



**INQUEST STATEMENT TO LEVESON
INQUIRY - MODULE 2**

March 2012

Leveson Inquiry - Module 2

Statement from INQUEST

Introduction

1. INQUEST is a charity founded in 1981 to support the families of those who die in state custody. Since then our services have expanded and INQUEST now provides both a general telephone advice, support and information service to any bereaved person facing an inquest and a free, in-depth complex casework service on deaths in state detention or involving state agents. We additionally work on other cases that also engage Article 2 of the ECHR and/or raise wider issues of state and corporate accountability. INQUEST has worked with hundreds of bereaved families following deaths in police custody or following contact with the police or police shootings. These include some of the most significant and controversial deaths in the last thirty years including Blair Peach, Richard O'Brien, Shiji Lapite, Ibrahima Sey, Wayne Douglas, Brian Douglas, Christopher Alder, Roger Sylvester, Jean Charles de Menezes, Ian Tomlinson, Azelle Rodney, Sean Rigg and Mark Duggan.
2. Our specialist casework service gives INQUEST a unique perspective on how the whole system operates through the monitoring of the investigative and inquest process. We work with families from the outset, giving us a unique overview. It enables us to identify systemic and policy issues arising from avoidable deaths and the way they are investigated. Our publications include: *Unlocking the Truth: Families' Experiences of the Investigation of Deaths in Custody* (2007), an extensively researched and referenced report which describes the experiences of families bereaved by deaths in custody from the time of death to the conclusion of the investigation and inquest and situates them within the political, recent historical and legal context.
3. Drawing on this casework and research, INQUEST campaigns with and on behalf of bereaved families and their legal representatives both for changes to practice to prevent deaths, and for changes to the legal process that follows a death, to improve the investigation and inquest process and accountability.

4. INQUEST also co-ordinates the INQUEST Lawyers Group (“ILG”) which is a national network of over two hundred lawyers who are willing and able to provide preparation and legal representation for bereaved families. Membership is open to all lawyers who represent bereaved families. The ILG also promotes and develops knowledge and expertise in the law and practice of inquests by providing training and acting as a forum for the exchange of ideas and experience.
5. This work has led INQUEST to be acknowledged as an expert in the field. For example, it was the sole non governmental member of the Forum for Preventing Deaths in Custody and is represented on the Ministerial Roundtable on Prison Suicides and the Independent Police Complaints Commission Advisory Board. INQUEST is now on the Ministerial Board on Deaths in Custody, which has replaced both the Forum and Roundtable, and Deborah Coles, one of its Co-Directors, is a member of the Independent Advisory Panel on Deaths in Custody. INQUEST also sat on the Ministry of Justice Coroners Service Stakeholder Forum until it was disbanded in 2011.

INQUEST’s submission to the Leveson Inquiry

6. The Inquiry has expressed interest in receiving submissions on the *“experiences of the victims of crime and the public more generally, who feel that they have been adversely affected (perhaps through a data leak or breach, or through the reporting of a case) by the current relationship between the press and the police”*.
7. INQUEST’s submission examines a recurring issue of concern to bereaved families and the people who work with them: misinformation following deaths involving the use of lethal force by the police. As well as providing a contextual backdrop to the problem we highlight a number of examples from recent, high-profile deaths in police custody, following police contact or as a result of police shootings and outline our view that the current investigation and complaint regime is not adequate to respond to this issue.

The contextual background

8. Whilst the number of deaths involving police use of force is a small proportion of the total number of deaths in custody, these deaths have often been the most controversial. Since 1990, unlawful killing verdicts have been returned in nine death in police custody/ following police contact cases, none of which has yet resulted in a successful prosecution.
9. Deaths involving the use of force by state agents have been disproportionately of people from black and minority ethnic communities and of people with mental health problems. Cases have revealed a use of violence on some occasions that is greatly disproportionate to the risks posed raising questions about the attitudes and assumptions of some state officials and pre-conceived ideas about the propensity to violence of particular groups of people. This has also profoundly impacted on police and community relations, resulting in a lack of confidence in the investigation system and considerable public anger.
10. Misinformation about such contentious deaths not only damages bereaved people; but it also undermines public confidence in authorities. Misinformation following contentious deaths makes it hard to allay any suspicions of wrongdoing and failures in the minds of bereaved families and the public at large. As well as obscuring the true picture of what happened, misinformation fuels fears that the state is attempting to deliberately prevent information about its own culpability in deaths becoming publicly known.

