

## **Independent Police Complaints Commission Operational Advice Note**

In 2005 the Independent Police Complaints Commission (IPCC) issued Statutory Guidance entitled *“Making the new police complaints system work better”* (the Statutory Guidance). It also issued a protocol dealing with the operational response of the IPCC and that document is now replaced by this Operational advice note and associated papers.

This operational advice note reflects the development of ECHR case law and the outcome of recent Judicial Reviews in English Courts regarding the implications of Article 2 along with the requirement for the Independent investigation of those cases where Article 2 may be engaged. It also reflects the provisions of Chapter 7 of the new ACPO Manual of Guidance on the Management, Command and Deployment of Armed Officers<sup>1</sup>. It is important that the amendments to the firearms manual regarding post incident management and conferring should be applied more widely to other incidents where Article 2 may be engaged.

The operational advice note has been agreed with the Association of Chief Police Officers (ACPO)<sup>2</sup> and should be read in conjunction with the Statutory Guidance which it supplements and/or updates. The new Statutory Guidance will incorporate this model when it is issued in late 2009/early 2010.

The advice note comes in the form of an Operational Model that will be applied to referrals made to the IPCC by the police service and other agencies. The Operational Model sets out the way in which the IPCC responds to such referrals and the expectations of delivery by the police and other agencies for whom the IPCC has responsibility. The model centres upon the out of hours referral process but is equally applicable to referrals in which Article 2 may be engaged, made during office hours. Where an incident being referred actually or potentially engages Article 2 a force is advised to make personal contact with the relevant IPCC office, in addition to the paper referral process, to provide the opportunity for an independent assessment to be undertaken by the IPCC at the earliest possible stage.

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<sup>1</sup> The new Manual of Guidance issued on the 13<sup>th</sup> July 2009 following the revision of Chapter 6 of the ACPO Manual of Guidance Police Use of Firearms – agreed at Chief Constables Council 23 October 2008

<sup>2</sup> Agreed at the ACPO Complaints and Misconduct Working Group and ACPO Professional Standards Committee

## **NOT PROTECTIVELY MARKED**

The Human Rights Act 1998 and obligations imposed under Article 2 apply equally to police forces and others and to the IPCC. Where Article 2 is engaged, police forces and others have a duty to ensure that they conduct themselves in a manner that is consistent with the procedural obligations that the courts have held to exist. These are –

- The investigation must be independent of those involved
- The investigation must be effective
- The investigation must be reasonably prompt
- There must be a sufficient element of public scrutiny
- The next of kin must be involved to an appropriate extent

So far as this note is concerned it is the first two obligations that are relevant and which must be observed by the police and the IPCC. In those cases where Article 2 may be engaged the IPCC will deploy Investigators quickly and will generally decide to conduct an independent investigation. The police have an obligation to preserve evidence so that it is available for the IPCC to enable it to conduct an effective investigation. At the same time a force should not act in a manner that might compromise the independence of the investigation. The courts have indicated that where there is a contravention of Article 2 that contravention cannot be rectified by later actions that are themselves compliant. What this means in individual cases will depend on the circumstances of that case. The IPCC will rely upon the police to provide such detail of the circumstances of the matter being referred as to enable it to issue appropriate directions in accordance with its powers under the 2002 Act.

The following documentation is not exhaustive, it is a guide focussed principally upon those matters where the IPCC could be expected to have a level of oversight. However the principles are applicable to a wide range of referrals and should be read in that context.

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# Independent Police Complaints Commission

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# **Independent Police Complaints Commission**

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## **Article 2 Operational Model<sup>3</sup>**

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**Table 1 – Managing the initial contact and attendance**

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<sup>3</sup> The content of the operational model is not exhaustive and is meant to address the key elements of IPCC / Police response

| <b>Initial Contact</b>  |  |
|---|--|
| <b>POLICE / OTHER AGENCY</b>  | <b>IPCC</b>  |
| <p>Provides notification to IPCC – this should take place at the earliest possible time. In the case where Article 2 is or may be engaged this should be as soon as possible and not more than 2 hours from the time of the incident being referred.</p> <p>Notification to ACPO if required</p> <p>Set up Incident handling arrangements – if this is potentially an Article 2 case consultation with the IPCC must take place regarding this.</p> <p>Call out additional staff such as SOCO, PIM, PSD to assist with the initial priority actions (without undue impact on Article 2). Forces should ensure that their processes allow for early notification to the IPCC to be triggered.</p> <p>Forces must have regard to the legislation relating to <b>the requirement to refer death or serious injury whether or not a complaint has been made</b> and must state to the IPCC the basis of the referral, i.e. complaint, conduct matter or DSI matter.</p> <p>The early notification to the IPCC will provide the opportunity for the police and the IPCC to determine expectations and establish ground rules to address what should be done prior to the attendance of the IPCC<sup>4</sup>.</p> | <p>Receipt of first contact</p> <p>The relevant Senior IPCC representative will make an initial assessment and determine whether or not IPCC attendance is required. Even at this early stage it may be possible to determine the Mol - ie. a death in custody or a fatal use of force – but such a decision will not be made in the absence of sufficient information.</p> <p>There will be early discussion about action being taken and future intentions whether or not IPCC deployment is to take place.</p> <p>If deployment is to occur directions will be given over the phone initially by the relevant Senior IPCC representative and then by the SI/DSI attending the scene/RVP<sup>5</sup></p> <p>The senior IPCC representative will contact the relevant on call SI/DSI whose responsibility it will be to make contact with the force and assume operational responsibility for the IPCC response.</p> <p>SI/DSI will deploy investigators to the scene with specific instructions provided by them. Once investigators have been deployed the SI/DSI will make their way to the scene.</p> <p>The relevant senior IPCC representative will provide a strategic overview of the referral and support the SI/DSI by dealing with matters involving Communications, Legal Services and Commissioner related</p> |

<sup>4</sup> This will be the case if Article 2 is engaged which should result in scene attendance by the IPCC

<sup>5</sup> A script is provided as an appendix outlining the basis in law that requirements can be made of the police service in terms of use of their resources



|  |  |
|--|--|
|  | <p>There will an expectation that the police will comply with the ACPO Guidance but if it is necessary to issue a Direction to the police to comply with the provisions of Chapter 7 regarding the issue of conferring, advice is provided in the IPCC advice note regarding that and such Directions must be properly recorded. Additionally the reporting senior police officer will be advised that if our direction is not facilitated there will be a need to provide a written explanation as to why. It is important to note that this principle may also relate to other referrals outside of the use of firearms where death and serious injury is an issue but such referrals must be considered on a case by case basis. Some forces have already moved to a position where the PIM principles in firearms incidents are being more widely applied to other matters. <b>It should be emphasised that this course of action is to obtain best evidence, to preserve the principles of accountability and independence and should not be seen as attributing guilt at an early stage.</b><sup>7</sup></p> |
|--|--|





initially thought, this must be drawn to the attention of the IPCC before proceeding further. Details of witnesses should be obtained and further action in respect of those will be determined by their status.

Carry out secondary H2H enquiries following the determination of sites by the IPCC.

Identify the extent to which H2 H needs to be carried out and IPCC.

Within the parameters identified determine primary and secondary sites. IPCC to carry out primary H2H. If witnesses within the secondary area clearly have significant evidence to give discussion should take place with the IPCC before the police proceed to secure that evidence. The presumption will be that the IPCC will deal with any witness who may have significant evidence.

