

Written evidence submitted by INQUEST, Police Action Lawyers Group and INQUEST Lawyers Group (PCO0041)

[Note: This evidence has been redacted by the Committee. [***] represents redacted text.]

Background

1. This submission from INQUEST, the INQUEST Lawyers Group and the Police Action Lawyers Group, draws from our experience of police conduct and complaints processes arising from deaths following police contact and in police custody as well as more generally.¹ It draws from the direct experience of nearly 30 families who have been through IOPC processes, including five families with particularly relevant experiences whose detailed accounts we quote throughout the submission.
2. INQUEST is the only charity providing expertise on state related deaths and their investigation to bereaved people, lawyers, advice and support agencies, the media and parliamentarians. INQUEST's specialist casework focuses on deaths in prison and other forms of detention, and mental health settings, as well as deaths where wider issues of state and corporate accountability are in question, such as Hillsborough and the Grenfell Tower tragedy. Our policy, parliamentary, campaigning and media work is grounded in the day to day experience of working with bereaved people. Our executive director, Deborah Coles, is also member of the Independent Advisory Panel On Deaths in Custody and was the Special Advisor to the Angiolini Review into deaths and serious incidents in police custody.
3. The INQUEST Lawyers Group (ILG) is a national pool of lawyers who provide preparation and legal representation for bereaved families. It supports the work of INQUEST, promotes and develops knowledge and expertise in the law and practice of inquests, and campaigns for reform on issues of concern. Over the last thirty years, ILG members have represented bereaved families in hundreds of inquests into contentious deaths, including in police custody.
4. The Police Action Lawyers Group (PALG) is a national organisation comprised of lawyers who represent complainants against the police throughout England and Wales. PALG was formed in 1991 and its members are concerned first and foremost with the principal objectives of the complainants they represent: to ensure that the police are held accountable for their conduct through all available avenues, including: the police complaints system, judicial review, compensation claims and the criminal justice system. Although, historically, the primary focus has been on police malpractice, PALG members also represent clients in respect of misconduct by other state authorities, particularly those with the power to detain and use force, including the prison service and immigration service.

¹ We refer specifically to cases covered by Chapter 7 of the Statutory guidance on the police complaints system, and under Section 12 of the Police Reform Act 2002

Introduction

5. We welcome this inquiry which provides an important opportunity to examine the IOPC's approach. We meet regularly with IOPC senior officials and have the opportunity to raise concerns. We acknowledge the efforts that have gone into strengthening the institutional framework for police complaints, and we do not underestimate the challenges faced by the IOPC and the impact that the conduct of others has on their ability to do their job.
6. We welcome the introduction of the new regulations in February 2020. Though the impact of these is not yet clear, we identify below areas where we think they will be useful. However, our experience over three decades has demonstrated that from the perspective of bereaved families, significant concerns continue with the varying quality of investigations, a lack of consistency and rigour, delay, continued perceptions of bias and of a lack of independence. INQUEST and bereaved families have submitted evidence to numerous Home Affairs Committees inquiries into police conduct and complaints over the years, and a brief review of previous submissions evidences the shameful failure to make progress on crucial areas over this time.
7. Too many families have been and continue to be failed by the system that should provide accountability. In this submission we focus primarily on the IOPC role as that is the subject of this inquiry, but we also emphasise the role that other institutional actors – including police forces and the CPS – play in delaying or denying justice. We urge the Committee to consider these wider roles and responsibilities alongside those of the IOPC.
8. In looking at the role of the IOPC it is important to recognise the broader social, political and social policy context in which the IOPC was set up, the considerable disquiet about deaths in custody and allegations of excessive force and disproportionate policing and deaths of Black men and those from minoritised communities. More recently, it was concern over the deaths of Sean Rigg and Olaseni Lewis, two black men who died after police restraint and the shocking levels of delay, obfuscation and institutional blunders that led to the establishment of the Angiolini review which looked at all aspects of the policing system, practices and structures of justice and accountability following a police custody death. It made a series of recommendations pertinent to this review.
9. This submission focusses on six main areas: (1) delays through IOPC and related processes; (2) quality of police and IOPC complaint and conduct investigations; (3) the experiences of families we have supported; (4) independence; (5) transparency and open justice; (6) addressing race and discrimination.

Delays through IOPC and related processes

10. Bereaved families frequently raise their concern about the inordinate length of time that investigations into police-related deaths take: often over many years and the negative impact these have had on their experience of the IOPC process. These are concerns that INQUEST and families have raised consistently before this Committee.² Although there have been some improvements in recent years, our legal work and the experiences of families points to a number of key stages in the course of an IOPC investigation where delays happen, leading ultimately to delays in the investigation outcome.
11. We note that the terms of reference of this inquiry are focussed on the IOPC's progress in speeding up decision-making. The IOPC need to be mindful of their own efficiency and resourcing when conducting investigations, to avoid them taking a disproportionate amount of time. Delays in investigating complaints have a significant impact on those awaiting their conclusion: they damage confidence in the system but can also compound feelings of stress, foster concerns about investigatory collusion with the police and, in cases involving deaths, prolong periods of bereavement or grief for the deceased's family.
12. Any consideration of timeliness in the police complaints and conduct process will be incomplete if it does not look at the role played by other public bodies that interlink with the IOPC investigation (e.g. the CPS and the police, Coroner, HSE), and we urge the Committee to consider these within this inquiry. Indeed, this was a matter considered in depth in the Angiolini Review into deaths and serious incidents in police custody, who recommended greater cooperation and consultation between organisations involved from the very early stages and regularly throughout any investigation.³

IOPC delays

13. INQUEST asked 23 families about delays they had experienced during the investigation process. Only eight told us they had been kept informed about delays, while 15 had not. Eight respondents identified the IOPC as responsible for these delays. Whilst we welcome the introduction of a Victims Right to Review of an IOPC decision not to refer a matter to the CPS, this must be done in a timely manner to avoid further delay to the process.

