

# THE ROLE OF THE CROWN PROSECUTION SERVICE IN RELATION TO CASES INVOLVING A DEATH IN CUSTODY OR IN CONTACT WITH POLICE

## Introduction

This document has been adapted from a booklet that is being prepared to share with families who have lost loved ones through a death in custody.

## What we do

The Crown Prosecution Service is the Government Department responsible for prosecuting criminal cases investigated by the police and other investigating bodies in England and Wales.

As the principal prosecuting authority in England and Wales, we are responsible for:

- advising the police on cases for possible prosecution;
- reviewing cases submitted by the police and other investigation bodies;
- determining any charges in more serious or complex cases;
- preparing cases for court;
- presenting cases at court.

## Facts about the CPS

- The Crown Prosecution Service (CPS) was established as an independent body in 1986 to prosecute criminal cases. We work closely with the police and other investigators to advise on lines of inquiry and decide on appropriate charges or other outcomes, in accordance with the Code for Crown Prosecutors. CPS prosecutors prepare cases for court and present cases in both the magistrates' courts and the higher courts.
- The Director of Public Prosecutions (DPP) is the head of the CPS and operates independently, under the superintendence of the Attorney General. As a government minister, the Attorney is accountable to Parliament for the work of the CPS.
- The CPS consists of: 13 geographical Areas across England and Wales; three Casework Divisions; our CPS Direct service, our CPS Proceeds of Crime service and a Headquarters.
- A Chief Crown Prosecutor (CCP) leads each Area and is responsible for the provision of a high quality prosecution service. Deputy Chief Crown Prosecutors (DCCP) and Area Business Managers (ABM) assist the CCPs.
- The three specialist casework divisions are: the Specialist Fraud Division (which now incorporates the Welfare Rural & Health Division), the Special Crime & Counter Terrorism Division and the Organised Crime Division. Each is headed by a Head of Division (HOD) and they deal with challenging cases that require specialist experience, including the prosecution of cases investigated by a range of investigation agencies including :
  - Police

○ The Independent Police Complaints Commission

- We are committed to delivering a high quality prosecution service, as expressed in our casework quality standards – while responding to the needs of the victims and witnesses of crime; and being open and answerable to the wider public we serve.
- At 31 March 2014, the CPS had a workforce of approximately 6237 (full time equivalent), including around 2226 prosecutors and 3629 caseworkers (or paralegal officers) and administrators. Nearly 94% of our people work at delivering our frontline prosecution service.

## Introduction

When a person dies in custody, it is a very difficult, distressing and stressful time for friends and relatives. In addition to the shock of the death, the family will have to deal with a number of people, who will be complete strangers, asking questions about the circumstances leading to the death. In some cases there may be publicity about the case and the decisions made by investigators, the coroner and inquest jury and by the CPS.

The processes followed by the CPS are based on two main reports:

In 1999 His Honour Judge Gerald Butler published his report on his “Review of the Role and Practices of the Crown Prosecution Service in Cases Arising from a Death in Custody 2003”.

In 2003, the Attorney General published his report on his review of the practices of the Crown Prosecution Service (CPS) and how it handled cases it received that involved a death in custody. (The phrase "death in custody" is explained in more detail a little further on.) The CPS website contains a summary of conclusions of the AG's review and the full text of the Attorney's Review is embedded here:



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## **What do we mean by “death in custody”?**

The CPS defines “deaths in custody” to include deaths in prisons, in secure hospitals and in connection with police action whether technically “in custody” or not. We also include immigration detention and secure detention for young people.

The CPS procedures are not, therefore, limited to deaths that take place in a police station or prison, but include the death of a person following contact between the police where there may be a link between the contact and the death. Fatal shootings involving police, where a police officer has fired the fatal shot, are also included in these special procedures. But deaths that arise from road traffic incidents are not.

## **Summary of what happens following a death in custody**

Where there has been a death in custody and a criminal offence might have been committed there will be a criminal investigation. The decision to conduct a criminal investigation is one for the investigation team.

In this type of case if police officers were involved then the investigation will be conducted by the IPCC, otherwise it will be conducted by the police.

The coroner is informed. A coroner is an independent judicial officer who sits in a coroner’s court. The coroner holds an inquest to decide how a person died. Part of the work of the coroner is to conduct his or her own investigation work before holding an inquest. For the purposes of this guidance we will refer to the coroner’s work only as an inquest. When there is a criminal investigation the coroner will usually suspend his inquest until the criminal investigation finishes.

The investigators will meet the family of the person who dies if the family want that to happen.

The CPS will usually be asked for legal advice by the investigator – this can include advice on whether to conduct a criminal investigation. The CPS cannot direct the investigator but can advise them and if there is an investigation the parties will work closely together to ensure a thorough investigation takes place. If the CPS considers that there is no prospect of a prosecution or that any possible prosecution is limited then it may advise the investigator of that. It always remains for the investigator to decide whether to investigate or to continue to investigate.

If the case is referred to the CPS the CPS will meet the family of the person who dies if the family want to meet. If after early advice from the CPS the investigator decides not to conduct a criminal investigation then then it is unlikely that the CPS will meet the family.

The investigator must gather evidence about what happened. In a criminal case, “evidence” means witness statements, exhibits, interviews and expert reports.

- A witness statement is a document signed by the witness which says what they saw or heard.

## SUBMISSION TO THE HARRIS REVIEW INTO DEATHS IN CUSTODY

- An exhibit is something they talk about – for example a video recording which they have kept for the case.
- An interview is a recording of someone talking about what they saw or heard. No-one, including suspects, can be forced to say anything. This is called “the right to silence”.
- An expert report is a witness statement prepared by a person who is an expert in a particular field who is allowed to give their opinion in evidence, for example as to the cause of the death.

Cases involving deaths in custody often need expert evidence from very senior medical experts and often several experts are needed. The experts have to have all of the other evidence to look at. This means that often they cannot write their expert reports until many months have passed.

When the investigation is finished, if the investigator thinks an offence might have been committed they will ask the CPS to decide whether there should be a prosecution. The CPS uses experienced lawyers for this and the DPP looks at every case to check the decision. External barristers who are not employees of the CPS are used as well especially where the decision about criminal responsibility is in doubt.

If the CPS decides there should be a prosecution then the case will go to court and a judge and jury will decide on the question of guilt or innocence.

If the CPS decides there should not be a prosecution then the family have a right to ask for a re-review (See under “The victims’ right to review” below) and can apply to the court to overturn the CPS decision (judicial review).

If there is no prosecution the coroner will hold an inquest. If the inquest jury returns a verdict of unlawful killing the CPS will look at the case again to see if there should be a prosecution.

## The Coroner and inquests

When a person dies in custody, a number of people have specific tasks to carry out. A coroner is a qualified as a doctor or lawyer specially appointed to conduct inquiries into violent or unnatural deaths, sudden deaths where the cause is unknown and in particular deaths in prison.

