



## ***Independent Advisory Panel on Deaths in Custody***

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The Right Honourable  
Robert Buckland QC  
Lord Chancellor & Secretary of State for Justice

Dear Robert,

As you know the Independent Advisory Panel on Deaths in Custody has a responsibility to enable you and Ministerial colleagues to meet your human rights obligation to take active steps to protect life. I am grateful to Panel member, John Wadham, for preparing this advice which I trust you and your officials will consider.

Although I am sure you are already well aware of the human rights duties imposed on the state by the European Convention on Human Rights (and, of course, by the equivalent UN treaties) we thought we might provide a reminder to others in your department. The right to life in Article 2 is one of the most fundamental provisions in the Convention, it is an absolute right and one which, in peace time, admits of no derogation under Article 15. Along with Article 3, it enshrines one of the basic values of the democratic societies making up the Council of Europe.

The Prime Minister has, quite rightly, emphasised the need for the public to stay at home. Self-isolation is vital if individuals or those close to them are particularly vulnerable. All of us must ensure we are at least two metres away from others at all times. Those in prison cannot take these steps for themselves and are reliant on the prison authorities to protect them. We realise what a great responsibility that this is at this time. This is why we believe that the minimum but essential rules provided by international human rights standards are important during this crisis.

As a general rule “persons in custody are in a vulnerable position and... the authorities are under a duty to protect them” (*Salman v Turkey*, para. 99). There is also a positive duty to protect a detainee if the authorities:

“...knew or ought to have known at the time of the existence of a real and immediate threat to life of an identified individual by a third party or himself and

they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.” (Keller v Russia, para. 82)

As you may know the European Court of Human Rights has also adopted a principled approach in respect of the medical treatment of vulnerable persons under the care of the State. This is particularly important when the domestic authorities, despite having been aware of the appalling conditions that later led to the death of persons in institutions, had nonetheless unreasonably put the lives of these people in danger (Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania). The Court has stated:

“In the light of the importance of the protection afforded by Article 2, the Court must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances. Persons in custody are in a vulnerable position and the authorities are under a duty to protect them.” (Salman v. Turkey, para. 99)

And

“...the Court reiterates that the authorities have an obligation to protect the health of persons who are in detention or police custody ... and whose relationship with the State authorities is therefore one of dependence. That entails providing prompt medical care where the person’s state of health so requires in order to prevent a fatal outcome.” (Tenkin and Arslan v Belgium, para.85)

The obligation on the authorities for the treatment of an individual in custody is particularly stringent where that individual dies or suffers from conditions that constitute a violation of the standards provided by Article 3 (A and Others v UK (2009); Gagiu v Romania; Geppa v Russia; Paladi v Moldova; Stanev v Bulgaria; Tanlı v. Turkey, para. 141; and Tekin and Arslan v. Belgium, para. 83).

We, of course, recognise that the courts will have to take into account the exceptionally difficult circumstances that the Government faces and that the facts of the cases referred to are very different. Nevertheless, the responsibility for the lives of those in prison lies with you.

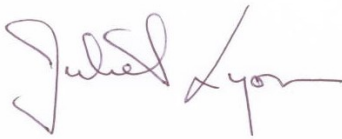
The absence of appropriate medical and other necessary care for those in prison engages Article 3 (also an absolute right) – the prohibition of torture, inhuman and degrading treatment and punishment. The jurisprudence from the Court requires the state to provide “requisite medical assistance” for those in custody (Ramirez Sanchez v France, para. 120) and to “protect the physical well-being of persons deprived of their liberty” (Khudobin v Russia, para. 93). Where the lack of this assistance gives rise to a medical emergency or “otherwise exposes the applicant to severe or prolonged pain” there will be a violation of Article 3 (McGlinchey and Others v UK). The state needs also to provide a place of detention tailored to the needs of those “mentally disabled”, “physically disabled” persons with a serious physical illness, and the people who are elderly (Dybeku v Albania, WD v Belgium, MS v UK, Price v UK, Mouisel v France, and Papon v France (No 1)).

In *Wedler v Poland*, the Court decided that if a prisoner's state of health becomes such that adequate medical or nursing assistance cannot be provided in detention, Article 3 requires the prisoner to be released (see also *Arutyunyan v Russia*; *Farbtubs v Latvia*; *Enea v Italy*; and *Gelfmann v France*).

In parallel with the duty to protect life under Article 2 and protect prisoners from Article 3 violations, there are strict investigatory duties which are particularly important for learning lessons and safeguarding lives in the future. The IAP is concerned that this duty may be lost sight of during the current emergency. Investigations will inevitably be subject to disruption and delay but this cannot distract from the duty to conduct effective and independent investigations. The next of kin must be treated with dignity and respect not least at a time when post death family liaison processes will be understandably subject to disruption and post death rituals will be restricted. Families must be signposted to where they can obtain specialist advice and support during this difficult time.

The IAP noted your evidence to the Justice Committee yesterday and respected your characteristic candour about the exceptionally difficult decisions facing you and your government. We were particularly pleased to hear that you are seriously considering how some cohorts of prisoners (outlined in our previous correspondence) might be safely released. Clearly to achieve this in a planned and disciplined manner, decisions must be taken now.

As ever, Juliet

A handwritten signature in purple ink that reads "Juliet Lyon". The signature is written in a cursive style with a long horizontal stroke at the end.

**Juliet Lyon CBE**  
**Chair of the IAP**