

PRISON, PROBATION AND IMMIGRATION RELATED DEATHS IN CUSTODY

A PROTOCOL FOR POLICE INVESTIGATIONS

Produced on behalf of the ACPO Homicide Working Group
January 2006

1

Final Version – January 2006

FOREWORD

The National Offender Management Service, Home Office Immigration and National Directorate, Youth Justice Board, Association of Chief Police Officers and Crown Prosecution Service fully endorse this protocol and commend its use to all managers and practitioners who are involved in the sometimes complex and challenging role of dealing with and investigating deaths in prison custody.

This protocol provides detailed guidance to investigators that will assist in achieving effective liaison and cooperation between the agencies that are now involved in this type of investigation. The highest standards of investigation are expected by both the family of the deceased and the general public. This protocol provides the basis to achieve that standard.

Peter ATHERTON
Deputy Director General
HM Prison Service

Brian POLLETT
Director of Detention Services
Immigration and National Directorate

Ellie ROY
Chief Executive
Youth Justice Board

Jon STODDART
Chief Constable
Association of Chief Police Officers

Philip GEERING
Director of Policy
Crown Prosecution Service

**PRISON, PROBATION AND IMMIGRATION RELATED DEATHS IN
CUSTODY**

A PROTOCOL FOR POLICE INVESTIGATIONS

1. ***Introduction***

- 1.1 This protocol has been agreed between the National Offender Management Service, the Home Office Immigration and Nationality Directorate, the Youth Justice Board, the Association of Chief Police Officers (ACPO) and the Crown Prosecution Service (CPS). It sets out a guide to the principles for co-operation, multi agency liaison and consistent working practices to enable investigators to deal effectively with any deaths relating to persons in prison custody, residents of National Probation Service Approved Premises (formerly known as Probation Hostels), residents of immigration detention accommodation, persons under Immigration Service managed escort, and residents of Youth Justice Board Secure Training Centres.
- 1.2 It is recognised that following a death of a person to which this protocol relates more than one investigation may be instigated. Each investigation team will have different roles and objectives to meet when a death occurs. A consistent and standardised approach is essential for an effective investigation. Clear lines of communication are also essential to engender cohesion between the police and other investigation teams and, wherever possible, to meet the needs of the family of the deceased, other persons working or resident in the premises in which the death has occurred, and expectations of the general public.
- 1.3 The protocol acknowledges that many decisions relating to the investigation of deaths to which this protocol relates involve consideration of the Human Rights of the deceased, any suspect or suspects (where appropriate), family members of the deceased, staff working in the premises in which the death has occurred and members of the public. The parties to this Protocol are committed to upholding all of their human rights obligations under the European Convention of Human Rights, but in particular:
- ❑ article two - the right to life
 - ❑ article three - prohibition against torture, inhumane or degrading treatment
 - ❑ article six - the right to a fair trial
 - ❑ article eight - the right to respect for private and family life
- 1.4 All actions and decisions will be taken without discrimination in accordance with article fourteen, which prohibits discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2. ***Parameters***

- 2.1 The protocol relates to deaths that occur on any premises (including Young Offender Institutions) operated by the Prison Service, or equivalent private contractor and those being used on a temporary basis for the purpose of housing persons in prison custody e.g. clinical settings, court cells, and police cells. It will also include any vehicle being used by the prison service or private contractor for the transport of persons held in prison custody.
- 2.2 Premises will also include all National Probation Service Approved Premises, immigration detention accommodation (such as Immigration Removal Centres) and Secure Training Centres. The protocol extends to any vehicle used for the purposes of Immigration Service managed escort.
- 2.3 For the purposes of this protocol, management and staff concerned with the care of detained persons will be referred to as 'Custodians'.
- 2.4 All deaths must be initially approached as potential homicides.
- 2.5 The Crown Prosecution Service (CPS) has a specialist team of lawyers to deal with deaths in prison custody. However, the CPS specialist lawyers will only deal with cases relating *'to those who die in prison where the acts or omissions of an agent of the prison authority may have been a more than minimal cause of the death'*. This accords, and is consistent, with the definition of deaths in prison custody contained in paragraph 7.1 of the Attorney General's 'Review of the Role and Practices of the Crown Prosecution Service in Cases Arising from a Death in Custody' of 15 July 2003.
- 2.6 Many of the deaths to which this protocol relates will not result in a criminal investigation and will not involve the CPS. However, where, following the initial investigation by the police, there is any suspicion of criminal conduct either by commission or by omission, by an agent of the prison authority, the CPS should be consulted immediately.
- 2.7 Experience has shown that even deaths due to 'natural causes' may warrant substantial investigation beyond just the clinical treatment given. Issues can arise about the quality of care received by the deceased, whether there has been compliance with standard procedures or the suitability of those procedures, and investigations may even reveal the sophisticated staging of a crime scene. It is recognised that persons in custody are in a vulnerable position and there is a particular obligation on public authorities to account for the treatment of an individual in custody, where that individual dies. It is a matter not only of concern to the deceased person's family, but also to the wider community.
- 2.8 This protocol applies to the conduct of police investigations arising from all deaths in custody which give rise to a multi-agency investigation or investigations of the nature set out in the protocol. From the outset, a high

standard of investigation should be adopted to engender the confidence of the deceased's family and the community at large.

