

MEMORANDUM OF UNDERSTANDING
BETWEEN THE SOLICITORS TO THE HILLSBOROUGH INQUESTS,
THE HILLSBOROUGH INVESTIGATION TEAM
AND THE INDEPENDENT POLICE COMPLAINTS COMMISSION

Introduction

1. This Memorandum of Understanding (“MOU”) is between –
 - (1) the Solicitors to the Inquests instructed by Lord Justice Goldring (“the Coroner”) in preparing for, and conducting, the inquests into the deaths of the Hillsborough disaster;
 - (2) the Hillsborough Investigation Team working under Assistant Commissioner Jon Stoddart and carrying out an investigation into the disaster (“the Investigation Team”); and
 - (3) the Independent Police Complaints Commission (“IPCC”), which is managing the investigation of the Investigation Team insofar as it relates to police conduct, pursuant to the provisions of the Police Reform Act 2002 (“the 2002 Act”).
2. This MOU is intended to record working arrangements between the Solicitors to the Inquests and the Investigation Team. Its primary objective is to promote constructive co-operation between the two teams, while recognising the independent remit of each. This MOU also makes provision for officers of the Investigation Team to perform tasks of value to the coronial inquiry.
3. This MOU does not constitute a legally binding agreement. It is not intended to restrict the Coroner in carrying out his statutory functions, or to fetter the exercise of his discretionary judgment. Neither is it intended to hamper the ability of the Investigation Team to conduct a full criminal investigation in accordance with its terms of reference, part of which is being conducted under the management of the IPCC.

Remit of the Inquests and Investigation

4. It is recognised that the Solicitors to the Inquests and the Investigation Team are entirely independent of each other and that each body has a distinct remit:

- (a) The function of the Solicitors to the Inquests is to prepare for open and comprehensive inquests into the deaths of 96 persons who died as a result of the disaster. The principal objective of the inquests is to ascertain how those persons came by their deaths. The verdicts of the inquests may not appear to determine criminal liability of any named person, or civil liability. However, it is a matter for the judgment of the Coroner to determine the scope of his inquiry, subject to statutory rules and legal principles.
 - (b) The remit of the Investigation Team is to carry out a full criminal investigation into the events leading up to, and including, the disaster. The investigation is to be conducted in accordance with terms of reference set by the Home Office and IPCC, copies of which are annexed to this MOU (Annex 1 and Annex 2). Depending upon the results of the investigation, it may provide the material for criminal prosecutions.
5. The Coroner has decided that the Inquests hearing should not be deferred pending the criminal investigation to be carried out by the Investigation Team. In those circumstances, it is recognised that the coronial inquiry and the criminal investigation will be taking place in parallel.
6. Insofar as the investigation of the Investigation Team relates to police conduct, it is an IPCC managed investigation (within the meaning of paragraph 18 of Schedule 3 to the 2002 Act) and is carried out under terms of reference set by the IPCC. Insofar as the investigation of the Investigation Team relates to other matters, it is carried out under terms of reference set by the Home Office.
7. In general terms, any IPCC managed investigation is conducted by police under the direction and control of the IPCC, which is responsible for setting terms of reference and approving the choice of investigating officer, as well as monitoring progress. The IPCC must also be consulted on key decisions as the managed investigation progresses. The IPCC manages the investigation and receives regular progress reports. Although the Investigation Team will have access to the relevant documents gathered as part of the IPCC managed investigation, the ownership of the documents and accordingly decisions about disclosure will be taken by the IPCC; with input from the Investigation Team. The role of the IPCC in managing the work of the Investigation Team in this case is governed more particularly by (a) a document which sets out the Roles and Responsibilities of the IPCC and the Investigation Team and (b) a memorandum of understanding between the IPCC, the Crown Prosecution Service and the

Investigation Team. Copies of those documents are annexed to this MOU (Annex 3 and Annex 4).

8. The IPCC has statutory responsibilities for the direction and control of the work of the managed investigation of the Investigation Team, as set out above. It has approved the proposed working arrangements between the Solicitors to the Inquests and the Investigation Team, as set out in this MOU. The IPCC is also conducting a separate, independent investigation into the aftermath of the Hillsborough disaster. This MOU does not relate to that investigation, and a separate memorandum is to be agreed between the Solicitors to the Inquests and the IPCC in that regard.

