation representatives and lawyer. Officers’ first accounts are frequently prepared the same day without the IPCC’s involvement. Officers’ detailed written accounts are prepared some days or weeks later under arrangements supervised by the home force, and usually in the company of the other officers implicated.

The IPCC is then a passive recipient of a bundle of evidence obtained from the principal officers without IPCC control over the process by which that evidence has come into existence, that process having been under the control of the home force and Police Federation. In effect, a key part of the Article 2 investigation has been conducted by the home force and the Police Federation alone. In cases where there has been use of force and no independent evidence (such as civilian witnesses or CCTV) the officers’ accounts will form the heart of the Article 2 investigation, which has in practice been concluded before the IPCC has had any input.

The concern raised by this practice may be of collusion and bad faith or indeed of innocent contamination of accounts through exposure to the accounts and interpretations of others. Both can fatally undermine confidence in the investigation as these early mistakes can rarely be undone, including by cross-examination at an inquest some years later.

**Conferring**

The fresh ACPO guidance<sup>7</sup> discussed before the Court in *Saunders and Tucker* came into force in relation to firearms cases only in November 2009 and its terms remain in place to date (a third edition introduced in 2011 contains similar provisions in relation to conferring). Very similar provisions were introduced in relation to non-firearms cases from March 2012 in the ACPO guidance *Safer Detention and Handling of Persons in Police Custody*, second edition.

The relevant provision in relation to conferring (para 7.99 ACPO firearms manual 3rd edition) is that officers are instructed not to confer about what was in their mind at the time force was used, though they may confer on other issues if a need arises. However, in all other respects there is no change to the arrangements by which officers' first and subsequent accounts are prepared. Crucially however, there are no safeguards in place to ensure that officers do not in fact confer (or to establish if they have), despite being instructed not to do so. This is especially so in light of the fact that they remain together for many hours following the incident, receive legal advice together and prepare their first accounts together. When set against the *laissez faire* approach taken by the IPCC to the early stages of an investigation, the new guidance cannot therefore command the confidence of bereaved families and the public. The IPCC has failed to recognise that this is an issue that remains to be addressed and has been passive both in identifying the issue within individual Article 2 investigations and in relation to national guidance.

PALG is aware that in some circumstances there will be operational reasons for officers to remain in contact following a death, for example if a further suspect remains at large. Such cases will be very much the exception and if there is such a need officers can be separated once the operational imperative has passed.

In PALG's experience, IPCC investigators are rarely about to tell families about the circumstances in which first and subsequent accounts were prepared, and fail to make enquiries about this, or indeed to consider the weight that can be placed on accounts provided in circumstances where collusion is possible. Even when advisors of bereaved families raise queries about this IPCC investigators have failed to obtain this information. This needs to be ascertained and recorded on the investigators log.

In an on-going case in which conferring has been raised, despite such queries being put forward during the first meeting with the IPCC investigator no enquiries were made of the officers until a year after the death, following a judicial review letter before claim on the issue of conferring.

The current arrangements in relation to conferring are incapable of producing best evidence, of ensuring the integrity of the investigative process or the confidence of bereaved families and the public.

**Role of Police Federation solicitors**

The view of PALG is that the presence of Police Federation solicitors during the

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<sup>7</sup> *The ACPO Manual of Guidance on the Management, Command and Deployment of Armed Officers "firearms manual" (2nd edition 1 November 2009)*.

process of producing first accounts does not alleviate concerns about conferring (suggested by Mr Justice Underhill in *Saunders and Tucker*). Quite the contrary, the role of such solicitors is to consider and promote the interests of Federation members. Even senior officers of the home force regard their role as balancing the need for a thorough investigation with the interests of officers involved in the incident. If the home force does not have the requisite independence to carry out Article 2 investigations, Police Federation lawyers equally lack independence. We refer, for example to the case of Habib Ullah in which the Police Federation solicitor advised officers to amend statements to exclude relevant information and is now the subject of a criminal investigation into administration of justice offences.

In many cases the Federation solicitor will be one of the first people to speak to officers following an incident, may speak to several officers in private, may be present whilst first accounts are prepared or even prepare the first written record of those first accounts. Such solicitors have an excessive degree of involvement in the initial, sometimes critical, steps in an Article 2 investigation. The IPCC should ensure the independence of the investigation by requiring officers to be at separate police stations, so that each receives legal advice separately, and by IPCC investigators playing a direct role in the process of obtaining first accounts.

#### ***Role of IPCC investigators***

IPCC investigators should be directly involved in the production of the first accounts. This does not necessarily mean that they need to interview officers or record the accounts themselves but they must at least supervise these arrangements. In particular they will need to satisfy themselves that the officers have indeed been properly separated, eg in different police stations rather than just in adjacent rooms and that the procedure is not being undermined in other ways.