- 2.9 The manner in which police investigators approach deaths to which this protocol relates will have a significant effect on the success of their investigation or of any investigation that follows. An attitude of openness and accountability is fundamental in so far as it is consistent with the legitimate requirements of any ongoing criminal investigation or criminal proceedings, and this applies specifically to:

- Communication with the deceased's family
- Communication with the community
- The investigative process
- Issues of disclosure

- 2.10 Benefits derived from such an approach are likely to include:

- Improved and effective dialogue with families and communities
- Better understanding of issues raised by families and communities
- Long term confidence of witnesses, jurors and community advocates
- Improved confidence in the investigative process
- Better community intelligence
- Enhanced investigative opportunities
- Improved inter agency co-operation.

- 2.11 Where appropriate, consideration should be given to dealing with certain deaths to which this protocol relates as a critical incident, in order to prevent the situation from escalating. Critical incidents are where the effectiveness of the Prison Service, National Probation Service, Immigration and Nationality Directorate, Youth Justice Board or Police response is likely to have a significant impact on the confidence of the victim, their family or the community.

3. *Primacy*

- 3.1 The Police have the initial duty to inquire into the circumstances surrounding the death and must be given primacy for their investigation. This will ensure that other investigations do not prejudice any criminal investigation or the fair conduct of any legal proceedings that may result. It is the responsibility of the Police and the Crown Prosecution Service, where the Crown Prosecution Service is involved, to make sure that there is no prejudice to criminal proceedings.
- 3.2 The police investigation retains this primacy over any other investigation, unless and until the Crown Prosecution Service, where consulted, advises that there is insufficient evidence or it is not in the public interest to bring criminal charges for any criminal offence, or, where there is no Crown Prosecution Service involvement, the Police Senior Investigating Officer considers,

following preliminary inquiries, that a full criminal investigation is not required.

- 3.3 The Prisons and Probation Ombudsman (PPO) also has a duty to investigate all deaths to which this protocol applies and will be anxious that their own investigation should not be unnecessarily delayed. Therefore, the police will, as far as it is possible, allow the PPO's investigation to proceed. (Further guidance can be found within section 2 of Memorandum of Understanding between ACPO and PPO – appendices, document A.)
- 3.4 A Detective Officer of at least the rank of Sergeant and a Forensic Investigator (Crime scene) will attend every death and make an initial assessment of the circumstances surrounding the death.
- 3.5 Where a death occurs on police premises whilst the deceased is under the control of the prison service or equivalent private contractor, a Police Senior Investigating Officer will be appointed from the outset to make an initial assessment of the circumstances surrounding the death. Contact will be made with the Head of Police Professional Standards, the Independent Police Complaints Commission (IPCC) and the Prisons and Probation Ombudsman. The IPCC will liaise with the Prisons and Probation Ombudsman and agree how the investigation will be pursued.
- 3.6 Where the circumstances of the death raises the suspicion of potentially criminal conduct, a Detective Officer of at least the rank of Inspector or a Senior Investigating Officer will attend the scene together with a supervisory Forensic Investigator and undertake an investigation into the death. (A guide for action required can be found within appendices - Document B)
- 3.7 The importance of the work of other non-police investigations is recognised, together with the urgency of certain enquiries they may have to undertake that are essential to identify any major risks to life or to the immediate stability of the regime in the premises in which the death occurred. Such investigators have a crucial role in contributing to familial and public reassurance and in assessing any lessons that can be learned so that immediate follow up action can be taken.

4. ***Initial action and response***

- 4.1 The primary concern upon discovery of an apparent death will be the saving of life. The protection and preservation of the scene will then become the priority, once it has been established that death has occurred.
- 4.2 Custodians will ensure that the scene of death is secured as soon as possible, in accordance with local instructions, and that it is not interfered with prior to the arrival of the police. A scene log should be commenced immediately to maintain the integrity of the scene. Good practice in this area has been developed by the Police Advisor's section which can be contacted on 020 7217 6470 to provide any advice and guidance required.