The importance of accurate press reporting of deaths in custody

11. INQUEST has been at the forefront of working to ensure greater openness and accountability following contentious deaths. Deaths in custody raise important questions about power and accountability. In a free and democratic society, such deaths should be subject to particularly close public scrutiny. For this reason it is imperative that the inquest system is open and transparent so that justice is seen to be done and public confidence in state bodies is upheld. As an organisation we have been at the forefront of opposing attempts by government to make inquests less accessible to the family, public and the media – including successful lobbying

against government attempts to introduce 'secret inquests' through legislation in both the Counter Terrorism Act 2008 and the Coroners and Justice Act 2009. Our comments about how the relationship between the police and some in the media has impacted in these inquests should be understood in this context.

12. INQUEST believes media scrutiny of the investigation and inquest process following a death in custody or a death following contact with the police serves a vital public interest. It provides a counterweight to a tendency towards secrecy where deaths may have been avoidable, particularly where state agents are involved.

13. To that end, during the government consultation process on the draft Coroners Bill in 2006, INQUEST worked alongside the NUJ and other media organisations to oppose clauses which would have imposed reporting restrictions in relation to some inquests. The stated intention was to protect vulnerable families and prevent personally damaging and sensitive information from being salaciously reported in the media when there was no public interest in reporting the case (e.g. suicide at home and the inquest revealed alcoholism and relationship breakdown). Indeed the police sought our advice about how they should approach the media and what the legal framework was in relation to reporting in a very sensitive case involving the death of a child found hanging at home. They were concerned that reporting about the details about the family situation and the death was not in the public interest and would be highly traumatic for the bereaved family. Many charities representing bereaved people were in favour of the proposals in the draft Bill but INQUEST's view was that the implications of any reporting restrictions in these sensitive cases would have opened the possibility of restriction on reporting on cases where there was a significant wider public interest. Despite our concern, and indeed families reporting their concerns to us, we felt that this issue was better dealt with through better training and an agreed ethical framework within the profession alongside a robust complaints mechanism, rather than through restrictive legislation relating to the conduct of inquests (alongside our and others concern that it would also result in a high number of legal challenges and add an additional layer of complexity). These views were supported by a number of print media representatives at a consultation event organised by the Ministry of Justice in July 2007.

14. In a number of deaths involving state agents some print journalists (alongside colleagues in the broadcast media) have played a key role in exposing the misinformation that has created a distorted understanding of the circumstances of some of the most controversial deaths.
15. For example, the disturbing issues surrounding the death of Ian Tomlinson (who was unlawfully killed on 1 April 2009 in the context of the heavily-policed and high profile G20 demonstration) could have been swept under the carpet and the cause of his death dismissed as being from 'natural causes' without the benefit of the video footage and photographs that entered the public domain to directly challenge the police version of events. INQUEST is clear that if the video footage had not been published by *The Guardian* in early April 2009, the shape of the investigation into Ian Tomlinson's death would have been very different. Indeed, the Independent Police Complaints Commission (IPCC) acknowledged in their media report: *it may well be the case that, but for this evidence [photos/video] Mr Tomlinson's death may not have resulted in the criminal investigation that was launched by the IPCC on 8th April*".

Misinformation following a death in police custody

16. Despite the positive role journalists can play in exposing the truth, as seen in Ian Tomlinson's death, INQUEST has ongoing concerns about the way unproven and inaccurate information is often reported about both the deceased and the circumstances of the deaths before any investigation has concluded. We have observed a pattern, particularly in relation to contentious deaths in police custody or following contact with the police, where partial and untested information about the initial post mortem findings (conducted on behalf of the coroner and sometimes reported before the report is complete) is reported by the media as fact, thereby creating an impression that acts or omissions of the police have played no part in the death. This is particularly problematic as most of these deaths involve at least one other post mortem and the medical cause of death is frequently a highly disputed issue at the eventual inquest often involving days of evidence from different expert witnesses. Moreover, coroners, when instructing the pathologist for the initial post-mortem, often rely on the police for information about the circumstances of the death and these briefings can often be partial or inaccurate.

