

Independent Advisory Panel on Deaths in Custody (IAPDC) – response to the Independent Human Rights Act Review (IHRAR) call for evidence (March 2021)

1.1 The Independent Advisory Panel on Deaths in Custody (IAPDC) notes this review of the Human Rights Act (HRA) and welcomes the opportunity to respond in brief to this call for evidence. The role of the IAPDC is to advise Ministers and officials on how they can meet their human rights obligations, prevent deaths and keep those detained under the care of the state safe¹. The IAPDC's response is made within its remit of preventing deaths in custody.

1.2 It is important to recognise the significant impact that the HRA has had not just on the processes behind the investigation of deaths in custody but to the level of wider scrutiny it has brought to such a significant issue². We welcome the fact that UK will remain a member of the European Convention on Human Rights (ECHR) and those substantive rights will remain in place. Important protections, particularly the independent investigatory duties derived from Article 2 (the right to life) and Article 3 (the prohibition of ill-treatment), are of great relevance to the work of the IAPDC. Those duties are important for ensuring that why and how a person died is investigated and that the independent bodies carrying out these duties are able to make recommendations and ensure lessons are learned with the aim of preventing future deaths. Finally, the nondiscrimination provision in Article 14 is important to addressing issues of disproportionality around deaths in custody, particularly following restraint or use of force at times during a mental health crisis.

Theme one: the relationship between domestic courts and the European Court of Human Rights (ECtHR)

2.1 It is beyond the remit of the IAPDC to respond to the detailed questions raised in this consultation. We are concerned more with outcomes of human rights judgments rather than which court produced those. However, we note that in relevant areas it has predominantly been the European Court of Human Rights (ECtHR) which has continued to ensure much needed policy improvement, though occasionally, the domestic courts in this country have filled the gap.

2.2 There are many cases in the ECtHR which have helped to understand the precise nature of the duty on the state towards those in custody. Examples of such cases relating to Article 3 include:

2.2.1 Kudla v Poland³ (the duty to respect for those in custody and the right to decent conditions);

2.2.2 Gafgen v Germany⁴ (the requirement for independent and effective investigations of credible allegations of ill-treatment by state actors); and

2.2.3 Selmouni v France⁵ (the duty on the state to explain how injuries were caused in custody where a person was in good health when they arrived).

¹ About the Independent Advisory Panel on Deaths in Custody, <https://www.iapondeathsincustody.org/about-us-1>.

² <https://publications.parliament.uk/pa/it200405/itselect/itrights/15/1505.htm>

³ <https://www.globalhealthrights.org/pdf.php?ID=6678>

⁴ <https://policehumanrightsresources.org/gafgen-v-germany-application-no-22978-05> ⁵ <http://www.hrcr.org/safrica/dignity/Selmouni.html>

2.3 The IAPDC also highlight ECtHR cases relating to Article 2 including:

- 2.3.1 *Salman v Turkey*⁵ (the recognition that those in custody are in a vulnerable position and should be protected);
- 2.3.2 *Renolde v France*⁶ (the regard for the particular vulnerability of mentally ill persons in custody);
- 2.3.3 *Jordan v UK*⁷ (the duty to initiate an independent investigation into a death without the need for a complaint);
- 2.3.4 *Edwards v UK*⁸ (the right for the next of kin to be involved in the investigation procedure to the extent necessary to protect their legitimate interests);
- 2.3.5 *Osman v UK*⁹ (the duty for the Police to protect life and that this duty must be able to be enforced by law);
- 2.3.6 *Van Colle v UK*¹⁰ (the duty of Police to protect the right to life from threats of third person);
- 2.3.7 *Amani Da Silva v UK*¹¹ (the importance of independent and effective investigations following the use of lethal force by Police officers); and
- 2.3.8 *Menson v UK*¹² (the importance of an effective investigation into racial motives in Police investigations).

2.4 The IAPDC also highlight the following Article 3 cases within the UK domestic courts:

- 2.4.1 *DSD & NBV v Commissioner of Police for the Metropolis*¹³ (the duty on the police to investigate ill-treatment by third parties); and
- 2.4.2 *MA & BB v Secretary of State for the Home Department*¹⁴ (the duty on the Police to investigate ill-treatment by third parties).

