

DEATH IN CUSTODY

A guide to the role of the
Crown Prosecution Service



Foreword from the Director of Public Prosecutions

When I was appointed Director of Public Prosecutions in 2013, I said that the Crown Prosecution Service (CPS) would do all it could to make victims' experiences of the criminal justice system easier and better, and I acknowledged the improvements that could be made in terms of how we communicate with victims. I know how one bad experience as a result of confusing and unsympathetic communication from the CPS can undermine someone's confidence in the whole system.

We need the confidence of those we are here to serve. This is especially true when a person dies in custody.

When a person dies in state custody, their family and other loved ones will – quite rightly - expect the criminal justice system to deliver a fair, thorough, transparent and independent investigation. By the same token, they should expect clear, sympathetic communication, and to be treated with respect at all times.

Building public understanding, trust and confidence in our decision making is vital. I hope that this booklet succeeds at explaining the processes which the CPS and its partners in the criminal justice system have in place regarding deaths in custody.

Alison Saunders CB

Director of Public Prosecutions.

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PART ONE - OVERVIEW

Introduction

This guidance offers an overview of the processes followed by the Crown Prosecution Service (CPS) after the death of a person in state custody. It explains the role of the CPS in determining whether or not to prosecute in these cases, and explains how that decision is reached.

By their very nature, deaths in custody require many different organisations to work closely together. While this guidance makes reference to some of those organisations, it is primarily concerned with explaining the specific role of the Crown Prosecution Service.

It is hoped that this guide will be of benefit to the family of anyone who has died in custody, and offer some degree of reassurance at what is likely to be a very stressful time.

Defining 'Death in custody'.

'Death in custody' is a broad term, which refers to the death of any person in the custody of the state. It is not limited to deaths which occur in prison or police custody.

Cases involving non-fatal shootings or severe injuries are not within the ambit of this guidance; in order to commence the processes put in place by the CPS, a death must have occurred.

The following list illustrates some circumstances where a person's death may be said to have occurred in custody:

- whilst under arrest in a police station;
- whilst held as a prisoner in a prison or police station;
- whilst under arrest by a police officer;
- whilst being detained for the purposes of a search;

- whilst in other lawful detention e.g. immigration detention;
- whilst a child or young person is in custody for their own protection;
- as a result of being shot by a police officer;
- following any other 'contact with the police' where there may be a link between the contact and the death.

A suicide can also be considered a death in custody, as can a death following a fight between prisoners, if there is an indication that a prison officer has negligently failed to prevent the death.

A death in a road traffic incident, even if the person who dies is under arrest and heading towards a police station in a police car, does not fall within the CPS definition of a death in custody.

The identity or employment of the person who caused the death is immaterial in all cases except fatal police shootings. For example, if a person dies as a result of grossly negligent medical treatment by a police doctor whilst in custody, that is still regarded as a death in custody. More on the test for establishing “gross negligence” can be found later in this guidance.

It is important to remember that not every death in state custody will be the result of a crime, or be regarded as suspicious. Although there will always be an investigation to establish the cause of death, it does not follow that criminal charges will always be brought; that will depend entirely on the facts of the case.

The Crown Prosecution Service

The CPS is the principal prosecuting authority in England and Wales, acting independently in cases investigated by the police and others. It was created by the Prosecution of Offences Act 1985, which established the position of Director of Public Prosecutions (DPP) as its head. The current DPP is Alison Saunders.

The core functions of the CPS are to:

- decide which cases should be prosecuted – keeping them all under continuous review;
- determine the appropriate charges in more serious or complex cases – advising the police during the early stages of investigations;
- prepare cases and present them at court - using a range of in-house advocates, self-employed advocates or agents in court; and
- provide information, assistance and support to victims and prosecution witnesses.

In carrying out its functions, the CPS is guided by the following set of core values:

- 'We will be independent and fair';
- 'We will be honest and open';
- 'We will treat everyone with respect';
- 'We will behave professionally and strive for excellence.'

When deciding which cases should be prosecuted, CPS prosecutors must comply with the *Code for Crown Prosecutors*. The Code contains a two-stage test for prosecutors, which requires them to ensure there is enough evidence to justify prosecution, and that prosecution would be in the public interest. More information on the Code can be found later in this guidance.