Direct Assistance Required by the Inquests Team

9. The Coroner and the Solicitors to the Inquests will require the assistance of officers of the Investigation Team in preparing for, and conducting, the inquests. In particular:

- (a) In conjunction with the IPCC, the Investigation Team is to be responsible for securing documentary evidence in relation to the disaster. Material which is gathered by the Investigation Team in relation to the aspects of their criminal investigation not managed by the IPCC will be kept under the control of the Investigation Team and used for investigation purposes. Material which is gathered by the Investigation Team under the IPCC managed investigation will be subject to the control of the IPCC. The Solicitors to the Inquests will require regular access to material gathered under both strands of the investigation and may in some circumstances need originals of documents for review in advance of the main hearing and/or for presentation as exhibits during that hearing.
- (b) It is likely to be necessary or desirable for the Solicitors to the Inquests to commission further enquiries, in advance of and/or during the inquests hearing, in order to ensure a comprehensive inquiry. These may include, for example –
 - (i) pursuing particular areas or lines of enquiry;
 - (ii) interviewing witnesses and taking statements;
 - (iii) searching documentary records;
 - (iv) securing documentary and physical evidence
 - (v) locating, contacting and communicating with witnesses who may be called to give evidence at the inquests hearing; and
 - (vi) preparing compilation records and presentation aids.

- (c) It is likely to be necessary or desirable for the Coroner to call officers of the Investigation Team as witnesses in the Inquests, in order to present relevant evidence (e.g. evidence summarising matters of factual background).
- 10. For the above and other similar purposes, it is agreed that the Coroner may call upon officers of the Investigation Team to assist in performing tasks of value to the inquests. In performing such tasks, officers are to act in accordance with the requests made and directions given by Solicitors to the Inquests. The Investigation Team will give assurances to the Coroner that there will be no contact with the legally represented families without prior consultation with their solicitor.
- 11. The Investigation Team will liaise regularly with the Solicitors to the Inquests for the purpose of making available officers and/or groups of officers to assist with tasks required for the purposes of the Inquests. The points of contact between the two teams will be the Solicitors to the Inquests and the Senior Investigating Officer.
- 12. It is recognised that, in performing tasks at the direction of the Coroner and Solicitors to the Inquests, officers in the Investigation Team will be discharging responsibilities for an inquiry which has a remit different and independent from that of the criminal investigation. For the avoidance of any doubt, the performance of such tasks by the Investigation Team will not be managed or directed by the IPCC.

General Co-operation between the Coronial Inquiry and Criminal Investigation

- 13. It is agreed that the Solicitors to the Inquests and the Investigation Team will co-operate and share information, subject to the rules and principles of law governing the work of each. In particular, and insofar as is lawful and practicable for all concerned:
 - (a) The Investigation Team will keep the Solicitors to the Inquests apprised of (i) its investigation plan (including amendments and revisions to that plan); (ii) the main investigative tasks and the times for which those tasks are scheduled; and (iii) the progress of the team in following the plan and carrying out the identified tasks.
 - (b) The Investigation Team will keep the Solicitors to the Inquests apprised of evidence gathered in the course of its inquiries, including providing schedules (and copies where requested) of (i) statements taken from witnesses; (ii) documentary and physical evidence obtained; and (iii) reports commissioned and obtained. As noted

above the Solicitors to the Inquests will require regular access to the material gathered by the Investigation Team. In particular, the Investigation Team will provide regular progress reports to Solicitors to the Inquests regarding enquiries and tasks requested by them. Arrangements may be made for regular meetings at which this information can be passed on, and it is intended that such meetings should initially occur at two-weekly intervals.

- (c) Upon request by the Solicitors to the Inquests, the Investigation Team will provide information regarding the progress of particular enquiries.
- (d) The Solicitors to the Inquests may liaise with the Investigation Team with a view to preparing evidence for the inquests hearing, including evidence from investigating officers. The Investigation Team will provide reasonable assistance in the preparation of such evidence.
- (e) Arrangements will be made for affording the Solicitors to the Inquests with reasonable access (by remote access and on site) to the documents controlled by the Investigation Team.
- (f) The Investigation Team will assist the Solicitors to the Inquests in carrying out a process of documentary disclosure to Interested Persons in the inquests. The precise form of assistance which the Solicitors to the Inquests will require in this process may be the subject of further written agreement.
- (g) Upon request by the Solicitors to the Inquests, the Investigation Team will grant access to original documentary evidence and physical evidence which is under their control, and will permit such evidence to be used in the inquests hearing. Such use will be subject to arrangements intended to ensure security and continuity of evidence.
- (h) Where the Solicitors to the Inquests request that a particular investigative task be prioritised or concluded before a set stage, the Investigation Team will make every effort to comply. In making such requests, the Solicitors to the Inquests will have regard to the investigation plan of the Investigation Team. Where the Investigation Team does not propose to comply with a request, or proposes to comply in part, it will provide reasons for its approach. Where it does propose to comply, its officers shall

pursue enquiries in accordance with the requests made and directions given by Solicitors to the Inquests.