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| <b>Post Scene</b>   |  |
|---|--|
| <b>POLICE / OTHER AGENCY</b>  | <b>IPCC</b>  |
| <p>Set up Gold Group with effective arrangements to ensure liaison with and support for the IPCC investigation.</p> <p>Community issues, including the IPCC as appropriate to address local tensions</p> <p>Exhibits to be handled in accordance with the IPCC directions, structured handover of all material to take place if the agreed Mol requires this.</p> <p>Any initial family engagement to be discussed with IPCC with a view to identifying an exit strategy if necessary</p> | <p>Determine the IPCC role in Gold Group and community related matters</p> <p>Oversee the management and handling of the exhibits – consider the engagement of a Forensic Advisor. Exhibits to be handled in accordance with the IPCC Exhibit Policy with the security of all exhibits being a primary issue.</p> <p>Identify FLM to deal with family issues</p> <p>Attendance at PM in a death case.</p> <p>Procure any relevant specialist advice</p> <p>Ensure formal handover of any material</p> <p>Conduct and investigation having regard to proportionality and timeliness, gathering all relevant evidence from any source.</p> <p>Media handling</p> <p>Interview suspected officers/staff</p> <p>Liaise with CPS (following discussion with Legal Services)/ HM Coroner</p> |

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Table 2 – Managing the handover and the start of the investigation

| <b>Investigation</b>   |   |
|--|---|
| <b>POLICE / OTHER AGENCY</b>   | <b>IPCC</b>   |
| <p>Handover of all relevant material to the IPCC</p> <p>Facilitate arrangements for IPCC to see staff</p> <p>Provide the requisite level of cooperation throughout an Independent investigation.</p> <p>If the investigation is managed by the IPCC carry out the investigation in a timely manner and submit report within the required time frame.</p> <p>Be prepared to deal with the redetermination of an investigation that may result in the investigation being handed back to the police.</p> | <p>Ensure early structured handover</p> <p>Develop MoU's to deal with the relationship between IPCC investigation and any parallel police investigation.</p> <p>Early engagement of police staff associations and relevant unions</p> <p>Consider an early findings report and review the Mol at keys stages</p> <p>If appropriate to redetermine, arrange hand over to the police</p> <p>Consider the release of an interim report</p> |

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| <b>Post Investigation</b>                      |  |
|--|--|
| <b>POLICE / OTHER AGENCY</b>                   | <b>IPCC</b>  |
| Implementation of recommendations and learning | Prepare an early interim report<br>Preparation and submission of report<br>Recommendations / Learning<br>Involvement in criminal / misconduct process<br>HMC – Inquest<br>Family |

**Consultation history:-**

- Senior Investigators
- Regional Directors
- Management Board
- Commission
- Legal workshop
- Director of Legal Services
- Copy to Steve Oakley re Operations Manual – 5 November 2008
- DCC John Feavoyour – ACPO Complaints and Misconduct
- ACPO Complaints and Misconduct Committee
- ACPO Professional Standards Committee

**Article 2  
Operational Model  
Appendix `A`**

**The power to direct the use of police resources**

The purpose of this Appendix is to provide information regarding referrals where Article 2 may be engaged although it is important to note that the principles are equally as applicable in other referrals where it is necessary to ensure that an independent perspective is secured. In most cases the cooperation of the police service will be obtained without difficulty although there may be cases where it will be necessary to direct action to be taken and indeed provide direction that certain action should not be taken.

Whether or not cooperation is forthcoming the following information will assist the relevant Director, Senior investigator (SI) or Deputy Senior Investigator (DSI) and inform their discussions with police senior officers.

At the time of referral where it appears that Article 2 of Human Rights, ECHR is engaged the SI / DSI should be mindful of the following:-

- Convention of Human Rights ('ECHR') appears to be engaged.
- That pursuant to paragraph 15 of Schedule 3 to the Police Reform Act 2002 ('the 2002 Act') the IPCC has determined that the matter will be subject to an independent investigation to be conducted by an IPCC investigator to be appointed under paragraph 19 of Schedule 3 to the 2002 Act.
- Where it is appropriate the force can be reminded that it is public authority for the purposes of the Human Rights Act 1998 ('the 1998 Act') under a duty under section 6(1) of the Human Rights Act 1998 not to act incompatibly with a person's Convention rights.
- Under the Police Reform Act 2002 as read with the 1998 Act, the force is obliged to ensure that the preservation and collection of

## **NOT PROTECTIVELY MARKED**

evidence by its officers is undertaken in a manner that complies with Convention rights.

Upon receipt of a referral it may be necessary to require police resources to carry out tasks that the IPCC feel appropriate. The SI / DSI will confer with the appointed police senior officer at the time of initial contact and deployment where it has been necessary to deploy. During those early discussions it may be necessary to secure the use of police resources to carry out tasks required by IPCC staff. It is hoped and expected that this can be secured by cooperation and mutual agreement.

In circumstances where such cooperation is not forthcoming the IPCC have the power to direct the police to take action and the police have a legislative responsibility to comply. The legislation providing that authority and requirement is outlined below;-

### **In matters of complaint**

- Paragraph 1(1) of Schedule 3 to the 2002 Act imposes on a chief officer of the force a duty to ensure that all such steps as are appropriate for the purposes of the complaint for obtaining and preserving evidence relating to the conduct complained about.
- Paragraph 1(6) of Schedule 3 to the 2002 Act the IPCC has the power to direct the force to take specific steps for obtaining and preserving evidence relating to any conduct that is the subject of the complaint.

### **In matters of conduct**

- Paragraph 12(1) of Schedule 3 to the 2002 Act imposes on a chief officer of the force a duty to ensure that all such steps as are appropriate for the purposes of the conduct matter for obtaining and preserving evidence relating to the conduct complained about.
- Paragraph 12(6) of Schedule 3 to the 2002 Act states that the IPCC has the power to direct the force to take specific steps for obtaining and preserving evidence relating to any conduct matter.

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**In DSI matters**

- Paragraph 14B(1)<sup>9</sup> of Schedule 3 to the 2002 imposes on a chief officer of the force a duty to ensure that all such steps as are appropriate for the purposes of the DSI matter for obtaining and preserving evidence relating to the DSI matter.
- Paragraph 14B(6) of Schedule 3 to the 2002 Act states that the IPCC has the power to direct the force to take specific steps for obtaining and preserving evidence relating to the DSI matter.

These notes are not exhaustive and are produced to assist IPCC staff, they are not meant to infer that the police will resist IPCC involvement as this is not the case.

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<sup>9</sup> As inserted by paragraph 12 of Schedule 12 to the Serious Organised Crime and Police Act 2005

**Article 2  
Operational Model  
Appendix `B`**

**Providing the direction that officers should not confer prior to recording  
their first account**

The issue surrounding officers being allowed to confer following an incident and in particular a firearms incident, has been a contentious one. However the recent *Saunders* judgement and Chapter 7 of the ACPO Manual of Guidance on the Management, Command and Deployment of Armed Officers have provided some clarity. Nevertheless the management of this will still require careful handling and directions provided to the police service should reflect our independence and responsibility to ensure accountability but also acknowledge the significance of this change and consider the welfare of principle officers.

Again cooperation will hopefully be secured by mutual agreement as the original amendment to Chapter 6 of the previous Manual of Guidance Police Use of Firearms regarding the issue of conferring, now reflected in the new ACPO Manual of Guidance on the Management, Command and Deployment of Armed Officers has been circulated throughout the police service. However there may be cases where confusion still exists and we need to be aware of this. The information outlined below will aid understanding and provide the necessary information to enable direction to be given should that cooperation not be forthcoming. How that direction should be given will be a matter for the individual but it must be clear and appropriately recorded.

**An Operational Advice note has already been issued to staff in relation to the original amendment to Chapter 6 of the previous manual in relation to conferring and this is attached at Appendix `C` to this document. *It is important to note that the new manual replaces this.***

The decision of the Administrative Court in the case of *R (On the Applications of Saunders and Tucker) v the IPCC* (2008) EWHC 2372 (Admin) indicated that the force, as a public authority, may not be acting in a manner compliant with Article 2 of the ECHR if it permits the principal officers to confer before individually making their initial note of the matter. The court said, “*if the circumstances of either of these cases were in due course to be considered by the Court it might very well find that a breach of art.2 had occurred ...It seems to me necessarily to follow from the decision in Ramsahai that the Court would be very chary of a general practice under which officers who are key witnesses in an art 2 investigation are expressly permitted to collaborate in the production of their statements*”

Following the judgement ACPO considered the impact of this upon Chapter 6 of the ACPO Manual of Guidance for the Police Use of Firearms and an amendment in relation to the issue of conferring was made. This has also been reflected in Chapter 7 of the new ACPO Manual of Guidance on the Management, Command and Deployment of Armed Officers. Paragraph 7.94 and 7.95 of Chapter 7 now states :-

*7.94 As a matter of general practice officers should not confer with others before making their accounts (whether initial or subsequent accounts). The important issue is to individually record what their honestly held belief of the situation was at the time force was used. There should therefore be no need for an officer to confer with others about what was in their mind at the time force was used. If, however, in a particular case a need to confer on other issues does arise then, in order to ensure transparency and maintain public confidence, where some discussion has taken place, officers must document the fact that conferring has taken place, highlighting:*

- *Time, date and place where conferring took place.*
- *The issues discussed*
- *With whom*
- *The reasons for such discussion*

*7.95 There is a positive obligation on officers involved to ensure that all activity relating to the recording of accounts is transparent and capable of withstanding scrutiny.*

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Our directions in the initial stages of a referral involving the police use of firearms should therefore reflect the provisions of Chapter 7. It should be made clear to the reporting officer that it is our expectation that Chapter 7 will be complied with and we should ascertain whether or not that is the case. If that is not the case the Senior Officer making the referral and / or the Senior officer present at the Post Incident Management Procedure should be Directed to ensure compliance. If the police do not comply they should be asked to record the reasons for that and provide that record to the senior IPCC member of staff attending the scene. They should be informed that failure to comply may result in subsequent criticism and be a potential breach of Article 2. It will also be appropriate to be clear that this is for the purposes of obtaining best evidence and demonstrating independence and accountability and is not an assumption of guilt.