² *"Families frequently complain to us about the length of time that the investigation takes and their lack of involvement in it". INQUEST Submission to the Home Affairs Committee Inquiry into Police Complaints and Discipline, October 1997; "There are long, drawn-out investigations which should only take a matter of months if all the evidence is there on the night. He was in the authorities' hands from start to finish. Everything is there. Why has it taken over 18 months to complete an investigation?" Marcia Rigg, oral evidence to the Home Affairs Select Committee inquiry into the work of the Independent Police Complaints Commission, 23 February 2010*

³ Report of the independent review of deaths and serious incidents in police custody, Rt. Hon. Dame Elish Angiolini DBE QC, key findings paragraphs 26-28

14. *Evidence gathering*: PALG, ILG and INQUEST have witnessed many occasions in which the IOPC have delayed in the initial gathering of evidence. Obtaining and preserving early evidence is crucial to being able to properly investigate a complaint. Delays can lead to loss of this evidence, for example footage being deleted, or witness memories becoming impaired. Our clients/the families we support will also not have had an opportunity to obtain this evidence themselves and are more often than not reliant on the IOPC's disclosure. Failure to gather evidence promptly and risking its' loss is a complete denial of justice for people who use the complaints system as a means of redress.

"I feel the IOPC were guilty of a gross error in overlooking evidence available in the days following the loss of Carl." Nicholas Mills

"Devon and Cornwall Police failed to 'secure the scene' of Thomas' death and it was too late to insist upon it once the IOPC were involved." Alison Orchard

"When it came to gathering the evidence I was shocked how slow this was. Interviews of officers didn't happen at all. Only statements were requested and these were still being asked for at least 9 months after [my brother] was killed." Anonymous

15. *Disclosure of evidence and the final report*: Whilst complainants await the outcome of a complaint, they do not have proper (or any) access to relevant disclosure or material. Where it takes a long time for a complaint investigation to conclude this can make complainants feel as though information is being purposefully withheld and that the system lacks transparency and openness; ensuring that the process is transparent and open is just as important as the outcome. These perceptions become entrenched when officers are provided with disclosure of the final investigation report and Body Worn Video/CCTV footage before the complainants and often without the complainant's knowledge.
16. Where the investigation relates to a death in custody, timely disclosure can provide the family with an understanding of what has happened to their loved one. Withholding or delaying this can be extraordinarily painful for them and develops mistrust of the IOPC. It is important that the IOPC ensure immediate access to sources of advice - such as an appropriately experienced solicitor - whilst complainants await the outcome of their investigation, so that they do not feel alienated by the process and are able to fully understand why any disclosure might need to be temporarily withheld.
17. *Instructing experts*: PALG and ILG are also aware of a number of examples where investigations into clients' complaints have been significantly delayed due to the late identification and instruction of experts, e.g. medical experts to comment on the cause of death where someone has died in custody. The IOPC need to take steps to ensure that they are not struggling to find experts at a point that could be critical in an investigation.

18. *The role of police:* In practical terms IOPC evidence gathering is often dependent upon police co-operation, both in relation to the provision of documentary evidence (police notebooks, logs, etc) and arrangements for witness statements to be given. That process often takes time and the system appears to lack the ability to ensure that such disclosure takes place promptly. It is also not uncommon, particularly in more serious cases, for IOPC requests for interview to be met with uninformative and pre-prepared statements by officers. In that event, often the lengthy waits for interviews that take place do not, ultimately, take the investigation any further forward.

“The Police seem able to object and appeal to [IOPC] recommendations and, since that all takes time, delays occur and recommendations are not taken up.” Alison Orchard

19. *Division of investigation between PSD/AA and IOPC:* Another delay occurs when the IOPC have referred the outcome of a complaint back to the Professional Standards Department (‘PSD’) to reinvestigate, or where there is disagreement between the Appropriate Authority (‘AA’) and the IOPC over what charges to bring against the subject of the complaint. Since the Police (Conduct) Regulations 2020 came into force, the IOPC are able to present cases on behalf of the AA and this should remove some of the previous causes of delay. However, where the PSD are directed to reinvestigate, the investigation would benefit from IOPC oversight to ensure that the appropriate standards are met and that investigations are carried out in a timely manner.

We were not given a time frame but when we asked why it was taking so long we were met with evasive answers [...] Despite significant legal pressure they still have not answered questions nearly four years on.” Lisa Cole

“Initially we were told by the IOPC that their investigation would take 6 months but then this changed and the IOPC said that they had up to 12 months. There were delays from the very beginning. We faced long delays in the IOPC finalising the report and then in them sending it to us and our lawyers. We received the report more than 12 months after Jake’s death and there was no proper explanation for this.” Alison Anderson

20. *Impact of delays:* Families who gave input into this submission, as well as other PALG and ILG clients, have reported devastating consequences from delayed investigations. This includes instances where misconduct hearings against police officers, who should be facing allegations of gross misconduct, have collapsed. Officers and their representatives have used delay as a means to justify abuse of process arguments and have successfully caused charges to be dismissed before hearings have had a chance to commence, meaning that officers are effectively acquitted without any evidence being heard. This is a complete denial of justice to people who are victims of police misconduct, in very serious and sensitive circumstances.

[***]

21. PALG and ILG members welcome the provisions in the February 2020 statutory guidance relating to the timeliness of investigations. Given that many clients experience delays to investigations that can last several years, a 12-month target is pragmatic, whilst also ensuring that every investigation is thorough and will serve and repair public confidence in the police complaints system. We also welcome the regular system of reporting where investigations are taking longer than 12 months set out at paragraph 13.80 of the guidance.
22. However, we have concerns that the measures proposed do not go far enough. The proposed measures do not explain how they intend to individually tackle the delays we have outlined above. Unless there is a more radical change the 12-month guidance is likely to be more honoured in the breach rather than observance.

