

Appendix B

Human rights standards applicable to policing

These standards should be read together with the overarching principles set out in the Guidance.

Protecting the public

1 In certain well-defined circumstances, the police are under an obligation to take preventative operational measures to protect individuals whose lives are at risk from the criminal acts of others.

2 Bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices, which must be made in terms of priorities and resources, such an obligation must be interpreted in a way, which does not impose an impossible or disproportionate burden on the police.

3 What is required of the police is that they take all steps that could reasonably be expected of them to avoid a real and immediate risk to life about which they know or ought to have known.

4 This obligation can also arise where the risk to life does not come from the criminal acts of others: for, example, it can extend to an obligation to take reasonable steps to prevent self-imposed risks to life (e.g. suicide).

5 Failing to pass on important information concerning a risk to an individual's life to the appropriate person or body can breach this obligation.

The prohibition on ill-treatment

6 Under Article 3 ECHR, torture and cruel, inhuman and/or degrading treatment and/or punishment are prohibited absolutely.

7 Torture includes deliberate inhuman treatment causing very serious and cruel suffering, which has a purpose, such as the obtaining of information or confession, or the infliction of punishment.

8 Treatment/punishment will be inhuman if it 'causes intense physical or mental suffering'. It is less severe than torture but can include threats of torture and the infliction of psychological harm.

9 Treatment/punishment will be degrading if it arouses in the victim a feeling of fear, anguish and inferiority capable of debasing him or her and breaking his or her physical or moral resistance, but only if it reaches a particular level of severity.

The use of force

10 Article 2 ECHR applies to the use of lethal force and requires that such force be no more than is 'absolutely necessary' to defend any person from unlawful violence, to make an arrest or to stop a riot. But it is unlikely to be 'absolutely necessary' to use lethal force to make an arrest or to stop a riot except where an identified individual is using violence that poses a threat to life or limb.

11 Article 2 ECHR can also apply where potentially lethal force is used.

12 The test of 'absolute necessity' under Article 2 ECHR is very strict. Lethal force must be 'strictly proportionate' to the danger posed. It will be difficult to justify the use of firearms as 'absolutely necessary' where less life-threatening equipment is available and could have been used.

13 Under the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which the European Court of Human Rights has used in interpreting Article 2 ECHR:

'law enforcement officers shall not use firearms against persons except in self-defence or the defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve those objectives. In any event, the intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.'

14 It is the genuine, honest and reasonable belief of the officer using force that is important. So long as he or she genuinely, honestly and reasonably believes that lethal or potentially lethal force is 'absolutely necessary' for one of the permitted reasons, Article 2 ECHR will be satisfied, even if that belief subsequently turns out to be mistaken.

15 Before firearms are employed, police officers should identify themselves and give clear warning of their intent to use firearms, affording sufficient time for the warning to be observed, unless to do so would place the law enforcement officer at risk or create a risk of death or serious harm to other persons.

16 Whenever the use of firearms is unavoidable, police officers should:

- exercise restraint in such use, acting in proportion to the seriousness of the offence and the legitimate objective to be achieved;
- minimise damage and injury and respect and preserve human life;
- render assistance and medical aid to any injured or affected persons at the earliest opportunity; and
- notify relatives or close friends of injured or affected persons at the earliest opportunity.

17 Police officers should be provided with effective training on the use of force 'with the objective of complying with international standards for human rights and policing'. The police should also receive 'clear and precise instructions as to the manner and circumstances in which they should make use of firearms'. A police force should have an adequate internal mechanism for auditing uses of force across the whole force, to identify any trends which may cause concern and ensure any necessary remedial action is taken. Although an electronic recording mechanism may be very useful, on its own it is unlikely to be sufficient.

18 Article 2 ECHR also requires the relevant authorities to plan and control operations in which lethal or potentially lethal force might be used 'so as to minimise, to the greatest extent possible, recourse to lethal force'.

19 Police officers should not use force against persons in custody or detention except where strictly necessary for the maintenance of security and order within the institution or when personal safety is threatened.

Investigation and follow up in cases of death or serious injury

20 Effective reporting and review procedures should be put in place regarding injuries and/or deaths resulting from the use of force and firearms by police officers. In cases of death and serious injury, a detailed report should be sent to the competent authorities.

21 In addition, an effective official investigation is required whenever an individual is killed as a result of force being used by an agent of the state and/or when it is arguable that there has been a breach of Article 2 or Article 3 of the ECHR.

22 The investigation must be prompt, thorough, impartial and careful so as to ensure accountability and responsibility.

23 The investigation must involve an assessment of the organisation and planning of the operation during which lethal force was used.

The training, instructions and communications of those who used lethal force and those who lay behind the operation are relevant to that determination.

24 An effective official investigation requires the appropriate authorities to secure all the relevant evidence concerning the incident causing death and to analyse the cause of death. It also requires a degree of public and independent scrutiny and the involvement of the family of the deceased in the procedure to the extent necessary to safeguard their legitimate interests.

Public order

25 Everyone has the right to freedom of peaceful assembly and of association.

26 These are qualified rights – they can be restricted, but only where a restriction is:

- prescribed by law;
- legitimate; and
- necessary and proportionate.

27 The right to peaceful assembly is not confined to static meetings; it also covers marches and processions.

28 The purpose of an assembly, march, protest or demonstration is largely irrelevant, so long as it is peaceful and the mere fact that it may annoy or offend others is not enough to justify a restriction.

29 Where there is a threat of disruption or disorder from others, the police may be under a duty to take appropriate steps to protect those who want to exercise their right of peaceful assembly, march, protest or demonstration.

30 But there is no absolute duty to protect those who want to exercise their right of peaceful assembly, march, protest or demonstration. The obligation on the police is to take 'reasonable and appropriate measures' and they have a fairly wide discretion in deciding how to police a peaceful assembly, march, protest or demonstration.