When a person dies in custody, the coroner will be informed and will appoint a pathologist to examine the body to try and determine the cause of death. This examination is known as a post mortem or autopsy. The pathologist will provide a report to the coroner and, if there is a suspicion that a crime has been committed, also to the investigators. In the criminal justice system, because it is so important to try and be sure of the cause of death, it may be necessary for more than one pathologist to carry out a post mortem. For instance, if a person is suspected of being responsible for causing the death, they must be allowed the opportunity to obtain their own evidence by having a post mortem conducted on their behalf. The family are also entitled to have a post mortem carried out, if they so wish. Unfortunately this means that families often have a longer wait before the funeral can take place. This is particularly difficult for families whose religion or culture usually involves bodies being quickly buried or cremated or returned to an overseas home.

### Inquest verdicts

An inquest is a court hearing to determine how a person died. A coroner does conduct investigations but so as not to confuse it with criminal investigations we will describe all of the coroner's work as the "inquest". There are a number of verdicts that can be given which include:

- natural causes
- suicide
- accident/misadventure
- lawful killing
- unlawful killing
- open verdict
- narrative verdict

Whether or not the CPS has considered the case before the inquest and decided not to prosecute, if there is a narrative verdict at the inquest or a verdict of unlawful killing, we will consider whether there is anything that would change our decision or mean there should be a prosecution.

The CPS role is to review the evidence and we must not simply follow the inquest verdict. Even where there has been a verdict of unlawful killing it does not necessarily mean that there will be sufficient evidence for the CPS to prosecute anyone. The findings of a public inquiry are considered in the same way.

There is a difference between the standards of proof in a prosecution and in other proceedings such as an inquest or inquiry. In a criminal case the prosecution must prove the case beyond a reasonable doubt whereas in other proceedings the standard is on the balance of probabilities.

In order to inform the CPS decision the police/IPCC will be asked for a report highlighting any areas where the evidence reviewed by the CPS in reaching its charging decision and the evidence given at the inquiry are different.

A Coroner's inquest verdict of unlawful killing is based on similar legal definitions to the criminal offences of murder or manslaughter.

However, importantly:

- The standard of proof is lower than in a criminal case as explained above.
- In a criminal prosecution the rules of evidence are different to the rules in an inquest.
- The purpose of an inquest is to determine the cause of death rather than to prosecute a person.
- There are additional rights for defendants in criminal trials that do not exist in inquests.

An inquest is normally held without a jury but there must be a jury if the coroner has reason to suspect that:

- the deceased died while in custody or otherwise in state detention, and that either the death was a violent or unnatural one, or the cause of death is unknown, or
- the death resulted from an act or omission of a police officer, or a member of a service police force, in the purported execution of the officer's or member's duty as such.

## **Investigators – the IPCC or police**

If the death has taken place in a police station or following contact with police, the Independent Police Complaints Commission (IPCC) will conduct the investigation.

The IPCC is an agency which is independent of the police and the CPS. One of its main tasks is to investigate, manage or supervise allegations of criminal conduct by police officers.

If the death has taken place in prison, then any investigation into a possible criminal offence is carried out by the police.

Whether it is the IPCC or the police who investigate, if it is believed that there is evidence that a crime may have been committed, they must pass the papers to the CPS.

We have close working relationships with the IPCC and the police. In these cases we are brought in at an early stage to advise them on legal matters and possible areas to investigate. We encourage close involvement with the CPS at the start of their investigations.

During our early meeting(s) with the investigators we discuss:

1. The likely extent of our involvement and what the investigators need from us at that stage
2. Arrangements for keeping the family and the coroner updated
3. Whether all the relevant investigative bodies are involved and working jointly.

Following the meeting(s) we confirm in writing what has been discussed and also provide written legal advice on the relevant criminal offences being considered and guidance as to how the investigative work should be approached.

When making prosecution decisions, although we work closely with other agencies in the criminal justice system to make everything as efficient as possible, we are independent of them.

When advised of a death in custody, the CPS will appoint one of a small number of specially selected prosecutors from “Special Crime” (a unit within the Special Crime & Counter Terrorism Division – SCCTD) who are very experienced prosecutors and who have been trained to handle these sensitive cases.

If at any stage the CPS prosecutor considers that there is no prospect of a prosecution or that any possible prosecution is limited then it may advise the investigator of that. It always remains for the investigator to decide whether to investigate or to continue to investigate.

It will be the task of that lawyer to advise the investigators and in due course to consider all the evidence to decide if there is sufficient evidence to prosecute.

There is further guidance within "The Decision to Prosecute"

## **The CPS specialist prosecutors**

The CPS has three Casework Divisions with national remits, one of which is Special Crime & Counter Terrorism Division (SCCTD). There are four operational units within SCCTD, one of which is “Special Crime” which is responsible for advising on and prosecuting sensitive and demanding cases, including deaths in custody. Special Crime is headed by a Deputy Head of SCCTD.

All death in custody cases which are referred to the CPS are dealt with by a small team of specialist prosecutors working in the Special Crime units of the Special Crime and Counter Terrorism Division. This ensures consistency and builds the expertise needed to deal with this difficult and important work.

Aside from deaths in custody, the work of Special Crime includes corporate manslaughter, gross negligence medical manslaughter, serious allegations against police officers and cases where there is an element of constitutional importance. These cases often involve similar issues to those which arise in deaths in custody cases and ensure that our death in custody specialists lawyers have extensive experience of the offences and issues relevant in death in custody cases.

## **The CPS arrangements for dealing with deaths in custody or contact**

The CPS has specific arrangements in place for dealing with deaths in custody. These arrangements are in line with the recommendations of the then Attorney General's "Review of the Role and Practices of the Crown Prosecution Service in Cases Arising from a Death in Custody 2003" which is referred to above.

The CPS and the DPP take these cases very seriously and our procedures involve all such cases being referred to the DPP at the end of our review for consideration.

Only very experienced and able senior lawyers, who are specifically designated are permitted to review death in custody cases in Special Crime.

If at any stage the CPS prosecutor considers that there is no prospect of a prosecution or that any possible prosecution is limited then it may advise the investigator of that. It always remains for the investigator to decide whether to investigate or to continue to investigate.

Where a file is submitted for a charging decision the reviews carried out by the senior lawyer in cases involving deaths in custody are examined by the line manager (the "Unit Head") and then by the Head of Division (or Deputy). They are then submitted to the DPP for final approval. In any case where the decision is or may be not to proceed, if the DPP (or any of the other lawyers) is not satisfied that it is "plain beyond doubt" that there is no case to answer then experienced external counsel will be instructed to advise. Again, this is in accordance with the "Attorney General's review of deaths in custody 2003".