Other bodies contributing to delays

“It is unfair to wait five years before an inquest is held, with officers being questioned stating they can’t remember what happened. Investigations should be concluded within a short time period, keeping families informed and keeping the same investigating team, ours kept changing all the time.” – Anonymous

23. The inordinate delays seen in bringing complaint and disciplinary matters to a conclusion are contributed to by the other bodies responsible for discharging functions in that process, in particular police forces and the Crown Prosecution Service (CPS). The families INQUEST asked about delays during the investigation process identified the CPS, the Coroners Service and police services as responsible, and pointed to their experience of waiting for expert statements further holding up investigations

Crown Prosecution Service

24. The HASC will be aware that, following an investigation by the IOPC, the matter may be referred to the Director of Public Prosecutions if there is an indication that a criminal offence may have been committed by a subject of the investigation. The CPS then consider whether criminal charges should be brought against any of the subjects of the investigation.
25. It is not uncommon for decisions by the CPS to take many months, and sometimes years. The net effect of such delay is to lengthen substantially the time taken for the complaints, disciplinary and associated processes to conclude. There is typically a complete halt to those processes while the CPS decision remains outstanding. For example, while the matter is with the CPS, it is routine for police force professional standards departments to delay disciplinary proceedings, and for Coroners to adjourn any inquest. The impact on complainants, bereaved families, police officers, and public confidence is significant. It severely frustrates the learning and accountability processes.

26. We outline here three examples where CPS decision-making has added between one or two years to the end-to-end process.⁴

Quality of police and IOPC complaint and conduct investigations

Local

27. Most police complaints are investigated locally, which means they are investigated by the police force about which a complaint has been made. In the experience of PALG members this lack of independence undermines the quality of most local complaint investigations. Complaint investigators from local police forces consistently demonstrate an unwillingness to challenge and interrogate the actions of their colleagues. This manifests in sub-standard evidence gathering and highly biased complaint reports.

"I raised an official complaint with the Police on the 16th of May following the death of my son Jordan BurrIDGE shortly after he was released from Police Custody. On the 28th of May I was sent a letter from the IOPC stating they were not dealing with my complaint and it was passed to Devon & Cornwall Police to deal with. I was asked for no further information, no advice and basically felt like no interest in my situation. Bearing in mind I had advised that I was complaining due to the death of my child I didn't even get a 'sorry to hear that' losing a loved one is extremely hard and the 'standard' letter template used to contact people is unkind and inappropriate in my view." Charlotte Soper

28. Problems with evidence gathering in local complaint investigations are frequently reported by PALG members. It is often the case that investigations will fail to preserve key items of contemporaneous evidence, such as CCTV or police body worn footage that automatically deletes after a limited period of time. Witness accounts from independent witnesses are often not pursued by investigating officers and are only included when the complainant lawyer obtains them. Accounts taken from police officers are frequently sought and provided by email, with minimal follow up or interrogation by complaint investigators.

⁴ We have numerous additional examples of similar cases involving CPS delays that can be provided to the Committee if useful.

29. Complaint investigators consistently demonstrate pro police bias in their complaint reports, resulting in complaint reports that are poorly reasoned and badly drafted. The accounts provided by police officers are frequently taken as fact by complaint investigators, with scrutiny reserved for the accounts of complainants. It is very rare for complaint investigators to evaluate the accounts given by police officers - by reference to all the available evidence - as directed by the IOPC's statutory guidance. We have seen many examples where the investigating officer appears to be going out of their way to rationalise the actions of the officers under complaint, in a manner that selectively ignores pieces of evidence that would challenge their account.
30. It is commonplace for appeals to the IOPC to be successful, given the poor quality of first instance local investigations and complaint reports. When re-investigations are directed, they will usually go back to the original investigator. Re-investigation reports will often be a copy and paste of the original report, with a few minor additions to address the points raised by the IOPC, and ultimately identical conclusions.
31. PALG members routinely represent clients whose police complaints have been unsuccessful, but who then succeed in civil claims arising from the same incident. In our view, this demonstrates the ineffectiveness of the police complaints system as a whole, which relies heavily on local police forces. Although the IOPC can play a role in ensuring the quality of local investigations through the appeals process, the need to go through yet another time-consuming process acts as a major disincentive for many clients.
32. PALG considers it is deeply unfortunate that a greater proportion of police complaints are not investigated at first instance by an independent body. If that is to remain the case, measures should be introduced to ensure a higher quality of investigations by local police forces and a means of scrutinising these. This could include introducing measures that impose penalties on local police forces that consistently produce investigation reports which are successfully appealed. There needs to be a stronger incentive on police forces to perform high quality, rigorous investigations of complaints against them.

IOPC

33. Only a minority of police complaints are investigated by the IOPC as these 'independent investigations' are reserved for the most serious or high profile police complaints, such as deaths in police custody. We note that the quality of evidence gathering and investigation reports is, for the most part, superior in these cases to those investigated by police forces. However, the issues that dog local investigations also arise in IOPC investigations far more frequently than they should. Bereaved families report significant frustrations with the investigation process, and the experience of ILG and PALG lawyers pinpoints a series of further concerns.

34. *Evidence-gathering*: There is frequently a lack of thoroughness in the gathering and reviewing of evidence by investigators, and a concern that they arrive too late to gather essential evidence. This often occurs in more serious cases where a proportionate investigation demands a more thorough and comprehensive approach to the collating, reviewing and scheduling of contemporaneous evidence (e.g. CCTV footage).

"I feel the IOPC were guilty of a gross error in overlooking evidence available in the days following the loss of Carl [...]"

"I did not believe that evidence was taken in a timely manner as there were a number of what I perceived to be mistakes made which began to seriously undermine my confidence in that organisation." Nicholas Mills

35. When we have identified good practice, it is in cases where the IOPC investigator has clearly thought about the nature of evidence required to support a possible criminal prosecution arising from the allegation, and has pursued such evidence with the thoroughness required by the criminal burden of proof. However, such examples are not nearly as consistent as they should be. Experienced investigators should always be assigned to more serious and complex investigations.

