Article 2 & 3 Investigative Obligations: New developments and residual questions

a presentation by

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Introduction

1. The scope of the Article 2/3 investigative obligation, and its jurisprudential basis, has recently received attention from both the High Court and the Court of Appeal in a number of cases, most particularly, in *R(LD) v. Secretary of State for the Home Department* [2005] EWHC 728 Admin (Munby J; heard in the Court of Appeal in January) *Takoushis v. HM Coronor for Inner London* [2005] EWCA Civ 1440, *Plymouth CC v. HM Coroner for Devon* [2005] EWHC 1014 Admin (Wilson J) and in *R(JL) v. Secretary of State for the Home Department* (permission granted in February, substantive hearing to take place probably in May).

2. The obligation itself has been recognised as arising since the decision of the ECtHR in *McCann*. However, there is still a great deal of uncertainty surrounding the application of the investigative obligation. In particular, as to:

   a) Whether it is a freestanding substantive or procedural obligation, or simply a means of identifying substantive breaches of Article 2;

   b) When the obligation to investigate arises – in particular, is it necessary, before the investigative obligation arises show an arguable breach of Article 2?

   c) What the obligation requires – in particular, is it necessary to have a public hearing along the lines of, at minimum, an inquest as interpreted in *Middleton*, in every case.

Origins of the investigative obligation

3. The investigative obligation was recognised by the ECtHR in *McCann v. UK* [1995] 21 EHRR 97 at paragraph 161, a case concerning use of force by the State:

   *The obligation to protect the right to life under [article 2(1)], read in conjunction with the State's general duty under Article 1 of the Convention to 'secure to everyone within their jurisdiction the rights and freedoms defined in [the]*
The more recent leading cases on the content of the investigative obligation in Strasbourg are Jordan v. UK (4th May 2001 – Jordan was killed in Belfast by an officer of the RUC) and Edwards v. UK (14th March 2002 – Edwards was killed by his cell mate whilst on remand in a young offenders’ institution). In Jordan and Edwards it was recognised that Article 2 requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. The essential purpose of an investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. What form of investigation will achieve those purposes may vary in different circumstances (see eg Jordan at para 105).

In Jordan v. UK at paragraph 103, the ECtHR 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. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as for example in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries and death which occur. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see Salman v. Turkey [GC] no. 21986/93, ECHR 2000-VII, § 100, and also Çakaci v. Turkey, [GC] ECHR 1999-IV, § 85, Ertak v. Turkey no. 20764/92 [Section 1] ECHR 2000-V, § 32 and Timurtaş v. Turkey, no. 23531/94 [Section 1] ECHR 2000-VI, § 82).

In Keenan v. UK the ECtHR found that Article 2 required the State to protect individuals in custody from death and injuries (relying upon Salman in relation to “injuries”), including where the death is self-inflicted. Thus:

1. In the context of prisoners, the Court has already emphasised in previous cases that persons in custody are in a vulnerable position and that the authorities are under a duty to protect them. It is incumbent on the State to account for any
injuries suffered in custody, which obligation is particularly stringent where that individual dies (see, for example, Salman v. Turkey [GC], no. 21986/93, § 99, ECHR 2000-VII). It may be noted that this need for scrutiny is acknowledged in the domestic law of England and Wales, where inquests are automatically held concerning the deaths of persons in prison and where the domestic courts have imposed a duty of care on the prison authorities in respect of those in their custody.

7. The investigative obligation arises even though death did not result if the individual has sustained life-threatening injuries. In the admissibility decision of the Court in Menson v. UK, Application no. 47916/99, on 6th May 2003 the Court held that:

With reference to the facts of the instant case, the Court considers that this obligation requires by implication that there should be some form of effective official investigation when there is reason to believe that an individual has sustained life-threatening injuries in suspicious circumstances. The investigation must be capable of establishing the cause of the injuries and the identification of those responsible with a view to their punishment. Where death results, as in Michael Menson’s case, the investigation assumes even greater importance, having regard to the fact that the essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life (see mutatis mutandis, the Paul and Audrey Edwards judgment, above-cited, § 69).

