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**DEATHS IN POLICE CUSTODY: GUIDANCE
TO THE POLICE ON PRE-INQUEST
DISCLOSURE**

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THIS CIRCULAR IS ADDRESSED TO:

**CHIEF OFFICERS OF POLICE (ENGLAND AND
WALES)**

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CHIEF CLERKS TO THE CROWN COURTS
CLERKS TO THE POLICE AUTHORITIES
(ENGLAND AND WALES)**

Dear Chief Officer

Home Office Circular 20/1999 advised Chief Officers about making arrangements for the pre-inquest disclosure of documentary evidence to interested persons where there has been a death in police custody. The guidance was particularly important in taking forward recommendation 42 of the Stephen Lawrence Inquiry.

We have now undertaken a review of the implementation of the guidance and a revised version of the Circular is attached. Experience shows that pre-inquest disclosure has generally been working well and has sometimes exceeded what is suggested in the guidance. It also indicates movement towards disclosure at an earlier stage. The main changes in the new version of the guidance are as follows:

Paragraph 6 refers to good practice in keeping bereaved families informed during the course of an investigation;

Paragraph 7 refers to the new definitions of deaths in police custody introduced on 1 April 2002;

Paragraph 10 clarifies when matters should be discussed with the Crown Prosecution Service in relation to material which might have an impact on subsequent proceedings;

Paragraph 12 advises that the views of the Crown Prosecution Service should be sought when disclosure of the investigating officer's report is contemplated;

Paragraph 13 refers to police officers explaining to interested parties that pre-inquest disclosure is on a confidential basis. The undertaking of confidentiality previously at Annex B has been deleted;

Paragraph 15 refers to the custody record and pathologist's report being disclosed prior to full pre-inquest disclosure. It also encourages pre-inquest disclosure being made as far as in advance as possible.

I hope that these various changes will improve the usefulness of the guidance and we will continue to keep the contents under review.

Yours faithfully

John Woodcock

DEATHS IN POLICE CUSTODY: GUIDANCE TO THE POLICE ON PRE- INQUEST DISCLOSURE

This note provides revised guidance to Chief Officers about the disclosure of documentary evidence to interested persons in advance of inquest hearings which concern deaths in police custody. It has been prepared in consultation with representatives of the Association of Chief Police Officers, the Metropolitan Police, the Police Federation, the Superintendents' Association, the Police Complaints Authority, the Coroners Society, Liberty, Inquest and others who have expertise in relevant issues.

Background

2. Home Office Circular 20/1999 was issued to clarify various issues in relation to the pre-inquest disclosure of documentary evidence which had been under consideration for some time. The updated version of the Circular reflects experience of operating the system, but the essential issues remain largely unchanged. Chief Officers may be aware that there is a fundamental review of the Coroners' Service underway. At least until that review has been completed there is no intention to alter the limited requirement of an inquest to ascertain who the deceased was, and how, when and where he came by his death. The existing prohibition on the attribution of civil or criminal responsibility remains, as does the restriction on commenting on matters outside the remit of the inquest.

3. Inquests are non-adversarial. There are in law no parties to the matter, and no issues to be litigated between them. However, where a death occurs in controversial circumstances, it can be difficult to avoid an adversarial approach arising, particularly where the deceased was in legal custody.

4. In such circumstances, disclosure of information held by the authorities in advance of the hearing should help to provide reassurance to the family of the deceased and other interested persons that a full and open police investigation has been conducted, and that they and their legal representatives will not be disadvantaged at the inquest. Advance disclosure may also remove a source of friction between interested persons and facilitate concentration on the facts surrounding the death. Experience has shown that pre-hearing disclosure in cases relating to deaths in police custody has been useful in allaying suspicions that matters are being deliberately concealed by the police which might otherwise have distracted attention from the real issues and made it more difficult for inquests to achieve the purpose required in law.

5. Chief Officers are advised, therefore, that there should continue to be as great a degree of openness as possible, and that disclosure of documentary material to interested persons before the inquest hearing should be normal practice in the cases described in paragraph 7 below. In all cases Chief Officers will want to consider whether there are compelling reasons why certain documents, or parts of documents, may not be disclosed. But there should always be a strong presumption in favour of openness.