## Details of the Attorney General's process for deaths in custody

1. Only lawyers in the Special Crime Division may deal with these cases.
2. Special Crime Division has lawyers who are experienced in dealing with cases that require consideration of gross negligence manslaughter and serious misconduct by police. These offences are very commonly considered in cases involving a death in custody. The case types are set out in the next paragraph.
3. The Division deals with all cases received by the CPS as follows:
  - **Disasters.** The Hillsborough Disaster is an example.
  - **Corporate manslaughter.** This includes deaths at work; in factories, on building sites and any other environment where legal duty of care arises.
  - **Medical manslaughter.** This includes deaths during medical and surgical procedures.
  - **Serious police corruption.** This includes drug dealing, passing information to criminals, systemic attempts to pervert the course of justice, corrupt relationships and other serious misconduct by officers.
  - **Cases of constitutional importance** such as MPs expenses
  - **All cases investigated by the IPCC** or where they manage the police investigation.
  - Offending in connection with **elections.**
  - **Assisted suicide**
  - Cases involving **CPS or National Crime Agency employees** except minor motoring matters.
  - The **disclosure of confidential information by public officials** to journalists
4. The Division also deals with all cases involving death in custody but the reviewing lawyer must be of at least a particular senior grade (Senior Specialist Prosecutor (SSP) - level E). Most of the lawyers are graded at Specialist Prosecutor (SP) and cannot deal with deaths in custody until they are made a SSP. SPs gain experience in the case types above. SSPs are appointed following civil service rules for open and fair competition. The recruitment process requires that they be tested for their legal skills and civil service competencies.
5. In addition lawyers receive training in relation to relevant offences, the law on disclosure, which is that the prosecution has to tell the defence if there is anything known that could weaken the prosecution case or help the defence case, about deaths that happen when the victim is being restrained, dispensing errors, which may be relevant if a doctor is involved in the death in custody, pathology and family liaison.
6. Until the lawyer is accredited by the DPP the advice given throughout a case is monitored by the line manager.

7. Accreditation is a process by which the lawyer is assessed by the DPP as having worked effectively on a death in custody case. (This process is often called “ticketing”
8. The DPP makes the assessment on accreditation by considering the review decision and a report from the Unit Head together with any significant advice given earlier in the case.
9. Only two attempts may be made to be accredited.
10. An accredited lawyer is also monitored in their work.
11. Regardless of whether an SSP is accredited or not, when the charging review is completed, the Unit Head must write a “critique”. This assesses whether the approach taken is correct in the opinion of the Unit Head.
12. If the Unit Head does not agree with the review then if that cannot be resolved they must indicate any area of disagreement or take over the decision making.
13. The critique and review is considered by the Deputy Head of Special Crime and Counter Terrorism (or the Head of Special Crime and Counter Terrorism). He or she must indicate agreement or indicate any area of disagreement or take over the decision making.
14. The Director receives the recommendations and must decide whether s/he accepts the decision.
15. At any stage, if any of the lawyers including the DPP consider that it is not plain beyond doubt that there is no case, experienced counsel from the Bar must be instructed to advise.
16. Counsel are selected for their experience in prosecuting homicide. Generally a Queen’s counsel will be used. These are the most senior barristers and the barristers that the CPS instructs for this kind of work are often barristers who were treasury counsel before they became Queen’s Counsel. Treasury Counsel are a group of barristers who prosecute at the Old Bailey They are appointed by the Attorney General and have very substantial experience.
17. Treasury counsel are divided into Senior Treasury Counsel and Junior Treasury Counsel. They are headed by “First Senior treasury Counsel”. Currently this is Richard Whittam QC, who has advised in a number of deaths in custody.

## Meetings with families

The CPS website contains various documents which set out our commitments to victims and witnesses including:

1. The Code of Practice for victims and witnesses. We consider that bereaved families are victims.
2. The CPS commitments to support victims and witnesses
3. Deaths in custody, which includes the following (which the CPS describes as “the enhanced pre-charge procedures”):

### **CPS contact with families**

*Prosecutors will contact the bereaved family to explain their role in the case and offer an initial meeting, where appropriate. This will usually take place at a CPS office. During that first meeting, bereaved families will be given the opportunity to tell the prosecutor how often they would like to be updated on the progress of the CPS review.*

*The prosecutor will explain the respective roles of the investigator and the prosecutor, the offences that are under consideration (for example murder or gross negligence manslaughter) and what has to be proved for each offence. The prosecutor will also explain that they might not be able to discuss the details of the evidence as it is so far known because this may affect any future trial. Whether or not they can discuss the evidence will depend on the circumstances of the case. The prosecutor will also give the bereaved copies of leaflets that explain how decisions are reached under the Code and the process for dealing with deaths in custody.*

*Because of their importance, complexity and reliance on expert evidence these investigations can be very lengthy. As a result, there may be quite a long time (months rather than weeks) between the meeting with a bereaved family and the decision whether or not to prosecute an individual or organisation.*

*Once the investigation is complete, the prosecutor will usually offer a second meeting for the bereaved to raise any issues that particularly concern them and which may not have been known about at the time of the first meeting. Often, a second meeting may not be necessary if all issues have already been discussed. However, the bereaved are always welcome to raise anything that they want with the prosecutor, whose contact details they will be given.*

*If matters are taking longer than expected, the prosecutor may also write to the bereaved to keep them updated. They may also offer a further interim meeting, depending on the circumstances of the case.*

*When the decision as to whether there should be a prosecution has been made, the prosecutor will write to tell the family the decision. If the decision is to prosecute the letter will confirm who is to be charged for what offence. Only basic information is usually given at this stage, as providing further details about why the decision was*

*made might affect the trial. If the decision is not to prosecute, the letter will provide more details, explaining how and why the prosecutor came to the decision.*

*The prosecutor will again offer a meeting to give further explanations, either of what will happen next in the prosecution or about why there is to be no prosecution. A decision not to prosecute will not be changed as a result of this meeting. A meeting will also be offered if, after a decision to prosecute, the prosecutor decides to stop the prosecution, withdraw one or more charges or make a substantial alteration to the charges.*

*Bereaved families may bring their lawyer or a friend to the meeting, which is perfectly acceptable.*

*There is no obligation on the bereaved to attend any meeting if they do not want to.*

4. Homicide Cases - Guidance on CPS service to bereaved families
5. More resources on family contact can be found on the CPS website.

## Summary regarding family meetings

Special Crime staff are based at offices in London and York. When the reviewing lawyer has been given the family's details they will either write to them or phone them to arrange a meeting. They will provide the family with their details including their direct telephone number. We will ensure that the reviewing lawyer has had no dealings with any officer who may be a suspect in the case.

One of the CPS lawyer's responsibilities will be to meet the family as soon as reasonably practicable and to keep in contact, either directly or through the investigators, as the investigation proceeds. Experience has shown that these investigations can be very lengthy and this long wait for a decision can be particularly stressful to all concerned.

If at any stage the CPS prosecutor considers that there is no prospect of a prosecution or that any possible prosecution is limited then it may advise the investigator of that. It always remains for the investigator to decide whether to investigate or to continue to investigate.

If the case is referred to the CPS the reviewing lawyer will keep the family informed (usually via the investigator) of the progress of the CPS's work and will normally offer a further meeting before a final decision is reached on whether or not there should be a prosecution. The purpose of these meetings is to ensure that the family have the opportunity to ask questions and raise any issues which are concerning them directly with the reviewing lawyer.

The family may have additional information they wish to provide or particular concerns that they want the prosecutor to take into account when reaching a decision. The prosecutor will be able to outline the issues in the case, the legal elements that have to be proved and how the *Code for Crown Prosecutors* applies. This is a public document that sets out the basic principles of how the CPS reaches decisions on cases. As no decision will have been reached at this stage, and as family members may be a witness, the prosecutor may not be able to discuss the evidence with the family in detail.

However the family will know more about the circumstances of the death, from their contact with the police or IPCC. As an example of "issues", a family may tell the CPS lawyer that a report is biased because it ignores facts that don't agree with the expert's opinion and only talks about those that do. The CPS lawyer must form his or her own view of the evidence but may agree and decide to ignore the report.