17. The early partial and inaccurate reporting of events in the media creates an inaccurate public perception about the nature of the death. These deaths are usually subjected to public scrutiny before a jury at an inquest but the initial reporting will have created a myth about the deceased that is then a challenge for the family and their legal team to overcome.
18. Deaths in custody often take place in circumstances where the only witnesses are those whose conduct might be called into question. One of the major causes of dissatisfaction with the investigation system has been its lack of independence, impartiality and transparency.
19. Attempts to tarnish the reputation of the deceased or their family are often perceived by families, those who work with them and the wider community as attempts to deflect attention away from official incompetence or wrong doing. These attempts to demonise the person who has died and build up a negative reputation creates the idea of an “undeserving” victim. Many families have described how they felt that instead of the death of their loved one being investigated, it was their private life and that of their relative that was subjected to the most scrutiny.
20. As a consequence these families frequently feel as if they are treated as criminals rather than victims and that they and their relatives are forgotten or considered undeserving of sympathy and support.
21. For clarity, our analysis of misinformation following deaths in custody is akin to the understanding of institutional racism – we do not and have not argued that there is an active conspiracy within the investigation process to cover up wrongdoing but that the closeness of many involved in such investigations to those involved in the death can lead to an inability to stand back and take a completely impartial and independent view. In our view, this potentially applies equally to sections of the media, the police, coroner’s officers (many of whom are supplied to the coroner by the local police) and to the IPCC itself.
22. INQUEST’s view is that there is an all too easy acceptance of the police version of events at the outset from some in the print media and the close relationship between some and police sources has led to what can only be described as a process akin to

regulatory capture. It appears to us that the relationship is often mutually interdependent and therefore the ability and willingness to keep a professional distance and an open and fair mind about all sources of information is sometimes compromised. A neutral and questioning stance appears to go missing for some of the media as they seem to have unquestioning faith in the accuracy of police sources of information, in a manner that often ensures the police are seen in a positive light when the reality may subsequently turn out to be more complex.

23. This has belatedly and very recently been recognised by the IPCC and new guidance has been issued on *“Communicating with the media and the public in IPCC Independent and Managed Investigations”*¹. The guidance, directed at the police, recognises that *“in the early stages of an investigation, the information which is available is likely to be incomplete and/or unverified”* and recommends that if the police *“identify material misinformation or areas of concern regarding rebuttal, they should immediately bring them to the attention of the IPCC by contacting the Press Office.”* It does not specifically deal with the issue of misinformation in the press from police sources but recommends that *“any briefing or comment should be attributed to a named police spokesperson. Unattributed comment or off-the-record briefings should be avoided”* whilst finally stating that the timing and content of any statements issued by the police are *“a matter for the police, for which a named senior officer should be responsible”*. Though the IPCC guidance encourages the police not to make unattributed comments it does not prohibit either that practice or off the record briefings. Given its limited scope and tentative language, the guidance is unlikely to tackle the long established pattern of misinformation described below.²

Examples

24. The problem we outline above is not a new phenomenon. The cases INQUEST has worked on where this has been documented include those of: Richard O’Brien (1994), Wayne Douglas (1995) Shiji Lapite (1994), Roger Sylvester (1999), Harry

¹ IPCC Guidance on Communicating with the Media and the Public in IPCC Independent and Managed Investigations (14th February 2012) available from: <http://www.ipcc.gov.uk/en/Documents/IPCC%20Guidance%20on%20communicating%20with%20the%20media%20and%20the%20public.PDF>.

² For example, less than a week after the IPCC Guidance was issued and following the police shooting of a 25 year old man in Forest Hill on 19 February 2012, the Metropolitan Police Service released a general statement which asserted *“a number of knives were recovered from the scene”* without attributing this to a named police spokesperson (see <http://content.met.police.uk/News/Man-shot-by-police-in-Lewisham/1400006745524/1257246745756>). The IPCC investigation into this incident is ongoing.

Stanley (1999) and Mikey Powell (2003)³. *The Guardian* journalist Simon Hattenstone reported these examples in his 2005 article '*We cannot take them at their word – "police sources" routinely vilify victims and excuse police actions*'⁴.