When speaking to the police IPCC staff should consider using the following in your discussions if it is necessary to do so:-

In accordance with paragraph 1(6), or 12(6), or 14B(6) of Schedule 3 to the Police Reform Act 2002 to direct the police to ensure that the provisions of the amended Chapter 6 are complied with. The Direction should be given to the Chief Officer – the senior officer reporting the referral and / or the senior officer present at the Post Incident Management suite. The Direction will be given by the on call IPCC senior representative if the referral is made out of hours and / or the senior IPCC member of staff deployed to the Post Incident Management suite.

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Article 2  
Operational Model  
Appendix `C`

Advice note to Regional Directors, Senior investigators and Deputy  
Senior investigators  
11 November 2008<sup>10</sup>

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Referrals involving the police use of firearms

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The purpose of this note is to advise Directors, Senior investigators and Deputy Senior Investigators of the developments arising from the *Saunders*<sup>11</sup> judgement regarding conferring and the response to that by ACPO in relation to the wording of Chapter 7 of the new ACPO Manual of Guidance on the Management, Command and Deployment of Armed Officers<sup>12</sup>. This advice note will assist us in providing a clear and consistent response to the police service when a referral involving the police use of a firearm is made to the IPCC.

The judgement in *Saunders* indicated that Principal Officers being allowed to confer prior to a first account being provided may be in breach of the requirements of Article 2, ECHR. An Operational Model has been developed internally to outline our response to Article 2 and 3 type referrals and that document reflects this latest judgement.

Following the judgement in *Saunders* ACPO have considered the implications of that upon Chapter 6 of the ACPO Manual of Guidance Police use of Firearms current at that time. Those considerations resulted in an amendment to Chapter 6 and are reflected in Chapter 7 of the new manual. The position outlined in paragraphs 7.94 and 7.95 of Chapter 7 is as follows:-

*As a matter of general practice officers should not confer with others before making their accounts (whether initial or subsequent accounts). The important issue is to individually record what their honestly held belief of the situation was at the time force was used. There should therefore be no need for an officer to confer with others about what was in their mind at the time force was used. If, however, in a particular case a need to confer on other issues does used arise, then, in order to ensure transparency and maintain public confidence, where some discussion has taken place, officers must document the fact this has taken place, highlighting:*

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<sup>10</sup> Please see Important Note at the foot of this particular document

<sup>11</sup> R (Applications of Charlotte Saunders and Corrina Tucker) –v- The Independent Police Complaints Commission

<sup>12</sup> Issued 13 July 2009

*Time, date and place where conferring took place;*

*The issues discussed;*

*With whom;*

*The reasons for such discussion.*<sup>13</sup>

*There is a positive obligation on officers involved to ensure that all activity relating to the recording of accounts is transparent and capable of withstanding scrutiny*<sup>14</sup>.

Paragraph 7.88 and 7.89 of Chapter 7 relates to the preservation and securing of evidence and states the following:-

*The responsibility for securing evidence and taking appropriate action in an Article 2 investigation remains with the Police Service until such times as the independent investigative authority has taken over the investigation*<sup>15</sup>.

*The responsibility of the police service being investigated is to facilitate that investigation through, for example:*

- *Identification and preservation of scenes and exhibits*
- *Identification of immediately available witnesses*
- *Securing of physical evidence*
- *The availability of experienced family or witness liaison officers*<sup>16</sup>

We should be mindful that this relates to securing and preserving evidence and not the conduct of investigation.

Therefore upon receipt of a referral involving the police use of firearms the IPCC member of staff receiving the initial referral and/or attending the scene should:

- make clear to the police our expectation that the provisions of Chapter 7 are being complied with and ascertain whether or not the force are doing so.
- If the police indicate that they do not intend to comply with the new guidance or are not sure what they will do, make clear that we will issue a direction to a Chief Officer within para 14B of the Police Reform Act if they do not comply with the guidance.

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<sup>13</sup> Paragraph 7.94 Chapter 7 of the ACPO Manual of Guidance on the Management, Command and Deployment of Armed Officers

<sup>14</sup> Paragraph 7.95 Chapter 7 of the ACPO Manual of Guidance on the Management, Command and Deployment of Armed Officers

<sup>15</sup> Paragraph 7.88 Chapter 7 of the ACPO Manual of Guidance on the Management, Command and Deployment of Armed Officers

<sup>16</sup> Paragraph 7.89 Chapter 7 of the ACPO Manual of Guidance on the Management, Command and Deployment of Armed Officers

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If a Direction is needed, it will be given by the on call IPCC senior representative - if the referral is out of hours - or by the Senior IPCC person attending the Post Incident Management process, depending on the circumstances of the case. A Direction should be made to the force – the Senior Officer present - in accordance with the provisions of the Police Reform Act 2002 the details of which are outlined below:-

### In Death and Serious Injury (DSI) Matters

- Paragraph 14B(1)<sup>17</sup> of Schedule 3 to the 2002 imposes on a chief officer of the force a duty to ensure that all such steps as are appropriate for the purposes of the DSI matter for obtaining and preserving evidence relating to the DSI matter.
- Paragraph 14B(6) of Schedule 3 to the 2002 Act states that the IPCC has the power to direct the force to take specific steps for obtaining and preserving evidence relating to the DSI matter.

**The Direction must be given to the Senior Officer present as representative of the Chief Officer. There is no power to enforce the Direction and no power to provide the Direction to the principal officers themselves (A form of words is provided for your use at the end of this document).**

All conversations relating to expectations or directions must be appropriately recorded.

If the force are not complying with the provisions of Chapter 7 regarding the issue of conferring and do not comply with our Direction to do so the senior officer present will be asked to record the reason for that and provide the IPCC member of staff with a copy of that record. If the force indicate that they will not comply with the provisions of Chapter 7 it should be pointed out that the consequences of that will expose the risk of challenge as to the compliance with Article 2, will be the subject of comment in the IPCC's report and should create an expectation that officers will be questioned later as to why the Chapter 7 guidance was not complied with, for example at Inquest proceedings.

