

ARTICLE

Article 2 of the Human Rights Act 1998 and the treatment of prisoners[†]

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SUMMARY

People detained in prisons, psychiatric hospitals, police custody and immigration detention centres remain a cause of concern, particularly to professionals, politicians and the media. As the number of people detained by the state increases, Courts have been taking an increasing interest in cases in which individuals have died in state custody. Such cases are subsumed under Article 2 of the Human Rights Act 1998 – the right to life. Article 2 case law has elucidated key principles that can be applied in practice. Importantly, it imposes on states not only a negative duty not to take life intentionally or negligently, but also a positive duty to safeguard life. The inherent positive obligations have two aspects: first, there is a duty to provide an effective and impartial investigation in cases of death resulting from the activities of state officials, and second, a duty to safeguard and protect life.

DECLARATION OF INTEREST

None.

Applications

The most obvious application of Article 2 is in cases of deliberate killing by state officials. However, it is not so restricted and case law has demonstrated that there need not be an intention to kill (*Stewart v. United Kingdom* 1984). Furthermore, it is not necessary for the victim to die before Article 2 issues can arise – it is enough to be put at ‘material risk’ (*Yasa v. Turkey* 1999). Where there is a threat to the life of someone in the custody of the state, there is a heightened responsibility to provide protection (*Salman v. Turkey* 2000). The judgment of *Osman v. United Kingdom* (2000), where a family sought to sue the police for failing to protect them adequately, resulting in a death, commented that where the authorities know of a ‘real and immediate threat’ to a person’s life there is an obligation to take preventive operational measures to protect that person. This obligation however, is not to be interpreted so as to impose a disproportionate or impossible burden on such authorities.

The obligation to protect life is not an unlimited one. In particular, where a detainee takes their own life, Article 2 will be breached only where it can be shown that the authorities knew or ought to have known that the detainee posed a real risk of suicide. Indeed, case law has demonstrated that where the authorities have taken reasonable steps to protect a detainee, having regard to the nature of the risk of suicide, or where there are no indications that a detainee is at risk of suicide, the death will not result in a breach of Article 2.

Crucially, Article 2 imposes on states not only a negative duty not to take life intentionally or negligently, but also a positive duty to safeguard life. These core principles are further elucidated at the end of our article, in the section ‘The responsibilities of clinicians’.

The following cases demonstrate how Article 2 case law has evolved with regard to prisoners and illustrate key principles pertaining to the use of Article 2 in practice.

The duty to investigate

Jordan v. United Kingdom (2001, 2003)

Although there were considerable discrepancies in this case between witness and police statements,

Article 2 of the European Convention on Human Rights (the right to life), as enacted in the UK by the Human Rights Act 1998, has been described as ‘one of the most fundamental provisions in the Convention’ (*McCann v. United Kingdom* 1995) and provides that:

- 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 escape of a person lawfully detained;
 - (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Paragraph 2 of the article explains and qualifies the right by setting out three sets of circumstances or ‘specified objectives’ in which deprivation of life is not within the boundaries of the Article, that is, it is a limited right.

[†] For discussions of Articles 3 and 8 of the Human Rights Act in *Advances* see: Curtice M (2008) Article 3 of the Human Rights Act 1998: implications for clinical practice. 14: 389–97; Curtice M (2009) Article 8 of the Human Rights Act 1998: implications for clinical practice. 15: 23–31. Ed.

it was undisputed that following a car pursuit the unarmed driver, Pearse Jordan, was shot and killed by a member of the Royal Ulster Constabulary. The applicant, the father of the deceased, submitted that his son had been unjustifiably killed and that there had been no effective investigation into the circumstances of his death. It was found that there had been a violation of Article 2 in respect of failings in the investigative procedures into the death. The applicant was awarded £10 000 in respect of non-pecuniary damage and £30 000 in costs.

Building on previous European jurisprudence, this case produced the minimum requirements – the ‘Jordan criteria’ (Box 1) – for the content of the investigative obligation on states in cases in which death has occurred in a way that engages Article 2. The Convention does not adopt a prescriptive approach to the form of the investigation. So long as minimum standards are met, it is for the state to decide the most effective method of investigating.

Edwards v. United Kingdom (2002)

In this case a remand prisoner was killed by another prisoner sharing his prison cell. It was held that there was a violation of Article 2 as regards the circumstances of the death and failure to provide an effective investigation. This case was particularly important because it was the first time that the European Court of Human Rights applied to a case of negligent failure to protect the life of a prisoner the same principles that it had developed in the context of killing by state agents.