25. In response to those in the media who have used arguments about press freedom to justify their unquestioning repetition of police sources of information we would argue that the principles of transparency and establishing the truth require a more neutral stance where judgement is suspended until all the facts have been established and tested in a legal forum.
26. Time and again this kind of misinformation is fed to unquestioning journalists within the print media who report unsubstantiated comments with damaging consequences. Until recently these kinds of reports would smear the deceased and sow doubt about the circumstances of the death that would remain unchallenged apart from by family members and campaigns until the inquest when it would then be unlikely to make the front pages. The advent of widespread use of social media and the emergence of citizen journalism has made it harder for this sort of systemic spin to remain unchallenged.
27. In this submission we highlight three recent examples and one historical example for the Inquiry to support our analysis of the problem outlined above.

Wayne Douglas

28. Wayne Douglas, a 25-year-old black man, died in Brixton police station after a struggle during the course of his arrest on 5 December 1995. One of the central issues for the jury at this inquest was the exact cause of his death. The first post mortem report conducted by Dr Freddie Patel found that he died of "hypertensive heart disease". He had no history of heart problems. He was a large man who weighed approximately 14 stones (90kg). The family's expert evidence directly challenged the police's version of events that he died of a heart condition and showed that he was completely healthy. The family's lawyers suggested that his death was caused solely by the manner of his arrest and his subsequent treatment at

³ INQUEST case briefings available from: www.inquest.org.uk

⁴ Annexed to this Statement as Appendix 1. Also Available from: <http://www.guardian.co.uk/politics/2005/aug/18/media.pressandpublishing>

the police station. The jury believed the family's expert witnesses and decided his death was contributed to by positional asphyxia and exhaustion not heart disease. At the inquest, both Professor Bernard Knight⁵, who conducted the second post mortem and Dr Nathaniel Carey who reviewed both post mortem reports gave evidence to say they disagreed with Dr Patel's findings and that Wayne Douglas did not have any heart disease or problems. Dr Carey 'wholly disagreed with the findings and the condition described by Dr Patel'⁶ and that 'in his opinion he felt that restraint causing positional asphyxia must be considered in the demise of Wayne Douglas'⁷. The jury at the inquest in December 2006 found Wayne Douglas had died of 'left ventricular failure due to stress and exhaustion and positional asphyxia.... following a chase and a series of restraints, in prone position, face down, as used in current police methods'.

29. Two weeks after Mr Douglas' death in December 2005 there were disturbances in Brixton and the police released details of the initial post mortem and their interpretation of the second post mortem to the media. It was reported in the Times that '*A second post-mortem examination on the body of Wayne Douglas, whose death in police custody sparked last week's riot in Brixton, south London, has vindicated the police version of events, Scotland Yard said last night.* There were also similar reports in a number of other newspapers (see appendix).

Roger Sylvester

30. Roger Sylvester died on 18 January 1999, seven days after being restrained and handcuffed by eight Metropolitan Police officers outside his home. He was a 30 year old African Caribbean man.
31. On 14 January 1999, while Roger lay in a coma at hospital, Scotland Yard issued a press release describing Roger banging on a neighbour's door in an 'aggressive and vociferous manner'. It was quickly established that he had in fact been banging on his own door and that there was no evidence that he had been behaving

⁵ P 42 line 25 -28 *Transcript of the summing up and verdict of the Inquest into the death of Mr Wayne Andrew Douglas*, 5th & 6th December 1996. Transcribed from tapes by Messers Harry Counsell & Co.

⁶ P 65 line 19 - 20 op.cit

⁷ P 65 - line 28 - 30 op.cit

aggressively. A complaint to the then Assistant Chief Commissioner, John Stevens, resulted in an insufficient apology

32. At the opening of the inquest into Roger Sylvester's death in January 1999, the then Coroner's pathologist Dr Freddie Patel made completely unfounded, unprofessional, inaccurate remarks to the press implying Mr Sylvester was under the influence of crack cocaine at the time of his death. The remarks were made in an "off the cuff" briefing to journalists outside the Coroner's court. These remarks were subsequently reproduced in newspapers. Following a complaint by the family, Dr Patel was removed and another pathologist appointed in his place. A further complaint to the General Medical Council resulted in a finding on 9 January 2002 that Dr Patel was guilty of serious professional misconduct. No apology has been received from Dr Patel or the then Coroner, nor has any evidence been produced to support the rogue remarks.
33. On 30 January 1999, *The Times* newspaper ran a full-page article claiming that police officers believed Roger's death was due to his heart being 'swollen by crack cocaine'. The article repeated other police misinformation, including the claim that he had been 'flinging himself to the ground' when police called for reinforcements. It also reported that the officers concerned had received death threats following Roger's death. Again, no evidence was ever produced to support any of these allegations.