If the prosecutor decides that there should be a prosecution, then the family will be informed and kept up to date as the case progresses.

If the prosecutor decides against a prosecution, the prosecutor will write to the family explaining the decision and they will be offered a further meeting where the decision will be explained in more detail.

The review carried out by the senior lawyer in a case involving death in custody is examined by the line manager (the "Unit Head") and then by the Head of Division (or

Deputy). They are then submitted to the DPP for final approval. In any case where the decision is not to proceed, if at any stage up to and including the DPP, the lawyer, manager or DPP is not satisfied that it is "plain beyond doubt" that there is no case to answer then experienced external counsel will be instructed to advise. This is in accordance with the Attorney General's review.

The family has a right to seek a review of a decision not to prosecute (VRR) and have other remedies if they are unhappy with the CPS decision. These are set out below under "The victims' right to review".

## The rights of suspects

Where a person is suspected of committing a crime, they have certain rights and these rights apply equally to police or prison officers where a person has died in custody. An example is their right to have their own post mortem as outlined above.

We understand that the family will want to know as much as possible of the circumstances in which their loved one died. It is understandable that families will be upset where a person who may be able to help decides not to explain what took place. However, in our criminal justice system, nobody can be forced to answer questions. Any refusal to answer questions can only be used against them in very limited circumstances and even then only if there is already sufficient other evidence against them.

The presumption of innocence means that in criminal cases the prosecution must prove guilt so that the jury are sure. If there is any reasonable doubt the jury must acquit.

Suspicion and supposition is not enough to convict a person in England and Wales. The CPS is bound by law to follow the Code for Crown Prosecutors.

The suspect(s) is/are entitled to expect the CPS to act lawfully. This means that we must be satisfied that the two stage test in the Code for Crown Prosecutors is met before we proceed.

The evidential stage of the Code test requires that prosecutors must be satisfied that there is sufficient evidence to provide a **realistic prospect of conviction** against each suspect on each charge. They must consider what the defence case may be, and how it is likely to affect the prospects of conviction. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be.

The finding that there is a realistic prospect of conviction is based on the prosecutor's objective assessment of the evidence, including the impact of any defence and any other information that the suspect has put forward or on which he or she might rely. It means that an objective, impartial and reasonable jury or bench of magistrates or judge hearing a case alone, properly directed and acting in accordance with the law, is **more likely than not to convict** the defendant of the charge alleged. This is a different test from the one that the criminal courts themselves must apply. A court may only convict if it is sure that the defendant is guilty.

## **When can the CPS make a decision on whether to prosecute or not?**

Before the CPS lawyer can make a decision on whether there should be charges or not the investigation needs to be complete and all the evidence supplied to the CPS. When this has happened we often say that we have received a “full file” of evidence.

The Code for Crown Prosecutors says:

*In most cases, prosecutors should only decide whether to prosecute after the investigation has been completed and after all the available evidence has been reviewed. However there will be cases where it is clear, prior to the collection and consideration of all the likely evidence, that the public interest does not require a prosecution. In these instances, prosecutors may decide that the case should not proceed further.*

*Prosecutors should only take such a decision when they are satisfied that the broad extent of the criminality has been determined and that they are able to make a fully informed assessment of the public interest. If prosecutors do not have sufficient information to take such a decision, the investigation should proceed and a decision taken later in accordance with the Full Code Test set out in this section.*

If the investigation or evidence file is not complete then the CPS must advise the investigators to carry out additional work.

The Code for Crown Prosecutors says:

*The police and other investigators are responsible for conducting enquiries into any alleged crime and for deciding how to deploy their resources. This includes decisions to start or continue an investigation and on the scope of the investigation. Prosecutors often advise the police and other investigators about possible lines of inquiry and evidential requirements, and assist with pre-charge procedures. In large scale investigations the prosecutor may be asked to advise on the overall investigation strategy, including decisions to refine or narrow the scope of the criminal conduct and the number of suspects under investigation. This is to assist the police and other investigators to complete the investigation within a reasonable period of time and to build the most effective prosecution case. However, prosecutors cannot direct the police or other investigators.*

**This page does not contain the full test of the Code for Crown Prosecutors. It is important to read the whole Code which is on the CPS website**

## The CPS decision on whether to charge or not

The presumption of innocence means that in criminal cases the prosecution must prove guilt so that the jury are sure. If there is any reasonable doubt the jury must acquit. In a criminal trial the prosecution has to prove guilt beyond a reasonable doubt. The defendant has to prove nothing and is presumed to be innocent until proved guilty to the satisfaction of the jury. More detail on proof is given above under “the rights of suspects”.

In a case the reviewing lawyer will consider each relevant offence and will explain offences to the family when they meet them. What follows below is some examples of offences that might be considered in such cases.

### The offence of manslaughter by gross negligence

This offence is commonly considered in cases involving death in custody. For a conviction the law requires that the jury is sure that all of the following elements of the offence are proved beyond a reasonable doubt against each defendant:

- **The suspect owed a duty of care in law to the victim.** A duty of care is a legal term which means that the defendant had a legal duty to behave in a particular way towards the deceased.
- **The suspect was negligent – he breached the duty.** A “breach” means the way the defendant behaved was not as good as it should have been and fell below the minimum standard required.
- **That the breach caused the death.** There must be a provable link between what the defendant did wrong and the death. If the victim would have or might have died anyway then this element will not have been proved.
- **That the breach was gross,** namely that the breach of duty was something that fell far below what could have been expected; and that there was a serious and obvious risk of death, not just of serious injury. Gross negligence is something “truly, exceptionally bad”. Mistakes, even very serious mistakes are not enough for this element; the actions must be truly appallingly bad.

## Corporate Manslaughter

### Common Law

The offence above can be committed by an individual or by a corporate entity. However, in order to consider prosecuting a company you first need to identify a “directing mind” of the company who is personally guilty of gross negligence manslaughter. A “directing mind” is a very senior person who can be said “to be the embodiment of the company”. Once you have identified a “directing mind” that is only the start as all of the other elements as described above must be proved. A company director does not owe a duty of care merely by virtue of being a director.

## **Statutory Offence**

On the 6 April 2008, the Corporate Manslaughter and Corporate Homicide Act 2007 (CMCHA) came into force throughout the UK.

The provisions in the Act which relate to deaths which occur in custody were brought into force on 1 September 2011.

The elements of the offence are

- the defendant is a qualifying *organisation*;
- the organisation *causes* a person's death;
- there was a *relevant duty of care* owed by the organisation to the deceased;
- there was a *gross breach* of that duty;
- a substantial element of that breach was in the way those activities were managed or organised *by senior management*; and
- the defendant must not fall within one of the *exemptions* for prosecution under the Act.

The details of this offence can be found in our policy on Corporate Manslaughter which is attached.

## **The offences of murder and attempted murder**

The crime of murder is committed when a person of sound mind and discretion unlawfully kills any person, with intent to kill or cause grievous bodily harm. "Unlawfully" means without legal justification or excuse, for example self-defence. The onus is on the prosecution to prove that the killing was unlawful.

Attempted murder requires intent to kill; intent to cause grievous bodily harm is insufficient.