An example from an on-going IPCC investigation in which the issue of conferring has been raised is that a number of officers produced first accounts which were so brief and general in nature that they were essentially meaningless. Officers were following the letter of the procedure but in effect defeating the purpose of the first account procedure by delaying their accounts for several days later by which time they had ample opportunity to consider their positions and confer. Direct involvement of IPCC investigators would enable the IPCC to require first accounts which provide an appropriate degree of detail on the key issues.

In most cases the IPCC is contacted early following a death, many hours before IPCC investigators arrive at the relevant location, make a decision on mode of investigation and take over control of an investigation. At that first contact the IPCC investigator can give a direction under para 14B Schedule 3 Police Reform Act 2002 that officers be separated and that first accounts be delayed until the arrival of IPCC investigators. Where there has been a shooting or restraint shortly prior to death there will be little doubt that there will be an independent investigation by the IPCC and it would clearly be appropriate for the IPCC to take such a position immediately even though it may not formally take control of the investigation until some time later that day.

#### ***The ACPO firearms manual***

The ACPO Manual of Guidance allows conferring on "other issues" other than what was in the mind of the officer at the time that force was used. This potentially allows officers to confer on controversial issues such as planning of an operation or steps

taken in relation to evidence following the use of force. It has also been interpreted as allowing conferring on factual matters such as names of roads, timings etc. Conferring on such factual matters provides opportunity for conferring on other matters and undermines the separation of officers. Any benefits to be gained from conferring on factual matters are outweighed by the benefits of a more rigorous evidence gathering process.

***PALG's recommendations for an effective investigation***

1. The IPCC should issue guidance under section 22 Police Reform Act 2002 stipulating post-incident procedures which:
  - a. Requires officers to be separated between a death and preparation of first accounts and prohibit officers from preparing subsequent detailed accounts together, or from sharing Police Federation representatives or solicitors.
  - b. Requires officers to prepare a first account as soon as possible – preferably on the day of the incident – although not before the arrival of IPCC investigators, who arrive promptly assuming at the outset that they will be conducting an independent investigation.
  - c. Directly involve IPCC investigators in taking, or supervising the production of, first accounts.
2. IPCC should negotiate with ACPO and police forces for fresh post-incident protocols requiring the above.
3. IPCC investigators should issue directions under para 14B Schedule 3 Police Reform Act 2002 to require the arrangements set out in 1a. and 1b. above immediately after being notified of a death which has involved the use of force by police officers.
4. As part of their evidence gathering within article 2 investigations IPCC investigators should obtain details of and record in their logs who officers were with prior to and during the preparation of first and subsequent accounts. IPCC investigators should consider opportunities for conferring/collusion as part of the process of assessing the evidence produced by officers involved in an incident.

***Case study:***

In the death of Faisal Al-Ani which concluded with an inquest in 2009, the deceased was a mentally ill man who was restrained with a considerable degree of force before being taken to the police station. He is seen on CCTV to have entered the police car on his feet, but is then seen being carried face down from that car less than 10 minutes later. He was placed face down on the floor of the custody suite in a state of fatal collapse, and minutes passed before an ambulance was called. Evidently, events in the car are crucial to an understanding of how he died; police officers in the car admit that they hit him with a baton and punched him whilst he was handcuffed to the rear.

The family were not given the IPCC report until almost 3 years after the death. They spotted that the IPCC Investigator had mis-read the dates on the officers' notebooks by one full day. The entire report was therefore based on a misunderstanding that the officers' first accounts had been written just hours after the death, when in fact they

were written a whole day later.

The significance of this is that, firstly, all of the officers and staff involved in the death were sequestered in the station bar after the deceased was removed from the station. They remained there together for about 5-6 hours, until about 2am. At the inquest they acknowledged that during that time they spoke to each other about what had happened. They also spoke to senior police officers and a representative from the Police Federation. They were however prevented from writing accounts that night. Secondly, in the course of the next day, local police force basically conducted an investigation into the death themselves – they seized CCTV from the town centre, obtained medical records, and interviewed his mother and the PCSOs who had been at the scene. It was only after this that the officers completed their notes, still without IPCC supervision. According to the police family liaison officer, the CCTV from the town centre at least was viewed at the station during the next day.

The IPCC failed to investigate or to give any weight at all to the potential contamination of the police accounts (perhaps inevitably given the shameful mistake in interpreting the dates on the notebooks). However, they also failed to critically examine or explain why a senior police officer who had been present during the de-briefing in the station bar then specifically told the IPCC that the deceased had “walked” into the police station. That information was repeated in a press release. Curious as to why they had been so specific on this detail, the family pressed for CCTV of the entry to the custody suite. This was seized after the police accounts were prepared, and showed the deceased being carried, apparently limp, into the police station. The family believe that the police originally intended to say that the deceased was well on entering the station in order to distract from events in the car – hence the report to the IPCC that he had walked into the station – but then realised that this account was not supported by the CCTV and tailored their accounts according to this and to the other evidence gathered. Whether or not this is true, the fact is that the IPCC were nothing short of disinterested in establishing the integrity of the police accounts.