There were protracted legal processes connected with the inquest into his death that resulted in the unlawful killing verdict that was returned at the inquest in 2003 being overturned in the High Court on the grounds of errors in the coroner's summing up. A new inquest was not ordered. The jury at the original inquest found that Roger died due to hypoxic brain damage which resulted from a cardiac arrest caused by the restraint used upon him. In particular, they found that the position and duration of the restraint proved fatal.

Jean Charles de Menezes

34. Jean Charles de Menezes was shot dead by police on a London Underground train at Stockwell Tube Station on 22 July 2005. In the aftermath of the death there was widespread reporting that he had failed to stop when challenged, had been wearing a bulky jacket and had vaulted ticket barriers whilst being chased by police firearms

officers. This remained the public version of events until the leak from the IPCC in August 2005.

35. INQUEST produced a Briefing on the case which included a discussion around the failure to correct misinformation about Jean Charles de Menezes' death⁸:

"24. The Commissioner of the Metropolitan Police has since accepted on the record that it was ill-judged of him not to act to correct the inaccurate information initially placed into the public domain regarding Jean Charles de Menezes after he was shot. This included that he had been wearing a bulky jacket and had vaulted the ticket barrier supposedly fleeing the police. This kind of misinformation has been a feature of other contentious deaths in custody where there have been concerted attempts by the authorities to attempt to tarnish the reputation of the deceased in order to deflect attention away from official incompetence or wrong doing.

25. The Metropolitan Police or indeed the IPCC should have issued an early statement simply correcting the erroneous initial impressions. This would not have undermined or compromised the IPCC's investigation in any way. In fact it would have assisted it by sending out the correct factual scenario to potential witnesses.

.....

28. The matter of misinformation is now the subject of formal complaint by the family and second IPCC inquiry, named 'Stockwell 2'. The original complaint included criticism of the police for failing to correct misinformation put out to the media. However, the IPCC in accepting the complaint, said it could not cover this latter aspect because the IPCC itself was responsible for an instruction that the police should not comment further in any way on the shooting. However, even if the reasons for such an instruction were sound, the IPCC should have given consideration to putting out a statement correcting some of the most obvious misinformation still in the public domain about Jean Charles de Menezes' conduct and demeanour (such as vaulting the barrier and wearing a bulky jacket). Instead, it was only as a result of a leak to ITN, that the family and the public were made aware of the fact that he had done nothing at all to arouse suspicion."

36. The subsequent IPCC report (Stockwell 2) did identify failings in the communications procedures within the MPS and as this extract from the IPCC press release makes clear upheld one of the family complaints.

The family complained that the Commissioner of the Metropolitan Police, alone or with others, released inaccurate public statements concerning the circumstances of his death, concurred with inaccurate information, or failed to correct such information.

⁸ Annexed to this Statement as Appendix 2

The officers subject to investigation were Sir Ian Blair, Commissioner of Police of the Metropolis, and Assistant Commissioner Andrew Hayman.

In relation to statements made on 22 July, the complaint against the Commissioner is not substantiated and there is no evidence of misconduct. However the Metropolitan Police Authority (MPA) should consider why the Commissioner remained uninformed of key information emerging during 22 July 2005.

The investigation report finds that the matters relating to Assistant Commissioner Andrew Hayman are substantiated. It is recommended that the MPA consider what action they intend to take concerning the conduct issues identified in relation to AC Hayman.

The report concludes that AC Hayman's actions in relation to his briefing the Crime Reporters' Association (CRA), at about 4.30 p.m., and then misleading the attendees at the 5.00 p.m. management board meeting and sub-meeting led to inaccurate or misleading information being released by the Metropolitan Police.

AC Hayman either misled the public when he briefed the CRA that the deceased was not one of the four or when he allowed the 6.44 p.m. 22 July press release to state that it was not known if the deceased was one of the four. He could not have believed both inconsistent statements were true.

The investigation concluded that there were serious weaknesses by the Metropolitan Police in the handling of critical information including within the senior management team.

37. Importantly the IPCC made five recommendations including the following:

The MPS reviews the purpose of the Crime Reporters' Association briefings including the potential for the MPS to be compromised if they are briefed outside an agreed media strategy.

