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This Note is a follow-up to the Roundtable with the Review Team and policing colleagues on 13 April 2021. It captures a point made in discussion about the State's positive duties under the ECHR (as interpreted by the courts) and their 'real-world' operational impact.

The NCA is not necessarily advocating change, or being critical of the law as it presently stands. The point is more about the consequences that might not have been foreseen - by the courts or anyone else - at the time of judicial consideration.

It is worth emphasising the nature of the NCA's work and the fact that our focus is on criminals operating at the 'highest end of high harm'. Our operations tend to have an international dimension and are sometimes conducted in the vastness of cyberspace. It is not unusual for there to be multiple (sometimes thousands of) unknown, faceless targets. The commonality is not always a type of crime but the technical means by which it is committed. Serious and organised criminals do not confine themselves to drugs or guns or people smuggling; they operate as international businessmen, multi-jurisdictional criminal hackers and commodity dealers across the full spectrum of illegal activity.

This means that in some investigations, the NCA acquires extensive information relating to very large numbers of suspects, simultaneously. Mindful of the Article 2 ECHR duty derived from *Osman v United Kingdom (2000) 29 EHRR 245*, officers understand their obligation to do what they reasonably can to avert harm where there is a real and immediate threat to the life of an identified individual. This duty is deeply ingrained in policies and procedures.

The profile of organised criminal networks is such that they frequently engage in extreme violence towards rivals as well as to each other. Officers will prioritise 'Threat to Life' information above other types of operational activity. In practice, this often means taking steps to prevent rival gangs attacking each other before, or at the same time as, resources are directed towards apprehending suspects or pursuing investigative lines of inquiry.

There is, of course, scope in the *Osman* test for assessments around what is *reasonable*. For officers on the ground, however, and the lawyers advising them, a degree of certainty is important. There is no appetite for dancing on the head of a legal pin when it comes to the protection of life, even when the threat is a direct consequence of an involvement in serious and organised crime.

If the NCA receives a large volume of 'threats to life' at any one time, it can require a particularly large scale response. There is an increasing reliance on technology, both to commit crimes as well as to detect them. The court in *Osman* in 1998 could not, perhaps, have predicted the operational complexity in assessing high volumes of data at speed.

The NCA is keen not to overplay this theoretical, rather than actual, risk. The Agency is well-versed in prioritising operational activity and successfully directing its resources into the right areas. There may have been cases where the *Osman* duty has slowed down a response in terms of pursuing other action, but we are not aware of instances where we have been unable to successfully manage both. This is, in part, due to our overall leadership of the Serious and Organised Crime System and our close work with policing

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to ensure that members of the public are protected and kept safe in accordance with our statutory duties.

National Crime Agency
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