At the time of his arrest, for approaching young women in the street and making inappropriate suggestions, it was suspected that Christopher Edwards was showing signs of mental disorder. At the police station he attempted to assault a female police officer. Despite significant concerns regarding his mental state, he was remanded in custody in Her Majesty’s Prison and Young Offender Institute Chelmsford. He was initially placed in a cell on his own but because of a shortage of space another remand prisoner, Richard Linford, was moved into the cell with him. Linford had been arrested for assault and had a psychiatric history, having been diagnosed at various times with schizophrenia or a personality disorder, both compounded by alcohol and illicit drug use. Linford had spent 2 days in police cells, where he had demonstrated bizarre and at times violent behaviour (predominantly attributed to alcohol and amphetamine use), but was eventually assessed as being fit to be detained (the initial police surgeon certified that he was not fit to be detained but a psychiatric registrar and another police surgeon considered him fit). He was subsequently remanded in prison, where he was eventually to share a cell with Edwards.

BOX 1 The Jordan criteria

The ruling in *Jordan v. United Kingdom* (2001) opined that to satisfy Article 2 and to constitute an effective investigation:

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| <ul style="list-style-type: none"> (a) the authorities must act of their own motion (b) the investigation must be independent (c) the investigation must be effective in the sense that it must be conducted in a manner that does not undermine its ability to establish the relevant facts (d) the investigation must be reasonably prompt | <ul style="list-style-type: none"> (e) there must be a ‘sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory; the degree of public scrutiny required may well vary from case to case’ (f) there must be involvement of the next of kin ‘to the extent necessary to safeguard his or her legitimate interests’ |
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Only a few hours after being moved into the cell Linford killed Edwards. Linford was found in the cell holding a bloodstained plastic fork, having stamped and kicked Edwards to death. At the time of the attack Linford was diagnosed as having paranoid schizophrenia. He subsequently pleaded guilty to manslaughter by reason of diminished responsibility and was detained under section 37/41 of the Mental Health Act 1983.

The judgment held that to satisfy the requirements of Article 2 any investigation had to satisfy modified Jordan criteria (Box 2). The Court concluded that the lack of power to compel witnesses detracted from its capacity to establish the facts relevant to death (under criterion (b) the lack of compulsion of witnesses who were either eyewitnesses or had material evidence relating to the circumstances of a death had to be regarded as diminishing the effectiveness of the inquiry as an investigative mechanism). It further concluded that the private character of the proceedings, from which the applicants were excluded save when they were giving evidence, failed to comply with the requirements of Article 2 to hold an effective investigation into the death of Edwards (under criterion (d) the parents, who were not represented at the inquiry and hence could not put any questions to witnesses, could not be regarded as having been involved in the procedure to the extent necessary to safeguard their interests). Therefore, there had been a violation of the procedural obligation of Article 2 in those respects.

R (on the application of Amin) v. Secretary of State for the Home Department and HM Coroner of West London [2002, 2003, 2004]

This was another case of a prisoner being killed by another prisoner. Zahid Mubarek was killed by Robert Stewart in the cell they shared in Her Majesty’s Young Offender Institution and Remand Centre Feltham. Stewart was later to be diagnosed as having ‘a long-standing deep-seated personality

BOX 2 The modified Jordan criteria

<p>The ruling in <i>Edwards v. United Kingdom</i> (2002) suggested that to satisfy the requirements of Article 2 any investigation had to satisfy modified Jordan criteria, i.e.:</p> <p>(a) it must be independent from those implicated in the facts</p> <p>(b) it must be capable of leading to a determination of whether state agents are liable for the death and/or the</p>	<p>identification of those responsible and (if appropriate) their punishment</p> <p>(c) it must be prompt and demonstrate reasonable expedition</p> <p>(d) it must involve a sufficient element of public scrutiny and must involve the next of kin in the investigative procedure to the extent necessary to protect their legitimate interests</p>
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disorder' and 'an untreatable mental condition'. Stewart battered Mubarek into a coma with a wooden table leg. Mubarek was due to be released that day. He never recovered, dying in hospital of brain damage a week later. At court the issue was whether the UK had complied with its duty under Article 2 to investigate the circumstances in which this crime came to be committed. The House of Lords overturned a Court of Appeal decision and held that there was a breach of Article 2.