31 A requirement of prior notice or authorisation for a peaceful assembly, march, protest or demonstration is not necessarily a breach of Article 11 ECHR, so long as the purpose behind the procedure is not to frustrate the event in question.

32 Orders banning peaceful assemblies, marches, protests or demonstrations altogether will only be justified in extreme circumstances, where there is a real danger of disorder that cannot be prevented by other less extreme measures.

Criminal investigations

33 Most criminal investigations will interfere with privacy. Therefore, as a basic rule, they must be:

- prescribed by law;
- legitimate; and
- necessary and proportionate.

34 Criminal investigations should also be objective and fair; and they should be sensitive and adaptable to the needs of vulnerable persons.

35 The retention of information, data and samples will usually amount to an interference with privacy.

Therefore it must also be:

- prescribed by law;
- legitimate; and
- necessary and proportionate.

Surveillance

36 All covert investigations must comply with the Regulation of Investigatory Powers Act 2000 and associated codes of practice.

37 Matters of a confidential nature in the possession of police officers shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise.

38 The use of CCTV cameras, even in public places, and the retention of data, can raise privacy issues under Article 8 ECHR and therefore must be prescribed by law, legitimate, necessary and proportionate.

39 There must be proper methods of accountability regarding both the authorisation and the use of police surveillance and other information-gathering activities.

40 Investigations into allegations that an individual's privacy has been breached by surveillance must be independent. Generally speaking, such investigations are carried out by the body or tribunal specifically charged with such responsibility under statute: e.g. the IPT established under the Regulation of Investigatory Powers Act 2000.

Informers and undercover officers

41 It is legitimate for the police to use informers and undercover officers in the investigation of crime.

42 But informers and undercover officers should not incite an individual to commit a crime he or she would not otherwise commit.

43 As a general rule, if an individual freely takes advantage of an opportunity to break the law given to him or her by a police officer, the police officer is not to be regarded as being guilty of 'entrapment'.

Search and seizure

44 Search and seizure interfere with privacy and therefore must be:

- prescribed by law;
- legitimate; and
- necessary and proportionate.

45 The right to privacy can extend to business or work premises.

46 Consent to search and seizure will not be valid unless it is genuine and informed.

Arrest and detention

47 Everyone has the right to liberty and security of their person. No one shall be subjected to arbitrary arrest or detention. Arrest and detention should be carried out strictly in accordance with the law.

48 In ordinary criminal cases, there must be a reasonable suspicion that an individual has committed a criminal offence before an arrest is made. That presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence.

49 All persons under any form of detention or imprisonment should be treated in a humane manner and with respect for the inherent dignity of the human person.

50 Those detained have a right to a medical examination on admission, their health should be fully protected and medical attention should be provided when required.

51 Any unnecessary force used against those detained is likely to be classified as inhuman.

52 All money, valuables, clothing and other property belonging to a detainee which he or she is not allowed to retain should be placed in safe custody.

Reasons

53 Everyone arrested should be informed, in a language he or she understands, of the reasons for his/her arrest.

54 Notification should be at the time of arrest or as soon as practicable thereafter.

55 Sufficient details should be given to enable the person arrested to know the basis upon which he or she is being held.

56 Detained persons should also be provided with information on, and an explanation of, their rights and how to avail themselves of their rights.

57 The reasons for arrest, the time of the arrest, the identity of the police officers concerned and the place of custody of the detained person should be recorded.

58 Those detained (particularly vulnerable individuals such as children) are entitled to notify or to require the police to notify members of their family or other appropriate persons of their choice of their arrest, detention or imprisonment.

Access to a lawyer.

59 Everybody detained by the police should be informed of the right to be assisted by a lawyer upon arrest. This is fundamental and should not be delayed.

60 Communications between a suspect and his/her lawyer should be confidential unless there are highly exceptional circumstances, such as evidence that the lawyer is engaged in crime.

Questioning

61 Resort to violence, threats or methods of questioning that impair a suspect's capacity to make decisions or judgments is prohibited.

62 In addition, all suspects have the right to remain silent during questioning, although, within limits, adverse inferences can be drawn from silence in certain circumstances.

63 The time and place of all questioning should be recorded.

The right to be brought promptly before a court

64 Everyone arrested for a criminal offence has the right to be brought promptly before a court.

65 Ordinarily the period of detention before a person is brought before a court should not be longer than about four days.

66 The court before which a person is brought must have power to order release.

Bail

67 The general presumption is that those awaiting trial should not be detained, but released on bail.

68 But bail may be refused if it is necessary and for a good reason, such as a fear of absconding, interference with the course of justice and protection of others. The reasons for refusing bail must be both relevant and sufficient.

69 Bail may be conditional.

Children

70 Where children are concerned, the best interests of the child should always prevail.

71 Arrest, detention or imprisonment of a child should be used only as a measure of last resort and for the shortest appropriate period of time.

72 In principle, no information that may lead to the identification of a child offender should be published.

73 Records of child offenders should be kept strictly confidential and closed to third parties.

74 While in custody, children should receive care, protection and all necessary individual assistance (social, educational, vocational, psychological, medical and physical) that they require in view of their age, sex and personality.

75 A child's parents or guardian should be immediately notified of the apprehension of their child and a judge or other competent official or body should without delay consider the issue of release.

76 Adaptations to the criminal justice system are needed where children are on trial and all procedures should take account of the child's age and the need to promote their rehabilitation.

Victims

77 Victims should always be treated with compassion and respect for their dignity.

78 Victims are entitled to access the mechanisms of justice and to be treated without discrimination.

79 Victims should be informed of the timing and progress of the investigation of their cases and subsequent proceedings.