**Case study:**

In similar circumstances to the previous case, but in a more recent example (Summer 2012) the deceased was found to be suffering from mental health problems and was forcibly restrained by police, including by the use of CS spray. He was taken to hospital under s136 but remained, alone, under police restraint there for a time. He suffered a cardiac arrest and died.

The IPCC were informed of the death but decided to “do a scene assessment” before assuming conduct. Ultimately, they formally assumed responsibility later that evening – it seems they simply waited outside for several hours waiting for the police to admit them to the investigation. In the meantime, as in the previous case study, local police effectively conducted their own investigation, in that they allowed a Police Federation lawyer to interview the principal officers and prepare a “combined first account” which was then handed over to the IPCC once they had assumed conduct. The IPCC Investigator saw no difficulty in simply accepting this as the basis of his investigation. It seems he later provided a “list of topics” to these officers and invited them to prepare their own witness statements, presumably with their lawyers. It is not known what they were provided by way of advance disclosure.

As such there has been no attempt to test the evidence of these officers, even though they are the only witnesses to events on the way to the hospital or in the ‘s136 room’

	<p>and no concerns raised about how the IPCC initially managed the investigation.</p> <p>It is of course a foregone conclusion that the accounts prepared and provided by the officers with their lawyers do not disclose evidence of misconduct and/or criminality. On this basis the IPCC have decided that – as in many other cases – the very low threshold for recording this case as a conduct matter is not met. This is a circular argument that precludes any proper scrutiny of events leading up to the death.</p>
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<b>7</b>	<p><b>Are the current post incident management processes sufficient to maintain public confidence in the independence and effectiveness of the investigation?</b></p> <p>See above.</p>
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<b>8</b>	<p><b>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 respond in a way which secures public confidence?</b></p> <p>PALG's view is that this in itself should not normally affect the perceived independence of the investigation; however, it often does especially in respect of scene of crime officers. As such, the reason for using personnel from the force under investigation needs to be clearly explained and justified to families. We would suggest that, given the IPCC's national reach and the way in which this type of expertise is often shared between forces anyway, one way of improving public confidence would be to use personnel from external forces. Where scene of crime officers are deployed from the force being investigated they need to be properly managed on site rather than remotely.</p> <p>However, there needs to be a culture change at the IPCC away from using ex-police officers to assist as experts, and the IPCC must ensure that the specialists it uses are independent by scrutinising their credentials, antecedents and regularly evaluating their work.</p>
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<b>9</b>	<p><b>Are there particular kinds of case where the IPCC should bring in other outside experts, e.g. health, social care or substance abuse professionals?</b></p> <p>PALG welcomes the use of experts in the course of IPCC investigations. Clearly there are issues that arise in cases which investigators will not have the appropriate expertise to understand and will require the assistance of experts. PALG however is concerned that the way in which experts are instructed by IPCC investigators undermines the strength of any evidence obtained and this needs to be urgently reviewed.</p> <p>PALG is concerned that experts, including both medical experts and use of force</p>
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experts are instructed by investigators who are not properly trained in instructing experts. It is not clear exactly what instructions are given and in what form i.e. whether it is oral or in writing. Furthermore, it is not always clear what information and documentation have been provided to the experts. There clearly needs to be transparency in this regard as bad practice in this area significantly undermines the reliability and quality of the expert evidence ultimately obtained by the IPCC, which ultimately is in no-one's interest.

The expertise of the 'experts' instructed by the IPCC is sometimes open to question. There is a perception that the IPCC regularly relies on the same experts without questioning their quality, in particular the use of ex police trainers and police officers to comment on the use of force. In the experience of PALG, the majority of 'use of force' experts are from a police background and there may be reason to doubt their impartiality. PALG believes that the complaint and disciplinary history, substantiated and unsubstantiated, of all experts with a police background should be considered by the IPCC before instructing them. PALG also considers that there are very few circumstances where it is appropriate to instruct experts who are serving police officers.

In a related point, there is a tendency to use such expert opinion in place of the IPCC investigator's own critical analysis/independent judgment, in particular in relation to 'use of force' experts. These experts appear to be briefed to not only give evidence on the powers and techniques used by officers, but also to comment on whether the use of force was reasonable in the circumstances. This is clearly usurping the function of the investigator. PALG practitioners are repeatedly seeing that evidence of the 'use of force' experts assessed as unreliable by the CPS and Coroners, having been relied upon in the conclusions of IPCC investigations. This serves to further undermine the confidence that the public can have in the integrity of IPCC investigations.

PALG considers that IPCC investigators need to reconsider the reliance that they are placing on the evidence of these so-called experts and develop the skills to approach their evidence professionally and critically. PALG proposes that the IPCC develop a database of approved experts whose CVs are available for inspection. Investigators need to be trained in how to instruct experts, including ensuring that instructions are in writing and that the evidence provided to an expert is available and disclosable if necessary.

**Case study:**

In the investigation into the death of Jacob Michael, the IPCC instructed a purported use of force expert who was a serving superintendent (PS Anderson) in the neighbouring force (Greater Manchester Police). The instructions were given orally and there was no accountability for the briefing he was given or what material he was given to consider.