- (i) The Solicitors to the Inquests and the Investigation Team will liaise with each other before instructing experts to produce reports relating to the disaster. While each team is entitled to commission reports independently for its own purposes, common experts will be used where that is appropriate.
- (j) The Solicitors to the Inquests will keep the Investigation Team apprised of preparations for the inquests hearing and will canvass the views of the Investigation Team on procedural steps which may foreseeably affect the progress of the criminal investigation.
- (k) The Solicitors to the Inquests will provide the Investigation Team with information and material which is provided to Interested Persons in the inquests (including procedural updates and access to documents and online resources).

Arrangements for Disclosure

- 14. It is recognised that, in the interest of conducting full and open inquests, the Coroner intends to provide advance disclosure, by giving Interested Persons access to a wide range of documentary material. In practice, that material will largely form part of the archive managed by the IPCC. As noted above, the Investigation Team is to assist in that disclosure process and will notify the Solicitors to the Inquests in writing if they have any objection to the disclosure of materials to Interested Persons due to concerns about prejudicing their ongoing criminal investigation.
- 15. When determining the arrangements for disclosure of documents, the Solicitors to the Inquests will liaise with the Investigation Team and make requests for documents or classes of documents to be provided for onward disclosure to Interested Persons. The overriding and principal concern of Solicitors to the Inquests will be to ensure that full and prompt disclosure be given to Interested Persons, in accordance with directions given and decisions taken judicially by the Coroner. Subject to that overriding concern, efforts will be made to ensure that the disclosure process is carried out efficiently and without unnecessary disruption of the criminal investigation.

ANNEX 1

Operation Resolve Terms of Reference

Introduction

The Hillsborough Investigation; Operation Resolve, was set up at the request of the Secretary of State for the Home Office, and Jon Stoddart was appointed as the Officer in Overall Command (OIOC) to lead the operation. These arrangements were set out in a Written Ministerial Statement to Parliament on 19 December 2012:

<http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm121219/wmstext/121219m0001.htm>.

Assistant Commissioner Stoddart is seconded from the Metropolitan Police Service to act as an advisor to the Secretary of State under section 97(1)(d) of the Police Act 1996 for the purposes of the investigation. Support for the investigation is being provided by Greater Manchester Police and Crime Commissioner, but all costs will be met by the Secretary of State by way of Special Grant payment.

Aim of the Investigation

The aim is to undertake a focussed, but comprehensive criminal investigation into the events leading up to and including the disaster occurring on the 15th April 1989 which resulted in the deaths of 96 people and injuries to 730 people at the Leppings Lane end of Hillsborough.

The working hypothesis for the investigation is to To prove or disprove that those who died in the Hillsborough disaster were unlawfully killed.

Investigation Scope

The scope of the investigation will cover the planning and preparation for the match and include organisational and individual decision making. It will examine the suitability of the stadium to host the event given what was already known.

The relevant times for this investigation will be as follows:

- ▶ Phase 1 : Before the disaster- 1981 – 20/3/89 (date the semi-final venue was agreed)
- ▶ Phase 2 : The date the semi-final venue was agreed (20/3/89) - to the day of the disaster - 8am 15/4/89
- ▶ Phase 3: During the disaster- 8am 15/4/89 – 8am 16/4/89
- ▶ Phase 4: Aftermath of the disaster - 8am 16/4/89 – Death of Tony Bland 3/3/93.
- ▶ Phase 5 : Aftermath of the disaster - 8am 16/4/89 – present day (to include supporters suffering injuries as a result of the disaster)

It is vital that this new investigation is able to demonstrate advances in criminal investigation techniques and evidential opportunities unavailable or unknown to the original investigating team to establish a greater understanding of how the disaster unfolded in 1989.

Key Issues for Investigation

The planning and decision making that went into the Stadium design, engineering, site alterations and final lay out will include the condition and adequacy of the turnstiles, the siting of barriers and "pen" design.

The investigation will consider all of the agencies involvement in the planning, resourcing and delivery of the event and in particular the arrangements for the stewarding and policing of the event.

Specific focus to the investigation will include investigating those with responsibility for the command and control of the event and for the safety and welfare of the spectators.

Fundamental to this is examining the key decisions taken (or not), and in particular the absence of precise monitoring of the crowd numbers and their safety within the pens at the Leppings Lane end.

The decisions taken on the day will form a vital part of the investigation to understand the effectiveness of the emergency response and management of the injured and deceased.

The emergency services response to the fans plight and their response to the crush of the fans at the Leppings Lane end will be examined, in particular the police command and control and consequence management of all decisions taken to determine how and why the disaster unfolded.

The emergency services response and activation of any pre-planned responses to such disasters, their responses to the plight of the injured, dying and deceased fans and to their witnesses, relatives and friends.

