

## **Joint Committee on Human Rights Inquiry into Counter-Terrorism Policy and Human Rights**

### **EVIDENCE SUBMITTED BY THE INDEPENDENT POLICE COMPLAINTS COMMISSION**

#### Summary

(1) The Independent Police Complaints Commission (IPCC) was set up to secure and maintain public confidence in the system for handling complaints about police conduct and to investigate allegations of serious misconduct.

(2) The IPCC's remit includes investigating any use of lethal force by the police and advising on changes needed to police practice in the light of its experience. Since 1 April 2004 the IPCC has undertaken investigations into eight fatal shootings by the police, using its powers of independent investigation.

(3) The IPCC is a non-departmental public body independent of the police. As such, its investigations enable the State to comply with the requirement under Article 2 (right to life) and Article 3 (prohibition of torture) of the European Convention on Human Rights for an effective independent investigation into any alleged breach by the police.

(4) In order to minimise deaths from use of force by the police, the IPCC is establishing a national system to identify lessons of general application from individual cases, disseminate them to police forces and monitor implementation. Examples of cases where changes in police practice have been recommended as a result of investigations are given in this submission.

#### Introduction

1. This submission outlines the role and responsibilities of the Independent Police Complaints Commission (IPCC) in relation to the use of lethal force by police and highlights changes the IPCC has advised be made to police practice in the light of its experience.

2. The IPCC was established under Part 2 of the Police Reform Act 2002 with a broad remit in relation to police misconduct and complaints about the police. It has a general duty to secure, and maintain public confidence in, the proper handling of complaints about the conduct of the police and, in doing so, to contribute to increasing confidence in policing as a whole. It is a non-departmental public body and wholly independent of the police (those who are or have been employed in a police force cannot be Commissioners). The IPCC started operations on 1 April 2004, replacing the Police Complaints Authority which had a more limited remit and fewer powers to investigate police misconduct.

3. More specifically, the IPCC's functions include investigating certain conduct matters of a serious nature. Any death or serious injury following some form of direct or indirect contact with the police where there is reason to believe that the contact may have caused or contributed to the death or serious injury must be referred to the IPCC, regardless of whether there has been a complaint. So must a serious assault by a person serving with the police. The IPCC can also call in complaints or conduct matters and does so where significant matters involving public confidence are concerned.

4. The IPCC must then determine how the conduct in question is to be investigated. An investigation may be independent (conducted by the IPCC itself), managed (conducted by the same or a different police force but managed by the IPCC), supervised (conducted by the same or a different police force but supervised by the IPCC) or conducted by the police force itself. As a matter of course, the IPCC conducts investigations into fatal shootings itself. Where other police firearms incidents are concerned, the IPCC may either conduct or manage the investigation itself.

5. If the IPCC concludes as a result of the investigation that anyone serving with the police may have committed a criminal offence, it has to refer the matter to the Crown Prosecution Service (CPS). The IPCC also has the power to recommend, and ultimately direct, that disciplinary proceedings be undertaken.

6. The IPCC has a wider responsibility to recommend and advise on changes needed, in the light of its experience, to police practice and to the arrangements for handling and investigating complaints and conduct matters. It is a prime function of the IPCC's broad guardianship role in respect of complaints to identify and spread best practice and ensure the appropriate lessons are learnt at both a national and local level when mistakes are made.

#### The IPCC's role in respect of Articles 2 and 3 of the European Convention on Human Rights

7. Article 2 of the European Convention on Human Rights sets out the most fundamental of rights. It provides that everyone's right to life shall be protected by law. However, there is no contravention of Article 2 if death results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Although the test in Article 2 is stricter, there are similar exceptions in English law which permits any person to use such force as is reasonable in the circumstances for the purposes of:

- self-defence; or
- defence of another; or
- defence of property; or
- prevention of crime; or
- lawful arrest.

In this respect the police are on the same footing legally as any member of the public.

8. Article 2 has been interpreted by the European Court of Human Rights as involving not only a negative obligation upon the state not to take life, but also a positive obligation to take steps to preserve it; and a procedural obligation to ensure that there is an adequate and effective investigation into deaths which are alleged to have arisen from the use of lethal force by State agents, or from the State's negligent failure to protect the lives of persons for whom it is responsible.