## **Unlawful act manslaughter**

This is killing without the intent to kill or cause grievous bodily harm. All other elements are the same as for murder.

## **After the CPS decision**

If the prosecutor decides that the suspect should be charged, the defendant will appear in court. We will tell the family the dates of the hearings and where they are to take place and the family will be informed of the bail decision. If there are any alterations to the charge, or if the prosecutor is considering accepting a plea of guilty to a lesser charge, the family will be advised.

If the prosecutor decides that the suspect should not be charged, the family will receive a written explanation of the reasons and will be offered a meeting so the prosecutor can explain those reasons to the family. The VRR and other remedies set out below are all available to the family.

A decision to charge can be made before or after the inquest or after a re-review (VRR) at the request of the family or after a judicial review if that is what the court orders.

## **The Victims' Right to Review ("VRR") and other ways to challenge the CPS decision**

If the CPS decides not to charge then the family can seek a review of the decision. The Victims' Right to Review scheme is set out in full on the CPS website. This involves a re-review of the case by a different prosecutor. There is no right to a re-review of the VRR review.

Families also have the right to bring a private prosecution, and their legal advisors will be able to provide them with the necessary information. If the CPS becomes aware of a private prosecution it may be necessary for us to consider whether to take it over. Our private prosecution policy is set out on our website.

If we do take over a private prosecution and discontinue it, our decision would be liable to the VRR process, if that is requested by the family.

In addition families may consider seeking a judicial review of our decisions whether not to prosecute in the first instance or to take over a private prosecution to stop it. Families are entitled to their own legal advice but generally the courts expect that the VRR process will be followed before such an application is made.

In such case an application for judicial review is a request to the Divisional Court for a ruling that the CPS decision is wrong and that it must be looked at again or changed.

## **The Inquest**

Where there is a possibility of a charge of homicide, the coroner will usually open and adjourn the inquest.

The law says that a coroner must suspend an inquest if a person is:

(a) charged with homicide or  
(b) with a related offence that is not homicide and the DPP requests a suspension  
But need not adjourn if the DPP says s/he has no objection or if the coroner thinks there is an exceptional reason not to suspend.

A coroner must also suspend an investigation if he is asked to do so by the DPP on the ground that a person may be charged with homicide or a related offence  
The adjournment is for 28 days or such longer period as may be specified by the coroner

If the prosecutor decides not to charge the suspect the coroner will be informed and will then arrange a date for an inquest.

The VRR and other remedies set out above are all available to the family.

Usually, from the family's point of view, the key question at the inquest is: how did the person die?

To assist families prepare for the inquest, there is a system for the investigators to supply the family with much of the evidence produced in the investigation. Although witnesses are called and may be asked questions, the inquest is not a trial and nobody can be found guilty.

The prosecutor does not have a formal role at an inquest, but may be present at times during the hearing to hear specific witnesses to help him or her decide whether any new and relevant evidence has been given.

If the coroner think that an offence may have been committed and s/he wishes to do so s/he can refer the case back to the DPP to consider before the inquest proceeds.

Once the inquest is finished, the prosecutor will consider all the evidence that is now available, including evidence given at the inquest.

If there is now sufficient evidence to charge a person or if further enquiries are needed, the family will be informed.

If the prosecutor decides that there is still insufficient evidence and that there are no further enquiries that can reasonably be undertaken, the prosecutor will write to the family advising them of the decision and the reasons for it. The prosecutor will invite them to a further meeting where that decision can be explained to them in more detail.

The VRR and other remedies set out above are all again available to the family.

## **Trial**

If a person is charged with a criminal Offence at any stage, they may be tried either in a magistrates' court or in a Crown Court, depending on the charge and the plea. The prosecutor will explain to the family what will take place and will answer any questions they may have.

More detail about the court process can be found on the CPS website.

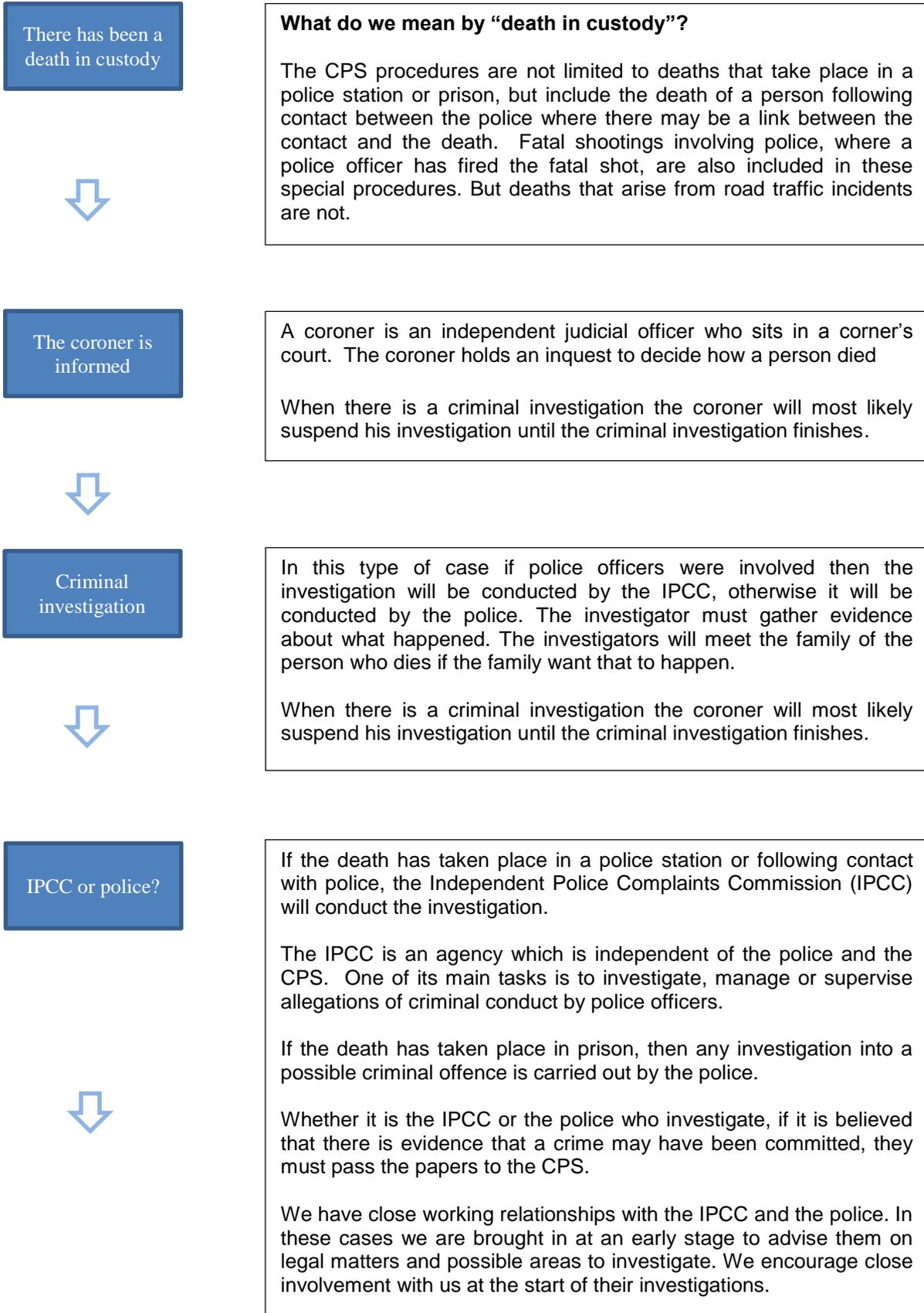
In a criminal trial the prosecution has to prove guilt beyond a reasonable doubt. The defendant has to prove nothing and is presumed to be innocent until proved guilty to the satisfaction of the jury.