PALG considers that this was an example of an expert who was neither independent nor appropriate. In his report, PS Anderson failed to criticise or challenge any actions of police officers or staff or any treatment of Jacob, or apply any of the facts to the applicable standards that he set out (that were not met).

The family instructed a use of force expert, Eric Baskind, who concluded that PS Anderson's findings were "impossible to reconcile" with the CCTV. Neither the Coroner nor the police asked for PS Anderson to give evidence at the inquest because his

	<p>report was so unhelpful. Instead, the independent expert instructed by the family was called to give evidence. Two further experts (pathology and emergency medicine) were instructed by the Coroner as further evidence was needed and had not been obtained by the IPCC.</p> <p>The IPCC report, however, unquestioningly reproduced PS Anderson's flawed conclusions in its report, and later adopted them in the 'conclusions' section, disregarding the CCTV evidence and the relevant policies and guidance that the officers failed to follow.</p>
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<p>10</p>	<p><b>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?</b></p> <p>PALG has serious concerns about the interaction between the IPCC and the CPS at all stages of the investigative process. The current protocol lacks clarity as to when referrals to the CPS can be made at all. Whilst the IPCC appears to recognise the benefit of early interaction between the two bodies, it does not recognise that the relevant statutory framework does not envisage the possibility of a referral unless certain criteria are met. This confusion is reflected in the notes attached to this review which state (at para 5.20) that a referral to the CPS can be made at the end of the investigation, whereas the protocol says that the CPS should be involved from an early stage.</p> <p>For example, a matter can only be formally referred to the CPS for a charging decision where it has been assessed as being subject to 'special requirements' i.e. the investigator considers that an officer "may have" committed a criminal and/or disciplinary offence. Whilst this may seem straightforward, in fact the reluctance of IPCC investigators to assess matters as being subject to special requirements also has the effect of denying such cases the possibility of a referral. Accordingly matters which may benefit from CPS input are therefore denied it due to errors made often early in the investigation.</p> <p><b>Case study:</b></p> <p>In a restraint related death case the investigator made a decision at the outset that the case was not subject to special requirements as there was nothing to suggest that any officer 'may have' committed a criminal and/or misconduct offence. At the end of the investigation the investigator predictably concluded that no action should be taken against any officer. Notwithstanding this, the Commissioner assessed the case as being suitable for referral to the CPS for a charging decision, a step which was welcomed by the family who hoped that the CPS may subject the matter to scrutiny where the IPCC had failed. In fact, the CPS sent the matter back to the IPCC on the basis that the referral criteria had not been met as the case had not been assessed as subject to 'special requirements'. Eventually the matter was referred – although it remains unclear on what legal basis – causing grave delays to the inquest timetable.</p> <p>This case exposed a number of issues: the dysfunctional relationship between the investigator and the Commissioner who appeared to have assessed the available evidence very differently, the fact that the Commissioner did not appear to understand</p>
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	<p>the CPS referral criteria, the failure by the investigator and Commissioner to review throughout the life of an investigation whether the matter should be subject to special requirements.</p> <p><b>Case study:</b></p> <p>Another example of the unfortunate consequences of failure to involve the CPS at an early stage is the case of Habib Ullah’s death. The IPCC investigator decided not to interview the officers under criminal caution after he had received the pathologist’s report. Following the pathologist’s conclusions that the deceased had suffered ‘a multifactorial cardiac arrest during an episode of restraint’ the investigator decided there was insufficient evidence to warrant criminal interviews with the officers. In judicial review proceedings to challenge this decision, the Judge said:</p> <p>‘With the greatest respect to Mr Niblo, that seems to me to be an approach which, on its face, is not appropriate. Clearly, as I have already said, there was a causal link between the incident and the death. The question is whether the conduct of the officers went beyond that which was justifiable or reasonable in all the circumstances. If it did not go beyond that, then clearly no offence was likely to be possible. If it did, then consideration would clearly have to be given as to whether the evidence was sufficient to justify putting the matter to the CPS for a consideration of possible offences having been committed. However that decision so far as it may have been wrongly based did not affect the situation, namely that the investigation continued.’[(R (Habib v [2009] EWHC 1408 (Admin))]</p> <p>The Judge clearly accepted that the investigator’s reasoning was mistaken and that he had not understood the basis on which the officers’ conduct might be unlawful. While the judicial review of the proceedings was unsuccessful as the Judge accepted the IPCC’s argument that it would at any time in its investigation review the position, it later emerged during cross examination at the Inquest that the officers had withheld significant matters from their statements. The Inquest was adjourned and the IPCC investigation has been re opened, this time with the close involvement and consultation of the CPS. Clearly, had the CPS been fully involved from the outset this might not have happened.</p> <p>PALG understands that the protocol on IPCC-CPS relations is under review and welcomes any attempt to bring further clarity to this area. We hope this will include the possibility of early CPS involvement and consultation. In PALG’S view CPS lawyers should be involved in investigative decision making to ensure that the best possible evidence is gathered at the outset of an investigation.</p>
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<p><b>11</b></p>	<p><b>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?</b></p> <p>The issue of disciplinary action strikes at the heart of what complainants want from the complaints process. The accountability of those entrusted with state powers is emptied of meaning if the process for bringing complaints rarely – if ever – results in disciplinary action against the officers complained of.</p>