9. Article 3 prohibits torture or inhuman or degrading treatment or punishment. Article 3 has also been interpreted as imposing an obligation on the State to carry out a thorough and effective investigation capable of leading to the identification and punishment of those responsible for alleged violations, including State agents.

10. Derogation from Article 2 (except in respect of deaths resulting from lawful acts of war) or Article 3 is not permissible, even in a time of war or other public emergency threatening the life of the nation (Article 15).

11. What form of investigation will, in those cases involving State agents or bodies, ensure their accountability for violations occurring for which they are responsible may vary in different circumstances. However, for an investigation into alleged unlawful killing by state agents to be effective it is necessary "for the persons responsible for and carrying out the investigation to be independent from those implicated in the events . . . This means not only a lack of hierarchical or institutional connection but also a practical independence . . .".<sup>1</sup> Any such investigation must be reasonably prompt, there must be a sufficient element of public scrutiny and the next of kin must be involved to the appropriate extent.

12. Through its investigatory function, the IPCC plays an important role in ensuring compliance by the state with Articles 2 and 3 where the police are concerned. An effective independent investigation followed by full criminal proceedings or, in their absence where a death is involved, an inquest are normally the means by which the state will discharge its procedural investigative obligations under Articles 2 and 3. Where it conducts or manages investigations itself, the IPCC performs the investigatory function of the police, both for the benefit of the CPS where criminal proceedings are in prospect and for the coroner where a death is concerned.

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<sup>1</sup>Jordan v United Kingdom, Application No 24746/94, Judgement of 4 May 2001, paragraph 106.

13. Terrorism raises issues surrounding the use of force by State agents in a particularly acute form. In January 2005, in response to concerns expressed by Muslim communities about anti-terrorist policing, the IPCC asked all police forces in England and Wales to refer to the IPCC any complaints or conduct matters that arose from arrests and stop and search under anti-terrorist legislation.

14. The British tradition is of an unarmed police force. However, the public need armed officers where there is a prospect of criminal use of lethal force, not least by terrorists. The IPCC recognises that officers who carry firearms are often faced with extremely difficult decisions in a life-threatening situation. However, the IPCC does not believe that the solution lies in making police officers subject to a different set of laws. It lies instead in ensuring the appropriate balance between protection of the public and the human rights of the individual, a balance that to be appropriate must take into account the circumstances in which force has been used. This can best be secured through prompt, thorough and independent investigation of any police use of lethal force, implementation of any changes in policy or practice identified as necessary in the course of investigation and prompt action to bring to justice any officers found to be at fault. The remainder of this submission outlines the process by which the IPCC aims to achieve this.

#### Investigations into police use of lethal force

15. Deliberate use of force by the police can result in deaths or serious injury in a variety of ways, for example restraint during arrest or mistreatment during police custody, as well as the use of firearms or other weapons. This submission focuses on the lethal or potentially lethal use of firearms or other weapons, where issues in the context of terrorism are most likely to arise.

16. Since the IPCC started on 1 April 2004 there have been eight occasions on which members of the public were shot dead by the police, three during the year to 31 March 2005 and five since. As a matter of course, the IPCC carries out investigations into fatal shootings itself. As a result the IPCC is developing considerable expertise in this field and through its investigations is accumulating a body of advice as to the policies and practices to be followed by the police. The names of those who died and the stage the investigation has reached are set out in the Annex.

17. The death of Mr Jean Charles de Menezes was the only one where any question of terrorism was involved. On 22 July 2005 Mr de Menezes, a Brazilian electrician who had boarded a tube train at Stockwell underground station, was shot dead on the train by armed police, apparently in the mistaken belief that he was connected with the attempted bombing incidents in London the day before. The IPCC assumed responsibility for the investigation into his death in line with its statutory duties. It has completed its investigation and referred the findings to the CPS. The IPCC is awaiting a decision from the CPS as to whether charges will be brought.