There are rules of evidence which mean that often not everything that is known will be said in court. For example the fact that someone thinks the defendant must be guilty is not allowed in evidence. Another example is where something cannot be proved to have been said by the defendant and so what was said might not be allowed into evidence.

These rules are different to the rules of evidence at inquests.

ANNEX A

Detailed process chart





## SUBMISSION TO THE HARRIS REVIEW INTO DEATHS IN CUSTODY

CPS lawyers

When making prosecution decisions, although we work closely with other agencies in the criminal justice system to make everything as efficient as possible, we are independent of them.

When advised of a death in custody, the CPS will appoint one of a small number of specially selected prosecutors from “Special Crime” (a unit within the Special Crime & Counter Terrorism Division – SCCTD) who are very experienced prosecutors and who have been trained to handle these sensitive cases.

It will be the task of that lawyer to advise the investigators and in due course to consider all the evidence to decide if there is sufficient evidence to prosecute.



CPS advise investigators

The CPS will be asked for legal advice by the investigator. The CPS cannot direct the investigator but can advise them.

There will be an early meeting with investigators (1) to scope the likely extent of CPS’s involvement (2) to ensure family liaison and liaison with the coroner is in place; and (3) to ensure that all appropriate investigative bodies are engaged and working jointly. This is supplemented by written advice from CPS –rehearsing the above. The written advice is also likely to include (a) a brief synopsis of the legal elements of the offence(s) under consideration and the likely evidential hurdles to be overcome, and (b) a staged guide to how the investigative work might best be undertaken.



CPS meet the family

The CPS will meet the family of the person who dies if the family want that to happen. (See above under “meetings with families for more detail”).

The CPS will arrange a family meeting soon after we first receive contact from police/IPCC unless:

- (a) the ongoing police/IPCC family liaison is going well and the timing is very close to the date of death when we may hold off for a while(subject to the wishes of the family). OR
- (b) Our role is very early advice before the police/IPCC have really decided to conduct a criminal investigation (as otherwise this may confuse the family).

This first meeting is to explain the law and process and to manage expectations about possible long investigation.



CPS write to coroner

The CPS lawyer writes to the coroner to explain CPS’s engagement. Any coronial inquest is normally postponed by the coroner pending the decision on prosecution.

Where there is a possibility of a charge of homicide, the coroner will usually open and adjourn the inquest.

The law says that a coroner must suspend an inquest if a person is

- (a) charged with homicide or
- (b) with a related offence that is not homicide and the DPP requests a suspension

But need not adjourn if the DPP says s/he has no objection or if the coroner thinks there is an exceptional reason not to suspend



## SUBMISSION TO THE HARRIS REVIEW INTO DEATHS IN CUSTODY



CPS available to advise investigators

Thereafter, for so long as CPS is asked to continue to be engaged, its case lawyer is proactive in setting and monitoring timescales for timely and effective working; and remains available to advise police/IPCC on all aspects of criminal case building, including identifying (and drafting terms of reference for) experts. If at any stage the CPS prosecutor considers that there is no prospect of a prosecution or that any possible prosecution is limited then it may advise the investigator of that. It always remains for the investigator to decide whether to investigate or to continue to investigate.



The investigation continues

The investigator must gather evidence about what happened.

In a criminal case, “evidence” means witness statements, exhibits, interviews and expert reports. A witness statement is a document signed by the witness which says what they saw or heard. An exhibit is something they talk about – for example a video recording which they have kept for the case. An interview is a recording of someone talking about what they saw or heard. No-one, including suspects, can be forced to say anything. This is called “the right to silence”.



Expert reports

Cases involving deaths in custody often need expert evidence from very senior medical experts and often several experts are needed. The experts have to have all of the other evidence to look at. This means that often they cannot write their expert reports until many months have passed.



6 months after the death

Before the 6 month date, any summary offences need to be considered. A summary offence is one which can only be tried at a magistrates’ court, for example, common assault. CPS will alert the investigators of this in a timely way to ensure that, if investigators wish to submit a summary offence file, they do so promptly. Where such a file is submitted, it will be the subject of review in the usual way– generating a Review Note, and notification of decision to the family and to investigators. More detail is given about reviews below.