It will examine the handling of the deaths and will consider in full whether any of the deaths, or injuries, could have been prevented by those organisations and individuals in whole or in part responsible for the duty of care owed to those who had attended the match.

A central feature in this new investigation will be the coronial processes and decisions that have had such a profound impact on the families of the deceased, and whether those decisions were proportionate or justifiable under the circumstances.

TS [Signature]

Assistant Commissioner Jon Stoddart - OIOC Op Resolve

ANNEX 2

Terms of reference

Investigation into the events leading up to and including the Hillsborough Stadium Disaster on 15 April 1989

Investigation Type: Managed (External)
Appropriate Authorities: South Yorkshire Police
Commissioner: Deborah Glass

Summary of Events

On 15 April 1989 over 50,000 men, women and children travelled by train, coach and car to Hillsborough Stadium, to watch an FA Cup Semi-Final between Liverpool and Nottingham Forest.

Shortly before kick-off was due at 3pm, a significant number of Liverpool fans entered the stadium through an exit gate which had been opened by South Yorkshire police officers. They then proceeded down a tunnel under the West Stand which led into two central pens located behind the goal area. The pens were already at or near capacity. This led to serious overcrowding in which, or subsequently, ninety-six women, men and children died, while hundreds more were injured and thousands traumatised.

Scope & Leadership of Investigation

The Independent Police Complaints Commission is managing an investigation conducted by Jon Stoddart, Assistant Police Commissioner into the role played by the Police in these events.

The investigation will seek to establish whether evidence exists which suggests that any police officer may have committed a criminal offence. This will include offences of manslaughter, but also any other criminal offence which may have been committed. It will also establish whether any officer has a case to answer for misconduct or gross misconduct.

These terms of reference cover only the part of Jon Stoddart's investigation into the actions of the police. This is part of a wider investigation which is also looking at other organisations.

Terms of Reference

The investigation will cover:

1. Issues relating to the stadium, including any role played by the police in:
 - a) Suitability and choice of the stadium to host the event;
 - b) The planning and decision making in relation to the ground's design, alterations and final lay out, including the siting and condition of barriers, fences, and gates within the fences;
 - c) The design and layout of the pens.

2. Planning and preparation for the match by the police, including organisational and individual decision making in relation to:
 - a) The resourcing of the event;
 - b) Any role played by the police in allocation of areas within the ground to the visiting teams' supporters;
 - c) The arrangements for the policing of the match, including arrangements for the arrival of fans and their management outside the stadium;
 - d) The arrangements (or lack of) for precise monitoring of the crowd numbers and their safety within the pens at the Leppings Lane end.

Complaints have been made against Officers Duckenfield, Marshall and Greenwood for their alleged failures in planning for the day, and the actions of these officers will specifically be considered. However, the investigation will also consider the actions and decision making of all other officers involved.

3. Actions of the police on the 15th April 1989 prior to the disaster, including:

- a) Actions of police officers outside the football ground – including the alleged failure by the police to prevent fans entering Leppings Lane, failure to prevent build up of fans outside the Leppings Lane turnstiles and filter fans away from those turnstiles;
- b) The decision not to postpone kick off of the match;
- c) The monitoring of crowd numbers in the pens – both the alleged failure to prevent the pens from becoming overcrowded and the alleged failure to act once the pens became overcrowded;
- d) The opening of Gate C;
- e) The actions (or lack of) to direct fans once Gate C was opened.

Specific complaints have been made Officers Duckenfield, Murray, Greenwood and Marshall for their roles in relation to the above, and these officers will specifically be considered. However, the investigation will also consider the actions and decision making of all other officers involved.

4. Response of the police to the disaster, including:

- a) The early police response to the crush of the fans at the Leppings Lane end, including allegations that the police were slow to respond / failed to act when it was obvious that people were in distress;
- b) Alleged failures / refusals on the part of the police to open perimeter gates, and allegations that officers pushed fans back when they were trying to climb to safety. This aspect of the investigation will specifically consider complaints made against PC Smith and PC Illingworth, as well as any other officers who may have been involved;
- c) Subsequent police command and control of the disaster;
- d) The communication between the police and the other emergency services;
- e) The activation and implementation by the police of any pre-planned responses and emergency procedures to such disasters;
- f) The police treatment of the injured, dying and dead fans.

Specific complaints have been recorded regarding the actions of specific officers for their part in the rescue operation, namely Duckenfield, Marshall, Greenwood, Murray and Jackson. These officers' actions will specifically be considered, but the investigation will also cover the actions and decision making of all officers involved.

The IPCC is liaising with the Coroner about the investigation of the matters set out above.

These terms of reference, which will be kept under review to take into account any evidence of further alleged offences connected to the Hillsborough Stadium Disaster, were issued for consultation on 24 April 2013 and approved by Deborah Glass on 20 June 2013.