- 4.3 It is recognised that in some exceptional circumstances, the preservation of a scene may compromise good order, stability and safety. Where the risks of preserving the scene are considered to be too high, operational requirements will take precedence. In order to maintain transparency and openness the decision should be made by a Governor, Director or Senior Manager. The decision and reasons for decision must be documented.
- 4.4 Prior to the arrival of the police at the scene, Custodians will also be responsible for securing and preserving all other relevant evidence. (To assist investigators a list of relevant evidence can be found within appendices - Document C)
- 4.5 There is also a need to ensure that all Custodians involved in the incident, or any of the events leading to it, are advised to avoid discussing it prior to any initial debrief or formal questioning by investigators. However, it is recognised that an early debrief of staff may be legitimate and proper in order to identify and resolve urgent welfare issues, and to quickly establish any learning points that will require immediate action by senior management. Meticulous records of the debrief should be maintained and brought to the attention of the police investigating team to avoid the possibility of the investigative process being undermined or pre-empted.
- 4.6 For those premises that have an allocated Police Prison Intelligence / Liaison Officer (PLO) the services of that Officer should be utilised to facilitate introductions, access, communication and integrity between agencies.
- 4.7 At an early stage the Governor, Director or where appropriate, the Senior Manager of the prison, establishment or organisation concerned, will meet with the senior police officer present to:
- Identify and review any actions already taken or approved by the police.
 - Formulate initial strategy.
- 4.8 Where, as a result of any meeting or meetings under paragraph 4.7, the police investigation continues to take primacy, the Senior Investigating Officer will make early contact with the Prisons and Probation Ombudsman to further discuss strategy and working arrangements, in accordance with this protocol and the Memorandum of Understanding between ACPO and the PPO. (Appendices – Document A)
- 4.9 The Governor or Director of any prison establishment has a responsibility to inform the Coroner immediately of all deaths. However, the Police may take on this responsibility when called to a prison death and will liaise directly with the Coroner. Any instructions provided by the Coroner should be considered and shared with all investigating teams.
- 4.10 Where the death is linked to any work related activity within a prison; probation; or immigration establishment, the Health and Safety Executive

(HSE) will be notified. Further guidance for investigators can be found in the HSE document: Work Related Death - A Protocol for Liaison.

5. *Pathologist and Post Mortem*

- 5.1 A Home Office Pathologist, appointed by the Coroner, will be utilised for all deaths to which this protocol relates, unless the Coroner deems otherwise.
- 5.2 Where it is considered by the Senior Investigating Officer to be appropriate, the appointed Home Office Pathologist will be invited to attend the scene of the death, to assist with the scene interpretation, collection and preservation of evidence, and removal of the body.
- 5.3 As a first principle, a Home Office Post Mortem will be held for all deaths in accordance with paragraph 5.1 above. A Detective Officer of at least the rank of Sergeant or other suitably trained officer, and a Forensic Investigator will attend the Post Mortem.
- 5.4 The time-scale for a standard Coroner's post mortem examination very often does not leave sufficient time for all investigators to be fully satisfied as to the cause of a prisoner's death, and the circumstances surrounding that death. Even if the death is due to 'natural causes', issues of clinical management may arise, and there may be other relevant matters relating to the non-medical treatment of the deceased, by the authorities. A standard Coroner's post mortem examination may not be adequate to fully explore all such issues. There is a need to properly investigate issues relating to the treatment (clinical or otherwise) of the deceased, in order to satisfy the requirements of article 2 of the European Convention of Human Rights.

6. *Access to Relevant Materials and Exchange of Information*

- 6.1 It is important from the outset that, although the police investigation retains primacy in accordance with the terms of paragraph 3.1 of this Protocol, an agreement is reached between each investigation team in respect of access to relevant materials and exchange of information.
- 6.2 'Relevant materials' includes exhibits, documentary evidence and any other relevant material obtained during the course of an investigation.
- 6.3 The Coroner should wherever possible, be given unimpeded access to all relevant material, including statements obtained by the police and all investigation reports. It is desirable that the original Clinical Record is made available immediately the death is reported, so that it is available for the post mortem examination.
- 6.4 Any relevant material obtained during the course of the investigation may be subject to statutory restrictions e.g. the Data Protection Act 1998, or, where there is a criminal investigation following the initial police inquiries, the Police and Criminal Evidence Act 1984, the Criminal Procedure and

Investigations Act 1996 and the Codes of Practice under those Acts. There is also a duty of confidentiality attaching to information provided to police during the course of investigations, although the public interest in keeping the information confidential must be weighed against the public interest in disclosing it (see for example paragraph 6.9 in relation to disclosing information to the Prisons and Probation Ombudsman).