In addition to the Code, the CPS has specific arrangements in place for dealing with deaths in custody. These arrangements, which include the oversight of the Director of Public Prosecutions, were put in place following the then Attorney General's 2003 review, "*Role and Practices of the Crown Prosecution Service in Cases Arising from a Death in Custody*".

As a prosecuting authority, the CPS has no power to direct the police, Independent Police Complaints Commission, or any other agency conducting an investigation. The role of the CPS and its partners during the investigation, and any prosecution that may follow, are explored in the next part of this guidance.

Box 1 - Deaths in Custody and the 'Right to Life'.

Article 2 of the European Convention on Human Rights (ECHR) states that the right to life of all citizens shall be protected by law. As a signatory to the ECHR, the United Kingdom must uphold this fundamental right, and the other rights guaranteed by the Convention. The Convention rights were given further effect in the UK in 2000, with the coming into force of the Human Rights Act 1998.

In a death in custody case, it may be claimed that the state took insufficient measures to protect the life of the deceased. If this is the view taken by a court (either domestically in the UK, or by the European Court of Human Rights) then the state may be found to have acted unlawfully. For this reason, it is essential that there is an independent and thorough investigation into the circumstances of the death, together with a robust decision by the CPS on whether or not to charge.

The text of Article 2 reads as follows:

- 1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.*
- 2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:*
 - (a) in defence of any person from unlawful violence;*
 - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;*
 - (c) in action lawfully taken for the purpose of quelling a riot or insurrection.*

PART TWO – THE INVESTIGATION

Immediately after a death in custody

The death of a person in state custody will immediately trigger local enquiries. This will include looking at whether a criminal offence may have been committed, and whether this offence caused the death.

During this initial stage, the death may be referred by a doctor or an authorised person to the coroner (see box one – ‘Role of the Coroner’). If it appears at any point that a criminal offence may have been committed, the coroner may decide to suspend his or her investigation until the investigation has been completed, and the CPS has made a decision as to whether there should be a prosecution.

The decision on which agency has responsibility for conducting the criminal investigation (referred to as ‘primacy’ within law enforcement) will be made, and will depend on the circumstances of the death. In most cases, criminal investigations of deaths which occur in a non-police environment, such as prison or immigration detention, will be investigated by the police. Investigations of deaths which occur in a police station, or following contact with the police, will be conducted by the Independent Police Complaints Commission (IPCC). The IPCC was established in 2004 by the Police Reform Act 2002. One of its main tasks is to investigate, manage or supervise allegations of criminal conduct by police officers. It can choose to manage or supervise the investigation, or to independently investigate the most serious cases. The IPCC is independent of police forces, CPS and the Government.

If the investigators believe that there is evidence a crime may have been committed, they must refer the decision on whether anyone is to be charged to the CPS.

Box 2 – role of the coroner

When a person dies in prison or police custody, the matter will be referred to the coroner. A coroner is an independent judicial officer who sits in a coroner's court. A public hearing, known as an "inquest", will follow. This is to establish who died, and how, when and where the death occurred. A coroner will reach a conclusion (previously called a 'verdict') at the end of the inquest. The conclusions available include (not exhaustive):

- accident or misadventure;
- alcohol/drug related death;
- lawful killing;
- unlawful killing;
- natural causes;
- road traffic collision;
- suicide - that a person intentionally took their own life
- narrative conclusion.

The coroner may also record an open verdict, should there be insufficient evidence for any other outcome.

After an inquest has been opened, it may be adjourned (postponed) until after any other investigations (including criminal investigations) are complete. 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.

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 CPS does not have a formal role during an inquest. However, the CPS prosecutor may be present at times to hear any new and relevant evidence. Once the inquest is finished, the prosecutor will consider all the evidence that is now available, including evidence given at the inquest. The inquest does not determine whether anyone is guilty of a criminal offence, and the outcome of the inquest is not binding on the CPS; 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.

Role of the investigator

The investigator will gather evidence about what happened. In a criminal case, “evidence” can include witness statements, exhibits, interviews and expert reports. Investigations into deaths in custody will often require witness statements from members of the public and the police officers or other public officials who may have information regarding the death. Exhibits may include written documents such as custody records, and video evidence such as CCTV footage from inside a police custody suite or prison cell.