8. In R (Amin) v. Secretary of State for the Home Department [2003] UKHL 51 Lord Slynn, at paragraph 41, held that:

“The duty to investigate is partly one owed to the next of kin of the deceased as representing the deceased: it is partly to others who may in similar circumstances be vulnerable and whose lives may need to be protected. The significance of this duty to those detained in prison, not least where prisons are crowded and prisoners often dangerous, is obvious. It does not seem to me to be possible to say that there is a clear dividing line between those cases where an agent of the state kills and those cases where an agent of the state or the system is such that a killing may take place. The result of "an incident waiting to happen" may just as much as an actual killing require detailed and profound investigation, though in some cases the procedure to be adopted may be justifiably different.”

9. Lord Steyn, in a similar vein, held at paragraph 50 that:

The Court of Appeal plainly thought that in the case of acts by state agents causing death in custody there is a more exacting and rigorous duty to investigate
than in cases of negligent omissions leading to death in custody. That cases in the
former category may be a greater affront to the public conscience than cases in
the latter category can readily be accepted. But the investigation of cases of
negligence resulting in the death of prisoners may often be more complex and
may require more elaborate investigation. Systemic failures affect more prisoners.

10. The scope of the investigative obligation in a case where death did not in fact
result also arose before the House of Lords in a case concerning disclosure in
R(Green) v. Police Complaints Authority [2004] UKHL where a man was injured
by a police officer allegedly driving at him. As to whether disclosure could be
sought relying upon Articles 2 and 3 of the ECHR, Lord Scott (the only Law Lord
expressly to decide this point, although Lord Carnswell (at para 83) had
reservations about the point) said:

8 But, secondly, Mr Gordon submitted that the appellant had the right to
disclosure of the material pursuant to articles 2 and 3 of the European

9 I would agree with counsel that the nature of the complaint against DS
Lawrence did engage articles 2 and 3. Mr Green was alleging that DS Lawrence
had driven the car into him deliberately. He said it had been an attempt by DS
Lawrence to kill him. If Mr Green had been killed by the collision with the car
and it had been the case that the fatal collision had been deliberately brought
about by DS Lawrence, there can be no doubt but that article 2 would have been
engaged. It would have been incumbent on the state to conduct a "thorough,
impartial and careful examination of the circumstances surrounding the killing":
McCann v United Kingdom (1995) 21 EHRR 97, 164, para 163. A no less
thorough, impartial and careful examination would be required in the case of an
allegation of an attempted killing by a police officer while on duty.

At paragraph 11 Lord Scott stated that the engagement of both Articles 2 and 3
required a thorough an impartial investigation.
11. It was accepted by counsel in Green that Article 3, like Article 2, requires a full, impartial and independent investigation satisfying the requirements of Amin (at paragraphs 58-59 of Green).

12. It has also been extended to Article 3 - Assenov v. Bulgaria (1998) 28 EHRR 652 at paragraph 102). At paragraph 102 the ECtHR held that an investigative obligation arises under Article 3 also:

2. The Court considers that, in these circumstances, where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State unlawfully and in breach of Article 3, that provision, read in conjunction with the State’s general duty under Article 1 of the Convention to “secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention”, requires by implication that there should be an effective official investigation. This investigation, as with that under Article 2, should be capable of ...

13. As regards the relevance of civil proceedings, at paragraph 141 of Jordan the ECtHR held:

... civil proceedings would provide a judicial fact finding forum, with the attendant safeguards and the ability to reach findings of unlawfulness, with the possibility of damages. It is however a procedure undertaken on the initiative of the applicant, not the authorities, and it does not involve the identification or punishment of any alleged perpetrator. As such, it cannot be taken into account in the assessment of the State’s compliance with its procedural obligations under Article 2 of the Convention.