The House of Lords held that the 'procedural duty' to investigate cases in which there had been an arguable breach of Article 2 had not been met in this instance and that a public inquiry should therefore be held. Also, although there had been a range of investigations into the homicide, these did not meet the 'minimum requirements' set down by the European Court of Human Rights in *Jordan v. United Kingdom* (2001) and *Edwards v. United Kingdom* (2002). Furthermore, it held that systemic failures leading to deaths called for even greater scrutiny and more rigorous investigation.

The House of Lords noted that the European Court applied essentially the same principles to cases concerning negligent failure to prevent deaths as were applied when deaths were caused by state agents, and held that deaths following negligence might in fact require more rigorous investigation than deaths at the hands of state agents. It also noted that there must be flexibility in selecting the means of conducting the investigation and that a number of different inquiries might together meet the overall test and held that the European Court had, in *Jordan* and other cases, laid down minimum standards that must be met (Box 3).

R (on the application of D by his litigation friend the Official Solicitor) v. Secretary of State for the Home Department and Inquest (intervener) [2006]

In this case, D, a remand prisoner known to be at risk of suicide, had attempted to take his own life and as a result suffered permanent brain damage. He attempted self-harm at court and was taken to hospital and then to prison. He was accompanied by a form indicating that he was at risk of self-harm/suicide. He self-harmed on three separate occasions within the first week in prison and was placed on 15-minute observations. He received upsetting family news and during a subsequent telephone call he became distressed. An entry was made on his self-harm/suicide form and in the health area observation book that staff should be extra vigilant. Later he hanged himself using bed linen. He was discovered and revived in time to save his life but too late to save him from permanent and irreversible brain damage. He was subsequently detained under section 3 of the Mental Health Act 1983 and

BOX 3 Principles and minimum standards expected for investigations where Article 2 has been engaged (as elucidated in the *Amin* case)

- There should be some form of effective official investigation if individuals have been killed as a result of the use of force by, among others, agents of the state
- Where agents of the state have used lethal force against an individual the facts relating to the killing and its motivation are likely to be largely, if not wholly, within the knowledge of the state; it is therefore essential that such a fatality is subject to some form of open and objective review
- Where the facts are largely or wholly within the knowledge of the state authorities there is an onus on the state to provide a satisfactory and convincing explanation of how the death or injury occurred
- The obligation to ensure that there is some form of effective official investigation when individuals have been killed as a result of the use of force is not confined to cases where it is apparent that the killing was caused by an agent of the state
 - Where an investigation is required, the state authorities must act of their own motion once the matter has come to their attention, that is, the state cannot leave it to the initiative of the next of kin either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedures
 - An effective investigation must be capable of leading to a determination of whether the force used was or was not justified in the circumstances
 - An effective investigation will generally require practical independence and a lack of hierarchical or institutional connection
- Although public scrutiny of police investigations cannot be regarded as an automatic requirement under Article 2, there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory
- In all cases the next of kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests
- There must be proper procedures for ensuring the accountability of agents of the state so as to maintain public confidence and allay the legitimate concerns that arise from the use of lethal force

diagnosed as having an organic personality disorder arising from a traumatic brain injury.

The Home Secretary agreed that, in the particular circumstances of this case (although not necessarily in all cases of 'near miss' suicides), the procedural obligation under Article 2 to investigate untoward deaths was triggered and commissioned an independent investigation by the Prisons and Probation Ombudsman.

Those representing D challenged the proposed terms of reference of that inquiry in the High Court, which held that to meet the requirements of Article 2, the inquiry must meet the following procedural requirements:

- the inquiry must be held in public, except where there were Convention-compatible reasons for any part of a hearing to be in private
- the inquiry must be capable of exercising the power to compel the attendance of witnesses, should this be necessary
- D's representative should be able to attend public hearings and put questions to witnesses in person
- D's representative must be given reasonable access to all relevant evidence in advance
- adequate funding for D's representative must be made available without inappropriate conditions attached.

Each of these requirements was challenged by the Home Secretary at the Court of Appeal, who argued that the proposed terms of reference for the Ombudsman's investigation were sufficient to meet Article 2 requirements.

The Court of Appeal broadly upheld the earlier High Court order. On the question of a 'public' inquiry, the Court noted that there were 'competing considerations' as to the benefits of public and private inquiries, one argument put forward on behalf of the Home Secretary being that in a private investigation witnesses are more likely to be candid and evidence is likely to be obtained more speedily and at less cost. The Jordan criteria set down by the European Court included that there should be a 'sufficient element of public scrutiny', not that the inquiry itself must be in public. The Court did, however, emphasise that in ordering a public inquiry, this did not mean that the whole process must be in public. What was meant by a public inquiry was that whoever conducted the inquiry:

would make the evidence and any written submissions public and take oral evidence in public ... It will of course be for the person conducting the inquiry to decide what oral evidence to call and indeed whether he wishes to hear oral submissions.