18. Six other investigations have been completed and four of these have been referred to the CPS for possible criminal proceedings. In three of these cases, the CPS decided not to prosecute. Before the establishment of the IPCC, the police would automatically refer all cases of fatal shootings to the CPS. Its independence of the police enables the IPCC to make its own assessment of where a criminal offence may have been committed and refer only those cases. This means the inquest can proceed without unnecessary delay where there is no question of criminal responsibility. As a result two of the completed investigations have not been referred to the CPS. The CPS will not normally prosecute unless there is enough evidence to provide a realistic prospect of conviction, a higher test than that applied by the IPCC for referral, and it decided not to prosecute in three of the cases referred to it.

19. The test for referral to the CPS that is applicable to the IPCC is a very low threshold and requires cases to be sent to the CPS where there is no realistic prospect of the case being prosecuted because it does not reach the evidential level. Sending cases to the CPS in these circumstances seriously slows down the handling of such cases by, in some cases, many months, creates unrealistic expectations and does not produce prosecutions. This undermines confidence in the criminal justice system. We would submit that it should be at the IPCC's discretion whether to refer a case to the CPS. This would enable inquests to proceed more quickly in cases where there is no realistic prospect of conviction. In some cases, even where there is a realistic prospect of conviction, the matter would be better dealt with by fast disciplinary action with a view to dismissal from the force; however, this would not apply to lethal use of force.

20. The CPS is still considering the position in three cases (including that of Mr de Menezes). In another four of the completed cases the inquest has yet to be held, so no detailed comment on these particular cases can be included in this submission.

21. The IPCC expects the police to refer any fatal shooting by a police officer to the IPCC immediately. The IPCC provides a 24 hour on-call service with a duty Commissioner available round the clock. When any such case is referred, the Chair and the Commissioner with responsibility for the force in question are always notified. The IPCC immediately sends a senior investigator to take the necessary measures to ensure the scene of the shooting and any evidence there may be is secure and contact is preserved with witnesses. The police hand over the case to the IPCC for investigation and a team is assembled for this purpose.

22. Since 1 April 2004 there have been three occasions on which use of firearms by the police resulted in injuries that were not fatal. Given the potential for loss of life in incidents such as these, they also need thorough investigation. The IPCC therefore carried out or managed investigations into all these incidents. None of them involved terrorism.

23. The IPCC also took over consideration of outstanding matters in a number of fatal shootings which occurred before 1 April 2004 and had been

investigated under the auspices of the Police Complaints Authority. In those cases the transitional provisions required the IPCC to operate as if it was in the shoes of the PCA and with its restricted powers and remit.

### Powers of investigation

24. The IPCC has extensive powers of investigation. The police have an obligation to co-operate, ensuring the IPCC has any relevant information and access to premises and documentation where needed. There are no exemptions from this duty, even on the grounds of national security. (This puts an onus on the IPCC to protect sensitive material and the IPCC has systems in place to do this.) Where the IPCC is conducting an independent investigation, the relevant IPCC staff have the equivalent of police powers for that purpose, including power to arrest, detain and question those under investigation. These powers are rarely used but provide an important backup.

25. Suspects questioned by the IPCC have all the rights of other suspects (set out in the Police and Criminal Evidence Act) and have to be interviewed under caution if there is any question that a crime may have been committed. As a result, those being questioned have a right to remain silent (though such silence may harm the defence in any subsequent criminal proceedings).

26. Whilst this protection is right and proper the ability of the investigation to get at the truth and to produce an investigation which complies with Article 2 of the ECHR can sometimes be hampered. This is as a result of a gap in the IPCC's powers which can prevent investigators establishing the truth. Although this has not yet arisen in a fatal shooting, there have been a number of cases involving deaths in custody where those police officers who knew what had happened refused to answer questions.

27. The Court of Appeal recently held in the case of *R (D) v Secretary of State for the Home Department (2006) CA*, in the context of death or serious injury in custody, that an investigation without the power to require answers to questions will not comply with Articles 2 and 3. The Director of Public Prosecutions and Crown Prosecutors (in respect of certain of types of offences in connection with investigations by the police and other specified bodies), the Serious Fraud Office and other bodies have such power and the IPCC understands its sister organisation in the Republic of Ireland will be given a similar power. It is a criminal offence not to provide information and documents to the Serious Fraud Office following a request from that body.

28. The government Bill, published before the last election, which would have put the Prison Ombudsman on a statutory footing, also gave his investigators the power to require the answers to questions.