"All we wanted to know was information about what had happened to Jake and at that time we didn't feel like the IOPC were there to help us get that information." Alison Anderson

36. *Bias towards the police*: When it comes to evaluating the actions of police officers, many bereaved families and clients experience a sense of IOPC bias towards the police. The perception is that they are not independent of the police or of police culture. This can be manifested in the IOPC taking an overly-cautious and conservative approach, with investigators unwilling to question or examine the motives of police officers who are unable to provide a reasonable explanation for their actions. We have noted that this frequently hampers complaints of discrimination, where the discriminatory motives of police officers are very rarely made explicit but can be implied by the circumstances. The disproportionate use of police powers on Black and ethnic minority people is well evidenced, yet it is rare in our experience for the IOPC to uphold a complaint of discrimination.

"The final report was heavily biased towards the police, contained wilful inaccuracies regarding the exact circumstances at the point of lethal force being used and did not examine the multiple wilful falsified statements given by Police officers that were proven after being properly tested at the Inquest to be false." Lisa Cole

37. Previously, IPCC guidance for the handling of police complaints stated that *"Where two accounts are on an analysis of the evidence equally credible, and where on one account, if proved, an officer may have misconducted himself, it will usually be appropriate to indicate that, in the investigator's opinion, there is a case to answer and or the misconduct meeting to decide which of the accounts is to be preferred."* Regrettably, in the updated statutory guidance currently governing the IOPC

handling of police complaints this provision appears to have been removed. **We urge the Committee to recommend that the provision that previously applied to the IPCC be reintroduced into the IOPC's statutory guidance.**

38. IOPC caution can also lead to investigation reports that focus on narrow questions, which do not capture the true grievance of the complaint, or complaints of an apparently serious nature being categorised as misconduct as opposed to gross misconduct.

"It's clear that the final report does not fully answer the relevant questions of neglect of our son. It doesn't consider the many injuries on our son and how that might have happened in a police station. The report glosses over a lot of the important details and doesn't actually address the main questions that we need answering." Alison Anderson

39. *Police cooperation and candour:* The lack of cooperation and candour of police officers is one of the most contentious issues concerning deaths in police custody. The perceived reluctance to be interviewed or for the IOPC to interview under caution arises in the majority of cases. For most families, this goes to the heart of the issue of independence and why it is that police officers are treated differently to other citizens. We are also concerned that the efficacy of IOPC investigations is frequently undermined by the absence of candour shown by police officers under investigation. It is common for IOPC investigations to face significant delays while officers under investigation are interviewed, only for the officers to give 'no comment' interviews, occasionally accompanied by a short written statements.

"The Police force that were being investigated were slow to respond." Anonymous

"If we hadn't got help from lawyers and INQUEST then we feel the IOPC and the police would have covered up all the evidence, we would have been given the minimum amount of information possible and we wouldn't be asking the important questions about what happened to our son in those final hours." Alison Anderson

40. In our view the expectation that officers fully cooperate with such investigations is surely implied by the Standards of Professional Behaviour, and consideration should be given to making it explicit. However, the IOPC consistently fails to penalise the silence of such officers, which it could easily do by shifting the burden of proof onto officers to justify their actions where they refuse to answer questions. **We recommend that the IOPC state clearly that police officers have not cooperated when this is the case.** The importance of the IOPC setting out clearly and publicly its expectation of police cooperation, and calling out the risk to public trust where this does not occur, should not be underestimated.⁵ The non-cooperation of police

⁵ See, for example, the response by the then Commissioner of the IPCC, Dame Anne Owers, to statements by the then Commissioner of the Metropolitan Police Bernard Hogan Howe against the entirely necessary step of opening a homicide investigation and arresting on suspicion of murder the officer who fired the fatal shot that killed Jermaine Baker: *"Rigorous independent scrutiny is not a threat; it is a protection ... and ... if the police appear to shy away from this, there is a real risk to public trust"*. Article by Dame Anne Owers' in The Times,

officers will remain a regular occurrence until such a measure is explicitly incorporated into the IOPC's statutory guidance and so, **we urge the Committee to recommend that a provision to shift the burden of proof onto officers to justify their actions where they refuse to answer questions be introduced into the guidance.**

41. Families want cases to be dealt with as a disciplinary or criminal investigation from the outset where there appears, on the face of it, to have been potential disciplinary or criminal offences. Families feel strongly that a level playing field requires police officers to be treated as a civilian would if there are grounds to suspect that they have been responsible for a crime, or as they would be treated in a place of work if there were potential serious misconduct. They naturally compare the process with how a civilian would be treated.

"[We were told] they didn't need to interview the officers as they had given detailed statements. Despite us insisting it was impossible that they had covered everything no matter how detailed, they didn't change their opinion until several months later and even then only asked for more statements from a couple of officers and attempted to interview one officer who refused to answer any questions. I found the way that the police are investigated compared to civilians to be poles apart. This further reduced any confidence in the IOPC in their ability or even desire to carry out a thorough investigation." Anonymous

42. *Rigour of IOPC investigations:* In cases where appeals to the IOPC are not upheld, it is sometimes the case that the IOPC investigator has failed to thoroughly scrutinise the complaint investigation conducted by the relevant police force.

Marc Cole

In notable cases such as the investigation into the death of Marc Cole in 2017, the IOPC investigation into officers' actions has been found to have been lacking in rigour. The IOPC report regarding his death stated that the officers' actions had not fallen below the standard expected. However, under questioning at the inquest into Marc Cole's death held three years after his death in January 2020, the officer who had Tasered Marc shortly admitted giving inaccurate initial statements to the IOPC regarding the amount of times he had Tasered him. The inquest found that the use of the Taser had in fact contributed to Marc's death.