The Court also held that Article 2 did not require that D's representatives should be permitted personally to cross-examine witnesses.

The duty to protect life

Keenan v. United Kingdom (2001)

This important case involved the suicide of a prisoner with a mental illness. It was found that there had not been a violation of Article 2. Although the standard of treatment of the prisoner prior to his suicide was found to breach Article 3, as has been discussed in the pages of this journal (Curtice 2008), the Court found that 'on the whole the authorities responded in a reasonable way' to the applicant's conduct when placing him in prison hospital care and under watch when he 'evinced suicidal tendencies'.

In this judgment the European Court of Human Rights set out the principle that:

the prison authorities must discharge their duties [to protect Article 2 rights] in a manner compatible with the rights and freedoms of the individual concerned. There are general measures and precautions which will be available to diminish the opportunities for self-harm, without infringing personal autonomy. Whether any more stringent measures are necessary in respect of a prisoner and whether it is reasonable to apply them will depend on the circumstances of the case.

This demonstrates the interplay between Articles 2 and 8 (the right to a private life) and in particular the key Human Rights Act principle of proportionality, which requires that measures that interfere with the right to respect for private life, personal autonomy and physical integrity must be confined to those necessary to achieve the legitimate aim of protecting a detainee from self-harm and must be appropriate to the particular circumstances of the individual case. It follows that blanket measures for large groups of detainees that may apply to intrusive surveillance or require the removal of items of clothing, may amount to disproportionate interferences with the right to respect for private life under Article 8 if they cannot be justified as necessary and proportionate measures to protect an individual detainee from a risk of suicide or self-harm.

The duty to protect life and the duty to investigate

R (on the application of Wright) v. Secretary of State for the Home Department (2001)

This case concerned a prisoner who had a severe asthmatic attack in his cell and subsequently died (a cell-mate being present at the time). He had a well-established history of severe asthma since childhood. The expert evidence had concluded that the medical treatment provided had been seriously deficient such as to breach the Article 2 duty to protect life.

At the inquest the family of the deceased were present but were unrepresented for want of legal aid. There was no inquiry into the quality of the medical

treatment that the deceased had received in prison. Later it emerged that the responsible medical officer had been suspended from duty and had previously been found guilty of serious professional misconduct (and should have undergone further training and at that time was prohibited from any form of single practice). In a civil action against the Home Secretary, liability was admitted, thus precluding forensic investigation of the case. The family sought judicial review on the grounds of a failure to protect the life of the deceased and a failure of the procedural obligation arising under Article 2 to investigate the circumstances of the death.

The judgment applied the Jordan criteria. It was found that the inquest had not constituted an effective official investigation: the cell-mate had not been called as a witness; there had been no independent expert witness; there had been no investigation into the medical officer; and the family (the claimants) had not been represented or given a proper explanation of the issues. For these reasons the judgment concluded on the facts that there had been a violation of Article 2 (and of Article 3: freedom from torture, inhuman and degrading treatment). The judge held that there should be an independent investigation, to be held in public, at which the family should be represented.

Tariyev v. Russia (2006)

This case was brought by the mother of a prisoner who died in a prison hospital after complications of surgery. During his initial stay in a 'correctional colony' he was diagnosed with an acute stomach ulcer, for which he received treatment. He was subsequently transferred to a remand centre during his appeal against his conviction, and when he returned to the colony (his sentence having been upheld) he was assessed as 'healthy'. Despite his known history of a stomach ulcer and the absence of his medical records (which were either mislaid, incomplete or lost) he was not examined by a gastroenterologist. He developed a perforated ulcer 3 weeks later and was transferred to a civilian hospital for emergency surgery. After 2 days he was discharged back to the prison hospital on a mattress in a prison van, even though he had been diagnosed with peritonitis. The prison hospital undertook further surgery 2 days later but with inadequate medical information from the civilian hospital and no facilities for blood transfusion. The prisoner subsequently died.

The European Court of Human Rights held that the state's treatment breached both Article 2 and Article 3. It reiterated that Article 2 imposed a positive obligation on states to take appropriate steps to safeguard life, with a particular duty to protect those in custody. This positive obligation was summarised as requiring:

states to make regulations compelling hospitals, whether private or public, to adopt appropriate measures for the protection of patients' lives. They also require an effective independent judicial system to be set up so that the cause of death of patients in the care of the medical profession, whether in the public or private sector, can be determined and those responsible made accountable.