38. Even though the IPCC upheld the complaint against AC Hayman and recommended to the Metropolitan Police authority that disciplinary action was taken against him the MPA declined to do so and in a press release on 12 December 2007 said that their view was that *'it was more realistic to suppose that this was caused by carelessness amounting to a lack of conscientiousness and diligence rather than by deliberate dishonesty or lack of integrity on his part.'*

39. The MPA justified its decision and said it was satisfied that the conduct would not justify the imposition of any sanction under the Police (Conduct) Regulations 2004. The MPA therefore concluded that there should not be disciplinary proceedings and that the matter should be dealt with by the Commissioner and the Chair of the MPA Professional Standards Committee giving AC Hayman advice on the standard of his future conduct.

40. The final decision whether disciplinary proceedings should be brought against AC Hayman rested with the IPCC which, after taking legal advice, agreed with the MPA decision. AC Hayman had already handed in his resignation on 4 December 2007 and as is well documented, retired from the Metropolitan Police.
41. This chain of events was met with incredulity by the bereaved family and again created the perception of the police and those to whom they answer being complicit in protecting them from proper accountability.
42. Despite the IPCC report and the high profile inquest note how the initial misinformation continues to circulate. For example, the caption under an image of Jean Charles de Menezes on *The Telegraph* website on 14 July 2011 (that accompanied, ironically, an article entitled "Phone hacking: Family of Jean Charles de Menezes targeted")⁹ read "Image 2 of 2: Jean Charles De Menezes who was shot dead by police *after failing to stop when challenged* (our emphasis) at Stockwell tube station".
43. On 14th July 2011 The family has written to the prime minister asking him to extend the remit of the phone-hacking inquiry to establish whether police officers involved in the Menezes investigation were leaking information to the press – either for financial benefit or to prop up the reputation of Scotland Yard.

The letter took particular issue with the relationship between Andy Hayman – the former assistant commissioner who ran the first phone-hacking inquiry – and News International.

"In the Independent Police Complaints Commission's Stockwell 2 investigation the practice of police off-the-record briefings to the media was scrutinised," the letter notes, "and the IPCC found that Andy Hayman had deliberately 'mised the public' over claims the person who had been shot dead by the police on 22 July 2005 was one of the four men who were being sought in connection with the attempted bombings of the previous day.

"Recent coverage of the police's role in investigating allegations of phone hacking, including Mr Hayman's evidence to the home affairs select committee, have highlighted his close relationship with News International, including potential financial links. We are conscious that the newspapers owned by News International

⁹ See Appendix 3. Also available from: <http://www.telegraph.co.uk/news/uknews/phone-hacking/8637532/Phone-hacking-Family-of-Jean-Charles-de-Menezes-targeted.html>

provided some of the most virulent and often misleading coverage around Jean's death and its aftermath."

The letter was also sent to Nick Clegg, Ed Milliband and Keith Vaz, chairman of the home affairs select committee. It concludes:

"Considering what is now known about Andy Hayman's relationship with News International we would like the inquiry into this scandal to extend its remit to scrutinise whether police officers involved in the Menezes investigation were leaking information to the press, either for financial benefit or in a vain effort to deflect criticism from the actions of the Metropolitan police which had led to Jean's death.

"These issues are of extreme importance to our family, whilst the accountability of the police and how politically sensitive criminal investigations are reported in the media are clearly a matter of public interest. We hope you will take these issues forward on our behalf."

Ian Tomlinson

44. 47 year old Ian Tomlinson died on 1 April 2009 in the context of a heavily-policed and high profile G20 demonstration. An inquest jury in May 2011 returned a verdict that he had been unlawfully killed. A police officer is now facing trial for manslaughter later in 2012.

45. In our briefing on the case published in June 2009 (see Appendix 4) we said:

11. *The IPCC's failure to treat the police version of events with a healthy degree of scepticism or to probe police conduct is detrimental to its independence and credibility, particularly in light of the IPCC's ...track record.¹⁰ The clear impression that emerged was that the IPCC and the Metropolitan Police sought to avoid an investigation into Mr Tomlinson's death by suggesting incorrectly that he had died of natural causes.*

12. *On 1 April 2009 the IPCC's London Regional Director agreed a Metropolitan Police press release that misleadingly failed to mention that there had been police contact with Ian Tomlinson before his death but did focus on the apparently exaggerated throwing of bottles by protesters at police administering first aid. Evidence quickly unfolded that seriously undermined the police's account of events, yet it took until 8 April before the IPCC instigated an independent investigation. That the IPCC subsequently sought to distance itself from the above press statement appears to confirm the troubling nature of the IPCC's initial collaboration with the police.*

...