### Additional advice for staff

- If the indications are that the guidance is not going to be complied with we should explain to officers that, in relation to the use of lethal force, they should record their honestly held belief why they used the force and we should make it clear that conferring is not necessary when recording their own belief.
- We must be clear that we are not seeking for officers to be separated and we understand that they are entitled to legal advice

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<sup>17</sup> As inserted by paragraph 12 of Schedule 12 to the Serious Organised Crime and Police Act 2005

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- Each case will have to be dealt with on its own merits, the underlying principle will be to ensure that our investigation is as effective as it possibly can be
- If Investigators are confronted with an unwillingness to comply the relevant senior IPCC representative should be consulted

**It should be pointed out that the adoption of this procedure is to obtain best evidence, to preserve the principles of accountability and independence and should not be seen as attributing guilt at an early stage. We should be mindful that this change in position is new to the police service and in doing so we should have regard to the recent comments of Nick Hardwick referred to in the Saunders judgement an extract of which is reproduced below:-**

***“... [we] recognise the uniquely difficult and dangerous job performed by firearms officers. The IPCC is clear that its investigators do not treat officers as suspects unless there is evidence that an offence has been committed. We recognise that firearms officers are lawfully carrying weapons and we do not treat them as suspects in a crime unless there is evidence to do so. However, when the state takes a life, we believe that there must be a rigorous investigation and the families and public are entitled to the fullest possible explanation of what occurred and why. This is the approach we have taken in all 14 fatal shootings we have investigated since 2004...”<sup>18</sup>***

If it is necessary to provide a Direction to the Chief Officer the following is a suggested form of words

*“You do not appear to have complied with the provisions of Chapter 6 of the ACPO Manual of Guidance Police Use of Firearms and have indicated that it is not your intention not to do so. I am therefore Directing you, in accordance with Paragraph 14B(6) of Schedule 3 to the Police Reform Act 2002, to comply with the guidance and issue an instruction to the principle officers in relation to conferring. I must point out to you that, in accordance with Paragraph 14B(1) of Schedule 3 to the Police Reform Act 2002, you have a duty to ensure that all such steps as are appropriate for the purposes of obtaining and preserving evidence relating to this matter should be taken. If you do not comply with the provisions of Chapter 6 you should record your reasons for not doing so along with the reasons for that and provide me with a written record of that decision and rationale.”*

## IMPORTANT NOTE TO READER

This advice note was initially circulated to staff on the 11 November 2008 and referred to amendments made to Chapter 6 of the Manual of Guidance Police Use of Firearms that was in place at that time. **This manual has now been**

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<sup>18</sup> Extract from press statement by the chair of the IPCC Nick Hardwick in response to MPA report on the shooting of Mr. de Menezes - July 2008

**replaced by the ACPO Manual of Guidance on the Management, Command and Deployment of Armed Officers in which references to post incident procedures are referred to in Chapter 7. In view of this the advice note has been amended to reflect the changes and replaces the previous circulation.**

A copy of Chapter 7 is attached for the purposes of clarity and completion.

## Chapter 7

# POST DEPLOYMENT

This chapter describes the post deployment process which applies to situations where AFOs have been deployed, including issues associated with debriefing and organisational learning. Where police officers have discharged weapons, or persons have been killed or injured, the welfare and legal issues, including the provision of accounts by officers, are outlined. The responsibilities of the key roles involved in the post deployment process are explained.

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## INTRODUCTION

- 7.0 This chapter outlines post deployment procedures in a broadly chronological manner. These procedures are designed to ensure that the post deployment phase of all armed deployments, irrespective of whether weapons have been discharged, are conducted in a manner which:
- Ensures the integrity of the legal process in respect of police action, persons arrested or evidential material seized;
  - Enables follow-up action related to any ongoing crime;
  - Identifies any operational or safety critical issues in respect of procedures, training, weapons or equipment used;
  - Ensures individual, team and organisational learning takes place and is addressed both locally and nationally as appropriate.
- 7.1 The procedures are scalable, and forces should consider their proportionate application according to the circumstances. The procedures to be adopted will range from the documentation of outcomes, through to structured operational debriefing. An auditable log of each armed deployment must be made and signed-off by an appropriate supervisor or commander in accordance with force policy.
- 7.2 The Conflict Management Model provides a structure which can be used to ensure that post deployment issues are addressed and can assist as a structure for any debrief process.
- 7.3 The following should be considered following deployment of AFOs:
- The community impact of the deployment (see **Community Impact Assessment** (6.70 - 6.74));
  - Media management (see **Media Releases** (7.113 - 7.116));
  - The nature of any debrief to be undertaken;
  - Consideration of an explanation or, where appropriate, an apology to persons affected by the operation.
- 7.4 The appropriateness and sequence of the above issues will depend on the circumstances and whether the criteria for a **Incident Investigation** (7.10 - 7.13)). If a post incident investigation is to be undertaken, the appropriateness of any of the above considerations should be discussed and agreed with the relevant investigative authority. Issues which become relevant when an investigation is to be conducted are set out later in this chapter.

## DEBRIEFING

- 7.5 Once an armed deployment has been concluded, a full debrief should be considered to identify opportunities for operational and organisational learning. Large or protracted operations should include arrangements for a specific debriefing session so that any aspect of the command structure, tactics or equipment used, which demonstrated good practice or caused a problem, can be identified and lessons learned. Debriefs should be documented.
- 7.6 Only in exceptional circumstances should debriefing take place when the criteria for post incident investigation have been met (see **Criteria for Post Incident Investigation** (7.10 - 7.13)), and this should only be with

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the agreement of any investigative authority which is involved. For further information see [Situational or Safety Critical Information](#) (7.40 - 7.41).

- 7.7 The ACPO Armed Policing Secretariat has a responsibility for disseminating good practice and lessons learned. Forces are encouraged to submit early reports to the Secretariat. Contact [acpo.policeuseoffirearms@westmercia.pnn.police.uk](mailto:acpo.policeuseoffirearms@westmercia.pnn.police.uk)
- 7.8 There is a range of issues to address in a debriefing process, and not all will be required in every situation. Each has a different but equally important purpose. These are:
- Operational and tactical;
  - Organisational;
  - Evidential.

Prior to officers finishing duty, the senior supervisory officer should also consider if there are any outstanding issues which need to be addressed. See also [Defusing](#) (7.105).

### POST INCIDENT PROCEDURES

- 7.9 The term post incident is used to describe situations in which shots have been discharged by the police, or an investigation into police action is to be conducted. As with post deployment procedures, these procedures are scalable. For example, the full procedure may not need to take place every time and will depend on the significance and consequences of the event.

### CRITERIA FOR A POST INCIDENT INVESTIGATION

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- 7.10 Post incident investigations will be commenced in all situations where there has been a discharge of a weapon by police (including those involving a conventional firearm or less lethal weapon), whether intentional or unintentional which has, or may have:
- Resulted in death or serious injury;
  - Revealed failings in command;
  - Caused danger to officers or the public.
- 7.11 Cases which result in death or serious injury will be subject to mandatory referral to the Independent Police Complaints Commission, or other independent investigative authority. Cases which have revealed failings in command, or have caused danger to the public, or where it is in the public interest should be referred to the independent investigative authority, as a voluntary referral. If the above criteria are not met, the force should consider the proportionate application of these procedures, where appropriate.
- 7.12 Where firearms and less lethal weapons have been discharged by police officers, it is in the interests of the public, the Police Service and everyone involved in the incident, that subsequent procedures should be open and transparent, and that the integrity of all action can be demonstrated. The post incident process will involve an investigation which may be conducted by the force professional standards department or an independent investigative authority, such as the Independent Police Complaints Commission, Police Ombudsman for Northern Ireland, and in

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Scotland under arrangements set out by the Procurator Fiscal.  
Investigations may also be undertaken by the Health and Safety Executive.

- 7.13 The *Code of Practice* requires chief officers to ensure that operating protocols exist within their forces that define the action to be taken throughout the various stages of an investigation. For further information on investigations, see [Article 2 ECHR and the Duty to Investigate](#) (7.72 – 7.82) and [Independent Investigations](#) (7.83 - 7.90).

#### INITIAL ACTION

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- 7.14 Where weapons have been discharged or a person has been shot or seriously injured during an armed deployment, the force control room or Tactical Firearms Commander (where appointed) must be immediately informed. Arrangements should also be made to ensure that the Strategic Firearms Commander and appropriate ACPO officer on duty or on call is informed as soon as possible.
- 7.15 The overall responsibility for post incident procedures should rest with an ACPO officer or senior officer (who has not been involved in the operational phase). This officer is responsible for initiating:
- The post incident investigation (including informing the independent investigative authority);
  - Post incident management.
- 7.16 The relevant independent investigative authority should be informed so that a decision can be made as to whether the incident meets the criteria for independent investigation. Where an independent investigation is to take place, the information given to the investigative authority should include the action being taken and arrangements made for them to commence a post incident investigation.
- 7.17 In situations which do not require investigation by an independent investigative authority, the incident may be investigated by the professional standards department of the force concerned, in accordance with local procedures. The information provided in this chapter is relevant to any investigation, whether carried out by the force's professional standards department or by the relevant independent investigative authority.

