

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 deceased or the local area) and the PPO in the investigation of deaths of:
 - prisoners (including people held in young offender institutions)
 - young people held in youth detention accommodation
 - residents of approved premises
 - residents of immigration detention
 - people under immigration managed escort
 - and any other deaths that the PPO has discretion to investigate.
2. If the deceased dies in hospital and has a recognised illness or medical history then the presumption will be no different than if someone dies in a civilian hospital. Likewise, where the deceased dies in a cell and death is believed to be due to natural causes i.e. heart attack, then there should be a presumption of minimal police involvement other than securing evidence pending a post mortem result.
3. The Ombudsman also has responsibility for investigating complaints from prisoners, those under probation supervision 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.
4. 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.
5. 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.

6. Where the PPO require the support of police resources the request for assistance will be via the relevant ACPO team or the force Head of Crime.
7. The memorandum is intended to compliment the memorandum agreed between ACPO, the Prison Service, the Home Office, the Youth Justice Board and the Crown Prosecution Service.

Initial investigation

8. The police initially approach all deaths as potential homicides.
9. The police will generally be given primacy for their investigation, 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.
10. Given that the Ombudsman's investigations must be Article-2 compliant, the Ombudsman may investigate in parallel with the criminal investigation conducted by the police. In these circumstances, the police may require that certain tactical or investigative parameters are placed upon the PPO's investigation (for example, that the PPO does not interview certain people). These parameters will be discussed with the PPO as soon as possible, as part of a joint strategy meeting (see below).
11. The police will provide a link between PPO and the Crown Prosecution Service (CPS). It is possible that PPO investigations will be delayed pending decisions by the CPS. In such cases, the police will keep PPO informed of progress with regard to criminal charges to allow them to make representations to the CPS if necessary.

Joint strategy meeting

12. The police will ensure that a joint strategy meeting is held 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.
13. The intention of the meeting 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). If the PPO investigator believes that any police liaison officers based at the prison will need to be interviewed as witnesses, it will be discussed at this meeting.
14. The meeting should also give consideration to the need for a disclosure agreement document. The purpose of this document is to formally record what information will be shared between the police and the PPO. The duties under the Criminal Investigation and Procedures Act are dealt with at paragraph 19
15. At the strategy meeting, liaison with the bereaved family will always be discussed, to ensure that there is co-operation between the police 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. It should also be agreed at this meeting whether a community impact assessment is necessary.

16. A written record of the strategy meeting and decisions will be maintained jointly by the police and the PPO.

Evidence at the scene of death

17. 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 and shared (in line with what has been agreed at the joint strategy meeting).

Risk assessments

18. 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.
19. 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. The PPO investigator or FLO will inform the police of their intention to visit the family to enable the police to conduct a community impact assessment as necessary.

Sharing of information and evidence

20. 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
 - 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.

21. 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.
22. The duty of the police to record, retain and reveal to the prosecutor any material obtained in a criminal investigation, or which may be relevant to the investigation or related matters, should be addressed at the joint strategy meeting. Where it appears that the Prisons and Probation Ombudsman's investigation has material that may be relevant to the police criminal investigation, reasonable steps should be taken for the police investigation to identify and consider such material. The police should inform the PPO of the relevant issues in that investigation and ask the PPO to make available any material in its possession.
23. 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 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.
24. 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.
25. The PPO investigator, which in this instance includes complaints investigators, recognises 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.

Deaths on police premises

26. Where a death occurs on police premises while the deceased was under the control of the Prison Service, or equivalent private contractor, or the immigration service, the police senior investigating officer will contact the PPO who is responsible for the investigation. GOLD Command of the incident and subsequent investigation will rest with the relevant Police Chief Officer as appointed by the Chief Constable. Deaths of other people on police premises are investigated by the Independent Police Complaints Commission (IPCC).

Resolution of disputes

27. 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

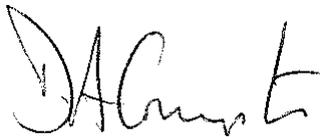
28. Named representatives of ACPO and the PPO will meet annually to view the operation of this memorandum of understanding. For the police, this will be the Head of East Midlands Special Operations Unit or their nominated representative. For the PPO, this will be the Deputy Ombudsman for Learning Lessons and Strategic Support and/or the lead Assistant Ombudsman for Fatal Incidents.



Signed:

Date: 11 December 2014

**Nigel Newcomen CBE
Prisons and Probation Ombudsman**



Signed:

Date: 12 December 2014

**David Crompton QPM
Chief Constable for South Yorkshire Police and Chair of National Policing
Homicide Working Group**