- 6.5 Where the Police are conducting a criminal investigation, there are likely to be difficulties with disclosure of material to other investigators for the duration of that investigation, or any subsequent criminal proceedings. The police must always bear in mind that, where a criminal investigation or proceedings is in prospect, the disclosure of certain information or material, including the form in which such disclosure is made, might have an adverse effect on the investigation or the proceedings (for instance by compromising or contaminating any evidence gathered), and this might cause prejudice to a suspect or accused person. However, where, in criminal investigations or criminal proceedings, the police are in any real doubt as to whether material can or should be disclosed, the CPS will provide early advice to the Police in respect of the form and timing of any exchange of information and issues of access to relevant materials between agencies. This approach will assist with the development of a memorandum of understanding between investigation teams regarding the sharing and exchange of information. The memorandum of understanding should be tailored to meet the needs of each individual investigation. The Prison Service Police Advisor's section can provide suitable guidance and can be contacted on 020 7217 6470.
- 6.6 When the Police are conducting an investigation into a death on behalf of the Coroner, they may at some stage be in a position to provide other investigation teams with a list of all completed or intended staff interviews. They may also be able to provide a copy of a witness statement or a record of interview taken from a member of staff. This will be subject to paragraph 6.7 below, and to any restrictions imposed by the legislation identified in paragraph 6.4 above, or the need to avoid any adverse effect on a criminal investigation or criminal proceedings.
- 6.7 Where Police are conducting a criminal investigation, disclosure of lists of completed and intended staff interviews will only be made following consultation with and authorisation by the CPS.
- 6.8 There may be situations where, during a criminal investigation, there are specific requests made for statements or records of interview by other investigating teams when the police may be in doubt as to whether the material can be provided, or as to when it can be provided, or the form in which it may be revealed. In such cases of doubt, the matter will be referred to the CPS for consideration.
- 6.9 Before taking a statement from witnesses, the Police will tell the interviewee that the information may be shared with the Prisons and Probation Ombudsman's investigating team. But whether or not consent is obtained, the

Police will normally be able to share both statements and documents with the Prison and Probation Ombudsman's investigating team. The only requirement is that the Police first consider on a case by case basis, taking into account all the relevant circumstances:

- whether the public interest to assist the Prison and Probation Ombudsman's investigation outweighs the public interest in keeping the information confidential; and
- whether the statement or document contains information that might cause particular prejudice to the person who made it. (If so, the Police should give the person prior written notice that the statement or document will be disclosed.)

- 6.10 Where interviews have taken place before the police investigation has commenced, or were otherwise approved by the police, the Prisons and Probation Ombudsman and heads of other investigation teams will provide the Police with a list of any interviews carried out by their investigating officers.
- 6.11 Custodians will produce without delay original documentation relating to the deceased as requested by the Coroner or Police, including any medical records and risk assessments made by staff.
- 6.13 The retention, revelation and disclosure of material in relation to prosecutions brought by the Crown Prosecution Service shall be in accordance with the requirements of the Code of Practice under s23 of the Criminal Procedure and Investigations Act 1996 and the Disclosure Manual, incorporating the joint operational instructions for handling unused material agreed between ACPO and the Crown Prosecution Service.

7. *Interviewing of witnesses and suspects*

- 7.1 Following any death a number of investigations may take place e.g.
- Police
 - Prisons and Probation Ombudsman (PPO)
 - Internal Prison Service
 - National Probation Service
 - Immigration and Nationality Directorate
 - Youth Justice Board
 - Clinical review
 - Independent Police Complaints Commission
- 7.2 Terms of Reference for the PPO can be found on their web-site: www.ppo.gov.uk Their relationship with the Prison Service is set out in a protocol that can be accessed via Prison Service Order 2710 "Follow up to deaths in custody." A copy of the order can be found on the Prison Service website: www.hmprisonservice.gov.uk The Memorandum of Understanding between ACPO and the PPO is attached (Appendices – Document A)

- 7.3 The heads of each investigation team should at an early stage meet and establish arrangements for the interview of staff concerned directly with the death. It is recognised as good practice for investigators to include a broad outline of these arrangements within a 'Memorandum of Understanding.'
- 7.4 Consideration will be given to establishing the most appropriate venue and environment for staff interviews and to ensure that necessary equipment is available to meet the needs of investigators. This will be critical for any criminal investigation when dealing with significant witnesses in accordance with national guidelines and will entail consideration of whether certain individuals might qualify for 'Special measures' as intimidated and/or vulnerable witnesses in accordance with the Youth Justice and Criminal Evidence Act 1999.
- 7.5 During a criminal investigation a co-ordinated approach is required to avoid duplication of work by investigators, to ensure the integrity of evidence gathered and to ensure that Custodians are dealt with considerately, fairly and proportionately. There are inherent legal dangers of persons being interviewed separately by different investigation teams and the CPS should be consulted for advice where it is known that separate interviews are likely to be conducted.
- 7.6 When requested the interviewee should be provided, where appropriate with the opportunity for access to and consultation with any relevant staff association or trade union prior to conducting the interview.
- 7.7 The Police Senior Investigating Officer may wish to meet officials of the relevant association or union prior to interview to discuss the process and, where appropriate, invite them to contribute evidence. Reasonable facilities and time should be provided to enable staff association or union officials to carry out their proper duties.
- 7.8 When a Custodian or any other individual is interviewed under caution, the provisions of the Police and Criminal Evidence Act 1984 and supporting codes of practice will apply.