29. The IPCC submits that it would be appropriate to give the IPCC the same power to require answers to questions and the provision of information and documents in the course of its independent investigations and managed investigations. In line with the Serious Fraud Office's powers it is proposed that such powers would be exercised by or with the authority of a lawyer

employed by the IPCC. The answers could not, of course, be used in criminal proceedings against whoever gave them because of the application of Article 6 of the European Convention on Human Rights but would allow the IPCC to quickly establish the truth of what happened. The IPCC believe that it would be desirable to mirror the proposal in the Republic of Ireland to be able to use answers given in disciplinary proceedings against those who answer the questions. This power would need to extend to all those who could contribute to the investigation if the IPCC is to be in a position to ascertain the facts; although such a power is less likely to be used than in the case of those under investigation, ambulance staff might, for example, have vital information.

30. The Court of Appeal also held in *R (D) v Secretary of State for the Home Department (2006) CA* on 1 March that compliance with Article 2 required a public hearing involving the applicant. If that is correct then investigations conducted or managed by the IPCC will not be Article 2 compliant where a death has occurred or there has been a near miss. There will probably be no need for such a public investigation where there is to be a Coroner's Inquest. But inquests are not held in all cases, particularly where there have been criminal proceedings and an inquest is not held in near miss cases. Criminal proceedings do not satisfy Article 2.

31. Steps may therefore need to be taken to bring independent and managed investigations into line with these requirements. This might involve the IPCC in establishing some form of public investigation in which the family of the person who died or the individual who was the subject of the near miss is able to participate and participate with adequate funding, provided by the state if necessary. The IPCC is currently considering the Court of Appeal decision and in particular whether it would be appropriate for its powers to be extended to enable it to hold such public hearings.

#### Process of investigation

32. In other respects the IPCC is confident that its independent investigations will meet the requirements of the European Convention on Human Rights. The IPCC has examined the implications of the judgement in *Jordan v the UK* and the House of Lords decisions in *R (Amin) v Secretary of State for the Home Department [2003] UKHL* and *R (Green) v Police Complaints Authority [2004] UKHL* for managed and supervised investigations under the Police Reform Act 2002 and has recognised the need to have a separate and external police force to carry out the actual investigation.

33. Using powers conferred by the Police Reform Act 2002, the IPCC has issued Statutory Guidance for the police service, which took effect on 1 December 2005. Among other things, this sets out the principles of effective investigations and is designed to secure consistently high standards of investigation across both the police service and the IPCC. There is a duty on the police to have regard to this Guidance.

34. A major criticism of the previous police complaints regime was the length of time taken to investigate complaints. This could be a cause of

considerable distress to the families involved and a source of potential injustice to the police staff involved. The IPCC is determined to ensure its investigations are conducted in a proportionate and timely way and has shown itself able to do so. The investigation into the first fatal shooting handled by the IPCC, Mr Nicholas Palmer, was completed in four months, about half the time that a similar police investigation would typically have taken under the previous system. The investigation the IPCC has concluded most recently, into the death of Mr Craig King, was completed in three months. The IPCC also ensures close co-operation between the IPCC legal teams and investigators and the CPS, so that the IPCC can significantly speed the post-investigative phase of a case.

35. The IPCC is equally concerned to ensure that the family or victims of an incident are kept properly informed about the investigation. The family of those who have died are given a dedicated Family Liaison Manager who is responsible for keeping the family informed at each stage of the investigation and explaining what action if any will be taken as a result of the investigation. This enables the IPCC to observe the obligation under Article 2 to involve next of kin to the extent that is appropriate. The IPCC also keeps the officers concerned appropriately informed. This openness with all those involved plays a crucial role in achieving confidence and trust in the investigation process.

36. The IPCC normally makes the investigating officer's report in an independent or managed investigation available to both the complainant (or next of kin in the case of a death) and those under investigation. The report, however, and indeed other information, may need to be withheld if it is in the public interest to do so; for example, if it is relevant to criminal proceedings, in the interests of national security to do so or necessary to prevent or detect crime

### Learning lessons

37. The Police Reform Act 2002 empowers the IPCC to make recommendations on police practice which have arisen from its functions as guardian and investigator of the police complaints and conduct system.