In earlier cases relating to alleged clinical negligence outside the prison service, the Court has repeatedly held that the individual negligence of a health professional or negligent coordination between health professionals is not sufficient to constitute a breach of Article 2 if the state has taken steps to set adequate professional standards and to ensure that breaches of these are appropriately investigated (*Byrzykowski v. Poland* 2006). Although the Court did not make reference to this principle, it held that the treatment overall was sufficiently poor to constitute a breach of the state's duty to safeguard the prisoner's life.

The existence of a causal link between the defective medical assistance administered to the prisoner and his death had been confirmed by the domestic medical experts and was not disputed by the respondent government. Accordingly, it was held that there had been a violation of Article 2 on account of the failure of the authorities to protect the prisoner's right to life. The Court found an additional breach of the 'procedural obligation' inherent in Article 2, in that the criminal investigation into the death was delayed and was inadequate, and his mother's right to participate effectively was not secured. The Court also found breaches of Article 3. The mother was awarded €25 000 for the suffering and distress caused by the death of her son.

Summary

Deaths in custody

Deaths in custody are a long-standing problem that many jurisdictions, including the UK, have looked at in depth. The UK itself has a long tradition of investigation and review of suicide and homicide rates in prison, which are regularly reviewed at a governmental level (House of Lords 2004). The main causes of death in custody are homicide, suicide and misadventure (usually drug related) (Home Office 2004). There are smaller and less contentious numbers of deaths relating to physical illness and this raises issues about the quality and the promptness of the healthcare that has been received, as do the deaths by suicide.

The right to life

The fundamental nature of the right to life is such that Courts have not only insisted that the right be upheld, but have prescribed a detailed process

of investigation that must be undertaken in the event of deaths to ensure that states are taking their responsibilities seriously (Box 1). Case law has made some distinction between situations in which agents of the state have caused the death of a citizen and situations in which the state has allowed the death of a citizen in custody, usually related to suicide, misadventure or homicide. However, in both cases the Court has placed a clear expectation that the state will interfere to preserve life. The cases above ably demonstrate that doctors and other healthcare practitioners have a clear duty to preserve life that runs alongside their long-standing ethical responsibilities.

An expert task force on deaths in custody

With regard to the Article 2 duty to investigate deaths in custody, the Joint Committee on Human Rights (House of Lords 2004) made several pertinent recommendations to the Home Office and the Department of Health following its review of the causes of death in custody. Its main recommendation was that these responsible departments should establish a cross-departmental expert task force on deaths in custody in the UK. The Committee emphasised that this should be ‘an active, interventionist body, not a talking-shop’. The task force should also have at its disposal human rights expertise and have its membership drawn

from people with practical working experience of the problems associated with deaths in custody. It broadly outlined the functions and powers of such a body and in particular the development of good practice guidelines (including training) to establish consistency in such investigations. Importantly, the Committee recommended that research be commissioned and that any resulting recommendations to ensure observance of the European Convention on Human Rights be government funded.

The responsibilities of clinicians

In recent years there has been expansion in the number of people detained in prisons (Ministry of Justice 2009a) and secure psychiatric hospitals (Ministry of Justice 2009b) in England and Wales, and in UK immigration centres (Home Office 2008). In all of these environments clinicians are increasingly being asked to comment on inmates’ risks to themselves and to others. Clinicians working in secure institutions therefore have a duty not only to their individual patients but also to the wider secure community of detained people, and an understanding of Article 2 principles illustrated by the above cases can help in this duty of care (see Box 4).

It is important that clinicians remain focused on patients and the wider community both inside and outside the prison walls. Support for inmates

MCQ answers

1	2	3	4	5
a f	a f	a f	a f	a f
b f	b f	b f	b f	b f
c t	c t	c f	c f	c f
d f	d f	d t	d t	d f
e f	e f	e f	e f	e t