The investigators will often need to obtain expert reports to establish the cause of death. These may include reports from senior medical practitioners, such as neuropathologists or toxicologists. In some instances, several different expert reports may be needed. The need for expert reports, and the time it can take for these to be prepared, is one of the reasons that death in custody investigations are rarely concluded quickly (regularly taking months, or even years, to complete). The CPS will do whatever it can to reduce unnecessary delays, and is committed to keeping bereaved families informed when delays do occur.

Role of the Crown Prosecution Service during the investigation

The CPS may be asked for legal advice by the investigator at an early stage, which might include guidance on whether a criminal investigation is warranted. The CPS must advise the investigator, but cannot direct them.

If there is an investigation, the CPS and the investigating body will work closely together to ensure a thorough investigation takes place. The two parties will meet and discuss:

1. Lines of enquiry to be followed;
2. Any expert evidence that should be sought
3. Timescales for the investigation to be concluded
4. Arrangements for keeping the family and coroner updated

5. Whether there are any grounds to believe that an offence may have been committed.

All death in custody cases referred to the CPS are dealt with by prosecutors in the **Special Crime Unit**. Special Crime forms part of the **Special Crime and Counter Terrorism Division**, with offices in London and York. This unit has senior prosecutors who have been specially accredited (or 'ticketed') by the Director of Public Prosecutions to advise on and prosecute death in custody cases. Only accredited prosecutors are assigned to these cases.

The senior prosecutor will advise the investigators, and in due course will consider all the evidence to decide if there is sufficient evidence to prosecute.

If at any point during the investigation it seems unlikely that any criminal charges can be brought against some or all of the suspects, or that any possible prosecution will have only a limited prospect of succeeding, the CPS must advise the investigating body accordingly. It always remains for the investigator to decide whether to start, continue or stop an investigation.

The CPS refer to this stage of the proceedings as "pre-charge", which means that no decision has yet been made on whether there should be a prosecution. The following section explains how the CPS decides whether or not charges should be brought.

Box 3 – Keeping victims informed

The death of a family member in state custody can be particularly difficult, and it may be some time for the full facts to come to light. The CPS, police and IPCC will make every effort to keep close relatives (who are considered 'victims' where a criminal offence has been committed) informed.

During the investigation, the investigators may appoint a dedicated officer for the purposes of keeping the family informed throughout the investigation. For the police, this will be a family liaison officer (FLO). The IPCC will appoint a family liaison manager (FLM).

If the investigators refer the matter to the CPS, the prosecutor will usually contact the bereaved family, and offer to meet them. 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, if this may affect any future trial. Whether or not they can discuss the evidence will depend on the circumstances of the case.

These investigations can be very lengthy. As a result, there may be an unavoidable delay (months rather than weeks) between the meeting with a bereaved family and the decision on whether or not to prosecute an individual or organisation. The prosecutor will usually write to the family to explain the reason for any such delays.

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 at the time of the first meeting. The bereaved are always welcome to raise anything that they wish with the prosecutor, whose contact details they will have been given.

When the decision as to whether there should be a prosecution has been made, the prosecutor will write to tell the family. If the decision is to bring charges, the letter will confirm who is to be charged, and for what offence(s). The prosecutor will be responsible for keeping the family informed and up to date as the case progresses through the courts.

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

PART THREE – THE DECISION ON WHETHER TO CHARGE

For a CPS lawyer to be able to make a decision on whether charges should be brought, the investigation needs to be complete, and all the evidence supplied to the CPS. A satisfactorily completed investigation represents a “full file” of evidence. If the investigation or evidence file is not complete then the CPS must advise the investigators to carry out the additional work required.

The CPS lawyer will make a decision whether or not to charge any suspect with any offence based upon all the evidence gathered during the investigation. Because of the seriousness of these cases, unless the decision is clear beyond doubt the CPS will seek a further review of the case by a senior, experienced barrister. All cases are then reviewed personally by the Director of Public Prosecutions for her approval.

The Code for Crown Prosecutors

In making their decision on whether or not to prosecute, CPS prosecutors are bound by the DPP’s ‘Guidance on Charging,’ and the Code for Crown Prosecutors (‘The Code’). The Code is a publicly available document, issued by the DPP in accordance with section 10 of the Prosecution of Offences Act 1985. It contains the ‘full code test’; this is a two-part consideration process, comprising the Evidential and Public Interest stages.

- The Evidential stage asks prosecutors to satisfy themselves that there is enough evidence to provide a realistic prospect of conviction against each suspect on each charge.
- The Public Interest stage requires the prosecutor to consider whether a prosecution is required in the public interest.