8 *Family*

- 8.1 Article 2 of European Convention of Human Rights supports the principle that the family are entitled to be involved in the investigative process, to the extent necessary to protect their legitimate interests.
- 8.2 The family circumstances of each individual are unique and families should be treated with consideration and respect. Deaths within establishments such as prisons can generate suspicion and concern amongst relatives as to the true circumstances surrounding the death. Families expect a professional and sensitive approach and should be assured at all times that the investigation is thorough, rigorous and independent. From the outset, effective co-ordination is

required between investigation teams in the provision of family liaison and support.

- 8.3 Family Liaison Officers are not always in a position to provide full practical support and guidance when working with victims' families, and at an early stage families should be given the opportunity to be referred to a supporting agency with the expertise and knowledge to provide professional and ongoing support. It is recognised that support and advice may be required for long periods of time to incorporate inquests and (where relevant) criminal trials, public enquiries etc.
- 8.4 The organisation 'INQUEST', founded in 1981 by friends and families of people who had died in custody, is able to provide this complete service and it is considered good practice for families to be referred to the organisation following any death. INQUEST can advise on specialist lawyers, experts, pathologists, bereavement support, and deal with referral to other appropriate supporting agencies. It can also be a helpful conduit between the investigating teams and the bereaved family. Information packs are available from:

INQUEST, 89-93 Fonthill Road, London N4 3JH.
Telephone: 020 7263 1111 Fax: 020 7561 0799
E-mail: inquest@inquest.org.uk

- 8.5 It is essential that next-of-kin be informed about a death as soon as possible. This responsibility initially lies with Custodians who have local arrangements in place. A prison Family Liaison Officer or senior member of staff will be nominated to arrange delivery of the death message and to act as a liaison and contact point with the family. In certain circumstances it may be impractical for staff to deliver the message and the Police will provide appropriate support following any requests made to assist with delivery of a death message. The delivery of death messages must not be unreasonably delayed for want of appointing a Family Liaison Officer.
- 8.6 The family should be kept informed of the progress of the investigation. If Family Liaison is to achieve its purpose, it must ensure that the family is kept informed and given the opportunity to participate effectively in it.
- 8.7 Where there is a death that falls within the scope of this protocol, the Police may appoint a Family Liaison Officer to make early contact with the family, to service both the needs of the investigation and provide ongoing family support.
- 8.8 Trained Family Liaison Officers or other staff appointed by any of the investigation teams to liaise with the family must work closely with the Coroner's Officer.
- 8.9 Where a post mortem has not been carried out, upon first contact with the family they will be notified of the time, date and location of the planned post mortem, and of their right to arrange for a pathologist or medical officer

appointed by them to attend. The family should also be advised at this early stage of their right to receive the post mortem report under the Coroner's rules.

- 8.10 Investigators need to be clear about how family support and contact is to be made and formulate an early joint strategy for a cohesive and prompt response, to avoid overlap and duplication of effort. Mixed messages, misinformation and a fragmented approach should be avoided at all costs. A Family Liaison strategy should be developed by the Police Senior Investigating Officer and shared with other investigation teams.
- 8.11 From a safety point of view it is also important that risk assessments be jointly considered before any deployment of a Family Liaison Officer to an address.
- 8.12 Where criminal charges are brought or contemplated, the Police Senior Investigating Officer should be prepared to meet the family (with the family's legal representatives, if the family so wish) and provide the family with such information about the investigation and any intended criminal proceedings that the police are in a position to give at that stage. The police should appropriately consider the concerns of the family and pay due regard to any further lines of inquiry they may suggest. For instance, the family may have important information concerning health problems of the deceased, and be concerned as to whether the care the deceased received in relation to such problems was appropriate. This may suggest further lines of inquiry, where the latter is relevant to the circumstances of the death.
- 8.13 As criminal proceedings are being progressed, the family should be informed of the timetable towards trial, including the date for the Plea and Case Management Hearing, any important interim hearings, the trial date etc. The family should be notified of relevant information on victim's rights, including 'Making a Victim Personal Statement', the Victims' Code of Practice and the Crown Prosecution Service Statement on the Treatment of Victims and Witnesses. The mechanism for informing the family on case progression should be agreed between the Crown Prosecution Service, Witness Care Unit, Senior Investigating Officer and Family Liaison Officer.

9 *Media management*

- 9.1 Investigations involving deaths in custody may attract a high level of public and media interest. It is important that contact with the media is managed carefully to minimise the causing of inappropriate and unnecessary alarm to the family, general public and prison community. It is also necessary to ensure that investigations are not compromised or impeded by media activity and that any press statement does not pre-empt the outcome of an investigation or give the impression that it has been prejudged.
- 9.2 At an early stage of the investigation an initial media strategy should be agreed between investigating teams including the Coroner's Office. This should be done in conjunction with respective press offices.

