



STRATEGIC POLICING AND CRIME BOARD
3rd June 2014

**West Midlands Police response to
Independent Police Complaints Commission
report, *'Investigation into the conduct of West
Midlands police officers following evidence
given in a murder trial arising from the public
disorder in Birmingham'***

PURPOSE OF REPORT

1. The purpose of this report is to set out the response of West Midlands Police to the Independent Police Complaints Commission (IPCC) report, 'Investigation into the conduct of West Midlands police officers following evidence given in a murder trial arising from the public disorder in Birmingham', published on 7th May 2014.

BACKGROUND

2. On 10 August 2011 three men, Haroon Jahan (aged 21), Shazad Ali (aged 30), and Abdul Musavir (aged 31) were struck by a car and killed in Winson Green. West Midlands Police immediately commenced an investigation into the incident under Operation Pointer. Advice was subsequently sought from the Crown Prosecution Service (CPS), which involved detailed conversations between senior CPS lawyers, the Senior Investigating Officer (SIO) and PIP4 lead. All of the available evidence was evaluated; including the CCTV, which proved significant in the charging decision. On the advice of the CPS, eight men were subsequently charged with their murder and a trial started on 19 April 2012 at Birmingham Crown Court.
3. During the trial it was alleged that certain witnesses to the events of that night may have been promised immunity from prosecution by police. The trial judge, Mr Justice Flaux, temporarily halted the trial to establish whether this was true and whether or not this information had been disclosed. As a result of his findings, he then raised concerns about the evidence given at court by officers over this promise of immunity, but dismissed an application by the defence to stop the trial for abuse of process. The trial continued and eight men were found not guilty of murder by a jury on 19 July 2012.

4. West Midlands Police acted swiftly to protect the integrity of the trial and to ensure that the trial could continue. The officers in question were removed from the case and an alternative SIO provided.
5. The severity of the allegations made at court led West Midlands Police to refer the matter to the IPCC for independent investigation on 9 July 2012.
6. On 10 July 2012 the IPCC determined that they would carry out an 'Independent' investigation into the matter. West Midlands Police have fully co-operated with their investigation.
7. On 6 August 2012 Regulation 14A notices for potential criminal offences and gross misconduct were served on the Senior Investigating Officer (SIO) Detective Chief Inspector (DCI) Tagg and on the Family Liaison Co-ordinator Detective Inspector (DI) Kiyani.
8. On 3 October 2012 DI Kiyani retired from West Midlands Police, having completed his 30 years' service.
9. On 11 October 2012 DI Kiyani was criminally interviewed under caution for the offences of perjury and misconduct in a public office and also for gross misconduct.
10. On 8 November 2012 DCI Tagg was criminally interviewed under caution for the offence of perjury, and also interviewed for gross misconduct.
11. The IPCC subsequently submitted an advice file to the CPS to review in relation to any potential criminal offences committed by the officers. On 17 September 2013 the CPS returned a decision not to take any action in relation to all officers subject to investigation.
12. The IPCC notified the force of findings of the investigation on 15 October 2013 and the force provided a formal response, under the requirements of paragraph 23(7) of Schedule 3 to the Police Reform Act 2002, on 25 October 2013.

SUMMARY OF THE IPCC REPORT FINDINGS

13. Paragraph 211 of the IPCC report states that, 'there is a case to answer in respect of gross misconduct for DI Kiyani. He was reckless in offering the community immunity from prosecution....His apparent lack of record keeping fell far below the standard expected of a police officer who was appointed to a key role in a murder investigation.'
14. Paragraph 212 notes that, as DI Kiyani has now retired from the force, he cannot be subject of any disciplinary proceedings.
15. Paragraph 230 relates to the conduct of DCI Tagg and states that, 'there is no case to answer for misconduct for DCI Tagg, although the Force may consider taking this opportunity of reminding DCI Tagg of his responsibilities as a SIO through management intervention.'

WEST MIDLANDS POLICE RESPONSE TO THE IPCC REPORT FINDINGS

16. West Midlands Police fully accepts the findings of the IPCC report and considers that there is both individual and organisational learning to be taken from the case, which is detailed below.

Action relating to individual officers

17. As noted above, DI Kiyani retired from the force on 3 October 2013 under Regulation A19 of the Police Pension Regulations 1987. As such, he cannot be subject to any misconduct proceedings.
18. The force agrees with the IPCC's determination that there is no case for DCI Tagg to answer in relation to misconduct. However, the force also accepts the report's findings as to the lack of clarity regarding his making and recording of disclosures to Counsel. The force also accepts that DCI Tagg did not raise the revelation, that certain members of the community has been offered immunity from prosecution by DI Kiyani, with 'sufficient emphasis and clarity' to ensure that Counsel fully appreciated the significance of the situation.
19. As SIO, DCI Tagg was also responsible for briefings to all staff about their roles and responsibilities on the investigation team. It appears from the investigation that DI Kiyani was not provided with a documented strategy or briefing to fulfil his role as Family Liaison Co-ordinator and Community Liaison lead. It also appears that DI Kiyani's engagement with key individuals was not known about or authorised by DCI Tagg. Although there would be an expectation that DI Kiyani should keep his superior informed, it still appears that DCI Tagg could have had better oversight of the activities of his immediate subordinate.
20. West Midlands Police acknowledges these deficiencies and, in response, has carried out 'management intervention' with DCI Tagg, supervised by the Head of Force CID. This action has involved DCI Tagg refreshing his knowledge of disclosure, record keeping and briefings to ensure that he is fully cognisant of his responsibilities in the future, and was completed on 5 March 2014.