6. Our understanding from the review is that it is common practice in most forces to keep bereaved families fully informed during the course of the investigation. We consider that this is essential good practice which should be followed in all cases. It is important to establish contact with the bereaved family as early as possible and keeping them fully informed will help to allay any fears that matters are being concealed by the police, particularly in the more controversial cases.

Scope

7. This guidance applies to all cases of deaths of a member of the public during or following contact with the police which the police are required to report to the Home Office. A full definition of such deaths is at Annex A.

Extent of disclosure

8. The courts have established that statements taken by the police and other documentary material produced by the police during the investigation of a death in police custody are the property of the force commissioning the investigation. The Coroner has no power to order the pre-inquest disclosure of such material, and limited powers to prevent such disclosure. Disclosure will therefore be on a voluntary basis.

9. All the material which is supplied to the Coroner should normally be made available to all those whom the Coroner considers to be interested persons.

10. There are some kinds of material which require particular consideration when pre-inquest disclosure is being arranged:

(i) There may in some cases be a question of whether disclosure of certain material might have an impact on possible subsequent proceedings, whether criminal, civil or disciplinary. This is likely to arise, however, only in exceptional cases. Where the material might have an impact on subsequent criminal proceedings, the matter should be discussed with the Crown Prosecution Service. These reasons would only justify withholding of documents, or parts of documents, where there was a genuine risk, not simply a remote possibility, that disclosure would have a prejudicial effect.

(ii) There may be material which contains sensitive or personal information about the deceased, or unsubstantiated allegations about the deceased, or other material which may cause concern or distress to the family of the deceased. Such material should be handled with appropriate care and sensitivity, particularly over the way in which such material is disclosed to the family of the deceased. The handling of such material should be discussed with the family or the family's legal representatives.

(iii) Personal information about third parties which is not material to the inquest – for example, the addresses of witnesses – should be deleted from documents to be disclosed. The names of witnesses should not be disclosed where an application to the Coroner for anonymity is being considered.

(iv) Where disclosure of material which is not likely to be called in evidence is contemplated, it may be preferable to arrange for interested persons to view the material in advance, rather than the material being copied and provided directly to them, on the grounds that such material is generally not likely to be relevant.

(v) Any person who is asked to give a statement during the course of the police investigation of a death in custody should be made aware that his/her statement may be used in the context of an inquest and may therefore be disclosed in accordance

with this guidance. That can readily be done by a declaration to that effect at the beginning of the statement.

11. Where any of paragraphs 10(i) – (iv) above apply, Chief Officers should seek the views of the Coroner concerned about how pre-inquest disclosure should best be handled. This would be consistent with the Coroner's role in controlling the conduct of the inquest. It would also enable account to be taken of any concerns that the Coroner might have regarding possible prejudice to the inquest hearing. However, consulting the Coroner on specific issues should not be used as an opportunity to delay the whole disclosure process. In cases where the Coroner decides to hold a pre-inquest hearing, that may provide an opportunity for the handling of disclosure to be discussed. It should be emphasised, however, that the Coroner has no power to order or prohibit disclosure of material which is in the possession of the police.

12. Disclosure of the investigating officer's report will not normally be expected to form part of the pre-inquest disclosure. That does not mean, however, that it is impossible for such a report to be disclosed where a Chief Officer considers that it would be right to do so. Where contemplating such disclosure, the Chief Officer should consider carefully, with the benefit of legal advice, whether it is in the public interest for the report to be disclosed to interested persons in whole or in part. The Chief Officer should also seek the views of others with an interest in the report, including the Police Complaints Authority in supervised investigations and the Crown Prosecution Service. Where a Chief Officer decides to disclose the investigating officer's report, expressions of opinion by the investigating officer and his or her recommendations and conclusions should be redacted.

Confidentiality

13. Pre-inquest disclosure to interested persons should be on a confidential basis, solely for the purpose of enabling interested persons to prepare for the inquest. That should be explained to and should be clearly understood by all interested persons when disclosure takes place.

14. Interested persons other than the police, including the family of the deceased, who have in their possession material about the death not otherwise disclosed to the police or the Coroner, should at the same time bring it to the attention of the Coroner and offer to provide similar pre-inquest disclosure to other interested persons.