- 9.3 The name of the deceased should not be released until next of kin have been informed of the death.
- 9.4 A joint media strategy should continue throughout the enquiry and the family should be kept fully informed and updated.

10 Training

- 10.1 The signatories to this protocol will identify any training needs that are required to effectively deliver the requirements of the protocol and make local arrangements for the necessary training to be delivered and evaluated in a timely manner.
- 10.2 A joint and collaborative approach to training is encouraged and opportunities seized to share and maximise the potential of any resources.

11 Review and Monitoring

- 11.1 The Association of Chief Police Officers, the Crown Prosecution Service, the National Offender Management Service, the Immigration and Nationality Directorate, and the Youth Justice Board shall form a National Liaison Committee which should meet at least once a year to review the operation of the protocol. Representatives from the Coroner's Service, Prisons and Probation Ombudsman, and other appropriate family support organisations will also be invited to sit on the committee. They will consider the protocol's operation and effectiveness to ensure that any changes in policy or practise are reflected within it. Any changes to the agreement shall be approved by the signatories.
- 11.2 The Association of Chief Police Officers, the Crown Prosecution Service, the National Offender Management Service, the Immigration and Nationality Directorate, and the Youth Justice Board shall also nominate a Liaison Officer to provide a link with staff operating on a local level. The Liaison Officer will be responsible for monitoring the effectiveness of the protocol and provide a single point of contact and conduit for practitioners. The Liaison Officers will report directly to the Police Advisor's section.
- 11.3 The Police Advisor's section (Tel: 020 7217 6470) will provide a single point of contact and co-ordination role for both the National Liaison Committee and nominated Liaison Officers.
- 11.4 Any dispute arising from the protocol or any failure to adhere to the protocol by any party that cannot be resolved locally shall be referred to the National Liaison Committee for resolution on behalf of the signatories.

12 Appendices:

Document A Memorandum of Understanding – ACPO & PPO

Document B List of relevant evidence to be considered by investigators

Document C Guide and considerations for forensic response to a death in prison

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

1. Introduction

- 1.1 This memorandum of understanding has been drawn up between the Association of Chief Police Officers (ACPO) and the Prisons and Probation Ombudsman (PPO). It sets out the principles for co-operation between the police and the PPO in the investigation of deaths of prisoners (including people held in young offender institutions), residents of National Probation Service approved premises, residents of immigration detention accommodation and people under Immigration Service managed escort, and any other deaths that the PPO has discretion to investigate.
- 1.2 It is the role of the police to conduct a criminal investigation into a death. It is the role of the PPO to investigate the general circumstances and events surrounding the death, including operational and managerial matters and the clinical care of the deceased, to provide explanations and insight for bereaved relatives, and to assist the Coroner's inquest.
- 1.3 This memorandum sets out the minimum standards of co-operation and communication that should be applied by all police services throughout England and Wales where both the police and the PPO are investigating the circumstances surrounding a death. The intention is to ensure that both investigations are thorough and fully achieve their aims, that overlap and duplication are kept to a minimum, and that the organisations, individuals and families involved in the investigation are dealt with considerately, fairly and proportionately.

2. Initial investigation

- 2.1 The police will initially approach all deaths as potential homicides.
- 2.2 The police will be given primacy for the investigation, in so far as this is necessary to ensure that the PPO's investigation does not prejudice any criminal investigation or the fair conduct of any subsequent legal proceedings. It is the responsibility of the police to make sure that there is no prejudice to criminal proceedings.
- 2.3 However, the PPO is anxious that their own investigations should not be unnecessarily delayed. As far as it is possible, therefore, the police will allow the PPO's investigation to proceed prior to a formal decision that the investigation is not a criminal one. For example, if the police consider that there is unlikely to be a criminal investigation, but are awaiting the post mortem report before formally closing the investigation, it might meanwhile be possible for the PPO investigation to proceed. As a rule of thumb, once the initial police interviews are concluded, it should generally be possible for the PPO to start his own investigation.
- 2.4 The police may allow the PPO's investigation to proceed, but put certain restrictions upon it (for example, that the PPO does not interview certain people). These

restrictions will be discussed with the PPO as soon as possible, as part of a joint strategy meeting (see below).

3. Joint strategy meeting

- 3.1 In all cases where the police and the PPO are responsible for the investigation of a death, the police will ensure that there is an early strategy meeting between the police senior investigating officer or other nominated lead police investigator, and the nominated PPO investigator to agree how the investigations will proceed. The intention will be to develop a strategy for parallel but co-ordinated investigations, and to set up a single point of contact between the investigations.
- 3.2 At the strategy meeting, liaison with the bereaved family will always be discussed, to ensure that there is co-operation between the police and the PPO family liaison officers. This should provide co-ordinated and strategic support for the family and a smooth handover of the family liaison role between agencies if appropriate.
- 3.3 The police senior investigating officer or other nominated lead police investigator will ensure that the nominated PPO investigator is told of any intelligence relevant to visiting the bereaved family, with particular regard to any health and safety issues about which the PPO needs to be aware.

