

# **MEMORANDUM OF UNDERSTANDING BETWEEN THE ASSOCIATION OF CHIEF POLICE OFFICERS AND THE PRISONS AND PROBATION OMBUDSMAN**

## **Introduction**

1. This memorandum of understanding has been drawn up between the Association of Chief Police Officers (ACPO) and the Prisons and Probation Ombudsman (PPO). It sets out the principles for co-operation between the police (whether investigating a death, acting as the coroner's officer or providing intelligence about the local area) and the PPO in the investigation of deaths of:
  - prisoners (including people held in young offender institutions)
  - residents of National Offender Management Service approved premises
  - residents of immigration removal centres
  - people under Immigration Service managed escort
  - young people in Secure Training Centres
  - and any other deaths that the PPO has discretion to investigate.
2. The Ombudsman also has responsibility for investigating complaints from prisoners, those under the supervision of the National Offender Management Service and immigration detainees. In addition he may from time to time be called upon to conduct special investigations on behalf of the Secretary of State. There is less likelihood of police involvement in such investigations, but where there is, the principles outlined in this Memorandum apply. Complaints investigators and those conducting special investigations recognise their responsibility to inform the police if evidence of a criminal offence or suspected criminal offence comes to light at any stage of the investigation.
3. Each investigation team will have different roles and objectives to meet when a death occurs. A coordinated approach is helpful for effective investigations. It is the role of the police to conduct a criminal investigation into a death. It is the role of the PPO to investigate the general circumstances and events surrounding the death, including operational and managerial matters and the clinical care of the deceased, to provide explanations and insight for bereaved relatives, and to assist the Coroner's inquest.
4. The memorandum sets out the minimum standards of co-operation and communication that should be applied by all police services throughout England and Wales where both the police and the PPO are investigating the circumstances surrounding a death. The intention is to ensure that both investigations are thorough and fully achieve their aims, that overlap and duplication are kept to a minimum, and that the organisations, individuals and families involved in the investigation are dealt with considerately, fairly and proportionately.
5. The memorandum is intended to complement the protocol agreed between ACPO, the Prison Service, the United Kingdom Border Agency (formerly the Home Office Immigration and Nationality Directorate), the Youth Justice Board and the Crown Prosecution Service.

### **Initial investigation**

6. The police initially approach all deaths as potential homicides.
7. The police investigation has primacy, insofar as this is necessary to ensure that the PPO's investigation does not prejudice any criminal investigation or the fair conduct of any subsequent legal proceedings. It is the responsibility of the police to make sure that there is no prejudice to criminal proceedings. However, given that the Ombudsman's investigations must be Article 2-compliant, the Ombudsman may decide exceptionally to conduct his investigation in parallel with the criminal investigation conducted by the police.
8. The PPO is anxious that his own investigations should not be unnecessarily delayed. As far as it is possible, therefore, the PPO's investigation will proceed prior to a formal decision that the investigation is not a criminal one. As a rule of thumb, once the initial police interviews are concluded, it should generally be possible for the PPO to start his own investigation.
9. The PPO's investigation may proceed, but the police may suggest restrictions upon it (for example, that the PPO does not interview certain people). These restrictions will be discussed with the PPO as soon as possible, as part of a joint strategy meeting (see below).
10. PPO investigations may be delayed pending decisions by the Crown Prosecution Service (CPS). The police will provide a link between the PPO and the CPS and it is hoped that a complementary memorandum can be agreed.

### **Joint strategy meeting**

11. In the event of the PPO being asked to delay their investigation, the police will ensure that there is an early strategy meeting between their senior investigating officer, or other nominated lead police investigator, and the PPO investigator to agree how the investigations will proceed. The police will invite the CPS if appropriate. The intention will be to develop a strategy for parallel but co-ordinated investigations, and to set up a single point of contact between the investigations. Each investigation is vital to learning the lessons from a death in custody and each agency will respect the work of the other(s).
12. At the strategy meeting, liaison with the bereaved family will always be discussed, to ensure that there is co-operation between the police SIO and the PPO family liaison officers. This should provide co-ordinated and strategic support for the family and a smooth handover of the family liaison role between agencies if appropriate.
13. The police senior investigating officer or other nominated lead police investigator will ensure that the nominated PPO investigator is told of any intelligence relevant to visiting the bereaved family, with particular regard to any health and safety issues about which the PPO needs to be aware.