14. *The family have expressed concern about the apparent delay of the IPCC in seizing MPS and City of London Police video footage of the incident. This was compounded by the fact that the chairman of the IPCC, Nick Hardwick, said on Channel 4 News*

¹⁰ National Audit Office. *The Independent Police Complaints Commission - Report By The Controller and Auditor General* HC 1035 Session 2007-2008, 14 November 2008

that there was no CCTV of the incident and that there were no cameras in the location where Ian Tomlinson was assaulted. The family continue to meet the IPCC for periodic updates but are routinely advised that little can be disclosed to them on account of the ongoing investigations. As a result the IPCC have so far failed to instil confidence in the family.

...

Misinformation

24. *After working with families bereaved by deaths following police contact for 30 years it comes as no surprise to INQUEST that the initial reports of the death of Ian Tomlinson were at best partial and at worst an attempt to deflect attention from the potential wrongdoing of police officers.*
 25. *The family of Ian Tomlinson is concerned about information that has entered the public domain via the press and that much of it appears to have been given to the press by public authorities.*
 26. *This kind of misinformation and spin has been a feature of other contentious deaths in custody where we have seen concerted attempts by the authorities to deflect attention away from official incompetence or wrong doing. Four hours after Ian Tomlinson's death the Metropolitan Police issued a statement announcing the death, which included the claim that police officers administering first aid were impeded by protesters throwing missiles. These allegations are strenuously denied by protesters who had gone to his aid and called an ambulance.*
 28. *This pattern further underlines the importance of a robust and immediate independent investigation. There is an obvious risk that if police officers (who may be motivated towards protecting their own) have conduct of the early stages of an investigation their approach may taint this process.*
 29. *The matter of misinformation is now the subject of formal complaint by Ian Tomlinson's family and a second IPCC inquiry into media handling by the MPS and City of London police.*
46. The IPCC investigation¹¹ that was published 9 May 2011 concluded that there was no deliberate attempt to mislead the public.
47. However the IPCC report includes a paragraph about the pathologist in the introduction to the media report which demonstrates their lack of a thorough understanding of the context in which they work, which we think in turn informs (or misinforms) their relationship with the media. The report notes at page 4 *it was indeed the finding of an independent pathologist on 3 April that Mr Tomlinson had died of a*

¹¹ IPCC independent investigation into the complaint by the Tomlinson family about media handling by the police following the death of Ian Tomlinson on 1 April 2009
[:http://www.ipcc.gov.uk/en/Documents/tomlinson_media_report_090511.pdf](http://www.ipcc.gov.uk/en/Documents/tomlinson_media_report_090511.pdf)

heart attack. The same pathologist also gave his opinion that wounds found on Mr Tomlinson had most likely not been caused by a baton strike or a dog bite, thus giving even less reason to consider there had been police contact.' However this was the same pathologist, Dr Freddie Patel, who had given the 'off the cuff' media briefing about Roger Sylvester and that the GMC had found guilty of serious professional misconduct (see paragraph 32 above)

48. We would have expected the IPCC to have had knowledge of the work of pathologists in relation to contentious deaths (including those in any form of custody or following contact with state agents) and that they should have been aware of the information about the professional standing Dr Patel who carried out the first post-mortem in this case. This should have informed their thinking and approach and raised both questions about the choice made by the coroner to instruct him, and caution about relying on his findings particularly in relation to any discussions with the media. However it appears from the IPCC report that they relied heavily on these findings at the time and sought to again in introducing the report.
49. Most importantly, as demonstrated by the evidence heard at Ian Tomlinson's inquest, it is a widely held view amongst reputable forensic pathologists that their final judgment about the cause of death must involve engagement with the established facts about the death and receipt of scientific results of tests on samples (not available to the pathologist at the time in this case), and therefore any rush to early judgement and public distribution of initial findings, however tempting, must be avoided in the vast majority of cases. The IPCC were not operating in this framework and seemed to lack this kind of understanding which should have informed their approach to their report on media handling.