4. Evidence at the scene of death

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

5. Sharing of information and evidence

- 5.1 As soon as possible without prejudicing any criminal proceedings, the police will share with the PPO all evidence obtained in the course of the investigation, including:
- Copies of photographs or videos of the scene
 - Copies of statements taken by the police
 - Copies of CCTV evidence
 - Full details of all exhibits and their location
 - Copy of the post mortem report
 - Copy of the deceased's police custody record in cases where they have recently been remanded from police custody
 - Copies of the deceased's police antecedents and history where appropriate

- History of family liaison contact to date
- 5.2 The police will normally tell witnesses that their statements or documents may be shared with the PPO's investigating team. But it is not essential that such consent is obtained before sharing information with the PPO. Although the information may have been given to the police in confidence, it can still be shared with the PPO. The only requirement is that the police first consider:
- Whether the public interest to assist the PPO's investigation outweighs the public interest in keeping the information confidential. As the PPO's investigation is considered to partially satisfy the State's obligations under Article 2 of the European Convention on Human Rights to conduct an independent investigation into a death in custody (the inquest is the other part of meeting this obligation), it will nearly always be in the public interest to assist the PPO's investigation.
 - Whether the statement or document contains information that might cause particular prejudice to the person who made it (for example, serious harm to their business interests). In the rare case that there might be such prejudice, the police can still disclose the information, but should give the person prior written notice that this will be done.
- 5.3 The PPO may only subsequently disclose information obtained from the police investigation if he considers that the public interest in making the disclosure outweighs the public interest in maintaining confidentiality.
- 5.4 The nominated PPO investigator will tell the police senior investigating officer or other nominated lead police investigator as soon as practical if evidence of a criminal offence or suspected criminal offence comes to light.
- 5.5 The nominated PPO investigator will tell all people interviewed as part of the PPO investigation that information about potential criminal offences will be shared with the police.
- 5.6 If the police request copies of statements taken by the PPO, or any documentation provided to the PPO, in order to assist in a criminal investigation, the PPO will provide these as soon as possible.
- 6 Deaths on police premises**
- 6.1 Where a death occurs on police premises whilst the deceased was under the control of the prison service or equivalent private contractor, or the Immigration and Nationality Department, the police senior investigating officer will contact the PPO and the Independent Police Complaints Commission (IPCC), who will agree how the investigation will be pursued.

7. **Resolution of disputes**

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

8. **Review and monitoring**

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

Guide and considerations for forensic response to a death in prison

- 1. Complete photography of the scene will be made, including external views into the cell from observation hatches. Photograph the body in situ**
- 2. Video of the scene must be considered**
- 3. Diagrams will be constructed, including all relevant measurements, including lie of the body, ligature points and any other significant aspects of the scene**
- 4. Make factual observation and photograph any obvious injuries to the body**
- 5. Exposed areas of the body to be fibre taped and head, hands and feet, to be bagged prior to removal to mortuary**
- 6. If a ligature is used, identify source material, photograph and retrieve**
- 7. In most instances the ligatures should remain with the body for the post mortem, when seizure will be made after viewing by Home office Pathologist. However there may be certain circumstances when this is not appropriate i.e. contamination of ligature by body fluids that may compromise potential DNA evidence prior to post mortem examination**
- 8. Cut ends of ligature must be indicated and whether cut by prison staff or Forensic Investigator**
- 9. Ligatures to be carefully preserved for low copy number DNA (See 7 above)**
- 10. Identify and photograph ligature point, method of attachment (prior to body being taken down if possible)**
- 11. Check for other ligature points or attempts to make ligatures and photograph. Seize attempts if possible**
- 12. Examination for footwear to be made. As a minimum, the immediate floor area below and surrounding the body and on any surfaces which deceased or others may have stepped on, which may be associated with the death**
- 13. Check for suicide note and seize**
- 14. Seize any letters, notes, or other correspondence relating to the deceased and consider ESDA and fingerprint treatments**
- 15. Check for Privacy ('privy') Key**
- 16. Consider examination of cell for drugs in conjunction with POLSA/Police search advisor**