Timing and costs

15. The precise timing of pre-inquest disclosure in a particular case will depend on the particular circumstances. It should be noted that in most cases the custody record and pathologist's report are disclosed prior to full pre-inquest disclosure. There will be cases on which CPS advice is sought on whether criminal proceedings are appropriate. In such cases, in order to avoid prejudice to a criminal trial, disclosure should not take place until either the CPS have advised against a prosecution or any criminal proceedings have finished. Subject to that proviso it is recommended that arrangements should normally be made for pre-inquest disclosure to take place as soon as the Chief Officer is satisfied that the material may be disclosed and in any case not less than 28 days before the date of the inquest proceedings. However, where possible, pre-inquest disclosure should be made as far in advance as possible. It is not good practice to delay disclosure to the 28 day point where there is no good reason to do so.

16. It is not anticipated that pre-inquest disclosure of documentary material will involve substantial additional costs. Indeed pre-inquest disclosure, through saving unnecessary adjournments and avoiding unnecessary suspicion, should actually save time and associated costs in many cases. The police should normally meet the costs of any reproduction of documents which is necessary for disclosure to interested persons.

ANNEX A

1. Deaths of a member of the public during or following police contact must be reported to the Home Office, Police Leadership and Powers Unit (PLPU) within 48 hours of the death. Forces are also required to report the outcome of any Coroner's inquest into the death. PLPU maintain a continuous record of all reported deaths and seek confirmation of the details and circumstances of each death with the force concerned prior to publication.
2. The definition of a death of a member of the public during or following police contact was revised on 1 April 2002 in order to provide greater clarity and avoid confusion.

CATEGORY 1

Fatal road traffic incidents involving the police

This definition covers all deaths of members of the public resulting from road traffic incidents involving the police, both where the person who dies is in a vehicle and where they are on foot.

CATEGORY 2

Fatal shooting incidents involving the police

This definition covers circumstances where police fire the fatal shots.

CATEGORY 3

Deaths in or following custody

This definition covers the deaths of persons who have been arrested or otherwise detained by the police. It also includes deaths occurring whilst a person is being arrested or taken into detention. The death may have taken place on police, private or medical premises, in a public place or in a police or other vehicle.

Deaths in the following circumstances are amongst those covered by the definition:

- where the person dies in or on the way to hospital (or some other medical premises) following or during transfer from police detention;
- where the person dies after leaving police detention and there is a link between that detention and the death;
- where the person is being detained for the purposes of exercising a power to stop and search;
- where the death is of a child or young person detained for their own protection;
- where the person is in the care of the police having been detained under the Mental Health Act 1983;

- where the person is in police custody having been arrested by officers from a police force in Scotland exercising their powers of detention under section 137(2) of the Criminal Justice and Public Order Act 1994;
- where the person is in police custody having been arrested under section 3(5) of the Asylum and Immigration Appeals Act 1993;
- where the person is in police custody having been served a notice advising them of their detention under powers contained in the Immigration Act 1971;
- where the person is a convicted or remanded prisoner held in police cells on behalf of the Prison Service under the Imprisonment (Temporary Provisions) Act 1980.

CATEGORY 4

Deaths during or following other types of contact with the police

This definition covers circumstances where the person dies during or after some form of contact with the police which did not amount to detention and there is a link between that contact and the death.

Examples of deaths which would be covered by the definition are as follows:

- where the person is actively attempting to evade arrest and the death occurs otherwise than as the result of a road traffic incident;
- where there is a siege situation, including where a person shoots himself, or another, whilst police are in attendance;
- where a person is present at a demonstration and is struck by a police baton and subsequently dies.

Deaths which follow police contact but which are not linked to that contact would not be covered. For example:

- Those attending police stations as innocent visitors or witnesses who are not suspects;
- Those which occur in a police vehicle which is being used as an ambulance to transport a dying person to hospital quickly, but not under the circumstances described under the category '*Deaths in police custody*';
- Those where police attend the scene of an incident where a person, who has not been detained, has received fatal injuries.

Notes

- **The above categorisations cannot be considered completely exhaustive. Cases will still have to be considered individually to decide whether and how they should be recorded;**
- **The term “police” includes police civilians as well as police officers;**
- **Deaths involving off-duty police personnel are not included.**