## **Evidence at the scene of death**

14. In most cases, the scene of death will be secured and not interfered with prior to police arrival. It will not subsequently be released without the agreement of the police. However, it is unlikely that the scene will continue to be preserved until the start of the PPO investigation. The police will therefore ensure that photographs or videos of the scene are taken, and all relevant evidence is preserved.

## **Risk assessments**

15. The PPO family liaison officer (FLO) and investigator offer a home visit to the family of every person whose death is being investigated. Where appropriate, visits are offered to each branch of the family. Although such visits may take place anywhere in the United Kingdom and, with agreement, elsewhere in Europe, this Memorandum only concerns visits in England and Wales.
16. The police will provide information about the place where the family visit is to take place at the request of the PPO FLO or investigator in order that they can take it into account when risk assessing the arrangements.

## **Sharing of information and evidence**

18. As soon as possible without prejudicing any criminal proceedings, the police will share with the PPO all evidence obtained in the course of the investigation, including:
- copies of photographs or videos of the scene
  - copies of statements taken by the police
  - copies of CCTV evidence
  - full details of all exhibits and their location, including any suicide notes
  - copy of the post mortem report
  - copy of the deceased's police custody record in cases where they have recently been remanded from police custody
  - copies of the deceased's police antecedents and history where appropriate
  - history of family liaison contact to date.
19. The police will normally tell witnesses that their statements or documents may be shared with the PPO's investigating team. But it is not essential that such consent is obtained before sharing information with the PPO. Although the information may have been given to the police in confidence, it can still be shared with the PPO. The only requirement is that the police first consider:
- Whether the public interest to assist the PPO's investigation outweighs the public interest in keeping the information confidential. As the PPO's investigation is

considered to partially satisfy the State's obligations under Article 2 of the European Convention on Human Rights to conduct an independent investigation into a death in custody (the inquest is the other part of meeting this obligation), it will nearly always be in the public interest to assist the PPO's investigation.

- Whether the statement or document contains information that might cause particular prejudice to the person who made it (for example, serious harm to their business interests). In the rare case that there might be such prejudice, the police can still disclose the information, but should give the person prior written notice that this will be done.

20. The PPO disclosure policy states that, generally, their records and the records they receive will be fully disclosed to the bereaved family, the services in remit and the Coroner. The exceptions include information which threatens the security of the establishment or the names of other prisoners, residents or detainees. The PPO may only subsequently disclose information obtained from the police investigation if he considers that the public interest in making the disclosure outweighs the public interest in maintaining confidentiality. When the police have doubt or concerns about disclosure, the senior investigating officer will consult with the Crown Prosecution Service.

21. The PPO investigator will tell all people interviewed as part of the PPO investigation that information about potential criminal offences will be shared with the police.

PPO investigators, which in this instance includes complaints investigators, recognise their responsibility to inform the police if evidence of a criminal offence or suspected criminal offence comes to light in the course of their investigation. The PPO investigator will inform a member of the Ombudsman's management team and will tell the police senior investigating officer or other nominated lead police investigator as soon as practicable. Usually the PPO will inform the prison Governor or senior manager of the service in remit when a matter has been referred to the police. If the police request copies of statements taken by the PPO, or any documentation provided to the PPO, or interview recordings/ transcripts, in order to assist in a criminal investigation, the PPO will provide these as soon as possible.

23. Any concerns about the period in police detention which are identified by the PPO investigator will be reported to the Chief Constable for consideration.

#### **Deaths on police premises**

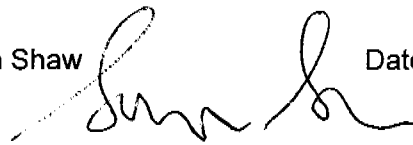
24. Where a death occurs on police premises whilst the deceased was under the control of the Prison Service or equivalent private contractor, or the United Kingdom Border Agency, the police senior investigating officer will contact the PPO who is responsible for the investigation. Deaths of other people on police premises are investigated by the Independent Police Complaints Commission (IPCC).

#### **Resolution of disputes**

25. Any disputes under this memorandum of understanding, for example over disclosure of information, will be discussed by nominated ACPO and PPO arbitrators in an attempt to find a resolution.

#### **Review and monitoring**

26. Representatives of ACPO and the PPO will meet annually to view the operation of this memorandum of understanding.

Signed: Stephen Shaw  Date: 15.07.09  
**Stephen Shaw**  
**Prison and Probation Ombudsman**

 Date: 18/6/09.  
Signed: Jon Stoddart  
**Jon Stoddart**  
**Association of Chief Police Officers**

