



**Review of investigatory arrangements which follow
police use of force and police driving related incidents**

Home Office

Submission

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Introduction

1. JUSTICE is a cross-party law reform and human rights organisation working to strengthen the justice system – administrative, civil, and criminal – in the United Kingdom. It is the UK section of the International Commission of Jurists. Our vision is of a UK justice system that is fair, accessible, and respects the rights of all, and which reflects the country's international reputation for upholding and promoting the rule of law.
2. This is a response to the Home Office's call to evidence regarding the terms of reference for its review of investigations after police use of force¹ (the "**Consultation**"). In this response we draw on our working parties: *Tackling Racial Injustice: Children and the Youth System* (2021)² and *When Things Go Wrong: the response of the justice system* (2020).³ We also draw on our recent report *The State We're In: Addressing Threats & Challenges to the Rule of Law* (2023).⁴
3. The Consultation was opened on 24 October 2023, with a deadline of 17 November 2023; a period of only 3 weeks. Given the incredibly short window of time for which stakeholders could respond to the Consultation, and the breadth and complexity of the issues covered, it has not been possible to provide a comprehensive response to all the issues raised by the terms of reference. Failure to address a particular aspect of the terms of reference does not therefore signify an endorsement. For efficiency, we have confined our submission to issues specifically address by the reports noted above.

Breadth of review and insufficient consultation

4. The terms of reference⁵ for which this Consultation seeks feedback are extremely broad and cover complex and contentious areas of law and policy. The terms of reference indicate an intention to conduct a wholesale review of the framework for regulating, investigation and prosecuting cases arising from police use of force. This includes an examination of the current legal framework currently governing these matters, which comprises of complex primary legislation and numerous pieces of secondary legislation, as well as a vast amount of statutory and non-statutory guidance.
5. JUSTICE, along with other stakeholders raised their concerns with the Home Secretary earlier this month about the origins of this review. The review arose out of the letter sent by Metropolitan Police Commissioner, Sir Mark Rowley QPM, to the Home Secretary on 24 September 2023, following the Crown Prosecution Service's decision to charge a police officer with murder in connection with the death of Chris Kaba.⁶ The letter from Sir Rowley to the Home Secretary contained several proposals for potential

¹ Home Office, [Review of investigations after police use of force: terms of reference](#) (2023).

² JUSTICE, [Tackling Racial Injustice: Children and the Youth System](#) (2021).

³ JUSTICE, [When Things Go Wrong: The response of the justice system](#) (2020).

⁴ JUSTICE, [The State We're In: Addressing Threats & Challenges to the Rule of Law](#) (2023).

⁵ Home Office, [Terms of reference for the review of investigatory arrangements which follow police use of force and police driving related incidents](#) (2023).

⁶ The full letter can be read [here](#).

reform, which would represent wide-ranging and fundamental changes to the mechanisms of police accountability. Whilst the terms of reference for the review do not contain specific policy proposals, they do anticipate some of these changes.⁷

6. It is notable that the Home Office's decision to conduct this review has arisen in response to a decision by the CPS to take steps to hold an officer accountable for his fatal use of force, rather than evidence of disproportionate use of force itself. For years bereaved families and survivors, and the organisations that represent them have highlighted issues with the (mis)use of police force, particularly against young Black men, and a lack of effective mechanisms for holding the police to account.⁸ However, the government has, to date, failed to adequately respond.
7. Given the breadth of the terms of reference, the potential for significant policy proposals arising out of the review, and the vital importance of police accountability for bereaved families and survivors of police use of force, it is concerning that the review intends to present its findings to the Home Secretary by the end of the year. It is our view that a meaningful review of this area cannot be carried out in such a short time frame, and without robust consultation with experts and other interested persons.
8. Relatedly, the terms of reference refer variously to the need to “*maintain public confidence*” and ensure “*sufficient rights*” for members of the public subject to police force.⁹ Public confidence in policing is particularly crucial at the current time, given the recent report of Baroness Casey,¹⁰ which found the Metropolitan Police to be institutionally racist, misogynistic and homophobic, and uncovered defensiveness and a lack of accountability within the force.
9. We are concerned that the review fails to provide any meaningful opportunity for members of the public, affected groups, or organisations representing them, to input into the terms of reference or review itself. This stands in contrast to the independent review conducted by Dame Angiolini into deaths and serious incidents in police custody, which provided generous amounts of time for public consultation.¹¹
10. That the Home Office was seeking evidence or submissions for the review was not adequately promoted. The review was not announced on social media or in the press. The terms of reference themselves, do not mention evidence collection or provide any details of how to make submissions to the review. Reference to submissions and

⁷ For instance, the possibility of legislating to reverse the Supreme Court's decisions in *R(Maughan) v. HM Senior Coroner for Oxfordshire* and *R (on the application of Officer W80) v. Director General of the Independent Office for Police Conduct and others*. The former determined that the standard of proof for all conclusions at an inquest, including lawful killing, is the civil standard, the latter determined that the civil law test for use of force applies in police conduct decisions.