- 17. Examine cell for any blood distribution**
- 18. Where death does not involve hanging, locate and photograph and retrieve potential weapons**
- 19. Consider use of knot expert to interpret ligature and knots**
- 20. Consider scene reconstruction**
- 21. Cell to be retained until released by Senior Investigating Officer**
- 22. Post mortems must always be performed by a Home Office Pathologist unless deemed otherwise by the Coroner**
- 23. Forensic Investigator supervisor must attend post mortem**
- 24. Full photography during post mortem to be undertaken**
- 25. Clothing to be appropriately seized and exhibited. A search for property within pockets must be made**
- 26. Post mortem samples to be taken as a minimum to include:**
 - Swabs of orifices – sexual offences**
 - Hair samples – head and pubic to include combings, plucked and cut. Additional cut head hair (approximately 100) cut adjacent to scalp to be taken for drug analysis**
 - Nail cuttings**
 - Consider low copy number DNA swabs from deceased**
 - Full toxicology set of samples**
 - DNA sample**
- 27. ‘Dead set’ finger and palm prints must be taken**
- 28. Consider ultra violet photography of injuries, ligature mark**
- 29. Drugs screen for drugs or alcohol misuse – also consider sedatives, hypnotics, volatiles and prescriptive drugs deceased known to be taking**
- 30. Consider submission of body orifice swabs for indications of sexual activity/offences**
- 31. All property seized in relation to inquiry must be correctly packaged and exhibited. Packaging must be tamper evident and satisfy health and safety requirements. Continuity must be addressed.**
- 32. Consider appointment of an exhibits officer**
- 33. The above are seen as a minimum requirement and examination should be based on the specific circumstances of each death**

Relevant Evidence

Documents and other evidence to be considered by investigators

1. Statements from staff and prisoners – e.g. those first on the scene, others attending, last person to see the prisoner alive, Duty Governor, Controller, prisoners in adjacent cells, Doctor, others with knowledge of the individual, e.g. personal officer / probation officer/party officer / friends
2. Prisoner's core record – form 2050
(Including Security File, Visits Sheets and property cards)
3. Clinical record (including Care Plan, forms 213, 2169, 2169a)
4. Dental records and Drug Treatment records
(These may be kept separate from Clinical record)
5. Incident forms and adjudication history, plus forms 1127, 254 (notice of reports and charge sheets) and forms 256 (adjudication hearing)
6. Incident Log (including copy of suicide note if applicable)
7. Any forms ACCT (current and previous)
8. Copy of Contingency Plans for Death in Custody
9. Wing Occurrence Book or form 2060 Observation Book
10. Copy of local Suicide Prevention policy
11. Copies of previous Suicide Prevention Team minutes (minimum previous 3)
12. Names, prison numbers (and current locations) of prisoners in adjacent cells
13. Reception Register
14. Relevant details of staff duties including night staffing for day prior to and day of death
15. Disciplinary records of prison officers on duty
16. Movement sheets
17. Gatekeeper's log

- 18. Details of core day**
- 19. Copies of any other relevant correspondence found in cell**
- 20. Specifications (map of wing/landing)**
- 21. Local Inmate Data System (LIDS) print-out for the deceased prisoner**
- 22. Form 191a Medical Restriction Register**
- 23. Prisoner Escort Form (PER)**
- 24. Counselling Assessment Referral and Throughcare (CARAT) Casework file**
- 25. Night Sheets including the night pegging printout**
- 26. Cell sharing risk assessment forms XF001 & XF002**
- 27. Relevant Governors Orders and Notices to Staff**
- 28. Staff Training Records**
- 29. Copies of any HMCIP reports (within the preceding twelve months)**
- 30. Copies of any Standards Audit Unit reports (within preceding twelve months)**
- 31. Copies of most recent annual reports of IMB**
- 32. Action plans of any investigations into previous deaths (within preceding twenty four months) at the establishment**
- 33. Registration procedures for form ACCT documentation**
- 34. Roll on day: Receptions in and out**
- 35. Wing Application books**
- 36. Request/Complaint forms – NHS complaints information**
- 37. Details of prisoner's referrals to listener schemes**
- 38. Copy of Caring for the Suicidal in Custody Guidance Pack**
- 39. Copy of Prison Service Order (PSO) 2700**
- 40. Risk Assessments for Bed-Watches and Bed-Watch logs**

- 41. Names and times of escorting staff**
- 42. Governor Journal Entries**
- 43. Copy of Prison Service Order (PSO) 2710**
- 44. PSI 26/2002 Cell sharing risk assessment, plus associated booklets and guidance**
- 45. Form 1352 Movement Books**
- 46. For category A prisoners, referrals to HQ**
- 47. Minimum staffing levels breakdown**
- 48. Cell clearance forms**
- 49. Duty Governor's Book**
- 50. Segregation Forms**
- 51. Copy of Health Care Standards**
- 52. Food refusal book**
- 53. Tapes of telephone calls**
- 54. CCTV**
- 55. Any relevant transcripts**
- 56. Subject Intelligence reports (SIRs)**
- 57. Pin-phone telephone conversations (retained for a three-month period)**
- 58. Forms specific to juveniles:**
 - T1:V risk assessment**
 - Asset form**
 - Pre sentence report**
 - Post court report**