

MEMORANDUM OF UNDERSTANDING
BETWEEN THE SOLICITORS TO THE HILLSBOROUGH INQUESTS
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; and
 - (2) the Independent Police Complaints Commission (“IPCC”), which is conducting an independent investigation into the aftermath of the disaster, 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 IPCC. Its primary objective is to promote constructive co-operation, while recognising the independent remit of the coronial inquiry and the IPCC investigation. This MOU also makes provision for staff of the IPCC independent 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 IPCC to conduct a full investigation in accordance with its statutory responsibilities.

Remit of the Inquests and Investigation

4. It is recognised that the Solicitors to the Inquests and the IPCC 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 IPCC investigation team is to carry out a criminal and police conduct investigation. That investigation will focus upon how evidence was gathered, collated and presented following the Hillsborough disaster. The investigation is to be conducted in accordance with terms of reference which are annexed to this MOU (Annex 1). Depending upon the results of the investigation, it may provide the material for criminal prosecutions and/or police disciplinary proceedings.
- 5. The Coroner has decided that the inquests hearing should not be deferred pending the independent investigation to be carried out by the IPCC. In those circumstances, it is recognised that the coronial inquiry and the IPCC independent investigation will be taking place in parallel.
 - 6. In addition to the IPCC independent investigation described above, a separate criminal investigation is being conducted by the Hillsborough Investigation Team under the leadership of Assistant Commissioner John Stoddart (“the Investigation Team”). The work of the Investigation Team will be focussed upon events leading up to and including the disaster itself. Insofar as it relates to police conduct, the investigation of the Investigation Team is an IPCC managed investigation within the meaning of Schedule 3 to the 2002 Act. This MOU does not relate to the Investigation Team investigation and its work, which are the subject of a separate memorandum agreed between the Solicitors to the Inquests, the Investigation Team and the IPCC.

Direct Assistance Required by the Solicitors to the Inquests

- 7. The Coroner and the Solicitors to the Inquests will require the assistance of officers and staff of the IPCC investigation team in preparing for, and conducting, the inquests. In particular:
 - (a) The IPCC is to have responsibility for storage of the documentary evidence in relation to the disaster and its aftermath. The Solicitors to the Inquests will require regular access to that material, and will need to review originals of documents in advance of the main hearing. It may also be necessary to present originals 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 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 any evidence or other material for use during the inquests, including evidence as to investigations, summary documents and similar materials.

 - (c) It is likely to be necessary or desirable for the Coroner to call officers and/or staff as witnesses in the inquests, in order to present relevant evidence (e.g. evidence summarising matters of factual background).
8. For the above and other similar purposes, it is agreed that the Coroner may submit requests to the IPCC for assistance to be provided by staff of the IPCC independent investigation team where it appears that the IPCC is the relevant organisation to provide such assistance. The IPCC will give consideration to those requests and, provided it has the powers, will make every effort to assist. In performing such tasks, officers and/or staff of the IPCC investigation team are to act in accordance with the requests and directions made by Solicitors to the Inquests on behalf of the Coroner.
9. It is recognised that the Coroner is likely to require a greater level of assistance from officers of the Investigation Team than from staff of the IPCC independent investigation team. This is because the statutory function of the coronial inquiry is to ascertain how the 96 deceased persons lost their lives, rather than to inquire into events after their deaths.
10. It is recognised that, in performing tasks at the direction of the Coroner and Solicitors to the Inquests, staff of the IPCC investigation team will be discharging responsibilities for an inquiry which has a remit different and independent from that of the IPCC investigation.

General Co-operation between the Coronial Inquiry and Criminal Investigation

11. It is agreed that the Solicitors to the Inquests and the IPCC 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 IPCC will keep the Solicitors to the Inquests apprised of (i) its independent 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) its progress in following the plan and carrying out the identified tasks.
 - (b) The IPCC will keep the Solicitors to the Inquests apprised of evidence gathered in the course of its inquiries, including (i) statements taken from witnesses; (ii) documentary and physical evidence obtained; and (iii) reports commissioned and obtained. In particular, the IPCC 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.
 - (c) Upon request by the Solicitors to the Inquests, the IPCC will provide information regarding the progress of particular enquiries.
 - (d) The Solicitors to the Inquests may liaise with the IPCC with a view to preparing evidence for the inquests hearing, including evidence from investigating officers. The IPCC 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 to any documentary evidence held by, or under the control of, the IPCC.
 - (f) The IPCC 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 might be the subject of further written agreement.
 - (g) The IPCC will grant access to original documentary evidence and physical evidence, 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 IPCC will make every effort to comply. In making such requests, the Solicitors to the Inquests will have regard to the investigation plan of the IPCC. Where the IPCC 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 by Solicitors to the Inquests.
- (i) The Solicitors to the Inquests and the IPCC will liaise with each other before instructing experts to produce reports relating to the disaster. While each body 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 IPCC apprised of preparations for the inquests hearing and will canvass the views of the IPCC on procedural steps which may foreseeably affect the progress of the IPCC independent investigation.

Arrangements for Disclosure

12. 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, some of that material may be held by, or under the control of, the IPCC. As noted above, the IPCC is to co-operate 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.
13. When determining the arrangements for disclosure of documents, the Solicitors to the Inquests will liaise with the IPCC and make requests for documents to be provided for onward disclosure to Interested Persons. The overriding and principal concern of the 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 IPCC investigation.