38. The IPCC has been developing its guardianship role since its start in April 2004. Learning lessons is an integral part of this. The Statutory Guidance recently published by the IPCC sets minimum standards for forces (and the IPCC) for the complaints system, as well as outcomes the IPCC expects the system to deliver. Systematic capturing and dissemination of lessons and good practice is critical in ensuring that these standards are being met and outcomes delivered. The IPCC actively encourages the police service to debrief all firearms incidents, including those that are successfully resolved, not only to ensure that any lessons are learned, but also to share examples of good practice.

39. Many lessons arising out of investigations have been fed back into operational policing. Some examples are outlined in paragraphs 43 to 49. The



IPCC is now beginning to establish a national system to identify lessons of general application from individual cases and, in consultation with the Association of Chief Police Officers (ACPO) and other key stakeholders, to agree how best to disseminate them to police forces and to monitor implementation of recommendations made. The IPCC, Her Majesty's Inspectorate of Constabulary (HMIC) and the Association of Police Authorities (APA) all have statutory responsibilities in one form or another to oversee and inspect the police complaints system and it is important to ensure that they are all in a position to monitor how police forces have applied lessons learnt to their operational policies. To monitor the position nationally we propose establishing a new multi-agency committee, including key stakeholders such as the Home Office, ACPO, APA, HMIC and the National Policing Improvement Agency in its membership. That committee may wish to dedicate part of its meetings to focusing on particular underlying themes that run through a number of cases, in order to identify areas which require more in depth review or to make recommendations to government on changes to policy or legislation.

### Changing police practice

40. As a result of the investigations into deaths resulting from lethal use of force by the police and other cases where there was a prospect of lethal force being used the IPCC has made a series of recommendations in relation to police practice. Those of particular significance are outlined below. We should be clear, however, that none of these recommendations will prevent fatal mistakes happening in future. Developments in training, policy and less lethal options should lessen the risk but will not eliminate it. The risk of mistake will be present as long as society expects police officers to carry guns to protect it from armed threats.

### **Less lethal alternatives to firearms**

41. The IPCC supports the use of less lethal weapons such as baton guns and tasers where feasible. Given concerns expressed about the use of tasers, the IPCC initially arranged to be informed of any incident in which a taser was used. However, following extensive trials and experience of the taser in practice, the IPCC no longer requires police forces to inform the IPCC when a taser is used.

42. The IPCC recognises that baton guns are not always effective in temporarily disabling a suspect and that the effect of tasers on home-made explosives of the sort that might be used by a suicide bomber is still uncertain. It therefore supports further research into the use of such weapons and the development of other alternatives to firearms.

43. If lives are to be saved by the use of such weapons, it is important that they can be effectively deployed. Mr Philip Prout was shot dead in 2004 after a baton gun failed to discharge. The baton gun used was of a type introduced in 1993, when it was used solely for public order purposes. Concerns were expressed at the time the weapon was adopted about some aspects of its

functioning. These were not addressed when in 2001 the weapon was authorised for use as a less lethal option in situations where conventional firearms were also deployed, although they were potentially of greater significance in this context. When a particular police force experienced difficulties with use of the weapon, ACPO's response, following the advice it had received, was that the problem was to be addressed as a training issue. In the course of its investigation, the IPCC concluded on the basis of forensic evidence that the butt stock of the baton gun had a propensity to misalignment by the user which prevented the weapon from firing. The IPCC concluded this was a consequence of its design and that ACPO should consider the feasibility of modifications to the weapon to reduce the risk of failure. It made various recommendations designed to improve effective use of the baton gun in the interim. Following the report, ACPO recommended to all forces that the baton gun should be used with the butt stock in the extended position only and issued comprehensive guidance to forces for its use.

### **Risk management**

44. In June 2004 a man shot his estranged wife, her sister and their mother at their home. The sisters subsequently died as a result. The incident was reported at 4.37pm but police did not enter the house until 5.41pm and the ambulance and paramedics did not arrive until 6.04pm. The subsequent review, overseen by the IPCC, concluded that, because higher priority was given to locating the gunman than helping those who had been shot, it took too long for the police to get to the scene and to get urgent medical help to the victims. It concluded that the failings were embedded in police policy and training in responding to firearms incidents, which essentially sought to eliminate risk rather than manage it, resulting in an overly cautious approach to the deployment of armed officers. The review resulted in a complete change of policy in the force concerned. The ACPO Manual of Guidance on Police Use of Firearms, which sets out the framework for police use of firearms, has also been amended to take into account the recommendations from the investigation, which sought to balance the needs of victims with the pursuit of offenders.