14. In Edwards, the ECtHR set out the following minimum requirements of the investigative obligation, the purpose of which is to “secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility” (at para 69 – see also Jordan at paragraphs 105-109):

a) Whatever mode is employed, the authorities must act of their own motion. They cannot leave it to the initiative of the next-of-kin to lodge a formal complaint (para 69). In Mr Dunn’s case his next of kin is his 4 year old
daughter and that is why he acts by the Official Solicitor his litigation Friend.

b) Those responsible for and carrying out the investigation must be independent from those implicated in the events (para 70).

c) The investigation must be capable of leading to a determination of whether the force used was or was not justified in the circumstances and to the identification and punishment of those responsible. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence and, where appropriate, an autopsy providing a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death. Any deficiency in the ability of the investigation which undermines its ability to establish the cause of death or the person or persons responsible will fall foul of this requirements (para 71).

d) The inquiry must be prompt and must be conducted with reasonable expedition (para 72).

e) There must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case.

f) In all cases the next-of-kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests.

15. The ECtHR found in Edwards that there was a breach of the investigative obligation under Article 2 on the following bases:

a) the lack of compulsion of witnesses who were either eyewitnesses or had material evidence relating to the circumstances of a death had to be regarded as diminishing the effectiveness of the inquiry as an investigative
mechanism. This detracted from its capacity to establish the facts relevant to the death, and thereby to achieve one of the purposes required by Article 2 of the Convention (at paragraph 79);

b) Mr Edwards’ parents could not be regarded as having been involved in the procedure to the extent necessary to safeguard their interests. The inquiry sat in private, and Mr Edwards’ parents were only able to attend when they themselves were giving evidence. They were not represented at the enquiry and were unable to put any questions to witnesses either through their own counsel or through the inquiry panel. They had to wait until the publication of the final version of the inquiry report to discover the substance of the evidence about what had occurred. The private character of the inquiry was a further reason why the Court found that the investigative obligation in Article 2 had not been fulfilled see [87].

16. The most recent ECtHR case to examine the investigative obligation under Article 2 was Oneryildiz v. Turkey (Application No. 489391/99 30th November 2004 – alleged state involvement in dangerous activities leading to death at a municipal rubbish tip). In this case the Grand Chamber of the ECtHR acknowledged that in general terms Article 2 imposes a duty for the State to ensure, by all means at its disposal, an adequate response – judicial or otherwise – so that the legislative and administrative framework set up to protect the right to life is properly implemented and any breaches of that right are repressed and punished (at para 91). The ECtHR went on to note that in some circumstances civil or administrative proceedings might suffice, but that in certain categories of case the ECtHR had developed a number of principles which set out minimum requirements of any State response to a threat to, or loss of, life (at para 93). The ECtHR noted that one such case is where the true circumstances of the death are, or may be, largely confined within the knowledge of State officials or authorities (at para 93).
17. In *R (Amin) v. Secretary of State for the Home Department* [2003] UKHL 51 Lord Bingham held that:

a) the ECtHR had been right not to distinguish between killing or alleged killing by state agents and cases where the state has failed to protect a prisoner in its custody because

*While deliberate killing by state agents is bound to arouse very grave disquiet, such an event is likely to be rare and the state’s main task is to establish the facts and prosecute the culprits; a systemic failure to protect the lives of persons detained may well call for even more anxious consideration and raise even more intractable problems* (at para 21); and

b) the State owes a particular duty to those who are involuntarily in its custody, including a duty to protect them against self-harm (at para 30).

The jurisprudential basis of the investigative obligation

18. A real issue arises as to the jurisprudential basis of the investigative obligation under Articles 2 & 3. What has not yet been finally determined by the UK courts is whether or not the investigative obligation is only owed in cases where there is an arguable breach of either domestic laws for protecting life or the Article 2 substantive obligation, or whether the investigative obligation is a free standing obligation under Article 2/3 which is part of the general requirements of Articles 2/3 to protect life by putting in place procedures which make the State accountable where life has been taken within its control.

19. In *Salman v Turkey* (2000) 34 EHRR 425 (a case of injuries and death sustained during prison custody) the ECtHR held at para 99:

*Persons in custody are in a vulnerable position and the authorities are under a duty to protect them. Consequently, where an individual is taken into police custody in good health and is found to be injured on release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused .... The obligation on the authorities to account for the treatment of an individual in custody is particularly stringent where that individual dies.*

20. The justification for such an obligation is set out at para 105 of *Jordan* as being
in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility.