43. INQUEST has long highlighted the variable quality of investigations into police deaths, including before this Committee.⁶ Bereaved families have varied experience

of the quality of IOPC investigations and some report being satisfied with the quality of investigations. However, there are a number of cases where significant and serious concerns have been identified and families have felt failed by the IOPC and forced to resort to legal challenges. These are often high profile cases. We urge the Committee to pay due attention to these cases which may appear as outliers but in our view expose deep rooted problems at the heart of the investigation of police conduct. Families who provided input into this submission expressed a sense that the IOPC either lack the power to investigate properly, or have the powers but do not want to use them: it strikes us that for families with direct experience of these processes to reach this conclusion should warrant serious reflection and action.

Family experiences and involvement

44. *Variation in experiences:* Through our casework and in representing families, we have seen a highly variable quality of IOPC investigations as well as the way in which the IOPC interacts with bereaved families and complainants. Some report positive experiences, but far too many highlight significant concerns about the process.

"IOPC have been absolutely brilliant and kept me informed throughout I can't think of anything they could have done better." Karl Brailsford

"[Staff member] from IOPC was considerate and informative throughout his investigation. Remaining professional throughout, he couldn't have done any more for me, I will always be grateful." Debbie Kyte

"We were met at home by IOPC officials the day after our loss. We were given a booklet which was very helpful and informative it has to be said." Nicholas Mills

45. *Being informed:* One of the key challenges for bereaved families is in being informed enough throughout the IOPC process to be able to participate in it in a meaningful way. As we have previously raised with this Committee, not only have families suffered a death with all the shock and distress that entails, but they are forced into a complex legal process in which their rights and power can be undermined.⁷ From the outset of any police conduct or complaints process, families need information about the role of the IOPC, where to go for specialist advice and support, and the processes and remit of the IOPC. They should also be informed of their rights to a

⁶ *Although there have been some examples of good practice in the conduct of IPCC investigations into deaths and serious injury ("DSI") there is still great inconsistency of approach.* INQUEST Submission to the Home Affairs Committee Inquiry on the IPCC, July 2012

⁷ *"In deaths in police custody families are met by a wall of silence, secrecy and insensitivity. Not only have they suffered a death with all the shock and distress that entails but they now begin to suffer the double victimization due to their lack of rights and power within the investigative process. They have to learn with no official help the language of death and the law - what is a post mortem, pathologist, coroner, how and where to go for legal help, advice and support."* INQUEST Submission to the Home Affairs Committee Inquiry into Police Complaints and Discipline, October 1997

second post mortem if the death has been contentious, particularly in restraint-related cases⁸

46. INQUEST asked 23 bereaved families with experience of IOPC processes how informed they were. 17 families told us they had been given information about the role and remit of the IOPC, but disappointingly six had not. Less than half of the families (11) had been given information about the IOPC misconduct process. Only seven families were given information on where to go for advice and help; 16 families were not given this information. This is a longstanding issue of concern, which INQUEST has raised with this Committee previously, and in meetings with the IOPC.⁹ Although some families have reported positive experiences, it is hard to understand how or why it can still be the case that so many report being badly informed.¹⁰ **We recommend that the Home Affairs Committee follow up with the IOPC in a year's time to ask for evidence of progress in ensuring all families are fully informed at the start of and throughout IOPC processes.**

47. *Delays*: Families reported to us many examples of how badly delays have been communicated to them. One family told us that they would have been accepting of an overall delay in the investigation, but that in their instance the delay related to a failure to take evidence in a timely manner, thereby jeopardising the investigation: this only undermined their confidence in the IOPC.

48. *Access to and involvement in the IOPC process*: Bereaved families seek involvement through the IOPC process which they expect to provide answers. This should include involvement in setting the Terms of Reference and being given the opportunity early on to put forward their key concerns, as well as a chance to spend time with the investigator early on receiving answers to all initial questions, or where the answers are not yet known a commitment to explore those matters during the course of the investigation. The IOPC is required to provide updates every 28 days, even if there is nothing to update, yet there is little consistency in approach. Some families get access, for example to CCTV footage from the early stages while others are wrongly denied information. Families often feel that they are simply met by a brick wall and that it is often only through the involvement of a lawyer that they get access to information.

"I was not made aware of the terms of reference and multiple press releases were made without family consent or prior warning." Lisa Cole

"Press releases were definitely an issue with me. I was given the opportunity to review these before they were released but I found them to favour the police. When I raised the issue with the IOPC it made no difference and they were put out as they were." Liam Fitzgerald

⁸ This point was recommended by the Angiolini review (paragraph 2.97)

⁹ *"Inadequate provision of information, in particular about where to obtain independent advice and support impacts directly on the capacity of families to effectively participate in the investigation process."* INQUEST Submission to the Home Affairs Committee Inquiry on the IPCC, July 2012

¹⁰ INQUEST have held family listening days, including with the IPCC and as part of the Angiolini review, as a means to feedback family experience.

49. Families want to be trusted to receive information on a confidential basis so that matters can be shared with them as the investigation progresses and key documents such as CCTV can be disclosed. Many families are told that disclosure of key materials cannot be provided, simply because there is the potential for a criminal process although no family member is witness to the events covered by the investigation. Many families have to battle to receive disclosure throughout the process even when they have legal representation and signed undertakings.
50. We also draw the Committee's attention to cases where families have not even been informed of misconduct meetings that were due to take place. Whilst these meetings are not open to the public or press, families are allowed to attend. In one matter the IOPC failed to inform the family of the outcome of their investigation and that officers were to face misconduct meetings. One hearing took place without the family's knowledge. A second hearing was adjourned following representation to enable the family and their lawyer to attend. In another matter the police force conducted the misconduct meeting without informing the family or the IOPC although both had stated their intention to attend.