45. The "culture of caution" apparent in this incident seemed to have been reinforced by the time generally taken to investigate lethal firearms incidents and the tendency to treat officers as suspects in a murder inquiry. The IPCC gives a high priority to cutting out unnecessary delays in investigations for which it is responsible, which has already enabled it to reduce the time usually taken. The IPCC also takes the view that police officers who fire fatal shots on duty should not be treated as suspects unless there is evidence to suggest a criminal offence may have been committed.

### **Records**

46. Proper recording of events and decisions is of critical importance in incidents involving the use of firearms. In the case of Mr Harry Stanley, who was shot dead in 1999 when the table leg he was carrying was mistaken for a

gun, the firearms officers involved had followed national police procedure in conferring with each other before writing up their notes. The case was not investigated by the IPCC as it was not in existence and its predecessor body, the Police Complaints Authority, did not have the power to investigate. In making a decision in relation to the disciplinary outcome, however, the IPCC observed that the practice of allowing officers to confer was not in the public interest. The IPCC is calling on the ACPO Committee on the Police Use of Firearms to revise, in conjunction with the IPCC, the current protocol on how officers write up their accounts of fatal incidents as a matter of urgency.

47. In a recent case involving a firearms operation (where no firearms were discharged), use of both firearms and dynamic entry/use of distraction devices was authorised. Police notes recorded the authorisation but not the reasons for them. The IPCC accepted that authorising the use of firearms was reasonable in the circumstances but considered the tactics of dynamic entry and use of distraction devices questionable. However, the IPCC considers it important that the decision-making process is fully recorded so that the reasons for the action taken are open to scrutiny. This will be an even more crucial factor where use of firearms results in a death.

### **Incapacity**

48. The IPCC is calling for further research into how firearms officers should deal with people under the influence of alcohol or drugs or suffering from mental health problems. Research has shown that they are disproportionately likely to be shot by the police. This is because the basic principle of firearms operations, that people will surrender to armed police rather than risk being shot, is less likely to hold good when people are not responding rationally to challenge.

49. This was apparent in the case of Mr Andrew Kernan (diagnosed as suffering from schizophrenia) who was shot dead in 2001 after police were called to his home by mental health workers when he was seen to be in possession of a samurai sword. He had failed to respond to warnings after threatening police officers. The IPCC recommended that all police officers should receive skill-based scenario training and that consideration be given to providing fast access to professional advice and support for police officers seeking to resolve high risk situations. The IPCC raised these concerns at a national level with the Home Office and ACPO in order to get a consistent approach across the country and to capture best practice.

### **Tactics for confronting suspected 'suicide bomber'**

50. This submission has not addressed tactics for confronting suspected suicide bombers. Our report into the death of Mr Jean Charles de Menezes at Stockwell underground station on 22 July 2005 is currently being considered by the Crown Prosecution Service so we do not feel it is appropriate for us to comment further at this stage.

3 March 2006

## ANNEX

### Fatal shootings since 1 April 2004

	<b>Name</b>	<b>Date of shooting</b>	<b>IPCC Investigation</b>	<b>Referral to CPS</b>	<b>Inquest</b>
1.	Philip Prout	4 May 2004	Completed	Yes – no charges	Completed
2.	Nicholas Palmer	12 May 2004	Completed	Yes – no charges	Pending
3.	Simon Murden	22 March 2005	Completed	Yes – decision awaited	Pending
4.	Azelle Rodney	30 April 2005	Completed	Yes – decision awaited	Pending
5.	John Mark Scott	16 July 2005	Completed	No	Pending
6.	Jean Charles de Menezes	22 July 2005	Completed	Yes – decision awaited	Pending
7.	Craig King	10 September 2005	Completed	No	Pending
8.	Philip Marsden	19 December 2005	Ongoing	Not yet applicable	Not yet applicable