ANNEX 1

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.



independent
police complaints
commission

Terms of Reference

Investigation into police involvement in the aftermath of the Hillsborough tragedy

Investigation Type: Independent
Appropriate Authorities: South Yorkshire Police, West Midlands Police, West Midlands Police Authority, West Yorkshire Police Authority; others to be identified
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.

Some of the injured and deceased were initially moved to the gymnasium, where relatives went to identify them, and were asked questions about their loved ones by police officers. Allegations have been made that relatives faced inappropriate and insensitive questioning in the gymnasium.

Immediately after the tragedy, Lord Taylor commenced a judicial inquiry into the disaster. Officers from West Midlands Police were appointed to assist him. In time, this investigation also formed the basis of a report to the Director of Public Prosecutions for him to consider whether any organisation or individual should be charged with offences. The West Midlands investigation also provided the basis for inquests which were held, and for complaint investigations against several police officers which were supervised by the Police Complaints Authority.

However, work was also done within South Yorkshire Police to gather accounts from officers. This process was led by senior teams within South Yorkshire Police, and with the assistance of an external solicitor. In addition, the tragedy was discussed at various meetings, including in the presence of Members of Parliament. Stories which were unfavourable to Liverpool fans, which are alleged to have originated with South Yorkshire police officers, also appeared in the press.

Terms of Reference

The IPCC will seek to establish whether there was any misconduct or criminal behaviour by police officers from any of the forces involved in events which took place after the tragedy, specifically:

1. The actions of police officers in the gymnasium, in particular whether the treatment and questioning of relatives was appropriate.
2. The interactions of police officers with the press and politicians in particular:
 - a) Whether any officer was involved in the passing of inappropriate or inaccurate information to a journalist, including whether any police officer was involved in passing written accounts to the press;
 - b) Whether any police officers passed inappropriate or inaccurate information to any Member of Parliament – whether individually or at meetings. This will include investigation of the actions of Norman Bettison in visiting Parliament and the evidence which he presented;
 - c) Whether the briefing which was given to the Home Secretary and Prime Minister on the day after the tragedy contained any inaccurate or inappropriate information; and
 - d) Whether the evidence demonstrates that such interactions were directed or encouraged by South Yorkshire Police.
3. The actions of police officers and those providing legal advice to police officers in relation to the collection of evidence, in particular:
 - a) The role of the teams led by Chief Superintendent Wain and Chief Superintendent Denton;
 - b) The direction which was given to officers not to complete notebooks or duty statements;
 - c) The process of obtaining handwritten accounts, and the way some of those accounts were subsequently amended, including:

- The actions of officers who agreed to amend their statements
 - The actions of any officer involved in asking them to do so;
- d) Whether amended statements were put forward on behalf of any officer which they had not agreed and / or signed; and
- e) Whether the amendments were made in an attempt to deflect blame from the police.
4. The evidence that was put forward on behalf of South Yorkshire Police, or by individual officers, to the West Midlands Police investigation, Lord Taylor's Inquiry, and the inquests, considering:
- a) Whether any officer gave evidence that was inaccurate, false or deliberately misleading;
 - b) Whether such evidence contained inaccurate, misleading or irrelevant criticism of fans' behaviour;
 - c) Whether the "Wain Report" was an accurate and complete picture of the evidence;
 - d) Whether any police officer gave inaccurate or misleading evidence about past actions to close the tunnel.
5. The checking of blood alcohol levels of the deceased and what, if any, influence any police officer may have had on the Coroner's decision to do this.
6. The carrying out of Police National Computer checks on the deceased and others in order to establish, if possible, which force or officer was responsible for this, the reasons it was done, and whether it was justified.
7. The actions of officers involved in the investigation which was conducted by West Midlands Police. This will include:
- a) The involvement of West Midlands Police in the decisions which were taken about how to gather evidence / obtain statements;
 - b) Whether officers involved in this investigation put inappropriate pressure on any witness to alter their statements;
 - c) Whether the summaries of evidence which West Midlands Police presented at the individual inquests were accurate;
 - d) Whether there is any evidence of bias in favour of South Yorkshire Police on the part of those involved in or leading the investigation..
8. The IPCC will also reach a finding on whether there was a general attempt by officers within South Yorkshire Police and / or West Midlands Police to deflect or

minimise blame for the tragedy from the police service by focussing on the behaviour or alleged behaviour of fans.

9. To identify whether any subject of the investigation may have committed a criminal offence and, if appropriate, make early contact with the Director of Public Prosecutions (DPP). On receipt of the final report, the Commissioner shall determine whether the report should be sent to the DPP.

10. To identify whether any subject of the investigation has a case to answer for misconduct or gross misconduct, or no case to answer.

In the event that a Coroner is appointed to oversee fresh inquests, the IPCC will liaise with the Coroner about the extent of any investigation into any of the matters set above, that may fall within the scope of the inquest.

These terms of reference, which will be kept under review to take into account any evidence of further alleged offences connected to the Hillsborough aftermath, were approved by Deborah Glass on 19 November 2012.