"We've had a terrible experience of the misconduct process. They were supposed to be hearings but then they were changed to meetings, which meant they could happen in private. We were excluded from these meetings by the Chair and we are left feeling like the police have been trying to protect themselves from any difficult questions. We feel that they are trying to avoid us and any press attention which might expose what they've done. It's taken many months to get to the hearings and they've been delayed and adjourned. The IOPC didn't even inform us of the outcome of the disciplinary hearings against two officers. They changed the date of the hearing for a Custody Sgt and said the family cannot attend, without even giving us a reason. We challenged the Chair's decision to exclude us and asked the IOPC to help support us in asking the Chair to allow us to attend. The IOPC didn't want to support us as they said they had to remain independent, but we now know that we had a right to be at those meetings. It took the threat of legal action against the Chair for the IOPC to actually stand up and support our right to attend those meetings." Alison Anderson

51. *How families are treated:* As indicated above, some families do report positive experiences of how they are treated by the IOPC through investigations. However, far too many families report negative experiences and tell us of the additional emotional burden placed on them as a result of the way the IOPC performs its role. Bereaved families are unlikely to have experienced IOPC processes prior to the loss of their loved ones, and so enter these processes unprepared. The way family liaison officers prepare them for what will be difficult and traumatic experiences – seeing their loved one in a mortuary, receiving detailed descriptions of what happened, reading the statements from police who may challenge their understanding of events – is crucial.

"We were assigned a Family Liaison Officer but [the officer's] role wasn't clear to us as [they] didn't liaise with us at all. [They] didn't explain the process of going to see Jake at the

mortuary and when we were there [they] didn't help at all, for example she didn't answer our questions about the bruises we saw all over Jake's body." Alison Anderson

"At no point did I ever feel as though the IOPC have any thoughts and understanding of the impact [of delays] on the families. Update letters in the first few months never arrived on time and again when it was mentioned how upsetting this was the IOPC didn't seem to care or understand why it would be an issue." Liam Fitzgerald

*"IOPC tried to belittle and condense my complaint into hardly anything to complain about. They knew I was vulnerable from losing my son and I felt they took advantage. [***]."* Geraldine Sephton

"They also need to have more empathy with victims, it often felt like individuals and the organisation forgot they were talking about investigations of loved ones. There are exceptions but in general that was my feeling." David Ridley

52. Families we spoke to also shared their impression that the IOPC acted as if it was for the benefit of families, taking decisions around what information to share rather than being led by what the family had requested or wanted. In some instances, this was experienced by families as the IOPC withholding crucial evidence. Their role should be to empower families to understand the police misconduct and investigation processes, and to take up their legal rights to participate in the investigation that has been set up as their means to find out what happened to their loved one. This should not be about managing the family but treating them as an equal party in the investigation.

53. *Inequality of arms*: Police forces and police federations commit funds to supporting police officers through the complaints process. There have been a number of occasions in which judicial reviews have been brought against the IOPC on behalf of police officers. Whilst that is, of course, perfectly acceptable in principle, it is frequently the case that bereaved families and victims of police misconduct do not have the resources for legal representation and to pursue a judicial review, unless they satisfy the extraordinarily low means test for legal aid. This means that, in practice, there is an inequality of arms. One consequence is that the pressure of legal challenge no doubt felt by the IOPC is lopsided in favour of the better funded police forces and Police Federation.

"The statement of the main officer who neglected our son still hasn't been provided. We wonder why the IOPC haven't sent this to us and the only explanation we can think of is that they don't want us to have it. CCTV evidence also hasn't been provided. The IOPC said that we wouldn't want to see it as it would be distressing. [...]"

The IOPC did everything they could to avoid us getting to see this vital evidence and we feel that the IOPC were actually working against us." Alison Anderson

54. *When confidence erodes over time*: Many families tell us that they start with confidence in the IOPC but that over time, their experience of the process erodes their confidence. Others report starting with a lack of trust in the IOPC which is only

confirmed by their experience through the process. Also families feel key issues are not addressed within IOPC reports, or because they cover a mass of detail but evade or side-line key questions. They tell us that had they not had legal representation or the support of INQUEST they would have not got any answers.

“At the beginning of the investigation [we] did feel that the investigators were going to do a good job and felt that they were on [our] side.” Anonymous

“We think there were delays in the investigation and the IOPC didn't chase up interviews with officers or try and get their statement. This made us lose confidence in the IOPC's ability to carry out a proper investigation. In the end we had lost so much confidence in the IOPC that my solicitor wrote and asked that all communication from them went through our lawyer. I was so appalled at the way the IOPC dealt with everything and their attitude towards us didn't seem respectful or sympathetic. Their attitude seemed very false and they would state every time we spoke that they were independent and again this just seemed to cause more doubt than anything about their actual independence.” Alison Anderson

“I honestly feel as though without a really good legal team working with me, I wouldn't have got the answer we have at this point and genuinely believe the investigation would be poorer for it. The IOPC shouldn't need to be pushed to do a good job but unfortunately that's how it feels.” Liam Fitzgerald

“It was clear to us that these highly trained and knowledgeable people [experts] had no trust in the organisation and that left us unable to trust them either.” Alison Orchard

Independence

55. Despite the intended independent nature of the IOPC, it is a common perception among bereaved families and lawyers, as well as other police complainants, that the IOPC are independent in no more than name. This significantly affects confidence in the IOPC.

“They tried to make it clear that they were not the police or that they had any connection to the police but their attitude and the way they spoke regarding the officers involved made us feel as though they were connected and didn't help us have confidence.” Liam Fitzgerald

“I remember the IOPC kept repeating that they were independent. They said it so many times that we started to question whether they were really independent.” Alison Anderson

“They say that they are independent, but they don't do a very good job of being independent. The IOPC need to stop telling families that they are independent at every stage because this causes more doubt than trust. We didn't think we would be told the truth and we still feel that we haven't been. We haven't been given vital evidence and all of our questions have been side-stepped.” Alison Anderson

56. It has long been recognised that the IOPC (and its predecessors) must be structurally independent of the police services. Structural independence alone, however, is not

enough to secure public confidence or efficient investigations. As several families who contributed to this submission indicated, there was a significant difference between the repeatedly stated independence of the IOPC and their experience of how their investigations were conducted.