2.5 Cases from the domestic court relating to Article 2 are provided in the following examples:

- 2.5.1 *R (Amin) v Secretary of State for the Home Department*¹⁵ (the duty to protect the life of those in custody);
- 2.5.2 *R (JL) v Secretary of State for Justice*¹⁶ (the duty to investigate whenever a prisoner attempts a near successful suicide which leaves serious injury);
- 2.5.3 *R (Middleton) v West Somerset Coroner*¹⁷ (expansion to the remit of an inquest when the deceased died in custody); and
- 2.5.4 *R (Wright) v Secretary of State for the Home Department*¹⁸ (on how the absence of legal aid for inquests may create an Article 2 violation).

⁵ <http://echr.ketse.com/doc/21986.93-en-20000627/view/>

⁶ <https://policehumanrightsresources.org/renolde-v-france-application-no-5608-05>

⁷ <https://ukhumanrightsblog.com/2018/11/28/the-third-inquest-into-the-death-of-pearse-jordan-when-dont-know-is-the-onlyavailable-answer/>

⁸ <https://hudoc.echr.coe.int/ENG#%7B%22itemid%22%3A%22002-9922%22%7D>

⁹ <https://www.lawteacher.net/cases/osman-v-uk.php>

¹⁰ <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-114473%22%7D>

¹¹ <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-161975%22%7D>

¹² <https://swarb.co.uk/menson-v-united-kingdom-echr-6-may-2003/>

¹³ <https://www.supremecourt.uk/cases/uksc-2015-0166.html>

¹⁴ <https://ukhumanrightsblog.com/2019/06/19/investigation-into-abuse-at-brook-house-irc-fails-to-meet-requirements-of-article-15/>

¹⁵ <https://swarb.co.uk/amin-regina-on-the-application-of-v-secretary-of-state-for-the-home-department-hl-16-oct-2003/>

¹⁶ <https://www.hrlc.org.au/human-rights-case-summaries/r-on-the-application-of-jl-v-secretary-of-state-for-justice-2008-ukhl-6826-november-2008>

¹⁷ <https://www.bailii.org/uk/cases/UKHL/2004/10.html>

¹⁸ <https://swarb.co.uk/regina-wright-v-secretary-of-state-for-the-home-department-admn-2001/>

Theme Two: the impact of the HRA on the relationship between the judiciary, the executive and the legislature

3.1 We do not think we can comment on the questions for this theme save to say that cases that establish rights for those in custody or improvements in investigations of ill-treatment or death should be implemented comprehensively and quickly.

About the Independent Advisory Panel on Deaths in Custody

The Ministerial Council on Deaths in Custody formally commenced operation on 1 April 2009 and is jointly sponsored by the Ministry of Justice, the Department of Health and Social Care and the Home Office. The Council consists of three tiers:

- Ministerial Board on Deaths in Custody
- Independent Advisory Panel (IAPDC)
- Practitioner and Stakeholder Group

The remit of the IAPDC (and overall of the Council) covers deaths, both natural and selfinflicted, which occur in prisons, in or following police custody, immigration detention, the deaths of residents of approved premises and the deaths of those detained under the Mental Health Act (MHA) in hospital. The principles and lessons learned as part of this work also apply to the deaths of those detained under the Mental Capacity Act in hospital.

The role of the IAPDC, a non-departmental public body, is to provide independent advice and expertise to Ministers, senior officials and the Ministerial Board. It provides guidance on policy and best practice across sectors and makes recommendations to Ministers and operational services. It assists Ministers to meet their human rights obligations to protect life. The IAPDC's aim is to bring about a continuing and sustained reduction in the number and rate of deaths in all forms of state custody in England and Wales.

Juliet Lyon CBE chairs the IAPDC.

Members of the IAPDC appointed in July 2018 are:

- Deborah Coles, Director, INQUEST
- Professor Seena Fazel, professor of Forensic Psychiatry, University of Oxford
- Professor Jenny Shaw, professor of Forensic Psychiatry, University of Manchester
- Jenny Talbot OBE, Prison Reform Trust
- John Wadham, Chair, National Preventative Mechanism

Further information on the IAPDC can be found on its website:

www.iapondeathsincustody.org

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