Both parts of the full code test must be met for a prosecution to start. It has never been the rule that a prosecution will automatically take place as soon as the evidential stage has been passed.

The Code for Crown Prosecutors can be read in full at the CPS website (http://www.cps.gov.uk/publications/code_for_crown_prosecutors/)

Selection of charges

The Code offers guidance to prosecutors on the selection of appropriate charges. This includes ensuring that the charges reflect the seriousness and extent of the offending, supported by the evidence gathered in the investigation.

Each case involving a death in custody is unique, and the charges will depend on the evidence gathered during the investigation. For that reason, it is not possible to predict which specific charges will be considered.

However, a common consideration for the reviewing lawyer will be whether the defendant in the case should face charges of **gross negligence manslaughter**. 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. For example, a person who is under arrest is owed a duty of care while in custody. The exact duty depends on the role of the suspect.
- **The suspect was negligent – he breached the duty.** A “breach” means the way the defendant behaved was not what it should have been, and fell below the minimum standard required.
- **The breach caused the death.** There must be a provable link between the defendant’s breach of his duty, and the death. If the deceased would, or might have, died anyway, this element will not have been proved. This is often the subject of detailed medical or other expert evidence.
- **The breach was gross**, namely that the breach of duty was something that fell far below what could have been expected. There must have been a serious and obvious risk of death, not just of serious injury. Mistakes, even very serious

mistakes, are not enough for this element; the actions must be “truly, exceptionally bad” to be considered criminal.

Reviewing lawyers are also on occasion asked to consider cases in which a person has died as the result of a police shooting. This may involve a decision whether to bring charges against the officer who fired the fatal shot. Although armed police may use lethal force where necessary in the line of duty, they are subject to the same laws of self-defence and the use of reasonable force as members of the public. This means that the actions of a police officer who has exercised lethal force will be judged on whether they were reasonably necessary in the circumstances as the officer honestly believed them to be, even if that belief is mistaken. It is not criminal for an officer to act upon a mistaken but genuinely held belief about the threat he or she is facing; although the more unreasonable the belief the less likely a court would be to conclude that it was honestly held. Moreover, the use of force must be objectively reasonable in the circumstances that the officer honestly believed them to be.

Cases in which charges are not brought

If the CPS decides that charges should not be brought, the prosecutor will write to the relatives of the deceased giving detailed reasons why the CPS has decided against a prosecution. If an inquest had been suspended pending the outcome of the criminal investigation, it will usually resume at this time.

The close relatives of the deceased have the right to seek a review of the decision under the **Victims Right to Review (VRR) scheme**. Under VRR, victims have a legal right to seek a review of a decision not to prosecute. This also applies to CPS decisions to discontinue or otherwise terminate proceedings. A review under the VRR scheme is an internal process carried out within the CPS.

It is important to note that in order to invoke a right of review under VRR, the decision not to charge must be regarded as a ‘qualifying decision’, made on or after specified dates. Full information on VRR can be found at http://www.cps.gov.uk/victims_witnesses/victims_right_to_review/index.html.

There is no right to a further review of the VRR decision.

Relatives also have the right to bring a private prosecution against the party or parties they believe to have caused the death. This is something on which a solicitor will be able to advise. If the CPS becomes aware of a private prosecution, it may be necessary for us to consider whether to take it over. CPS policy on private prosecutions can be read at http://www.cps.gov.uk/legal/p_to_r/private_prosecutions/

If the CPS takes over a private prosecution and subsequently discontinues it, that decision may also qualify for the VRR process, if requested by the family.

In addition to using the VRR scheme, families may still choose to seek a judicial review of a decision not to prosecute. This involves the lodging of a formal application to the High Court. The High Court is asked to consider whether the CPS was legally wrong in not bringing charges. If the High Court agrees to consider the issue (known as 'granting permission') it will review the original decision, and can ultimately require the CPS to reconsider its decision.

