

ECHR Considerations in Police Investigations

This Briefing Note is a follow up to the Round Table Meeting between the Independent Human Rights Act Review and representatives from Policing. An issue was raised about how certain offences are now considered, per se, to equate to a breach of human rights in that they constitute inhumane and degrading treatment. This, in turn, can mean that policing's ability to prioritise is inhibited as we might face either human rights based litigation or more general criticism if we do not exhaustively investigate, even where cursory investigation suggests a matter will never reach the threshold for prosecution. This is particularly relevant in Rape, Serious Sexual Offences, Child Sexual Abuse and Exploitation, Domestic Violence and Modern Slavery.

Nearly all allegations of these type of offences are currently investigated, regardless of risk or threat. This is unlike other crime types where proportionate activity and any intrusion into Human Rights is driven by risk and threat.

The 2018 Supreme Court judgement in the case of Commissioner of Police of the Metropolis v DSD and Another, concerning the investigation of offences committed by John Worboys, and other similar cases now gives the precedent that not fully investigating serious crime can be classed as a breach of Article 3. As a result there is a number of cases being brought against the Police in similar circumstances, challenging Police action or inaction. This inhibits the Police's ability to prioritise investigation, which is exacerbated by concern about potential challenge or criticism from external parties or courts. This leads to Police continuing to investigate, regardless of the level of evidence or risk, and even where cursory investigation suggests a matter will never reach the threshold for prosecution.

The lack of discretion around prioritising investigations has a direct impact on volume. Officers in some Rape Investigation Units are carrying workloads in excess of 30 investigations at a time. In considering the level of impact on supervision rates, a Detective Inspector in one force is overseeing and managing 490 active cases. The concern surrounding potential challenge or external criticism can, unless addressed, jeopardise the proactive and expeditious investigation of crimes.

In the area of Modern Slavery, a recent ECtHR decision in the case of V.C.L and A.N v UK mandates that a separate modern slavery crime and investigation occurs every time there is a suspicion that a suspect of an offence could be being exploited. Apart from making it more difficult to prosecute criminals involved in serious violence, sexual exploitation and drugs supply, this results in forces having to crime and investigate many more thousands of modern slavery investigations every year to prove that suspects are not being exploited. Currently, this is done as part of the investigation into the primary offence and not separately investigated. Ministers are currently deciding whether they will appeal the judgement to the grand chamber, if not it will be applicable from the end of May 2021.

Investigators working in units dealing with serious crime are unlikely to operate with Article 3 concerns specifically at the forefront of their mind. They, nonetheless, work with the ingrained concern, detailed above, as to how an external body, whether that be partner, inspectorate, media or the public would view any resulting negative outcome. This pressure is increased by the human rights based decisions made by the courts that result in the requirement that every avenue of investigation is exhausted prior to closure.