At paragraph 144 the ECtHR elaborates that:

Proper procedures for ensuring the accountability of agents of the State are indispensable in maintaining public confidence and meeting the legitimate concerns that might arise from the use of lethal force. Lack of such procedures will only add fuel to fears of sinister motivations, ...

21. This was reiterated in Edwards v. UK (2002) 35 EHRR 19 at para 69.

22. In Amin: [2004] 1 AC 653 the House of Lords considered the investigative obligation in the context of the death of a prisoner at Feltham Young Offender’s Institution who was killed by his cell mate. Lord Bingham (at para 20(3)) quoted from Salman v Turkey (2000) 34 EHRR 425 at para 99 (set out above) and held that this established the important proposition that

‘Where the facts are largely or wholly within the knowledge of the state authorities there is an onus on the state to provide a satisfactory and convincing explanation of how the death or injury occurred: Salman, paragraph 100; Jordan, paragraph 103.’

23. Lord Bingham in Amin also held (at para 3) that:

“The state owes a particular duty to those involuntarily in its custody. As Anand J. succinctly put it in Nilabati Behera v. State of Orissa (1993) 2 SCC 746, 767: “There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life.” Such persons must be protected against violence or abuse at the hands of state agents. They must be protected against self-harm: Reeves ... Reasonable care must be taken to safeguard their lives and persons against the risk of avoidable harm.”

24. At paragraph 31 Lord Bingham specifically recognized that:

a) The investigative obligation arises where a death has occurred or life-threatening injuries have occurred.

b) The purpose of the investigation is to ensure that so far as possible the full facts are brought to light, that culpable and discreditable conduct is exposed and brought to public notice, that suspicion of deliberate wrongdoing (if unjustified) is allayed; that dangerous practices and
procedures are rectified, and that those who have lost their relative may at least have the satisfaction of knowing that lessons learned from his death may save the lives of others.

25. Also, in Menson v. UK [2003] ECHR 47916/99 on 6th May 2003 the ECtHR held that:

_The court observes that the applicants have not laid any blame on the authorities of the respondent state for the actual death of Michael Menson; nor has it been suggested that the authorities knew or ought to have known that Michael Menson was at risk of physical violence at the hands of third parties and failed to take appropriate measures to safeguard him against that risk. The applicants’ case is therefore to be distinguished from cases involving the alleged use of lethal force either by agents of the state or by private bodies with their collusion ([see eg McCann, Jordan or Shenaghan]) in which the factual circumstances imposed an obligation on the authorities to protect an individual’s life, for example where they have assumed responsibility for his welfare (see for example Edwards ...), or where they knew or ought to have known that his life was at risk (see for example, Osman)._ 

26. These authorities provide support for the contention that the investigative obligation arises in any case where death or a near miss occurs in state custody, or by reason of the use of force by the State. It also suggests that the obligation arises by reason of a breach of the procedural obligations to protect life, and by the need to ensure accountability for deaths, i.e. that it arises without the need for any arguable case of breach of the substantive requirements of Article 2 or of domestic law being shown.

27. The cases set out above must be considered in the light of the Court of Appeal decision Takoushis v. HM Coronor for Inner London [2005] EWCA Civ 1440, a case of death flowing from alleged medical negligence. In this case the Court of Appeal held:

a) That if the procedural obligation was linked to the positive obligation in article 2, the investigative obligation would indeed be very limited.

b) The need for an effective investigation was not limited to those cases where there was a potential breach of the positive obligations to protect
life, but that where agents of the state potentially bear responsibility for the loss of life, the events should be subject to an effective investigation.

c) In order to comply with article 2, the state must set up a system which involves a practical and effective investigation of the facts. But that is not to say that there is an independent obligation on the state to investigate every case in which it is arguable that there was, for example, medical negligence.