#### POST INCIDENT ROLES

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- 7.18 There are a number of roles specific to the post incident process. These are:
- Post Incident Manager (PIM) see [The Role of the Post Incident Manager](#) (7.44 - 7.49);
  - Initial Investigating Officer (IIO);
  - Investigator from independent investigative authority or force professional standards department.
- 7.19 The responsibilities of those involved in the post incident process are outlined in [Post Incident Responsibilities](#) (7.121 – 7.126) including the Strategic, Tactical and Operational Firearms Commanders.

**IMMEDIATE POST INCIDENT COMMAND CONSIDERATIONS**

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- 7.20 Following the discharge of a firearm, the Tactical Firearms Commander should initially establish what has taken place, including the extent of any casualties and take action, as appropriate, to ensure:
- Resources are adequately deployed to deal with the situation, including medical aid, welfare and operational and technical support;
  - Continuity of command of any ongoing crime-in-action to arrest offenders;
  - Integrity of process in relation to securing best evidence;
  - Senior command and independent investigative authorities are notified of the event;
  - The community impact is considered, and where appropriate, action is taken to address these issues.
- 7.21 The Strategic Firearms Commander, on being notified of the incident, should make an assessment regarding continuity of command, and take action to ensure command resilience. This may involve consideration as to what command support is required.
- 7.22 The Strategic Firearms Commander should also consider what strategic issues need to be addressed in respect of the:
- Incident;
  - Community;
  - Police force involved and any service-wide considerations.
- 7.23 Until such time as the Tactical Firearms Commander is relieved of their responsibilities, or the incident is brought to a conclusion, the Tactical Firearms Command responsibilities will include identifying and actioning the following issues:
- Is any person injured – and, if so, are they receiving appropriate medical attention?
  - What action is being taken, or needs to be taken, to secure the scene?
  - What additional resources are required?
  - Is there an ongoing threat to life or operational imperative that requires continued action from armed officers at the location of the incident?
  - To what extent have the original operational objectives been met?
  - Are there any new or emerging threats or risks outstanding to any person?
  - What control measures are in place in respect of these?
  - Are there any critical operational safety issues identified that require immediate attention?
  - Are any subjects at large? What action is required to locate them?
  - Have relevant scenes been identified? What action is required to preserve scenes and evidence?

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- Has an appropriate Post Incident Procedure been implemented?
  - Have arrangements been made to hand over to the IIO?
  - Has the force professional standards department been notified?
  - Has the Strategic Firearms Commander been briefed?
- 7.24 Where there will be a time delay in the arrival of an investigator, a command decision should be made as to how and by whom the scene should be managed and investigatory issues commenced. Initial policing priorities pending the arrival of the independent investigative authority include:
- Management of the scene;
  - Establishing what took place;
  - Identification of witnesses;
  - Identification of Principal Officers, see [Principal Officers](#) (7.42 – 7.43);
  - Identification and securing of exhibits;
  - Media management.
- The responsibilities in relation to the welfare of all staff involved are addressed in [Welfare Considerations](#) (7.64 – 7.68).
- 7.25 Consideration should be given to the appointment of an IIO by the force in which the incident occurred. Where appropriate, this should be done in consultation with the independent investigative authority (where involved). The role of the IIO should include all initial investigative issues pending the hand over to an appointed investigator from an independent investigative authority or other department.
- 7.26 The interim arrangements should enable a managed transition from the operational phase of the incident to the investigation. In this transitional phase, close liaison is essential between the Tactical Firearms Commander, the IIO and an officer appointed by the force to manage the post incident processes. See [The Role of the Post Incident Manager](#) (7.44 – 7.49).

### MANAGEMENT AT THE SCENE

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- 7.27 When weapons have been discharged, officers should take all necessary action to ensure that threats are neutralised and that the scene is safe. The fact that weapons have been discharged and details of any persons injured or killed should be reported to the control room and/or Tactical Firearms Commander as soon as practicable. Provision of medical aid is also a priority. Situational and safety critical information should be relayed as soon as possible, see [Situational or Safety Critical Information](#) (7.40-7.41). Officers should remain operationally active until stood down.
- 7.28 Where possible, and without compromise to the security of officers and persons in the vicinity, action should be taken to secure the scene.
- 7.29 Securing firearms and ammunition carried by officers is an important part of the evidence gathering process.
- 7.30 Weapons which have been fired should, as far as practicable, be maintained in the condition they were in immediately after being fired, pending forensic examination. Where any police weapon has failed to fire,

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was discharged unintentionally or is suspected of any malfunction it should be isolated for forensic examination.

- 7.31 All firearms which have been discharged, operationally drawn or pointed during the operation should be identified, as this will be relevant information in the post incident investigation. The IIO, in conjunction with the independent investigative authority, will determine which of these weapons need to be treated as exhibits.
- 7.32 An officer who is injured, traumatised or in a state of shock should have their weapon removed by the Operational Firearms Commander, team leader or other suitably qualified officer. This should, preferably, be someone who has not been directly involved in the discharge of firearms. This officer should ensure the weapon's security. A dual emphasis on safety and evidential integrity should apply at all times.
- 7.33 Where a subject has been shot and a weapon is still in their possession, it should be removed from them and secured. Any other weapons found at a scene should remain where they are located, unless this compromises public safety or the security of the exhibit. Wherever possible, weapons recovered at the scene should not be interfered with or made safe, unless there is an operational or safety imperative. The position of recovered weapons should be noted and relayed to the person who is taking charge at the scene. Where, for operational or security reasons, it has been necessary to take any action in respect of a recovered weapon, details of the precise procedures followed should be recorded. For further information see Chapter 3 Weapons and Exhibits.
- 7.34 The appointment of a scene manager should be a priority. The scene manager will be responsible for securing evidence, deploying forensic experts and ensuring forensic recovery in accordance with the forensic strategy.
- 7.35 As far as possible, the positions of officers at the scene of an incident where firearms have been discharged should be recorded. However, the deployment of AFOs will often involve rapid movement of officers and may involve key actions being taken and weapons being discharged by officers from more than one position during an event which is developing in very fast time. In addition, officers may become involved in detaining a subject, action to search and secure any weapons found and/or in the provision of medical assistance. In these circumstances precise and accurate recall of where officers were at each stage of the tactical deployment is often not possible.
- 7.36 Unless there is a safety critical reason, the police vehicles in which the Principal Officers attended the scene are not to be removed without the express authority of the Tactical Firearms Commander or the IIO.
- 7.37 Where there is an operational imperative to remove a person, vehicle or equipment from the scene at an early stage, the reason for this should be recorded along with their initial location, for the purpose of any future investigation.
- 7.38 As soon as is practicable after the scene has been secured, AFOs involved in the incident should return to a police station or other suitable location where post incident procedures will take place. This will assist in securing the integrity of the scene, defuse any tensions at the scene and enable post incident issues, including those of evidence and welfare, to be attended to.

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- 7.39 Officers who have been involved in an incident where shots have been discharged, or where death or serious injury has occurred, should not be isolated from one another, other than for situation specific reasons such as preventing forensic cross-contamination.

### SITUATIONAL OR SAFETY CRITICAL INFORMATION

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- 7.40 Where officers have discharged weapons, they are permitted, and may be required to relay situational and safety critical information to those involved in the ongoing management of the incident or operation.
- 7.41 On their return to a police station or location where post incident procedures will take place, arrangements will be made for the initial welfare and investigative issues to be addressed in a structured and sensitive manner.

## 1. POST INCIDENT MANAGEMENT

### PRINCIPAL OFFICERS

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- 7.42 Where a post incident investigation is taking place, the independent investigative authority will at an early stage wish to identify Principal Officers who were directly related to the decision to use force. As the investigation unfolds, others involved in the operation, whose actions or decisions were involved in informing or making critical decisions, may be regarded as Principal Officers. In the initial stages all actions taken by, and in respect of, Principal Officers in relation to securing evidence, discussion undertaken and notes made must be documented.
- 7.43 Prior to officers providing accounts of what happened, the following issues should be addressed:
- Weapons and exhibits secured;
  - Welfare, including medical and legal advice considerations, see [Welfare Considerations](#) (7.64 – 7.68).