57. We recognise that the IOPC has a difficult role to perform; it has limited resources and faces frequent legal challenge by policing bodies to its actions. However, beyond the issue of funding, we believe that there is a cultural problem that in many ways limits the extent to which the IOPC acts truly independently.
58. It is welcome that by law the IOPC's Director General can never have worked for the police. In addition, according to the IOPC's website, none of their executive team or regional directors have worked for the police. This would suggest that the IOPC recognise the tension between the organisation remaining independent from the police and employing ex-officers in senior roles.
59. However, an FOI request in October 2019 revealed that 28% of the IOPC's total staff were ex-police. Further, that in respect of Investigators, Operations Team Leader/Deputy Senior Investigator, and Operations Manager/Senior Investigator roles, this increased to 31%, 37% and 40% respectively. This means that over a third of all IOPC investigations are likely to be undertaken by an ex-police member, a fact that is difficult to reconcile with a concept of an organisation that is independent from the police. This is consistently identified by families with experience of IOPC processes as problematic, and at the heart of their perception of bias and lack of independence. Families who gave input into this submission made a number of suggestions for addressing this: that the IOPC should consider having lay members (who would assist and be present throughout the investigation), and using ex-police officers as consultants rather than investigators.
60. The IOPC's structural independence is undermined by this lack of cultural independence from the police, which we have seen contribute directly to the lack of robustness in decision-making when investigating the actions of police officers. In our view, if the IOPC had a culture different from the dominant cultures of the police service then its chances of effectively scrutinising the police service would increase. This is plain in relation to allegations of misconduct involving discrimination.
61. The impression of a lack of independence is exacerbated where the IOPC, on reviewing the handling of a complaint by local resolution within a police force, finds that the local complaint investigation was inadequate, and yet refers the complaint back to the same force for 'reinvestigation' rather than investigating the matter themselves. The same Professional Standards Department within a given police station can thus be asked to review their own work. Unsurprisingly, the resulting level of scrutiny of the subject of the complaint is frequently disappointing. From the point of view of complainants, this return of the complaint back into the control of the local officers also increases the impression of collaboration between the IOPC and the relevant police force.

“The hearings were delayed, then eventually the AA asked the IOPC to rescind their direction for gross misconduct which they agreed to so the hearings never happened and the officers were acquitted without any evidence being heard.” - Gimhani Eriyagolla, lawyer

62. In relation to deaths following police conduct and in police custody, many families told INQUEST of their impression that the IOPC was lacking in independence, and their concern that giving Police Forces the responsibility to carry out misconduct hearings should be changed. In 2020, the United Friends and Family Campaign called for the abolition of the IOPC in order to replace it with a “truly” independent body that can conduct robust and transparent investigations into police involved with deaths¹¹.

Transparency and open justice

63. It is vital to recognise the role of police disciplinary proceedings in discharging the State’s procedural obligations to victims in accordance with Articles 2 and/or 3 of the European Convention on Human Rights, in cases where the alleged misconduct involves violence against members of the public, or deaths at the hands of the police. The importance of open justice in police disciplinary proceedings cannot be over-stated. The Committee will be aware that open justice is a fundamental principle of the common law, long regarded as integral to protecting the rights of those involved in court proceedings and essential to maintaining public confidence in the administration of justice. Furthermore, secrecy damages public confidence. Suspicion that the authorities are not being fully open as to their actions, or that the processes designed to facilitate accountability are in truth weighted in the authority’s favour, encourages distrust and enables resentment to fester. Open proceedings are vital to address the problem of trust and to allay the fears and concerns which arise.

64. Misconduct hearings are held where there is a case to answer for gross misconduct. Until 2015 gross misconduct hearings were held in private¹², unless the IPCC directed¹³ that a public hearing should take place (for reasons of “gravity” or “other exceptional circumstances”). In 2015 the regulations were amended to introduce a presumption that hearings “shall be in public”¹⁴, subject to the Chair’s discretion to exclude persons from attendance and/or impose conditions on attendance¹⁵.

¹¹ <https://www.theguardian.com/uk-news/2020/jun/14/racism-campaigners-iopc-police-watchdog-abolished>

¹² Regulation 31(1) of the Police (Conduct) Regulations 2012

¹³ Regulation 31(5) of the Police (Conduct) Regulations 2012

¹⁴ Regulation 31(1) of the Police (Conduct) Regulations 2012 as amended by regulation 9 of the Police (Conduct) (Amendment) Regulations 2015

¹⁵ Regulation 31(6) and (7) of the Police (Conduct) Regulations 2012 as amended by regulation 9 of the Police (Conduct) (Amendment) Regulations 2015

65. We welcome the fact that the 2020 Regulations strengthened the requirement for a public hearing: now gross misconduct hearings “must be in public”¹⁶. However, the full impact of these new regulations on public access to gross misconduct hearings remains to be seen, given traditional hearings have largely been replaced by remote or limited access hearings due to COVID-19.
66. We note also that the Chair retains the discretion to impose conditions on attendance and exclude any persons from the hearing. Complainants are therefore dependent on the Chair to uphold open justice principles, often in the face of sustained efforts on the part of the subject officers and the Appropriate Authority to restrict access to hearings.
67. In PALG’s experience, the Chair’s discretion to restrict access to hearings has been exercised arbitrarily at times. By way of example, one PALG member recounts a gross misconduct hearing that took place under the amended 2015 regulations, with the supposed presumption in favour of public hearings. The case involved a [parent] who was visiting her child in hospital and [received an injury from] a police officer [***]. A criminal prosecution took place resulting in the officer’s acquittal, and the officer was then subject to gross misconduct proceedings. The gross misconduct hearing was due to take place in public but at the eleventh hour this vulnerable complainant was informed that the hearing would now take place in private for reasons which were unexplained. The complainant was forced to instruct specialist lawyers at the last minute, who had to make representations to be allowed into the hearing room in order to make legal submissions on why the hearing should be held in public. The representations were successful and the hearing proceeded in public, but it is clear that complainants without immediate access to specialist legal representation will struggle to make such important open justice arguments.
68. In PALG’s experience, complainants and the public can often face significant practical obstacles in attending the hearings. Hearings are often poorly publicised, and it can be difficult to obtain security clearance to attend. Hearings are often held in high security police buildings which can be daunting and inaccessible to complainants and members of the public. For example, at Metropolitan Police Service (MPS) disciplinary hearings, the hearing room is located deep within the MPS Empress State Building, and complainants and witnesses are only allowed into the hearing room when they are called to give evidence. After giving evidence, complainants and witnesses watch the remainder of the hearing in a visitors centre via video link, rather than in the actual hearing room itself, which makes it much more difficult to exercise their right to ask questions of witnesses (at the Chair’s discretion) and for members of the media to raise procedural issues with the Chair, for example. By contrast, we have some experience of disciplinary hearings in neutral venues such as