d) The obligation is to establish a framework of legal protection, including an effective judicial system for determining the cause of death and any liability on the part of the medical professionals involved.

e) The fact that the state has made it possible in law for a family to bring a civil action in negligence will not be a sufficient discharge of the state’s obligation in every case. This may be because litigation is not practical or because liability has been admitted.

f) Where a person dies as a result of what is arguably medical negligence the state must have a system which provides for the practical and effective investigation of the facts and for the determination of civil liability. Unlike in the cases of death in custody, the system does not have to provide for an investigation initiated by the state, but may include such investigation. The question in each case is whether or not, on the facts, there has been compliance with the obligation to provide the potential for a practical and effective investigation of the facts and the determination of civil liability.

g) A system which provided only for civil liability, and not an inquest, may not be sufficient. However a system which included a Middleton compliant inquest would be sufficient..

h) A clear distinction can be drawn between the clinical negligence cases and the custody cases.
28. The import of Takoushis appears to be to reinforce the case-specific nature of the investigative obligation – one cannot know whether or not sufficient investigation has been put in place until such time as the reality of the investigation afforded by civil litigation has been ascertained (i.e. is public funding available, will the case settle etc). Moreover, the effect of Takoushis on cases of life threatening injuries in the clinical negligence context has yet to be ascertained. A further question arises as to the threshold requirement, i.e. does an arguable case for negligence have to be shown, or is it sufficient that the death or injuries occurred whilst under the care of the medical profession?

Near miss cases

29. In R(LD) v. SSHD Munby J at first instance, and subsequently the Court of Appeal, considered a case where a prisoner had made a serious suicide attempt whilst in custody, as a result of which he suffered from permanent and disabling brain damage. In that case, on the basis of the facts that D was a prisoner who was known to be a real and immediate suicide risk, the seriousness of the incident and its consequences, and the existence of issues as to whether more could have been done to deal with the risk, the Secretary of State accepted that the investigative obligation under Articles 2 & 3 was triggered. The question which arose was what, in the light of this, was required in order to satisfy the obligation.

30. By his order and judgment Munby J. decided that what was proposed by the Treasury Solicitor in that case, i.e. a private investigation by the Prisons and Probation Service Ombudsman would not fulfil the Article 2 obligation. He also determined that the potential for D to take civil proceedings was not relevant to the satisfaction of the Article 2/3 investigative obligation in that case. In his judgment and declarations he set out the minimum requirements which would be necessary.

31. Munby J. held that:
a) Given the jurisprudential basis of the State’s investigative obligation under Article 2, there was no logical justification for treating a “near miss” suicide attempt differently from that of a death in custody (para 47).

b) LD’s suicide attempt raises real and very worrying doubts about the sufficiency of protection against suicide being provided at HMP Pentonville even in the case of someone like LD who was known to be a real and immediate suicide risk (para 47 & para 53).

c) In significant respects the investigation by the PPO proposed by the Secretary of State failed to meet the State’s obligations under the ECHR (paras 48-52).

d) That the investigation culminating in the report dated 22 July 2002 from Ms Draper, Senior Investigating Officer within the Prison Service, could play only a minimal contribution towards satisfaction of the State’s investigative obligation (para 29 & para 30).

e) That the availability of civil proceedings is irrelevant to satisfaction of the State’s investigative obligation under Article 2 in the case of a death or near-miss in custody (para 39).

f) In determining what the minimum requirements are in this case one has to have regard to the circumstances surrounding LD’s suicide attempt, the fact that it was accepted that at that time he was known by the prison authorities to be a real and immediate suicide risk, the seriousness of the incident and its consequences, and to the existence of issues as to whether more could have been done to deal with the risk (para 52).

g) That this judgment should not be read as saying that the kind of inquiry which the circumstances of the present case required would be needed in every case of attempted suicide in custody, let alone in cases of non-suicidal self-harm (para 54).
h) That the inquiry should be in public (save where there were ECHR compatible reasons to hear the evidence of a particular witness, or other parts of the hearing, in private.

i) That the inquiry should be set up so that it was capable of being given the necessary power to compel the attendance of witnesses.

j) That LD’s representatives must be able to attend all public hearings of the inquiry and put questions to witnesses directly.

k) That LD’s representatives should be provided with reasonable access to all relevant evidence in advance.

l) That the funding which the SSHD had said he proposed to make available to LD’s representatives should be adequate, should not have inappropriate conditions attached and should be at such a level as to allow LD to be involved in the investigative procedure to the extent necessary to satisfy his legitimate interests.