Finally, it should be remembered that a decision by the CPS not to bring charges has no bearing on the ability of the Health and Safety Executive to prosecute. The HSE operates entirely independently of the CPS, and will prosecute if there is evidence of offences against the Health and Safety at Work Act 1974

Cases in which charges are brought

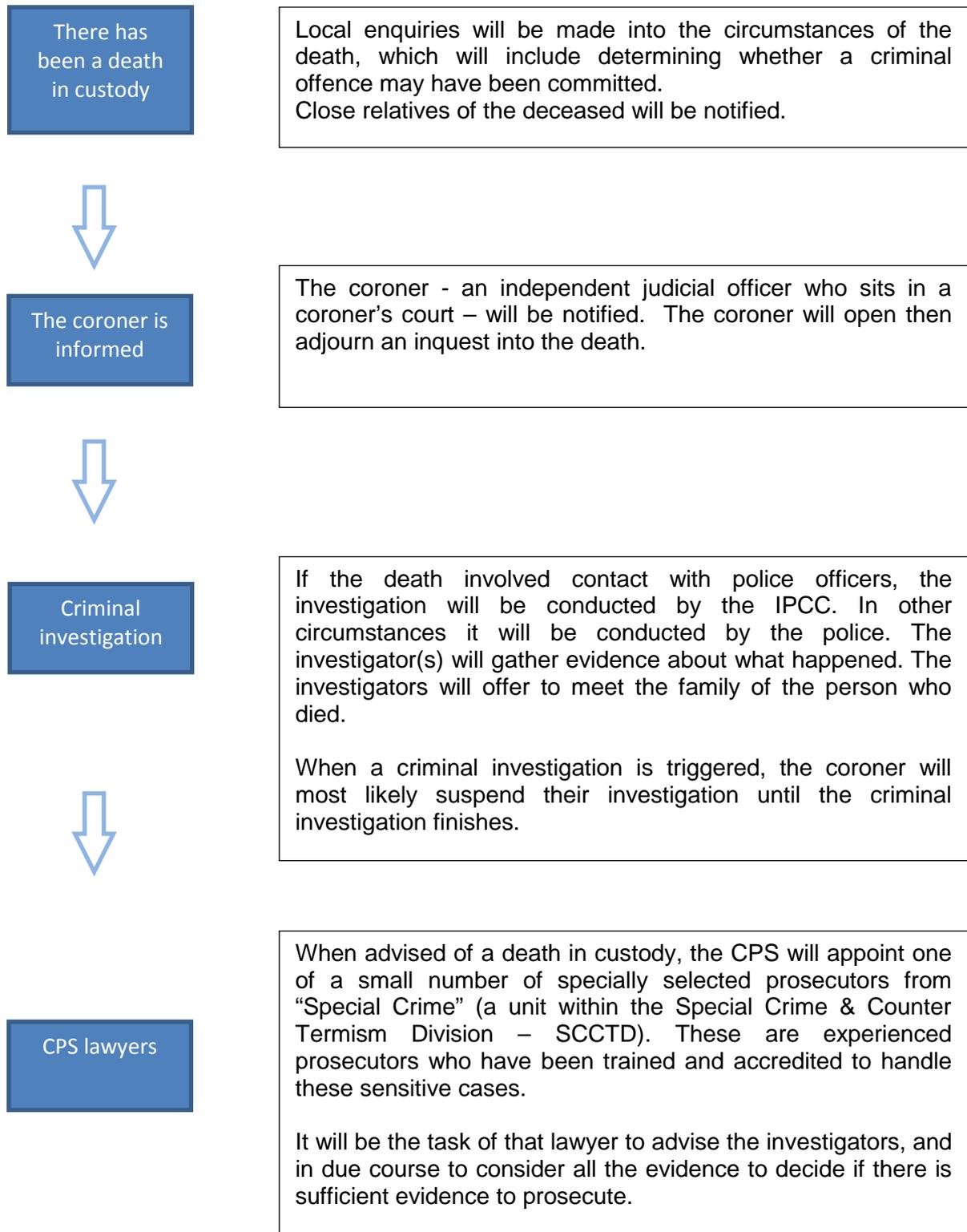
If the prosecutor decides that a suspect should be charged with a criminal offence, the case will proceed to the trial stage. The defendant will be formally notified, and required to appear in court. Typically, they may be asked to appear at a Magistrates Court, where the case will often be transferred ('sent') to a Crown Court, depending on certain factors such as the seriousness of the charges faced. All homicide cases, including gross negligence manslaughter, are immediately transferred to the Crown Court.

When a case progresses to a criminal court, its scheduling will be a matter for the court itself. The Criminal Procedure Rules govern the way that cases are managed.

The CPS will tell the relatives the dates of the hearings and where they are to take place, and the family will be informed of any decision on bail. 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.