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	<p>The availability and use of disciplinary action is also an essential part of the framework for enforcing public authorities' Article 2 obligations. Such bodies are under a duty to take general measures to employ and train competent staff and to adopt appropriate systems of work to protect the lives of people for whose welfare they are responsible. This includes taking disciplinary action where standards fall below the expected level as regards the protection of life.</p> <p>It was a problem of the old and discredited Police Complaints Authority that complaints rarely resulted in disciplinary action against the officers concerned, though a matter that did not result in a disciplinary action when it went through the complaints system would often, when litigated in the civil courts, result in settlement, the payment of compensation, apologies and other remedies. Lawyers representing claimants have seen some shift in this pattern. Particularly where there is failure to protect life (for example in the context of domestic violence, or in the context of the treatment of vulnerable detainees) there does seem to be a greater willingness to recommend and take disciplinary action. This is to be welcomed. But there is still a long way to go. Police officers are still seen by most of our clients as 'untouchable' in disciplinary terms and it is difficult to argue with this view. This perhaps more than anything else discredits the complaints process.</p> <p>Turning to the first of the specific questions asked, it is the experience of some PALG members that the IPCC's role is understood by their clients. Other PALG members find that their clients are puzzled that the IPCC does not have the power to instruct forces to suspend officers and that it does not play a greater role in the disciplinary process.</p> <p>In answer to the second question – whether the IPCC should have a greater role in deciding whether disciplinary action should follow from an investigation – from the complainants' point of view, it does not matter who makes the decision, as long as someone does. The current position that the IPCC can direct that disciplinary action be taken but only if the force rejects an earlier recommendation is unfortunate in that it creates delay.</p> <p>We would like to see the IPCC have powers to direct suspension in some cases, or at least to make cogent submissions to the force concerned that officers should be suspended or moved to backroom duties. Our clients find it difficult to understand that in many instances police officers who have been implicated in a death in custody remain on frontline duties and it does nothing for public confidence in the IPCC for this to be the case and for the IPCC to assert that it is a matter for the force and not for the IPCC.</p>
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<b>12</b>	<b>Should there be a statutory basis for IPCC recommendations, so that police forces must respond formally and declare what action they are taking?</b>  This would be an improvement from the claimant's point of view in our opinion. It would strengthen the role of the IPCC as an agent for change and improvement of police practice. It would better enable lessons learned by the IPCC from investigations with a particular theme to be fed back to different forces to try to ensure that those lessons are learned more broadly.
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<b>13</b>	<p><b>How can the process for learning lessons contribute to improvements in policing and help to prevent deaths from occurring in the future?</b></p> <p>PALG members have experience of many instances where the IPCC investigation into a death makes no finding of blame or culpability on the part of officers, whereas the jury at the Inquest makes critical findings. Often – as in the case of Sean Rigg – the inquest will also expose serious weaknesses in the IPCC investigation. We do not know if the IPCC records or acts upon the findings of juries or the information which comes out at inquest. We suggest that the IPCC should review its work in light of jury findings in order to improve it and promote best practice by its investigators.</p> <p>PALG'S impression is that the IPCC's guardianship role could be strengthened and used more effectively to promote best practice within forces and highlight failings. For example, there have been a number of Rule 43 reports on the dangers of restraining individuals who conceal packets in their mouths. In the past, some forces have not had in place clear and effective policies or training for officers on the risks of using force on these individuals. We believe this could have been remedied earlier by more effective use of the guardianship role.</p> <p>In addition, in our experience some forces do not have in place clear policies for the retention of custody suite or other relevant footage. The IPCC should take a stronger role in ensuring that such policies are in place. The IPCC's guardianship role could also be used to good effect to lobby or to campaign for legislative change to improve police practice, for example for footage to be installed in police vans and vehicles generally.</p> <p>It would be useful from the complainant's point of view if the IPCC could review, through its guardianship role the outcome of disciplinary proceedings that it has recommended or directed. We suggest that a thematic review on this issue would be very useful and a timely opportunity to reflect on the difference that the IPCC has made to disciplinary outcomes for victims of police misconduct.</p>
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<b>14</b>	<p><b>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?</b></p> <p>This question is really answered in our responses to the questions above but at the level of principle we think that public confidence would be secured by unflinching, probing, high quality investigations which are carried out with the objective of getting to the truth of how the death occurred. In addition to the views set out in answer to previous questions, the IPCC should also improve practice by:</p> <ul style="list-style-type: none"><li>• Arriving at the scene of a death promptly and expecting to undertake a thorough and searching independent investigation.</li><li>• Ensuring that families are informed as to the process, their right to legal advice and of their right to have a representative present at the first post mortem.</li><li>• Providing detailed information and appropriate disclosure to families at an early</li></ul>
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stage.