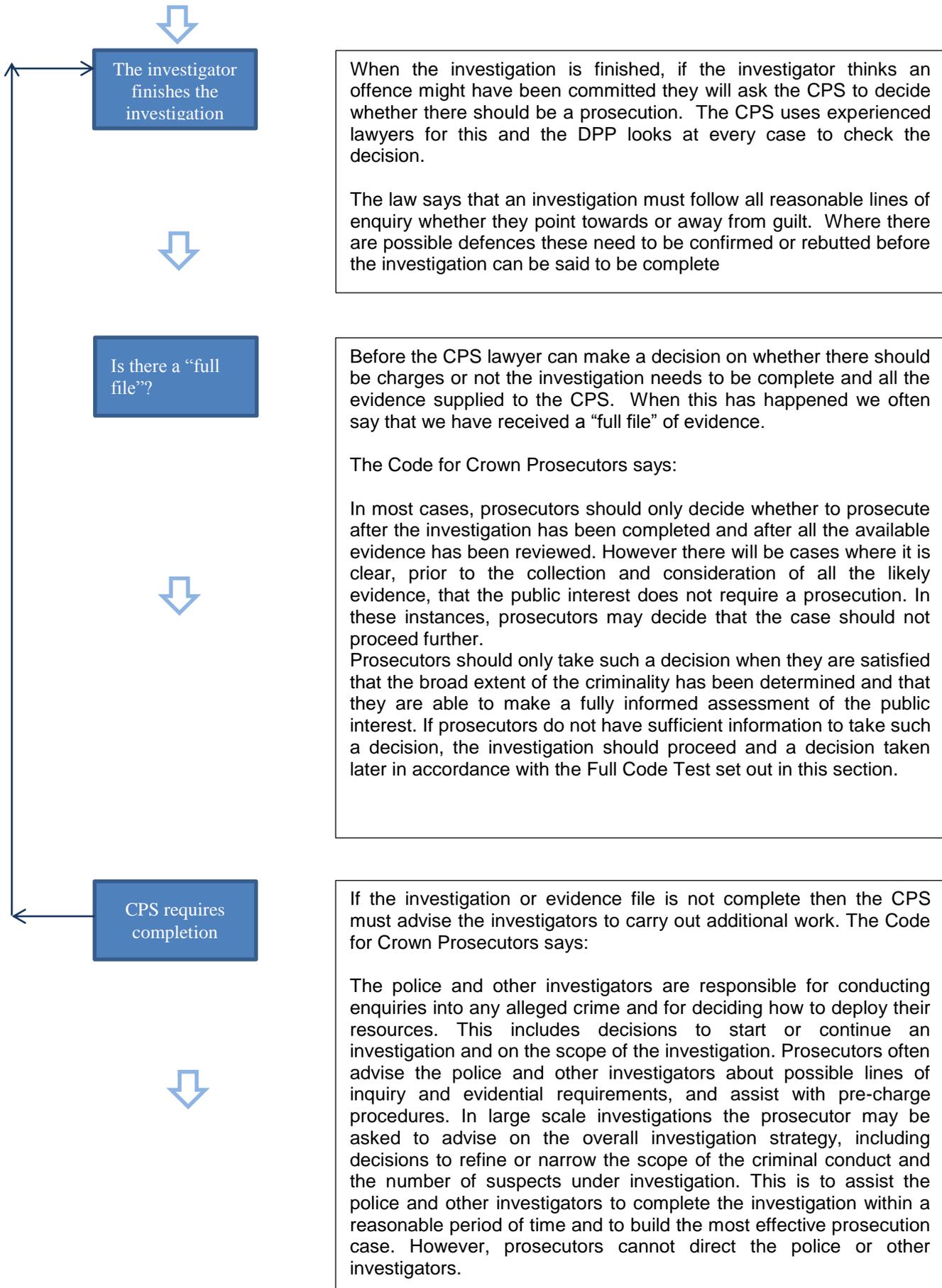


Further family meetings

Generally there are three stages at which a meeting is appropriate (initial; immediately before a charging decision is finalised; after a charging decision has been made). (See above under “meetings with families for more detail”). The IPCC or police Family Liaison Officers should provide regular updates but sometimes additional meetings may be appropriate.



## SUBMISSION TO THE HARRIS REVIEW INTO DEATHS IN CUSTODY





## SUBMISSION TO THE HARRIS REVIEW INTO DEATHS IN CUSTODY

Pre decision family meeting

After CPS has read the full file, but before a charging decision has been made a further meeting is offered to the family (1) to explain, in broad terms, the issues in the case, and (2) to make sure they have had the opportunity to bring up anything that they would like taken into account before the decision is made. We call this the "issues" meeting. (See above under "meetings with families for more detail").



The CPS reads all the evidence

Before the CPS lawyer can make a decision on whether there should be charges or not the investigation needs to be complete and all the evidence supplied to the CPS. When this has happened we often say that we have received a "full file" of evidence.



A charging decision is made

The presumption of innocence means that in criminal cases the prosecution must prove guilt so that the jury are sure. If there is any reasonable doubt the jury must acquit. In a criminal trial the prosecution has to prove guilt beyond a reasonable doubt. The defendant has to prove nothing and is presumed to be innocent until proved guilty to the satisfaction of the jury.



Suspicion and supposition is not enough to convict a person in England and Wales. More detail is given above under "The CPS decision on whether to charge or not". An example of the type of offence we consider is explained above under "The offence of manslaughter by gross negligence"

The DPP has oversight

Only very experienced and able senior lawyers, who are specifically designated are permitted to review death in custody cases in Special Crime.

The reviews carried out by the senior lawyer in cases involving deaths in custody are examined by the line manager (the "Unit Head") and then by the Head of Division (or Deputy). They are then submitted to the DPP for final approval. In any case where the decision is or may be not to proceed, if the DPP (or any of the other lawyers) is not satisfied that it is "plain beyond doubt" that there is no case to answer then experienced external counsel will be instructed to advise. Again, this is in accordance with the Attorney General's review of deaths in custody.

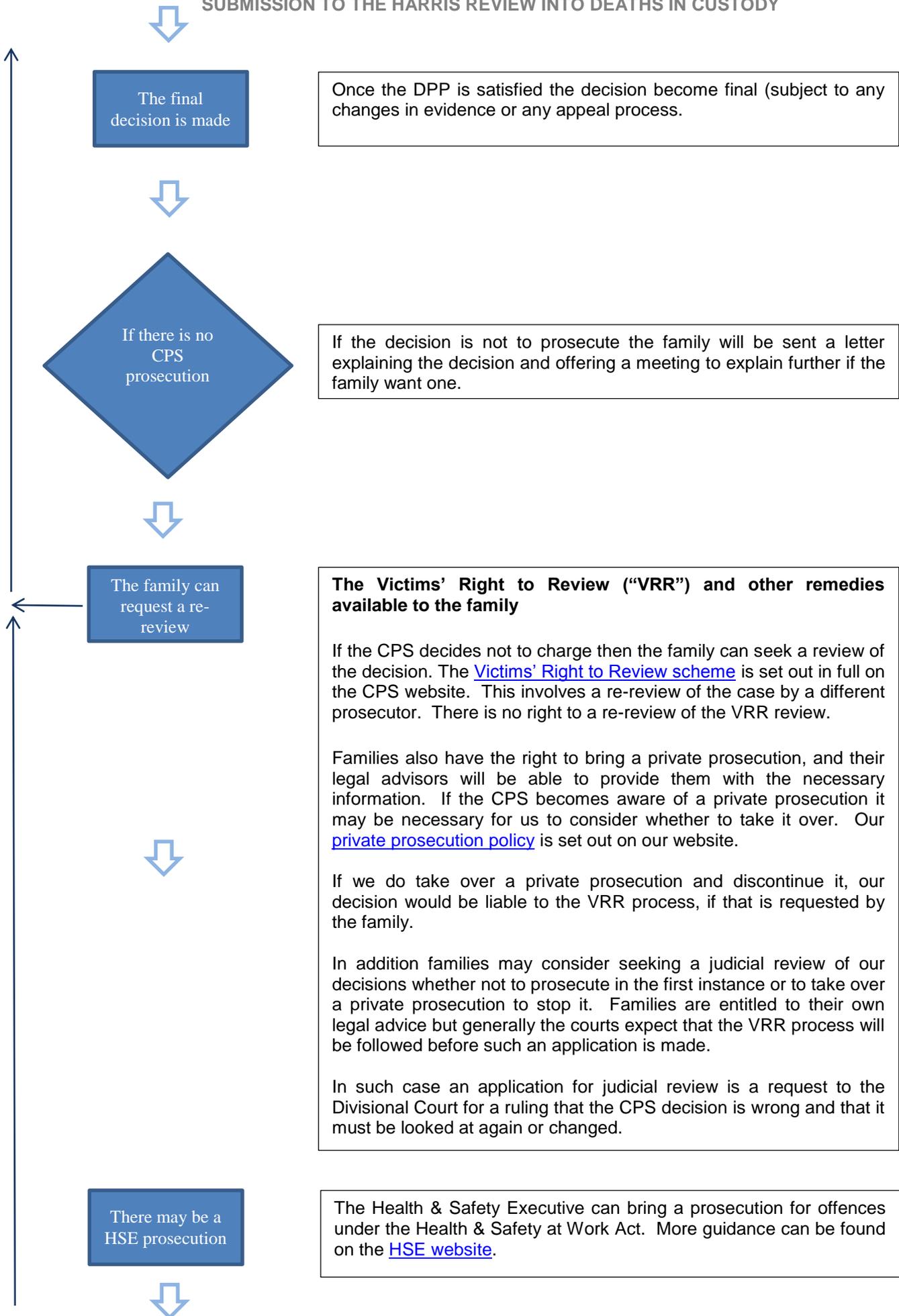


A barrister may be instructed

In any case where the decision is or may be not to proceed, if the DPP (or any of the other lawyers) is not satisfied that it is "plain beyond doubt" that there is no case to answer then experienced external counsel will be instructed to advise. Again, this is in accordance with the Attorney General's review of deaths in custody.



