

The Harris Review  
102 Petty France  
London  
SW1H 9AJ

**Your ref:**

**Our ref:** KA

**Direct Line:** [Redacted for the  
purposes of publication]

**Date:** 17 July 2014

**BY E-MAIL ONLY**

Dear Lord Harris

Thank you for your invitation to respond to the review into self-inflicted deaths in custody of 18-24 year olds. As you know, the Commission has recently started an inquiry into non-natural deaths in detention of adults with mental health conditions in prisons, police custody and hospitals. We enclose the inquiry's terms of reference. Many of the issues relevant to the inquiry overlap with the main issues you are considering in your review.

As the inquiry is very much in its infancy, it would not be appropriate for us to offer definitive views on the issues which your review will cover. We aim to draw conclusions and make appropriate recommendations once we have examined and analysed all relevant available evidence and we are anxious not to pre-judge any matter falling within the inquiry's remit.

However, given our statutory duty to encourage good practice in relation to human rights and to encourage public authorities to comply with Convention rights, we thought it would be helpful to share some generic views on how best to safeguard the lives of vulnerable individuals in detention through the prism of the State's Convention obligations as incorporated in the Human Rights Act 1998.

**Equality and  
Human Rights  
Commission**

Arndale House  
The Arndale Centre  
Manchester M4 3AQ

**Tel:** 0161 829 8100  
**Fax:** 0161 829 8110  
info@equalityhumanrights.com

The Equality and Human Rights Commission was established by the Equality Act 2006 as the Commission for Equality and Human Rights.

Our view is that better compliance with Article 2 together with Article 14 may reduce the number of self-inflicted and other non-natural deaths in custody. Domestic and European case law has established a set of Article 2 obligations which the state has to those in its care. We believe that their practical application will help all offenders to be managed in a way more conducive to their safety and well-being.

We have drawn up the enclosed framework incorporating these obligations to measure Article 2 and 14 compliance. We regard it as a “living” document which may change during the course of inquiry as a result of the evidence and observations we receive from organisations and individuals working in the three settings.

Section A relates to the state’s positive obligation, in certain circumstances, to protect life. Section B relates to the positive obligation to carry out a proper investigation into any death for which the state might have some degree of responsibility. We also enclose some notes of amplification on both sections.

The overarching principle is the obligation to ensure that these rights and protections are enjoyed by everyone, without discrimination.

### **The obligation to protect life**

We have broken down the obligation to protect life into two parts. Firstly, the general obligation to take routine steps to prevent an individual committing suicide as the very fact of detention heightens that risk. Secondly, the specific obligation to take more individualised steps to protect the life of an individual where the state knows or should know that there is a real and immediate risk to his/her life

The vast majority of the steps the state is required to take relate to the general obligation and apply to all those in detention regardless of their level of vulnerability. The thornier question is when the specific obligation is triggered and how it applies to each individual case. Three questions need to be asked in that regard:

**Equality and  
Human Rights  
Commission**

Arndale House  
The Arndale Centre  
Manchester M4 3AQ

**Tel:** 0161 829 8100  
**Fax:** 0161 829 8110  
info@equalityhumanrights.com

The Equality and Human Rights Commission was established by the Equality Act 2006 as the Commission for Equality and Human Rights.

1. Was the prison aware, or should it have been aware, of a real and immediate risk to a prisoner's life?
2. Was the risk real and immediate enough for the prison to have to consider taking steps to prevent it?
3. Should the prison have done more to prevent it?

An important principle which overarches the scope of the more specific obligation is that it should not impose a disproportionate burden on prisons with different demands on their finite resources.

We equate vulnerable with those at real and immediate risk of self-inflicted death and agree that early identification of vulnerability is at the core of the obligation. An initial assessment of all young prisoners, either on reception or preferably pre-sentence, will serve to identify those at risk. It is important that those carrying out the initial assessment are qualified to do so and have access to all relevant medical records.

We agree that it is desirable to develop a non-exhaustive list of factors to be considered in order to identify on initial assessment those potentially at risk of self-harm or suicide. We do not consider that it is within our statutory remit to specify precisely what those factors would need to be.

We believe that those so identified should then be further assessed (for example, by a psychiatric nurse with access to other specialist support services) to determine the level of risk, the appropriate specialist support and any individualised safeguards which should be put in place to minimise the risk.

There is clearly more difficulty in identifying vulnerability during a young person's journey through custody. The first days and weeks of custody must be trigger points but there will be others. Self-reporting of poor mental health, for example, may be patchy and unreliable. Our inquiry will consider the potential of cross-sector learning and we will seek to

**Equality and  
Human Rights  
Commission**

Arndale House  
The Arndale Centre  
Manchester M4 3AQ

**Tel:** 0161 829 8100  
**Fax:** 0161 829 8110  
info@equalityhumanrights.com

The Equality and Human Rights Commission was established by the Equality Act 2006 as the Commission for Equality and Human Rights.

identify what tools are available in prisons and other settings to assist early identification of vulnerability and risk.

The role of prison staff and families is crucial throughout the custody journey. Families should be encouraged to report concerns and systems put in place to enable them to do so. Staff should be trained to identify increased risk and systems put in place to enable them to report it. Prisoners should have knowledge of the systems in place to enable them to report bullying by other prisoners or by staff and should have confidence in the systems in place to deal with those complaints.

### **The obligation to investigate**

In addition to the steps set out in the framework, we believe that an investigation should identify:

- any defects in the system
- any defects in instructions and training of relevant staff
- any defects in the planning, management or control of the incident ( which will cover the dissemination of information and the supervision of staff)
- Individual failings which a robust system should detect and remedy before harm is done.

Although we have not given specific answers to the questions you have asked, we hope that our more generic response will be of value to the review. We should also advise you that our inquiry report will be published in Spring 2015.

Yours sincerely,

Keith Ashcroft  
**Senior Lawyer**

**Equality and  
Human Rights  
Commission**

Arndale House  
The Arndale Centre  
Manchester M4 3AQ

**Tel:** 0161 829 8100  
**Fax:** 0161 829 8110  
info@equalityhumanrights.com

The Equality and Human Rights Commission was established by the Equality Act 2006 as the Commission for Equality and Human Rights.