- Actively demonstrating impartiality and independence from the police and PSDs.
- Questioning the credibility of evidence from police and civilian staff and expect to look at this critically against other evidence.
- Being prepared to *challenge* police evidence. Time and again we see the IPCC accepting police evidence at face value, preferring it and drawing conclusions that are favourable to the police without any critical evaluation.
- Locating CCTV evidence promptly and evaluating it properly. This is a recurring theme in IPCC investigations.
- Establishing the relevant standards contained in Force policies, questioning the officers about their conduct against those standards and establishing whether they were met
- Not delaying in getting accounts from civilian witnesses.

**Case study:**

In the Jacob Michael investigation, local civilian witnesses were very willing to provide evidence soon after the events, but they were not contacted quickly and they became less willing to cooperate as time passed. Some witnesses 'disappeared' or the IPCC gave up on some witnesses that the Coroner later traced and took statements from. A month is too long to wait before contacting important lay eye witnesses. The IPCC delegated contacting some civilian witnesses to the local police, which was not appropriate.

Also, there are some instances where the CCTV evidence clearly refutes the evidence of police witnesses, but no critical analysis has ever been conducted by the IPCC. This is particularly apparent where the officers falsely portray Jacob as aggressive and violent when he arrives at Runcorn custody, in an attempt to excuse how they treated him and their failure to consider his welfare. Indeed, the IPCC report finds that it was reasonable that officers perceived Jacob as aggressive and uncooperative rather than critically ill. However, the CCTV film and audio clearly shows that Jacob was obviously very unwell when he is in the back of the police van, and in a state of collapse when he arrived at Runcorn, floppy and unable to stand or walk. There are many examples of the CCTV evidence contradicting or calling in to question the evidence given by police staff: False evidence from the officers in some areas calls their credibility into question in other areas of their evidence. The IPCC considers neither. The report goes on to draw conclusions from the CCTV that are favourable to the police and simply not credible against the CCTV. The summary of the evidence given in the IPCC report is not recognisable against the graphic and disturbing pictures and sound of Jacob's deterioration and distress in the van and on his arrival at the police station.

**Case study:**

In the Rigg investigation the IPCC also failed to completely analyse all the CCTV and the audio with it at any stage, in particular to inform the interview process. Had the IPCC analysed the CCTV thoroughly then they would have been able to challenge the

	officers on their accounts which were at odds with the footage.
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15	<p><b>Does the IPCC keep complainants, families, interested parties and those subject to an investigation appropriately informed of progress?</b></p> <p>In the experience of lawyers representing families, the IPCC does not always exercise the powers it has regarding disclosure properly and without delay. Whilst there may be good reasons for not disclosing evidence immediately, it is the experience of PALG practitioners that IPCC at times does not have a sufficiently good reason for delays that are often significant. The European Court has drawn attention to the importance of disclosure, even where sensitive information is involved, for example in <i>El-Masri v. Macedonia</i>, application no. 39630/09, judgment (draft) 13 Dec 2012, at §190-1.</p> <p>The primary example is delay in disclosure of relevant evidence until the end of the investigatory process. This can prevent the family from participating effectively, if the delay in disclosure undermines the family's ability to carry out effective investigations themselves, where these are all too frequently needed. For example, toxicology samples are often destroyed within 6 months. If the IPCC do not disclose a toxicology report until after that time, but it turns out to be a deficient report, the delay will have prevented the family from obtaining their own toxicological report. Also, a witness's recollection may deteriorate or CCTV can be lost.</p> <p>Generally – but by no means all the time – we have seen adherence to the statutory requirement to provide updates as to the progress of the investigation at least every 28 days (Regulation 12 of the Police (Complaints and Misconduct) Regulations 2012). However, the quality of information remains a concern: IPCC investigators routinely adopt an excessively cautious approach to disclosing information and these updates contain very little actual information, they are more frequently a stock-take of the investigation: eg “we have interviewed 28 witnesses and are continuing to review all the available evidence”, which tells the family nothing of what has been learned in the course of that review.</p> <p>We are conscious that there have been occasions where the wrong information has been made public by the IPCC and this has in all probability influenced that culture, but this should not be a reason to withhold information from bereaved families, particularly given that they may have to wait for 3 years or more to be given access to the primary evidence. There are also good practical reasons for better dialogue with families – when provided with information they are frequently able to assist with its interpretation, and thereby to improve the quality of the investigation.</p> <p>We wonder if the IPCC practice of postponing interviews with officers for very lengthy periods of time explains their very restrictive approach to disclosure of information, but at the same time are all too aware that the police officers are given a great deal of information (see Q16 below), whereas the families are not. This is another frustrating example for families of unlevel playing field.</p> <p>Some good practice has been reported – for example in one case the IPCC provided an anonymised summary of all the witness statements in so far as they described what had happened to the deceased's son during his detention. This was enormously helpful to the mother of that child; but unfortunately she did not receive this until almost</p>
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a year after the death.