⁸ See e.g. INQUEST, [I can't breathe: Race, death & British policing](#) (2023).

⁹ Home Office, [Terms of reference for the review of investigatory arrangements which follow police use of force and police driving related incidents](#) (2023).

¹⁰ Baroness Casey, [An independent review into the standards and behaviour and internal culture of the Metropolitan Police Service](#) (2023).

¹¹ The consultation for Dame Angiolini's review ran from 26 February 2016 to 6 May 2016. See Home Office, [Consultation outcome: Independent review of deaths and serious incidents in police custody](#) (2016).

information on where to submit them was only provided at the bottom of the guidance page for the review.¹²

11. In JUSTICE's report *The State We're In: Addressing Threats & Challenges to the Rule of Law* (2023) we highlighted the need for robust consultation processes in ensuring transparent and inclusive law and policy making – a requirement of the rule of law.¹³ Consultation with affected people also provides a strong evidence base, inevitably improving the quality of the final product.¹⁴ The lack of input into the review from those impacted by police use of force, will significantly weaken the findings of the review, and undermine the legitimacy of policy and legislative proposals stemming from it.
12. As mentioned above, the terms of reference for the review do not include any substantive policy proposals. However, should any proposals arise out of the review process, it is imperative that time is given for effective consultation.

The legal/regulatory framework on use of force

13. The terms of reference for the review includes an examination of whether the legal framework and guidance on practice for use of force is sufficient to maintain public confidence in policing, in particular for “*communities and families impacted by police use of force*”.¹⁵ It is disappointing that, despite the well documented disproportionate impact of police use of force on racialised communities, and in particular Black communities, the terms of reference do not address the particular need to ensure confidence amongst these communities specifically.
14. According to the Home Office's most recent statistics, in the year ending March 2022, individuals perceived as Black had force used against them by the Metropolitan police at a rate 3.4 times higher than those perceived as white. In the rest of the country, Black individuals were subject to police force at a rate 3 times higher than white individuals.¹⁶ Research released by INQUEST earlier this year found that Black people were 7 times for likely to die than white people following the use of police restraint.¹⁷
15. In our 2021 Working Party report *Tackling Racial Injustice: Children and the Youth Justice System* we highlighted how disproportionate use of police force against Black and racialised children, has significantly damaged relations between Black and racialised communities and the police. Consultees raised a lack of understanding around disproportionality, the tendency of police to use force over seeking cooperation, failures to de-escalate, and lack of accountability as factors driving the use of force against children and young people.¹⁸ The Working Party recommended a robust

¹² Home Office, [Review of investigations after police use of force: terms of reference](#) (2023).

¹³ JUSTICE, [The State We're In: Addressing Threats & Challenges to the Rule of Law](#) (2023). p. 12.

¹⁴ *ibid.*

¹⁵ Home Office, [Terms of reference for the review of investigatory arrangements which follow police use of force and police driving related incidents](#) (2023).

¹⁶ Home Office, [Police use of force statistics, England and Wales: April 2021 to March 2022](#) (2022); INQUEST, [Submission to the United Nations High Commissioner for Human Rights for their 2023 report](#). (2023).

¹⁷ INQUEST, [I can't breathe: Race, death & British policing](#) (2023).

¹⁸ JUSTICE, [Tackling Racial Injustice: Children and the Youth System](#) (2021).

assessment of the police's use of force on Black and racialised children and young people.¹⁹

16. The review must specifically acknowledge and examine the ways in which existing legal frameworks and guidance exacerbate disproportionate use of force against Black and racialised communities. This will require close engagement with members of affected communities, and the organisations representing them.
17. JUSTICE also has concerns that the legal framework and guidance on use of force is not sufficient to protect individuals suffering from mental health issues. Data from the Independent Office for Police Conduct, obtained by JUSTICE through Freedom of Information requests show that for the years 2012-2013 to 2021-22 over 57 percent of deaths involving use of force by the police concerned individuals identified as having mental health concerns.
18. The high rates of deaths involving police use of force where an individual is identified as having a mental health concern have persisted despite some limited guidance. In 2016 the College of Policing published Authorised Professional Practice guidance stating that "*officers should not use methods on restraint on people with mental ill health or vulnerabilities...unless absolutely necessary*".²⁰ A College of Policing Memorandum of Understanding in 2017 highlighted the need for de-escalation and the importance of verbal skills when dealing with people with mental health concerns.²¹
19. In 2017 Dame Angiolini's Review of Deaths and Serious Incidents in Police Custody recommended that national policing practice and training must reflect the position that the use of force against those suffering mental health crisis poses a life-threatening risk.²² As of 2023 there is no national level guidance on the use of force against individuals identified as having mental health concerns, or on the specific risk use of force poses to individuals suffering from mental ill health. This needs to be addressed to maintain confidence in policing amongst those at risk of mental health crisis, and the public at large.