The **presumption of innocence** in criminal cases means that 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.

ANNEX A – flow chart for CPS processes



CPS advise investigators



There will be an early meeting with investigators (1) to scope the likely extent of CPS's involvement (2) to ensure liaison with the family and coroner; and (3) to ensure that all appropriate investigative bodies are engaged and working jointly. This is supplemented by written advice from the CPS. 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. The CPS prosecutor will usually offer to meet with the relatives of the deceased.

CPS meet the family



The CPS will meet the family of the deceased. This first meeting is to explain the law and processes involved, and to manage expectations about a possible long investigation. There are three situations in which a meeting might not take place:

- (a) The family declines the opportunity;
- (b) the ongoing police/IPCC family liaison is going well and the timing is very close to the date of death;
- (c) the CPS role is very early advice before the police/IPCC have decided to conduct a criminal investigation.

CPS prosecutor writes to coroner



The CPS lawyer writes to the coroner to explain the CPS's engagement. Any 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) charged with a related offence that is not homicide and the DPP requests a suspension

However, the Coroner 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.

CPS available to advise investigators



Thereafter, for so long as CPS is asked to continue to be engaged, its case lawyer will proactively set out and monitor timescales for timely and effective working, and remain 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 must advise the investigator.

The investigation continues



The investigator continues to gather evidence concerning the circumstances of death, seeking CPS advice as needed. 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.

Six months after the death



Before the six-month date is reached, 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.

Further family meetings

Typically, there will be three stages at which a meeting is offered – at the outset of the investigation, immediately before a charging decision is finalised, and after a charging decision has been made). The IPCC or police Family Liaison Officers should provide regular updates but sometimes additional meetings may be appropriate.

Is there a “full file”?



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. This is often described as the CPS having a “full file” of evidence. If the investigation or evidence file is not complete, the CPS lawyer must advise the investigators to carry out additional work.

The investigator finishes the investigation



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.

The law says that an investigation must follow all reasonable lines of enquiry whether they point towards or away from guilt. Where there are possible defences these need to be confirmed or rebutted before the investigation can be said to be complete

Pre decision family meeting



After the 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.

The DPP has oversight

Once the DPP is satisfied, the decision becomes final (subject to any changes in evidence or any appeal process).

A charging
decision is
made

If there is no
CPS
prosecution



The family can
request a re-
review

If the decision is not to prosecute the family will be sent a letter explaining the decision. A further meeting will be offered.

The Victims' Right to Review ("VRR") and other remedies available to the family

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. The [private prosecution policy](#) explains how this works.

If the CPS takes over a private prosecution and discontinues it, the decision normally would be liable to the VRR process, if that is requested by the family.

In addition, families may consider seeking a judicial review of 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.

There may be a HSE prosecution



Inquest



Coroner returns a conclusion



The CPS may reconsider a decision not to charge



The family can request a re-review

The Health & Safety Executive can bring a prosecution for offences under the Health & Safety at Work Act. More guidance can be found on the [HSE website](#).

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 (or continue the inquest, if it had previously been suspended pending outcome of the investigation).

Inquest conclusion

There are a number of conclusions that can be given which include (not exhaustive):

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

A coroner's inquest verdict of unlawful killing is based on similar legal definitions to the criminal offences of murder or manslaughter, depending on the facts of the case. However:

- 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.

If there is a narrative conclusion at the inquest, or a conclusion of unlawful killing, we will consider whether there is anything that would change our original decision or mean there should be a prosecution. This is more obvious when there is a conclusion of unlawful killing, but the CPS role is to review the evidence and we must not simply follow the inquest conclusion. 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

An application for judicial review is a request to the High Court for a ruling that the CPS decision is wrong, and that it should be looked at again or changed. 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.

If there is to be a CPS prosecution

A family private prosecution?

A meeting with the family

Charge: The defendant is charged and must attend 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.

Plea and Case Management Hearing: 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. This may not begin for several months. Lots of legal arguments may take place between the CPS and defence during this time. Sometimes there are legal arguments at court as well.

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.

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.

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 the CPS does take over a private prosecution and discontinues it, the decision would be liable to the VRR process.

A meeting will be offered to explain what will happen during the prosecution.

For information about the Crown
Prosecution Service, and to view or
download an electronic copy of this
guidance, please visit our website:

www.cps.gov.uk