In short, the IPCC needs to adopt a much less defensive approach to providing information, and a much better and more open communication strategy.

**Case study:**

In the investigation into the death of Sean Rigg, after the investigation, and leading up to the inquest, the IPCC relied on their 'Making information available policy' and their statutory guidance to police on how they should conduct a disclosure exercise during inquest proceedings. Their position was that these did not contradict the Home Officer Guidance Circular 31/2002.

The IPCC stuck very firmly to the position set out in their 'Making information available' policy that "at the conclusion of the investigation, we will make as full disclosure as possible to the coroner to enable the coroner to provide interested persons to the inquest with the information necessary for them effectively to participate in the process." (3.3. 'Making information available' policy). This meant that all disclosure issues had to go through the Coroner, when there is obviously no obligation or real purpose in doing so given that the Act and the Rules do not provide a disclosure framework for Coroners, who do not in reality have the power to case manage and make disclosure orders with penalties for non-compliance.

In practice, following this policy also caused significant delays. The frustrations were added to by the IPCC's categorisation of evidence etc. into (rather obscurely defined) 'used' and 'unused' categories, not really like the police in criminal proceedings exercising CPIA powers/duties. The IPCC would only provide the actual documents to the coroner that were on the 'used' list, and then provided a list of the 'unused' documents.

It was therefore very difficult for the legal team acting for the family (let alone the coroner) to determine from the unused list what might be relevant. Unsurprisingly (to the legal team), it turned out that a significant amount of evidence that was 'unused' proved to be highly relevant, but to access it the legal team had to inspect all the documents at the IPCC.

Even once the family's lawyers had inspected all the documents, this was still not enough to secure what was requested. Instead, because of the IPCC's self-imposed stance of only disclosing to Properly Interested Parties when the Coroner had agreed to it, the IPCC had to make representations to the Coroner as to why documents the legal team had said were relevant needed to be disclosed; this added to delays, and gave the legal team less time to prepare for the inquest.

The most frustrating thing for the family and their legal team was that there was no need for the approach the IPCC had adopted. Material should simply be provided pre inquest, redacted if necessary to remove irrelevant third party names, addresses etc. There was nothing held back after the Coroner had said that it should be given to the family and their legal team, so there was clearly no argument about any 'harm' that might occur by them having it (see below re Question 16 re harm test).

**16 Where information is withheld for “harm test” reasons, is this clearly explained? How might this be improved?**

PALG experience is that it falls to the family's own legal advisers to explain why information has been withheld; generally speaking Investigators do not seem able to put forward a persuasive case for why information has been withheld on the basis of the 'harm' test.

Of more concern than the lack of explanation is the way in which the harm test is applied. In almost every case, this is interpreted very restrictively indeed when it comes to the family – they can expect to see nothing in the way of primary documents until the conclusion of the investigation, and to be given very limited information as to what these documents contain. This will routinely be the case even where the family member is not a witness of fact and where the risk of prejudice will therefore be so minimal as to outweigh the effect on their trust of a refusal to disclose information.

In contrast, police officers who are suspects (or witnesses) will routinely be given, through their lawyers, extensive disclosure of material before they are interviewed. The potential for prejudice is quite clear, and a great deal more significant than is the case with family members as the accounts of the police officers are of course at the heart of the investigation.

**Case study:**

We refer to the on-going investigation into the death of Kingsley Burrell, in which four police officers are under criminal investigation for offences of assault and gross negligence manslaughter. In response to the legal team's requests for reassurance about the extent of pre-interview disclosure, they learned that the IPCC Senior Investigator had already provided Russell Jones and Walker with advance disclosure of no less than 34 witness statements and a copy of the post mortem report together with a number of photographs, a number of weeks before the officers were due to be interviewed under caution. Russell Jones and Walker informed the Coroner that the Investigator had also offered them yet further disclosure of material even though this did not go to the issues to be covered in interview.

This should be a matter of enormous concern for the IPCC. It creates a double standard which is in fact neatly illustrated in the same case. NHS workers who dealt with the deceased are also under investigation for gross negligence manslaughter, but separately, and by an external police force. The NHS suspects received minimal pre-interview disclosure; as would be routine in a police manslaughter investigation. The NHS suspects in the death have been properly dealt with as suspects, while their police officer colleagues are accorded special consideration.