32. On appeal, the Secretary of State did not seek to draw any distinction as to the requirements of Article 2/3 between cases where death was or was not caused, but sought to argue that it is not necessary in every case of death or near miss in custody that there be a public hearing with compellability of witnesses. Thus, the Secretary of State argued, that whilst in the UK inquests are in fact required to be held where there is a death in custody, that is not required as a matter of ECtHR jurisprudence. If successful, this could have a potentially large impact upon the nature of the investigations which are carried out in such cases.

The two lines of authority

33. A distinction has thus been maintained both in ECtHR and domestic jurisprudence between an obligation, adjectival to Article 2 to make judicial redress available if State agents may have been involved in a death, for example in clinical negligence cases (such as Powell v. UK 45305/99, 4th May 2000 & Calvelli and
Ciglio (32967/96, 17th January 2002), and cases arising out of a death in custody or a “near miss” incident in custody, in which case there must be compliance with the principles as set out in Jordan, Edwards, and Amin. The custody cases have been specifically distinguished from cases arising in other contexts in this regard (see at ECtHR level the acceptance in Oneryildiz v. Turkey (Application No. 489391/99 30th November 2004) that the custody cases turn on a number of clearly established principles).

34. Moreover, the scope of the obligation as identified in Powell is quite different to that which arises in the custody context. It is an obligation to establish an effective independent system for establishing the cause of death and any liability on the part of health professionals (Powell at p.18 & Calvelli and Ciglio at para 49). There is no obligation to ensure that an investigation takes place in every case. Thus, in Powell, there was no scope to complain of a breach of Article 2 given that the Claimants had decided to accept compensation in settlement of a civil claim based upon medical negligence. Such a determination stands in stark contrast to the approach of the ECtHR in cases arising out of the use of force by State agents, or from death or life-sustaining injuries sustained in State custody.

35. In the domestic courts, in R (Goodson) v HM Coroner for Bedfordshire and Luton [2004] EWHC 2931 (Admin) Richards J. and Takoushis (as set out above) it is accepted that different principles apply to determine what is required by way of Article2/3 depending upon whether or not the death (or it would follow, near miss) occurred in custody or in the context of clinical negligence.

36. Adopting the same approach, in the earlier case of R v Home Office ex parte Wright [2001] EWHC Admin 520, Jackson J. held that civil proceedings were ‘irrelevant’ to the defendant’s procedural obligations under articles 2 and 3 of the Convention. In that case, which concerned a death of a prisoner due to a severe asthma attack, liability had been admitted at an early stage of the civil proceedings which precluded any hearing at which evidence concerning the circumstances of Mr Wright’s death was adduced or tested (para 61). Again
emphasising the clear correlation between the issues which arise in cases concerning the use of lethal force by the State’s agents, and deaths in State custody, Jackson J. stated that he was reinforced in his conclusion by paragraph 141 of Jordan (at para 61).

Residual Issues

37. A number of questions remain for the courts considering the scope or content of the investigative obligation under articles 2/3:

a) To what extent is it necessary to show a breach of the protective obligation, or an arguable breach, before the obligation arises?

b) To what extent is it necessary to show an arguable breach of domestic law before the obligation arises?

c) What other limits are there on the scope of the obligation?

d) To what extent does the ECHR authority which emphasises the importance of context, apply in domestic law?

e) To what extent is publicity required?

f) If, as has been argued in LD in the Court of Appeal, an inquest is simply one means of satisfying the investigative obligation, but does not indicate a minimum standard, will other cases which have been premised upon the inquest as the model for article 2 investigations have to be reconsidered?