### THE ROLE OF THE POST INCIDENT MANAGER

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- 7.44 Post Incident Managers (PIMs) facilitate, manage and ensure the integrity of the post incident procedure. Their role is not limited to police involved shootings and may include situations such as deaths in custody and serious injury traffic collisions involving police officers. Post Incident Managers often perform their role as part of a PIM team, under the direction of an overall PIM.
- 7.45 A PIM will usually be nominated by the force to which the Principal Officers belong. This will apply to any policing incident or operation, including those which cross force boundaries. Appropriate support should be available from the force in which the incident occurs. Forces should consider the possibility of such occurrences and have appropriate joint operational force and regional protocols to deal with post incident procedures.
- 7.46 An early decision should be made by the Post Incident Manager, in conjunction with the ACPO officer/delegated senior officer responsible for the post incident procedures, the Tactical Firearms Commander and the IIO, as to which officers will be considered Principal Officers; this will vary, depending on the

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- 7.47 The PIM's responsibilities will normally commence following the return of the Principal Officers to a police station or other area where the post incident procedures will take place. In some situations, for example, where officers are delayed at the scene it may be appropriate for the PIM to go to the scene.
- 7.48 The PIM's role is to facilitate the investigation, ensure integrity of process and that the Principal Officer's needs are addressed in a manner which does not compromise the investigative process. This will include keeping Principal Officers informed of developments and providing appropriate explanations of procedure, as well as obtaining necessary practical assistance for them.
- 7.49 The PIM will establish the basic facts of what happened. In the first instance the PIM should obtain this information from a source other than the Principal Officers. If this information is only available from the Principal Officers, the PIM should remind them of the importance of legal advice before seeking the information. The PIM will also ensure that the basic facts are passed to the investigator. For further information on the roles undertaken by the PIM or a member of the PIM team, see [Post Incident Manager](#) (7.126).

### ANONYMITY OF OFFICERS

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- 7.50 The PIM should, where necessary, consider approaching an ACPO officer or delegated senior officer regarding the need to protect the anonymity of Principal Officers.
- 7.51 As with any witness or suspect, concerns for the safety of some Principal Officers and their families means their anonymity should be addressed at an early stage.
- 7.52 Procedures should be in place to consider the anonymity of officers prior to deployment, if necessary, and subsequently should any shooting occur. It should be made clear to officers involved that the issue of anonymity may be the subject of judicial proceedings or challenges and may have to be reversed at a later stage.
- 7.53 Suggested measures to preserve the anonymity of Principal Officers include:
- Restricting access to systems and documents containing details of Principal Officers;
  - Using anonymous references (eg, Officer 'A') at an early stage (with a list of such references compiled for inclusion in documents);
  - Omitting officer details and identity from communications and circulations, including media releases;
  - Advising all officers of their responsibility to maintain confidentiality;
  - Advising independent investigative authority, Crown Prosecution Service and other agencies.
- 7.54 The PIM will normally maintain a list of the names of officers involved in the incident, which should be protectively marked as appropriate. The PIM should ensure that action is taken to maintain the anonymity of Principal Officers until such a time as this is deemed to be unnecessary. The PIM should consult an ACPO officer or delegated senior officer regarding this issue.

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**WEAPONS AND EXHIBITS**

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- 7.55 On return to the location where post incident procedures are taking place, weapons which have been discharged should be identified, as should all other weapons deployed in the immediate vicinity of the shooting.
- 7.56 Where practicable, when weapons are unloaded and exhibited, consideration should be given to photographing or videoing the process. Where this is not practicable, a detailed documentary account of the weapon's state and the procedure used for unloading should be completed. The handling and securing of weapons involved in the incident must be undertaken in a manner which maintains the forensic integrity of these exhibits.
- 7.57 All firearms, ammunition, less lethal weapons and specialist munitions should be accounted for in a manner which ensures that safety, recording and accountability are properly addressed.
- 7.58 Initial investigating officers will, in liaison with the independent investigative authority (where involved), consider which weapons are required to be secured as exhibits, and whether clothing should be secured or officers examined for forensic traces. It is good practice for this decision to be outlined to the officers in person.
- 7.59 Officers' weapons should be secured by a different person to the one securing the subject's, to avoid any dangers of cross-contamination. Since AFOs will, invariably, have moved to another location, it is important that they do not have to await the conclusion of the scene examination before their firearms are taken for examination.
- 7.60 Given that officers who train with firearms and visit locations at which weapons and munitions are used and stored, such exhibits may be of limited value. Many AFOs train wearing operational clothing, the evidential value of this clothing for examination is, therefore, likely to be limited. All officers involved in an incident will be required to assist with the forensic preservation of their weapons and equipment.
- 7.61 The PIM or officer coordinating collection of weapon exhibits will ensure that the weapons are unloaded and handed over, in a controlled manner and by an appropriately trained officer, to the appointed exhibits officer at the post incident management suite or other appropriate location.
- 7.62 Where a weapon is examined and found not to have been fired or is no longer required as evidence, arrangements should be made, in liaison with the independent investigative authority (where involved), for it to be returned to the relevant department as soon as practicable.
- 7.63 If there is no dispute as to who fired shots, there may be no requirement for other measures to identify officers. Measures such as the securing of clothing or taking of swab samples to forensically identify those officers contaminated by firearms discharge residue will normally only be adopted in exceptional circumstances. When an investigating officer considers it necessary to obtain such additional forensic evidence from officers, the PIM will record the rationale and discuss it with the IIO. If the IIO requires additional forensic evidence, the PIM will explain the rationale to the officers concerned and make a record in their policy log. If clothing is to be taken, suitable, alternative clothing must be provided.

**2. WELFARE CONSIDERATIONS**

- 7.64 The welfare needs of officers should be addressed throughout the post incident process.
- 7.65 The welfare needs of officers will include, but should not be limited to:
- Immediate need for first aid and other medical assistance;
  - Securing weapons and equipment;
  - The provision of refreshments;
  - Making phone calls to immediate family members or partners regarding officers' wellbeing and possible retention on duty;
  - Showering and appropriate change of clothes (provided there are no forensic matters to be addressed).
- 7.66 Principal Officers should be supported by their supervisory officers and given the opportunity to consult representatives of their relevant staff association as soon as possible. Every effort should be made to ensure that early professional legal advice is made available in appropriate cases. This is particularly important where officers have used force as they may be subject to an investigation which can include potential criminal offences.
- 7.67 An incident involving the use of firearms by police officers which results in death or injury may affect those involved differently and it is not possible to say who may be affected and to what extent. However, those affected may include those at the scene, and those who were directing resources (including control room staff and those involved in making critical decisions). Officers who have not discharged weapons or suffered injury may also be traumatised.
- 7.68 All officers involved in an incident where firearms have been discharged by police officers, whether or not they are the Principal Officers, should be able to receive support from the Occupational Health Unit or professional health advisor employed by the force concerned, if they wish. If possible this opportunity should be provided within seventy-two hours.

**MEDICAL EXAMINATION**

- 7.69 Officers who were in the immediate vicinity of the discharge of firearms or other munitions should be examined by a registered medical practitioner as a matter of course, subject to their consent, as they may have suffered an injury of which they are not aware. All officers should check for such injuries to themselves and their colleagues.
- 7.70 Where a registered medical practitioner is called to examine an officer, they should be briefed about the background of the incident and the reasons for the examination. Any other information or personal circumstances which may be relevant to the examination should also be provided.
- 7.71 The most appropriate supervising officer to brief the registered medical practitioner may be the PIM or a member of their team. The content of any outline of the incident given to the registered medical practitioner must be documented.