That double standard also stands stark when the IPCC's own guidance on pre-interview disclosure is compared to the CPS guidance which applies to the rest of us:

“the interviewing or investigating officer must disclose sufficient information to enable the suspect to understand the nature and circumstances of their arrest. There is no requirement for the police to present a *prima facie* case before questioning the accused or to give the defence solicitor a full briefing before questioning the suspect. *Imran and Hussain* [1997] Crim.L.R. 754, CA and *Farrell*

	<p>[2004] EWCA Crim 597.” [our emphasis]</p> <p>The IPCC guidance is far broader in calling for sufficient disclosure to enable police suspects to “prepare for interview”. Although this guidance makes one oblique reference to “legislation and case law concerning adverse inference” it places all its emphasis on the investigator’s discretion, instead of on the need to ensure that the accounts of officers are capable of being properly tested and so as to enable the public to place confidence in the integrity of those accounts.</p> <p>Evidently, the test for what would amount to appropriate pre-interview disclosure must depend on the particular circumstances of the case and would therefore vary from case to case. The over-riding consideration however simply has to be the integrity of the investigation and ‘welfare concerns’ or an unwillingness to treat police officers as suspects cannot take priority over that. We fail to see therefore why the CPS guidance was not simply adopted by the IPCC given that it too is intended to be applied in under caution interviews for criminal offences and in view of the fact that, once a criminal investigation is underway, police officers as suspects should have the same rights as civilians.</p>
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<p><b>17</b></p>	<p><b>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?</b></p> <p>In our experience, families of the deceased person often do not feel adequately involved in the investigation. Families are frequently frustrated by the length of time that investigations take and by the lack of information provided to them during the course of the investigation. Our clients wish to be provided with as much detailed information and disclosure as possible as early as possible. The current system of holding meetings with families as the investigation progresses often feels like little more than a gesture because so much information is withheld. Please see our comments above about the application of the harm test.</p> <p>Unfortunately, it is not uncommon to come across investigators and others who are not sufficiently sensitive to the needs of grieving families. People working on investigations into the death of a person who has died in custody need to remember at all times that they are dealing with a bereaved family and that what may be just a job to them is of extreme importance to that family. They also need to remember that most bereaved families of persons who have died in custody cannot begin to come to terms with their loss until they are provided with proper reasons for the death and that the investigation is actually prolonging the grieving process. The members of a bereaved family are victims and should be treated as such.</p> <p>It is often the case that those who die in police custody were suspected of, engaged in or implicated in criminal conduct. The IPCC needs to guard against stigmatising these individuals as criminals of dubious or violent character. For example, in a judicial review against the IPCC for failing to interview police officers under criminal caution, the IPCC in defending the action sought to vilify the deceased by emphasising his criminality and including intelligence about his possible criminal activities. None of this information was relevant to the legal matters at issue.</p>
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	<p>Most bereaved families are unhappy about the way that they have been informed of a death and the care they receive thereafter. Although it is the job of the police to inform families of the death of an individual in police custody, we think that the IPCC should in its guardianship role work to ensure that this is done sensitively and appropriately and act on all complaints about the way this is done.</p>
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<b>18</b>	<p><b>Does the IPCC strike the right balance in its communications with the media?</b></p> <p>We adopt the submissions made by INQUEST to the Leveson Inquiry, dated 12 March 2012, and appended to this document.</p>
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<b>19</b>	<p><b>How should the IPCC work with communities and community groups to secure and maintain public confidence in the investigation?</b></p> <p>PALG members have limited experience of the IPCC using community reference groups. The case of Habib Ullah, a Muslim Asian man who died in police custody in High Wycombe in July 2008, is a good example where more could have been done to improve relations with the community, and where formation of an effective community reference group and communication with the community might have been helpful.</p> <p>Representatives of the family and the community repeatedly criticised the police and IPCC's relationship with the community and the negative effect the handling of the investigation into the death was having. The Commissioner who attended the meetings responded that he would raise these issues as part of his guardianship role and that they were not relevant to the investigation itself, but as far as is known nothing was done.</p>
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<b>20</b>	<p><b>Do IPCC investigations take sufficient account of equality and diversity issues?</b></p> <p>In the case of a Muslim man who died in police custody, his widow speaks very limited English and has limited literacy. She is a vulnerable individual, having taken a traditional role and allowed the men of the family to deal with the wider world. The IPCC has had to be reminded of the need to bring interpreters to meetings and documents have not been translated. On one occasion, she was asked by the IPCC to give a personal impact statement. Although the investigator who attended was female, the interpreter was male and this upset and disturbed the widow, who did not feel that she could give a full and open account to a man.</p> <p>In some cases issues of equality and diversity are approached in a rather blunt and context free fashion – eg a family with (in their words) “a Muslim sounding name” who were perplexed and offended to be offered assurances that a community impact assessment had been conducted following the death of their loved one.</p> <p>In another example, a young black man who was also an eye witness to events</p>
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	<p>preceding a restraint related death kept the pen he had used to write on his statement. The IPCC investigator was heard to say that he could keep it “just so long as it didn’t turn up on a crime scene”. Clearly perceiving this as racist, the young man refused to sign his statement and has refused to co-operate further with the investigation.</p>
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<b>21</b>	<p><b>Could IPCC reports, or their accessibility, be improved in order to contribute to securing and maintaining public confidence in the IPCC and its work?</b></p> <p>This has been answered in responses to earlier questions.</p>
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**General comments**

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