## SUBMISSION TO THE HARRIS REVIEW INTO DEATHS IN CUSTODY



## SUBMISSION TO THE HARRIS REVIEW INTO DEATHS IN CUSTODY



Inquest

If the prosecutor decides not to charge (and HSE do not prosecute) the suspect the coroner will be informed and will then arrange a date for an inquest.

A coroner is a doctor or lawyer specially appointed to conduct inquests into violent or unnatural deaths, sudden deaths where the cause is unknown and in particular deaths in prison.

When a person dies in custody, the coroner will be informed and will appoint a pathologist to examine the body to try and determine the cause of death. This examination is known as a post mortem or autopsy. The pathologist will provide a report to the coroner and, if there is a suspicion that a crime has been committed, also to the investigators. In the criminal justice system, because it is so important to try and be sure of the cause of death, it may be necessary for more than one pathologist to carry out a post mortem. For instance, if a person is suspected of being responsible for causing the death, they must be allowed the opportunity to obtain



Inquest verdict

### **Inquest verdicts**

There are a number of verdicts that can be given which include:

natural causes, ,suicide, accident/misadventure, lawful killing, open verdict, narrative verdict and narrative verdict.

A Coroner's inquest verdict of unlawful killing is based on similar legal definitions to the criminal offences of, depending on the case, murder or manslaughter although importantly:

- In a criminal prosecution the rules of evidence are different to the rules in an inquest.
- The purpose of an Inquest is to determine the cause of death rather than to prosecute a person.
- There are additional rights for defendants in criminal trials that do not exist in inquests.



The CPS may reconsider

Whether or not the CPS has considered the case before the inquest and decided not to prosecute, if there is a narrative verdict at the inquest or a verdict of unlawful killing, we will consider whether there is anything that would change our decision or mean there should be a prosecution. This is more obvious when there is a verdict of unlawful killing but the CPS role is to review the evidence and we must not simply follow the inquest verdict. A public inquiry is considered in the same way. In order to inform the CPS decision the police/IPCC will be asked for a report highlighting the areas where the evidence reviewed by the CPS in reaching its charging decision has changed.



## SUBMISSION TO THE HARRIS REVIEW INTO DEATHS IN CUSTODY

The family can request a re-review

If the CPS decides not to charge then the family can seek a review of the decision. The [Victims' Right to Review scheme](#) is set out in full on the CPS website. This involves a re-review of the case by a different prosecutor.

The family can seek judicial review

In addition families may consider seeking a judicial review of our decisions whether not to prosecute in the first instance or to take over a private prosecution to stop it. Families are entitled to their own legal advice but generally the courts expect that the VRR process will be followed before such an application is made.

In such case an application for judicial review is a request to the Divisional Court for a ruling that the CPS decision is wrong and that it must be looked at again or changed.

A family private prosecution?

Families also have the right to bring a private prosecution, and their legal advisors will be able to provide them with the necessary information. If the CPS becomes aware of a private prosecution it may be necessary for us to consider whether to take it over. Our [private prosecution policy](#) is set out on our website.

A decision by the CPS to stop a private prosecution may also be the subject of a VRR or an application for judicial review.

If there is to be a CPS prosecution

If the prosecutor decides that the suspect should be charged, the defendant will appear in court. We will tell the family the dates of the hearings and where they are to take place and the family will be informed of the bail decision. If there are any alterations to the charge, or if the prosecutor is considering accepting a plea of guilty to a lesser charge, the family will be advised.

A decision to charge can be made before or after the inquest or after a re-review (VRR) at the request of the family or after a judicial review if that is what the court orders.

A meeting with the family

A meeting will be offered to explain what will happen during the prosecution. Our experience is that this is often not taken up as the letter we send covers most of the detail.



The prosecution  
takes place

**Charge:** the defendant is charged and attends court

**Preparation:** there will be a number of preparatory hearings and the evidence must be served by the CPS on the defendant and the court.

**Arraignment:** this is when the defendant is asked if he pleads guilty or not guilty.

If the defendant pleads not guilty there will be a trial which may be many months in the future. Lots of legal arguments may take place between the CPS and defence during this time. Sometimes there are legal arguments at court as well.

**The trial:** a jury hears all of the evidence that is allowed at the trial and decides whether they are sure that the defendant is guilty. If the defendant is found "not guilty" there can be no appeal by the CPS.

**Sentence:** if the defendant pleads guilty or is convicted s/he will be sentenced by the judge. The CPS cannot ask for a particular sentence.

## ANNEX B

### Statistics on deaths in custody

#### How many deaths in custody have there been?

Statistics vary between organisations depending on what definition is applied to “death in custody”.

An example of statistics is the *Independent panel on Deaths in Custody* which analysed records for deaths in state custody between 1.1.00 and 31.12.10.

The report found that:

- in total, 5,998 deaths were recorded for the 11 years from 2000 to 2010. This is an average of 545 deaths per year. Of these deaths, about 7 in 10 were of males and about 3 in 10 were of females
- a total of 607 deaths were reported in 2000 compared to 512 in 2010
- deaths of people detained under the Mental Health Act were about 3 in 10 deaths
- deaths in prison custody were about 6 in 10 deaths
- 2 in 3 deaths were recorded as “natural causes”.

The report also broke the data down for the first time to allow ethnicity to be seen:

- Black and Minority Ethnic (BME) groups 9%
- White 87%
- Other 1%
- Not stated 3%

The report says that in the 11 years, 294 people died in or following police custody. Note that these figures may include people who had been released. This is an average of almost 27 deaths in police custody each year.

Of the 294 deaths:

129 of these are said to have died from natural causes.

40 were “self inflicted” (this does not include accidental overdoses)

11 had “restraint as the primary cause”

#### An independent review of the statistics

The *National Statistician* has reviewed death in custody statistics and her report explains some of the difficulties of how to interpret the figures. The link is in the footnote.

## The IPCC deaths in custody study

The IPCC website holds some additional data covering a slightly different period.

This states as follows:

- Between 1998/99 and 2008/09, 20% of the 333 cases of death in police custody were sent to the Crown Prosecution Service for a decision on whether or not to prosecute (67 cases). For cases which occurred since the IPCC's inception (2004/05 -2008/09) this increased to 25% (32 of the 128 relevant cases).
- Of the 67 cases sent to the Crown Prosecution Service, seven cases led to a prosecution (10%).
- Of the seven cases which led to a prosecution, a total of 26 police officers and one staff member faced charges. Of these individuals only one police officer and one staff member were found guilty – both for misconduct in a public office.
- There is a large amount of missing data regarding misconduct and discipline prior to 2004/05. Of the 128 deaths in custody from 2004/05 – 2008/09, there were 44 cases where officers/staff faced disciplinary action or misconduct hearings (34%).
- A total of 114 officers and 23 staff members faced disciplinary action or misconduct hearings.