**3. ARTICLE 2 ECHR AND THE DUTY TO INVESTIGATE**

- 7.72 When the issues in respect of securing weapons, equipment and exhibits and the welfare issues have been addressed, Post Incident Managers should explain the nature and implications of an Article 2 ECHR investigation.
- 7.73 Under European law there is a procedural requirement on the State to ensure that where a death occurs at the hands of the State an effective and independent investigation takes place (this includes any death caused by or brought about as a result of police action).
- 7.74 Article 2 places a positive duty on the State to investigate following any death at the hands of the State. In order to satisfy Article 2 the investigation must be effective. The European Court of Human Rights (ECtHR) has held in *Jordan v UK* [2003] 37 EHRR 2, and *Edwards v UK* (2002) 35 EHRR 19, that it must be:
- On the State's own initiative (e.g. not civil proceedings);
  - Independent, both institutionally and in practice;
  - Capable of leading to a determination of responsibility and the punishment of those responsible;
  - Prompt;
  - Allow for sufficient public scrutiny to ensure accountability;
  - Allow the next of kin to participate.
- 7.75 These principles were approved by the House of Lords in the case of *ex parte Amin* (the *Zahid Mubarek* case) [2003] UKHL 51.
- 7.76 The requirements under Article 2 ECHR are, therefore, relevant and can extend to any situation in which death or serious injury occurs during an incident or operation in which police are involved.
- 7.77 The essential purpose of an Article 2 investigation is:
- To secure the effective implementation of laws safeguarding the right to life; and
  - In those cases involving agents of the State, to ensure their accountability for deaths occurring under their responsibility.
- 7.78 The investigation must be capable of leading to a determination of whether the force used was or was not justified in the circumstances, and to the identification and punishment of those responsible in appropriate cases.
- 7.79 Reasonable steps must be taken to secure all relevant evidence, including witness testimony and forensic evidence.
- 7.80 Any deficiency in the investigation which undermines its capability of establishing the circumstances of the case or the person responsible is liable to fall short of the required measure of effectiveness.
- 7.81 The aim of an investigation into a police-related shooting is, therefore, twofold:
- To ensure that the applicable law is properly followed and implemented, ie, so that, where appropriate, effective criminal proceedings are brought;

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- To ensure police accountability, whether or not criminal proceedings are brought.
- 7.82 Where a death does occur at the hand of the State, the burden is on the detaining authorities to provide a satisfactory and convincing explanation for the death (*Anguelova v Bulgaria*, Application No. 38361/97 Judgment of 13 June 2002). In the absence of such explanation, Article 2 may be breached.

### INDEPENDENT INVESTIGATIONS

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- 7.83 The scope of the investigation is likely to be wide ranging. It will not only include the circumstances of any injury to, or death of, any person who may have been shot, but also the circumstances leading up to the discharge of firearms, and all the issues surrounding this such as the management and planning of the deployment.
- 7.84 By their very nature, incidents involving the discharge of a firearm by a police officer give rise to public interest, and can be highly emotive and stressful for all involved. As a consequence, both the investigative function and the chief officer's duty of care to officers and police support staff involved must be afforded a high priority.
- 7.85 The duty of care to officers and police staff will extend to welfare, physical, psychological and medical support. In addition, the police staff associations have arrangements in place for the provision of advice and support to officers including legal advice. In facilitating the provision of these services, investigating officers, Post Incident Managers and staff association representatives have distinct roles. It is, however, essential that all officers, Post Incident Managers and those involved in any debriefing process are able to demonstrate integrity of purpose in all communications between each other and in record making and debrief procedures.
- 7.86 All appropriate steps should be taken by the Police Service in the initial stages following the discharge of firearms to reduce any possible risks of the investigation, required under Article 2 ECHR, being undermined by any deficiencies, such as failing to secure the evidence, including witness testimony and forensic evidence. The procedures adopted should be designed so as to demonstrate integrity of purpose in all actions and discussions between the officers involved.
- 7.87 Nothing in this section should be interpreted as constraining effective action by the Police Service or the officers involved in adopting an operationally necessary procedure to secure best evidence, arrest or bring to justice those who may be involved in ongoing criminal activity or a follow up investigative process.
- 7.88 The responsibility for securing evidence and taking appropriate action in an Article 2 investigation remains with the Police Service until such time as the independent investigative authority has taken over the investigation.
- 7.89 The responsibility of the police force being investigated is to facilitate that investigation through, for example:
- Identification and preservation of scenes and exhibits;
  - Identification of immediately available witnesses;
  - Securing of physical evidence;
  - The availability of experienced family or witness liaison officers.

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- 7.90 Early notification to the independent investigative authority will enable these procedures to be adopted and initial actions being taken by the police to be agreed at an early stage

### 4. PROVIDING ACCOUNTS

- 7.91 Where an initial account is made by officers it should, subject to any legal advice that they are given, be made as soon as practicable. These accounts should be recorded in writing, timed, dated and signed.
- 7.92 Each officer's initial account should only consist of their individual recollection of events and should, among other things, address the question of what they believed to be the facts and why, if relevant, they considered that the use of force and discharge of firearms was absolutely necessary.
- 7.93 Detailed accounts should not normally be made immediately, but can be left until the officers involved in the shooting are better able to articulate their experience in a coherent format, normally after at least forty-eight hours.
- 7.94 As a matter of general practice, officers should not confer with others before making their accounts (whether initial or subsequent accounts). The important issue is to individually record what their honestly held belief of the situation was at the time force was used. There should, therefore, be no need for an officer to confer with others about what was in their mind at the time force was used. If, however, in a particular case a need to confer on other issues does arise, then, in order to ensure transparency and maintain public confidence, where some discussion has taken place, officers must document the fact that this has taken place, highlighting:
- Time, date and place where conferring took place;
  - The issues discussed;
  - With whom;
  - The reasons for such discussion.
- 7.95 There is a positive obligation on officers involved to ensure that all activity relating to the recording of accounts is transparent and capable of withstanding scrutiny.
- 7.96 Where an officer has any concerns that the integrity of the process is not being maintained, they must immediately draw this to the attention of the person in charge of the post-incident process and ensure that this is documented.
- 7.97 A person involved in a traumatic or life-threatening encounter will often experience a range of physiological and psychological responses which may determine their perception of time, distance, auditory and visual stimuli and the chronology of key events. This may affect their ability immediately after the incident to recall what may be important detail. Where over time officers recall further information, this should be recorded in a further account.
- 7.98 There may be circumstances where it is necessary for officers to provide more detailed information at an earlier stage. This could be to address issues associated with a person who is now in custody or in relation to an ongoing criminal investigation, for example, where a person was not arrested at the scene.
- 7.99 It is the responsibility of each individual police officer involved in the incident to ensure that any information that may be relevant to the

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investigation is revealed, recorded and retained. This information should include an officer's own observations relating to the incident and any accounts received from witnesses.

- 7.100 Once officers involved have been able to make their initial accounts, arrangements will be made by the PIM to ensure that these accounts are secured and made available to the investigative authority.

### 5. SECURITY AND WELFARE OF OFFICERS

- 7.101 The PIM will initiate an early threat assessment to determine whether there are any security issues in respect of the Principal Officers involved in the incident. This will allow the PIM to recommend that the force puts in place the appropriate control measures to ensure the safety of the officer(s) and, where necessary, their families. An ongoing threat assessment process will continue, where necessary, until it is no longer required.

#### OFFICERS' FAMILIES AND HOMES

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- 7.102 Consideration should be given by the force to which Principal Officers belong, as to whether the welfare, medical and professional support should be extended to the Principal Officer's families. Their families should be alerted to the possible reactions of those involved in such incidents and should be afforded the opportunity to discuss the situation with the Force Occupational Health Advisors.
- 7.103 The security of an officer's home should be considered at an early stage. The cost of any appropriate measures, such as the installation of a panic alarm direct to the nearest police station and improved locks should be met by the officer's force. Forces should have a policy on providing security and anonymity in appropriate cases.

#### FAMILY LIAISON OFFICER

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- 7.104 In any incident where persons have been killed or injured as a result of police action, consideration should be given to the use of family liaison officers. It can also be beneficial to use these officers to support the families of police officers who have been significantly affected by firearms incidents, especially where the officer's identity has become known to the public.

#### DEFUSING

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- 7.105 Defusing is a short and informal process, which should be facilitated by trained people, and is aimed at giving immediate support to staff. It should take place as soon as possible after the event and, in any case, prior to conclusion of duty. The defusing process may assist officers and other staff recognise and manage the reactions and feelings they are or may experience as a result of what they have been involved in.

#### ADDITIONAL SUPPORT

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- 7.106 Consideration should be given to having a suitable person, for example a trusted colleague, assigned to stay with an officer who has been traumatised or significantly affected during the hours immediately following the incident. In appropriate cases, this person should subsequently accompany them home. Consideration should also be given to supporting the families of officers involved. These considerations should

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also be extended to any other officers or members of staff who are significantly affected by the incident.