Mark Duggan

50. Mark Duggan was shot dead by Metropolitan Police on Thursday 4 August following the interception of the taxi he was travelling in by armed police. Initial media reports based on verbal information from the Metropolitan police and the IPCC said that there had been an exchange of fire between Mark Duggan and armed Metropolitan police officers. However this turned out to be untrue. The only shots

confirmed to have been fired at the scene came from police issue weapons and the fired bullets recovered were similarly police issue hollow points.

51. As we have described, similar high profile cases - Ian Tomlinson and Jean Charles de Menezes - had been 'mismanaged' and the public had been assured following costly investigations into media handling that the same process of allowing inaccurate information to remain in the public domain uncorrected would not happen again. The Metropolitan Police Authority Stockwell Scrutiny report of 2008 asserted '*The MPS is a very different organisation than it was in July 2005... Both the organisation and individuals within it have learned from the experience. The shortcomings shown up in Stockwell Two will not re-occur.*'¹² But despite the impression being given following Stockwell 2 and the media handling report following the death of Ian Tomlinson that lessons were learned the same damaging process of inaccurate information being given to the media occurred again. Whilst the IPCC later put out a statement that said one of their staff members had 'inadvertently' misled the media, the damage in terms of family and community confidence in the independence of the investigation had been done and there now has to be a huge effort to repair that damage. INQUEST has repeatedly reported to parliamentarians, policy makers and investigators that ensuring that the early stages of an investigation are handled with absolute integrity and propriety is crucial to the family having any confidence in the process.

52. The matter of misinformation was the subject of a complaint by Mark Duggan's family and this was formally recorded by the IPCC. A formal apology was made in writing to the family by Amanda Kelly, Director of Business Services at the IPCC.

Concluding observations

53. There is a fine line to be navigated between balancing openness and transparency and respect for bereaved people and the circumstances in which their relatives have died. Bereaved families who feel they and/or the investigation of the death of their relative has been "*adversely affected... by the current relationship between the press and the police*" currently have no adequate mechanisms for complaint or redress.

¹² para, 11, *Metropolitan Police Authority Stockwell Scrutiny Final*, July 2008

Ethics and Training

54. As we have shown, some journalists either knowingly or unwittingly collude with the police by accepting information from them as fact without checking its veracity. We believe this to be a key question of journalist ethics and training. Our experience is of both the best and the worst of the profession: those who operate with the utmost integrity in the service of reporting the truth and those who do not.
55. The government, following the passing of the Coroners and Justice Act 2009, has declared its intention to appoint a Chief Coroner. Whoever takes up this post would be well placed to be involved in working with the profession and others to improve guidance in this area. The Ministry of Justice, which is currently responsible for the administration of the coronial system, has previously been engaged with the media (see paragraph 13) in relation to the reporting of matters relating to deaths involving inquests. Liaising with the media will be an important part of this role and a good opportunity to discuss their working relationship with the police and others and develop good practice in relation deaths that will be subject to a jury inquest.

The Independent Police Complaints Commission

56. We do not believe that the IPCC can be the sole forum for complaints about the links between the police and the publication of inaccurate information about the deceased and their family.
57. With new leadership in the recent appointment of a new Chair, Dame Anne Owers, and a more robust approach, there is an opportunity that the IPCC could change, but it remains in a difficult position to investigate complaints about processes that it itself is implicated in, as evidenced by at least the three cases referred to. In a number of these high profile cases, the IPCC has often been tasked with investigating complaints about its own relationship with the media and its lack of challenge to the police provision of information it knows to be inaccurate and the reporting of it by the media.

58. For the reasons set out above, we think the recently published IPCC guidance to police on communicating with the media and the public¹³ is unlikely to tackle the wider, underlying problem of misinformation in the press following a death in police custody. The issue needs to be addressed by Police and Crime Commissioners, the IPCC and the Chief Coroner in dialogue with the media.
59. Families do not have any other avenue for redress and whilst the high profile cases may have resulted in the IPCC media specific investigations the process of feeding the media misinformation is not only at play in these cases. The kind of information designed to tarnish the name and reputation of the deceased is made available to local media and damaging reports are published in a sensationalist manner that have the same traumatising affect of the bereaved family and yet there is no effective avenue for complaint.
60. There needs to be an effective avenue for families to complain about misreporting and reputational damage and some possibility of meaningful redress and recompense.

INQUEST

28 March 2012

¹³ ¹³ IPCC Guidance on communicating with the media and the public
http://www.ipcc.gov.uk/en/Pages/ipccguidelines_papers.aspx