Organisational Learning

21. The IPCC report highlights failings during the investigation to properly record and disclose information as required by the Criminal Procedure and Investigations Act (1996). Good practice recommends that new information is submitted to Prosecuting Counsel on disclosure schedules and that a record is maintained of such communications.
22. Until her recent retirement, ACC Rowe held the position of National Policing Lead for Disclosure. As part of her work, a Regional Disclosure Group was formed, in conjunction with the CPS, to provide continuous professional development for investigators and prosecutors. In September 2013 an input on disclosure was provided to SIOs from around the region by the West Midlands Police Disclosure Manager, who remains the national lead advisor on disclosure issues. In addition to this, a separate input, specifically on the disclosure related learning from the Operation Pointer investigation was given to regional SIOs at Tally Ho! in May 2014.
23. The IPCC report makes reference to the role of the PIP4 advisor during the investigation. PIP is the ACPO/College of Policing Professionalising

Investigation Programme and sets the national standard for investigations based on recognised good practice. PIP4 is the highest level. The role of the PIP4 advisor in this investigation was to provide guidance and support to the SIO, provide the link between the SIO and ACPO, and to be the public face of the investigation.

24. Whilst the report does not make any recommendations concerning the use of the PIP4 advisor, the force recognises the importance of having clarity with regards to the PIP4 role. It is essential that there is a proper understanding and accountability amongst senior investigators as to who is responsible for resolving issues that arise during the course of an investigation. As such, the force has pro-actively liaised with the College of Policing to establish how the learning from this operation can be incorporated into national training and a trainer from the College has attended the recent force continuous professional development input on the learning, which was delivered to SIOs.
25. A further 4 detective superintendents within the force have now been trained to PIP4 level to provide greater organisational resilience for oversight of large or complex investigations.
26. The selection of SIOs and PIP4 advisors is an operational decision made by the head of the relevant department, which for major investigations would tend to be the Head of Force CID or Head of Public Protection. All West Midlands Police SIOs and investigative staff are trained to nationally accredited standards and the nature of the force's size and geography provides an extensive range of operational experience to develop these skills.
27. The IPCC report makes reference to 'Gold' level oversight of Operation Pointer, which, in this context, relates to ACPO level supervision. It is important to note that Gold level relates to the strategic oversight of an operation, including matters such as any wider impact on community tensions, the force's resilience to conduct daily business, or significant reputational issues. Gold level supervision does not involve intrusive scrutiny of the detail of the criminal investigation itself, which is the responsibility of the SIO. The IPCC report makes no criticism of the Gold level processes relating to Operation Pointer and, as such, the force does not consider that these processes need to be altered at this time.
28. The IPCC report details the legislation relevant to the authorisation of immunity from prosecution. It is clear from the evidence provided by both DCI Tagg and DI Kiyani that both were aware of the proper procedures, albeit the report finds that DI Kiyani failed to follow them. In this respect the force does not consider that there is a general lack of understanding amongst investigators regarding these provisions, although the force will ensure that they continue to be covered as part of investigative training and professional development.
29. Much of the focus of the IPCC report relates to the lack of clarity and record keeping regarding the internal communication between senior investigators, staff briefings and in regards to dealings with Counsel. The report accepts that, 'there was a need to conduct many briefing meetings....and to record the issues discussed during *all* such meetings would not be considered appropriate or proportionate.' However, the force recognises the need to ensure that the quality and documentation of key communication is sufficiently robust, so that there is no doubt as to who is responsible for a particular task. To achieve this, the force has produced a good practice document for SIOs covering the

recording of briefings and other communications, and reaffirming the importance of regular reviews during major investigations so that all relevant information is communicated and recorded properly.

30. The force considers that the provision of clear guidance on the appropriate level of documentation regarding communication between investigators and Counsel also needs to be addressed at a national level. The issue has been discussed with the National Policing Lead for Disclosure, who has already had initial discussions on the subject with the CPS disclosure lead, and it was also raised at the ACPO Criminal Justice Business Area meeting on 22nd May 2014. The force hopes that this work will be progressed in the coming months to provide clarity and consistency for all parties.

FINANCIAL IMPLICATIONS

31. There are no specific financial implications from the IPCC report.

LEGAL IMPLICATIONS

32. There are no specific legal implications at this time.

RECOMMENDATIONS

33. The Board is asked to consider the West Midlands Police response to the IPCC's findings as detailed above.

Chief Constable Sims