BOX 4 Article 2 principles for clinical practice

- *Positive and negative obligations* Article 2 imposes on states not only a negative duty not to take life intentionally or negligently, but also a positive duty to safeguard life (*X v. United Kingdom* 1978). To breach Article 2 there can be interference with either or both of these obligations
- *Negative obligations* The negative duty not to deprive an individual of life may be breached by excessive or unnecessary use of force against a detainee. It may also be breached as a result of systemic failings leading to failure to provide adequate procedures or adequately trained or qualified staff, to ensure safety
- *Positive obligations* This has two aspects, both of which prohibit the state from taking life and place on it a positive duty to safeguard life. First, in the case of death as a result of the activities of state officials, there must be an effective and impartial investigation. Second, there is the question of the extent to which the state should respond to a threat to the life of an individual, that is, it places positive obligations on the detaining authorities to take steps to protect individuals whose lives are known, or should be known, to be at risk. To breach Article 2 there can be interference with either or both of these obligations
- *Positive obligation to protect life* The positive obligation to protect life arises wherever the authorities know or ought to know of a real and immediate risk to the life of a particular person or group of people. Case law makes clear that the positive obligation arises where the threat to life comes from a third party, such as a cell-mate or the detained person
- *Material risk* It is not necessary for the victim to die before Article 2 issues can arise – it is enough to be put at ‘material risk’. Article 2 is breached if, in these circumstances, the responsible authorities fail to take reasonable measures within the scope of their powers to avert the risk
- *Real and immediate threat* where the authorities know of a ‘real and immediate threat’ to a person’s life there is an obligation to take preventative operational measures to protect that person. Case law has demonstrated that there need not be an intention to kill and where there is a threat to the life of someone in the custody of the state there is a heightened responsibility to provide protection
- *Deaths in custody* If a death does occur in state custody, the burden is on the detaining authorities to provide a satisfactory and convincing explanation for it. In the absence of such an explanation, Article 2 is breached
- *Medical treatment in prison* Not receiving proper medical treatment when a prisoner has an illness could amount to a violation of Article 2 and, failure to communicate relevant information could give rise to an Article 2 violation if this failure results in a person not being adequately cared for (such a scenario would almost certainly also breach Article 3)
- *Prison suicides* – case law has demonstrated that where the authorities have taken reasonable steps to protect a detainee, having regard to the nature of the risk of suicide, or where there are no indications that a detainee is at risk of suicide, the death will not result in a breach of Article 2

at risk of suicide must be reviewed and all cases of completed suicide or near misses must be investigated in accordance with the appropriate procedure. Any inquiry will look closely at issues of quality of treatment and issues of clinical negligence. The message is clear: those detained by the state must be safeguarded from murder, suicide and neglect.

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MCQs

1 Article 2 of the Human Rights Act 1998 provides that:

- a only people detained in prison shall have their right to life protected by law
- b only certain groups of people shall be deprived of life intentionally, save in the execution of a sentence of a Court following conviction for a crime for which this penalty is provided by law
- c deprivation of life shall not be regarded as inflicted in contravention of the Article when it results from the use of force that is no more than absolutely necessary in defence of any person from unlawful violence
- d deprivation of life shall not be regarded as inflicted in contravention of the Article when it results from the use of force that is more than absolutely necessary to effect a lawful arrest or to prevent the escape of a person lawfully detained
- e deprivation of life shall not be regarded as inflicted in contravention of the Article when it results from the use of force that is more than absolutely necessary in action lawfully taken for the purpose of quelling a riot or insurrection.

2 Article 2:

- a is an absolute right
- b is a qualified right

c is a limited right

- d only applies to deaths in state custody
- e only covers investigations into deaths in custody.

3 Article 2:

- a imposes on states only a negative duty not to take life intentionally or negligently
- b imposes on states only a positive duty to safeguard life
- c imposes on states neither positive nor negative duties
- d imposes inherent positive obligations that have two aspects: first, there is a duty to provide an effective and impartial investigation in cases of deaths as a result of the activities of state officials, and second, a duty to safeguard and protect life
- e will not be breached as a result of systemic failings that fail to provide adequate procedures or adequately trained or qualified staff to ensure safety.

4 With regard to these criteria, to satisfy Article 2:

- a the authorities must not act of their own motion
- b the investigation must not be independent
- c the investigation must not be reasonably prompt

- d there must be a sufficient element of public scrutiny of the investigation or its results; the degree of public scrutiny required may well vary from case to case
- e the next of kin must not be involved.

5 The modified Jordan criteria for investigative obligations into a death that engages Article 2 include that:

- a it must not be independent from those implicated in the facts
- b it must not be capable of leading to a determination of whether state agents are liable for the death and/or the identification of those responsible and (if appropriate) their punishment
- c it must be prompt and demonstrate reasonable expedition
- d it must not involve a sufficient element of public scrutiny
- e it must involve the next of kin in the investigative procedure to the extent necessary to protect their legitimate interests.