¹⁶ Regulation 39(1) of the Police (Conduct) Regulations 2020

hotels and conference centres, which have proved less intimidating and more accessible to complainants and witnesses.

69. In our experience there is a commonplace reluctance on the part of both the Appropriate Authority and the IOPC to allow the complainant access to documents referred to during the hearing. It is plainly important to protect the integrity of proceedings, including by careful management of disclosure. However, particularly in proceedings where the complainant is not an eye-witness, denying them access to documents significantly hinders their ability to participate in the hearings and again to exercise their right to ask questions via the Chair (at the Chair's discretion). Coupled with exclusion from the hearing room, this sends a clear message to complainants that their role in the proceedings is insignificant and unimportant, despite the long battle many will have faced to push for misconduct proceedings, often involving multiple negative decisions and appeals. Indeed, in PALG's experience, complainants can feel as though they are an unnecessary adjunct to misconduct proceedings. Forces tend to approach proceedings as their sole concern and dominion, while public access is viewed as a gift rather than a fundamental right.
70. Plainly for open justice to be effective, gross misconduct hearings must be well-advertised and every effort should be made to facilitate access to the hearings by complainants and the general public. Hearings should be held in neutral locations wherever possible, instead of hard-to-reach police buildings. Attendees should be granted access to the hearing room itself, and the ability to follow proceedings including by accessing documents referred to during the hearing (after they have given evidence). Attendance by complainants and the public should be encouraged and facilitated, with complainants treated as an important part of the disciplinary process. In PALG's experience this is often not the case.

Addressing race and discrimination

71. An effective police complaints system must include rigorous consideration of discriminatory treatment and practices. In our experience issues around race and discrimination and whether deaths or serious incidents can be linked to discriminatory attitudes and practices is not adequately considered (if at all) in IOPC investigations. The Casale review following the investigation into the IPCC investigation into the death of Sean Rigg highlighted this very issue.¹⁷
72. As the Angiolini review made clear, where there is evidence of racist or discriminatory treatment or other criminality or misconduct, police officers must be held to account through the legal system. Failure to do so undermines community confidence in the police and is damaging to police and community relations.

¹⁷ <https://www.seanriggjusticeandchange.com/Review%20Report%20FINAL.pdf>

“The lack of reference to race throughout is not a sign of non-discrimination, but rather an indication of malaise and/or a lack of confidence about how to address racial issues appropriately.” Silvia Casale

Conclusions

73. As we evidence above, the system of accountability that is in place continues to fail bereaved families and other complainants. This inquiry’s focus on delays and obstacles in the police conduct and complaints process is important, but must not reduce these issues to merely bureaucratic questions of process that can be tweaked and refined. There are more fundamental questions to be tackled that situates these concerns within the wider picture of a dysfunctional police complaints process that too often fails to hold police officers to account for wrongdoing or criminality.
74. There has been significant scrutiny of the IOPC over the years, and INQUEST, ILG and PALG have played an active role in this. We have witnessed the improvements that have been introduced as a result and do not underestimate the efforts it has taken to achieve these.
75. However, an effective system for police accountability depends on more than the IOPC. To address the deficiencies in accountability, the Committee must consider the crucial role of the other policing stakeholders who too often hold up, fail to cooperate with and even actively undermine the search for accountability. This requires in particular a focus on the CPS and the police themselves.
76. With regard to the CPS, we have set out above how inordinate delay in CPS decision-making has a substantial impact (typically measured in years) on the timeliness of the end-to-end disciplinary process. The issue of the poor quality of CPS decision-making in cases concerning criminal conduct by police officers is beyond the scope of this inquiry, but is one which has for decades been at the heart of concerns about accountability. It is a striking fact – and one for which the CPS must bear considerable responsibility – that in the 30 years since INQUEST began recording, no police officer has been found guilty of murder or manslaughter following a death in police contact or custody. **We would urge the Committee to look specifically at the role of the CPS in the wider system of police accountability.**
77. With regard to the role of the police forces and other police stakeholders, it must be recognised that those bodies, whose legitimacy depends upon an effective system of public accountability, often appear to be fiercely resistant to it. Just by way of one recent example [***]. The committee will have read in the body of the submissions above how such police resistance to accountability manifests itself in the routine experience of complainants and families. Whatever is done to increase the power of the IOPC and improve its function, there will always be significant barriers to

accountability if it is not embraced by police forces themselves. That is a matter with which this Committee should be concerned.

78. There remains a lack of trust and confidence in the police complaints systems and at its core are concerns that the rule of law does not apply to the police for abuses of power in the same way it does to an ordinary citizen. We are concerned that these systemic failures undermine the prevention of future ill treatment and abuse. A democratic society needs an effective mechanism that ensures scrutiny and accountability of the police and ensures that prosecutions for human rights violations are brought in appropriate cases.

79. INQUEST, PALG and ILG recommend that the Home Affairs Committee follow up this inquiry with a further, in-depth inquiry into accountability for deaths resulting from police action. This should focus on the responsibilities and roles played by all relevant stakeholders. This inquiry should also consider specifically how race and discrimination is considered through the police complaints process.

INQUEST, the Police Action Lawyers Group and the INQUEST Lawyers Group

October 2020