### SPECIAL LEAVE OR SUSPENSION FROM DUTY

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- 7.107 When appropriate, special or administrative leave may be granted to a Principal Officer. There may, however, be circumstances where such leave is not in an officer's best interest and consultation with the officer and staff association is appropriate.
- 7.108 Suspension from duty should only be necessary in exceptional cases, and in accordance with force policy. When it is necessary to suspend an officer, that officer should still be able to contact colleagues within the Police Service and should still continue to receive appropriate medical and welfare support.

### AFOS' AUTHORISATION

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- 7.109 An officer's authorisation to operationally carry a firearm should not automatically be removed, and nor should they be automatically excluded from firearms training or other related duties.
- 7.110 An evidence-based assessment should be made by the police force, in conjunction with the independent investigative authority, the force professional standards unit and the provider of occupational health advice, as to when officers should be permitted to resume operational duties, including duties or roles in which they have regular access to firearms.
- 7.111 Any decision to remove an officer from operational firearms duty should be regularly reviewed (at least monthly) by the chief officer responsible for firearms policy, in consultation with the investigative authority.
- 7.112 Officers who have discharged their firearm must complete a mandatory occupational health post incident support programme provided by their force.

### MEDIA RELEASES

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- 7.113 Subject to any operational reasons, a cooperative and open media strategy should be adopted. The media strategy should be formulated in consultation with the independent investigative authority. A clear factual account of the incident should be provided at the earliest opportunity. Care must be taken to avoid compromising any subsequent judicial proceedings. Consideration should be given to the appointment of a specialist media officer who has knowledge of the Police Service's use of firearms, such as the nature of training given to officers, the guidelines under which officers may discharge firearms and the kind of firearms carried.
- 7.114 Precautions should be taken to protect the officers and their families from unwanted publicity. The PIM must ensure that, where practicable, the Principal Officers are informed of all media releases prior to their circulation and he or she may make representations on their behalf. This action may assist in prompting officers to consider their families and others likely to be affected by a media release and allow them to make early arrangements to cater for any foreseeable problems.
- 7.115 No information that might unintentionally identify officers concerned with the incident should be passed to the media. In addition, sensitivity should be exercised in the completion of internal force publications or reports

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concerning the incident. Care must always be exercised when using communications systems, including mobile phones.

- 7.116 Officers involved in the incident should avoid discussing the detail with personnel not involved in the incident, unless there is an operational imperative to do so. This is to prevent the possibility of uninformed rumour and to protect the identity of those involved.

### PROGRESS OF THE ENQUIRY

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- 7.117 The Police Reform Act 2002 requires that all interested persons should be kept informed of the progress of the enquiry. Procedures should be put in place to ensure that regular updates are provided, and the host force should consider the provision of an ongoing PIM or Force Liaison Officer (either full or part-time) to facilitate this. Procedures for providing updates may include a meeting with officers involved in an incident, as soon as practicable after an incident, and, in any event, providing the officers with terms of reference of the investigation within forty-eight hours.
- 7.118 It will be normal for the independent investigative authority to brief the force concerned as to the current status of the investigation, usually not later than twenty-eight days after the incident.

### DOCUMENTATION AND DISCLOSURE

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- 7.119 The originals of all documents and statements generated as a result of an incident must be handed over to the force professional standards department or independent investigative authority at the earliest opportunity.
- 7.120 The Criminal Procedure and Investigations Act 1996 requires that all material obtained in the course of an investigation that may be relevant to the investigation is retained for disclosure purposes.

## 6. POST INCIDENT RESPONSIBILITIES

### OPERATIONAL FIREARMS COMMANDER

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- 7.121
- Remains operationally active until stood down;
  - In the absence of the Tactical Firearms Commander, ensures that the scene is protected and that evidence is preserved until the arrival of the IIO;
  - Should ensure that the weapon(s) or perceived weapon of the subject is located and secured in situ, unless it is dangerous to do so;
  - Ensures a weapon safety check is carried out by officers;
  - Liaises with the IIO and, where necessary, with the involvement of the scenes of crime officer, supervises the unloading of the weapons and identifies which weapon was carried by each officer.

### TACTICAL FIREARMS COMMANDER

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- 7.122
- Remains operationally active until stood down;
  - Ensures that the scene is protected and that evidence is preserved until the arrival of the IIO;
  - Considers the safety of the public, police personnel and the immediate welfare of casualties;

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- Considers which officers are to be treated as Principal Officers (in conjunction with the ACPO officer or delegated senior officer, IIO and PIM);
- Ensures transfer of AFOs to relocation point and assists in identifying Principal Officers;
- Establishes the facts of what has taken place and ensures that all relevant information is recorded;
- Informs the force control room and the Strategic Firearms Commander;
- Determines the rendezvous point (RVP) for incoming resources;
- Briefs and formally hands over to the IIO;
- Briefs the Strategic Firearms commander.

### STRATEGIC FIREARMS COMMANDER

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#### 7.123

- Remains in a position to maintain command until the strategic intention of the operation is achieved, or they are relieved;
- Continues to be available to the Tactical Firearms Commander if required;
- Informs ACPO officer or delegated senior officer of the incident;
- Ensures all relevant information is recorded.

### ACPO OFFICER (OR DELEGATED SENIOR OFFICER)

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#### 7.124

- Ensures investigation and welfare procedures are implemented;
- Appoints PIM;
- Appoints IIO;
- Ensures that Principal Officers are identified;
- Considers referral to the independent investigative authority;
- Subject to referral to the independent investigative authority, agrees the media strategy;
- Ensures all relevant information is recorded.

### INITIAL INVESTIGATING OFFICER

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#### 7.125

- Has early dialogue with the independent investigative authority to agree responsibilities and key actions;
- Opens a policy log and ensures all relevant information and decisions are recorded, including issues of anonymity;
- Agrees initial terms of reference with ACPO officer or delegated senior officer;
- Identifies and preserves evidence;
- Ensures effective scene management;
- Considers which officers are to be treated as Principal Officers (in conjunction with the ACPO officer or delegated senior officer, PIM and Tactical Firearms Commander);
- Identifies and considers relevant national guidelines;
- Liaises with the Tactical Firearms Commander as to initial action at the scene;
- Liaises with chief officers as to media policy;
- Liaises with and consults the PIM;
- Makes early contact with the appointed investigator from the independent investigative authority;

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- Carries out those enquiries deemed urgent and those that may assist in the collation of evidence which may be lost prior to the arrival of the investigator from the independent investigative authority;
- Agrees initial objectives in relation to forensic evidence;
- Makes early contact with the pathologist (where appropriate);
- Liaises with the scientific support coordinator.

### POST INCIDENT MANAGER

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#### 7.126

- Opens a policy log and ensures all relevant information and decisions are recorded, including issues of anonymity;
- Considers which officers are to be treated as Principal Officers (in conjunction with the ACPO officer/delegated senior officer, IIO and Tactical Firearms Commander);
- Establishes immediate contact with the Principal Officers and ensures that they are given immediate support;
- Considers whether to assign a member of the PIM team to each Principal Officer;
- Advises all relevant members of staff that post incident procedures have been implemented and explains the PIM role;
- Meets the Initial Investigating Officer or any representative from the independent investigative authority;
- Takes measures to ensure the physical and emotional wellbeing of the staff involved;
- Considers the attendance of a doctor or health adviser;
- Ensures access to telephones to enable officers to contact relatives or friends;
- Informs the following departments and agencies to attend if required
  - Occupational Health and Welfare Unit
  - Doctor or Force Medical Examiner (FME)
  - Staff Associations as appropriate;
- Ensures that any necessary forensic procedures are dealt with as early as possible and that officers are fully informed of the relevance of the procedures (for example, the seizure of exhibits);
- Secures early legal advice/representation if requested;
- Maintains dialogue with the IIO and addresses issues with them, including press releases and the progress of the investigation to update staff involved;
- Advises Principal Officers of their responsibilities regarding the discussion of the incident with colleagues;
- Facilitates the process in which officers provide initial accounts and ensures these (where made) are provided to the investigator, see [Providing Accounts](#) (7.91 – 7.100).

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