

### Core Competency 2A: Core knowledge and law

## European Convention on Human Rights (ECHR)

### Article 2: practical and effective investigation

Article 2 provides that everyone's right to life shall be protected by law. The state must not take life and must take appropriate legislative and administrative steps to protect individuals from threats to life when in their care. When Article 2 may have been violated, the state must ensure its system, taken as a whole, provides for a practical and effective investigation. Criminal proceedings, civil proceedings, inquests, proceedings in negligence, reviews and investigations may satisfy all or part of the requirement. Under some circumstances the state must go further and initiate an 'effective investigation' (an 'Article 2 investigation'). This may apply where the victim and/or perpetrator has been in custody of the state, such as in prison or detained under the Mental Health Act. In such cases the investigation has to have a sufficient element of independence and public scrutiny.

Proportionality of investigation is the general approach, with the most serious violations of Article 2 meriting the most extensive investigation, ultimately under the Inquiries Act 2005 (which has the power to compel witnesses and require them to produce documents).

### Application to children's serious case reviews

Generally, serious case reviews involve children who have not been in residential care, that is, not in the care of the state. However, the existence of child protection systems designed to protect potential child victims suggests the state does accept some responsibility for vulnerable children's lives. The serious case review can be seen as one essential part of the state's system for providing a practical and effective investigation when there is a possibility that its systems for protection of life might need improvement. It sits alongside inquests, criminal proceedings, IPCC investigations and occasionally proceedings in negligence, which, taken together may be seen as the satisfying the state's effective investigation requirement.

**Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children**, the **Multi-agency Statutory Guidance for the Conduct of Domestic Homicide Reviews** and **guidance for safeguarding adults reviews** make no mention of Article 2. These contrast with mental health homicide investigations under **HSG(94)27**, which do specify circumstances in which an Article 2 'effective investigation' should be carried out. In practice, adherence to principles and procedures in national guidance is likely to ensure that in most cases any Article 2 requirement is satisfied. However, it is sensible to seek legal clarification where an adult has been subject to the Mental Health Act, a child or 'vulnerable adult' has been in hospital or residential care, where Deprivation of Liberty Safeguards (DOLs) apply or there has been a Child Protection Plan in existence. The law in the area of Article 2 is complex and certain cases concerning inquests are relevant if further reading is required; [R \(on the application of Humberstone\) v Legal Services Commission \[2010\] EWHC 760 \(Admin\)](#) and [R \(Takoushis\) v Inner London Coroner \[2005\] EWCA Civ 1440.](#)

## Articles 8 and 10: publication and public interest

*Article 8:* Right to private and family life

*Article 10:* Right to freedom of expression

These were balanced against each other in the case of Michael Stone, who failed in his attempt to prevent the publication of a mental health homicide inquiry report; [Stone v South East Coast Strategic Health Authority, Kent County Council, Kent Probation and Secretary of State for Health & Josephine Russell \(Interested Parties\) \[2006\] EWHC 1668 \(Admin\)](#). The question for the court was whether the decision to publish the report was an interference of Michael Stone's right to privacy under Article 8(2) ECHR. Article 10 was engaged because of the rights of the public to receive the published information. A balancing exercise was required and the approach adopted was that outlined at paragraph 17 of [re S \(a Child\) \[2005\] 1 AC 593 \[2004\] UKHL 47](#); "First, neither article has as such precedence over the other. Secondly, where the values under the two articles are in conflict, an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary. Thirdly, the justifications for interfering with or restricting each right must be taken into account. Finally, the proportionality test must be applied to each. For convenience I will call this the ultimate balancing test".

The court held there was a compelling case in favour of publication; "The existence of potentially dangerous persons at liberty in the community affects the entire community. That community has a reasonable and justified expectation that an inquiry undertaken after such a high profile case as the present will be publicised in full, so that the public is not left in the dark (or in the shade) about how it happened or left to speculate about the lessons that have been or should be learned and about the recommendations made, with a view to implementation, to reduce the risk of such occurrences in the future" (paragraph 45).

## Articles 8 and 10: publication, redaction and anonymisation

The recent position concerning children's serious case reviews has relevance to all reviews. It had not been the practice to publish children's serious case reviews until, in 2010, the Coalition Government announced that in future all SCR reports would be published. Statutory guidance was immediately amended to bring that into effect. This had been prompted by the production in November 2009 of the unredacted, unpublished Doncaster Local Safeguarding Children Board Serious Case Review Report on the 'J' Children and published Executive Summary in January 2010.

When the full '[J' children Doncaster report was eventually published on the 29 March 2012](#), in redacted form, the Department for Education announced there would be an independent review undertaken by Lord Carlile CBE to review the issues, the action taken and improvements made in the case. On the same day the then [Education Secretary Michael Gove underlined the priority which the Government attaches to the commitment to publish](#); "We want an open, confident, self-regulating system where professionals are continually asking how they can improve rather than a system clouded by secrecy and fear. Where there is clear evidence of failure or incompetence, individuals and organisations need to be held to account. Where there are successes, these should be celebrated and shared". Publication should take place unless there are compelling reasons relating to the welfare of the children concerned.

Lord Carlile's report on the 'J' children Doncaster case, known as the '[Edlington case](#)' was published on 16 November 2012. Again, this was linked with an announcement on publication. Expressing himself "frankly - frustrated" with the situation, Secretary of State Michael Gove stated in a speech on 16 November 2012 "only 28 SCRs have been published since June 2010 of the 147 initiated and of which 80 have completed". Only days later, on 19 November 2012, in [In the matter of X and Y \(Children\) \[2012\] EWCA Civ 1500](#) redaction and anonymisation came under scrutiny. Once again the balancing act between Articles 8 and 10 was central. Independent reviewers and LSCBs will find this case useful, for example at paragraphs 46 to 47; 'In each individual case careful thought will need to be given to two separate questions: first, whose identities require to be anonymised; and, second, what degree of anonymisation is required..... Not everyone will be entitled to anonymity, particularly if their involvement is already in the public domain. For example, anonymisation of the identity of a child's killer may not be required if the killer has been convicted and there are no other adults or children in the family whose legitimate interests will be prejudiced by publication. On the other hand, it will be a rare case where the identity of a living child is not anonymised'. The judgment goes on to consider types of anonymisation.

For further useful guidance on redaction and anonymisation see [Kathryn Torney v Information Commissioner additional party The Regional Health and Social Care Board EA/2012/0143](#) (to be read with comments contained in Sequeli Knowledge Disclosure on the Freedom of Information Act 2000). All the case authorities above are likely to be relevant not only to mental health investigations and children's serious case reviews but to domestic homicide reviews and safeguarding adults reviews.

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