Timeliness of investigations and legal processes

20. The terms of reference for the review include an examination of whether quicker outcomes can be achieved across investigations involving the police's use of force or driving. This includes consideration of whether there is scope to reduce duplication in the criminal, coronial and misconduct processes and consideration of the impact on timeliness of more effective working between investigatory bodies.

¹⁹ JUSTICE, [Tackling Racial Injustice: Children and the Youth System](#) (2021), p.3.

²⁰ College of Policing, [Mental health-detention](#) (2016).

²¹ College of Policing, [Memorandum of Understanding – The Police Use of Restraint in Mental Health & Learning Disability Settings](#) (2017).

²² Rt. Hon. Dame Elish Angiolini DBE QC, [Report of the Independent Review of Deaths and Serious Incidents in Police Custody](#) (2017), p. 9.

21. As set out in our report *When Things Go Wrong: the response of the justice system* (2020),²³ delays in achieving resolution can be attributed, in part, to separation between proceedings able to determine liability and those, such as inquests, prohibited from so doing.²⁴ The balance between the fair trial rights of the accused and the State's obligation to conduct an adequate, independent, prompt and transparent investigation means that to some extent, the problem of multiple processes is intractable. Further, our consultation with bereaved people suggests that lengthy investigations are on occasion welcomed where length is perceived to correlate with thoroughness.²⁵
22. However, anguish is caused by unnecessary delay and duplication, exacerbated by lack of effective communication between investigating agencies.²⁶ Our report makes several recommendations to alleviate some of the duplication and delay in post-death investigation processes.
23. First, in response to concerns about the effectiveness of existing arrangements between police and other investigators, the report recommended that where multiple agencies are involved in investigations concurrent with an inquest, coroners should hold prompt and regular pre-inquest hearings with investigating agencies to require them to liaise closely and account for the progress of their work and co-ordination.²⁷ To better progress investigations, where possible, investigating agencies should continually update one another as information emerges about the circumstances of an incident. A model is provided in the current Memorandum of Understanding between the Air Accidents Investigation Branch and Association of Chief Police Officers.²⁸
24. A related issue, raised frequently over the course of the Working Party, was the experience of witnesses, and in particular bereaved people and survivors giving evidence on multiple occasions. To avoid the distress and delay caused by this, the Working Party recommended that investigating agencies should collaborate in the questioning of witnesses. A lead interview should aim to gather evidence that can satisfy the objectives of multiple investigations and form part of a cross-jurisdictional dossier. Investigating agencies should meet with a view to appointing interviewers and briefing them as to the issues on which information is sought.²⁹ To ensure that the interviewer is able to elicit the fullest possible evidence in a single session, when interviewing witnesses who have suffered trauma, interviewers should employ cognitive interviewing techniques,³⁰ such as those incorporated into the Achieving Best Evidence framework.³¹

²³ JUSTICE, [When Things Go Wrong: The response of the justice system](#) (2020).

²⁴ Coroners and Justice Act 2009, s. 10(2); Inquiries Act 2005, s. 2.

²⁵ JUSTICE, [When Things Go Wrong: The response of the justice system](#) (2020), para 1.8.

²⁶ *ibid*, para 1.9.

²⁷ *ibid*, para 3.10.

²⁸ *ibid*, para 3.20

²⁹ *ibid*, para 3.14

³⁰ *ibid*, para 3.16.

³¹ Ministry of Justice, [Achieving Best Evidence in Criminal Proceedings: Guidance on interviewing victims and witnesses, and guidance on using special measures](#) (2011).

25. We recognise that there may be difficulties in evidence sharing and rationalising between police investigations aimed at ascertaining blame, and investigations aimed purely at preventing future recurrence.³² However, subject to data protection, there is nothing preventing the migration of prosecution material to other investigations once the criminal process concludes. In *When Things Go Wrong*, we recommended that where an inquest, inquiry or other form of investigation follows a concluded criminal trial, investigators should consider whether the witness statement (including the victim impact statement) of a bereaved person used at trial might be sufficient to serve as that person's evidence for the purposes of the investigation.³³

JUSTICE
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³² JUSTICE, [When Things Go Wrong: The response of the justice system](#) (2020), para 3.21

³³ *ibid*, para 3.22.