

1 Introduction

Current government, police and council policies regarding the setting of speed limits and their subsequent enforcement contravene the Human Rights Act, 1998. The articles being contravened include the following:

- Article 2 “right to life”
- Article 3 “prohibition of torture and inhuman treatment”
- Protocol 1, Article 1 “peaceful enjoyment of possessions”

2 Rhetoric

In 2000 Tony Blair stated¹:

- Research shows us that speed, more than anything else, is what is killing people.
- Controlling speed is at the heart of our strategy.
- Speed can make the difference between life and death.
- We will take tough new steps to enforce speed limits.

In 2001 Charles Clarke (for Jack Straw) stated²:

The police will continue to exercise their discretion on what action to take on offenders, but it is clear that motorists who have assumed in the past that it is acceptable to drive at 40 mph in a 30 mph zone can no longer expect such latitude. I have made my own position on this clear in emphasising that speed limits are set in the expectation that drivers will comply with them.

In 2004 David Jamieson stated³:

One of the very real problems local authorities face in trying to improve safety on the roads for which they are responsible is to decide what measures need to be put in place and where. Road accidents are by their very nature random events and sites and stretches of road only become targets for treatment once accidents have occurred. For example, roads where traffic speeds are generally high may never suffer accidents while other roads on which travel more slowly might contain far greater danger due to their construction and the prevailing conditions.

In 2004 the Department of Transport stated⁴:

- The government expects all drivers to observe all speed limits on all roads at all times (except for emergency vehicles)
- The government permits the police the routine use of covert speed cameras to catch drivers speeding “excessively”

1 The Government's Road Safety Strategy, March 1st 2000

2 Letter February 9th 2001

3 Letter April 7th 2004

4 Letter September 16th 2004

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In 2005 the Department of Transport stated⁵:

- The police can use Home Office approved speed detection equipment overtly or covertly whenever there is a need to prevent speeding drivers.
- Partnership equipment for example cameras, but not liveried vehicles, may be used by police officers that are not funded by the programme provided this does not adversely affect the partnership's enforcement at core sites.

As can be seen the government is perfectly aware that speeding traffic kills road users. It also states that the police are free to enforce the speed limits either overtly or covertly.

3 Reality

The following are stark facts:

- Every single person in the UK has a 1 in 240 chance of being killed on the road during their lifetime⁶.
- Every single person in the UK has a 1 in 25 chance of being seriously injured on the road during their lifetime⁷.
- Less than 5% of the road network meets the current criteria for Safety Camera Partnership speed enforcement guidelines.

The latest handbook for Safety Camera Partnerships⁸ states:

- All cameras must be highly visible (rule 5)
- Fixed/mobile cameras may only be used at a site with a significant killed/seriously injured record (rule 7)

Current government guidelines for safety camera placement require a disproportionate number of deaths or serious injuries before a camera may be deployed. The guidelines also require that drivers be warned of speed enforcement well in advance of the cameras and that the cameras be highly visible. Research shows that the number of accidents in the immediate vicinity of the cameras has decreased⁹. This decrease has not been statistically significant away from the immediate vicinity of the cameras. Research shows that most drivers just slow down in the immediate vicinity of the cameras and then speed up to their normal driving speed away from the cameras¹⁰.

When councils wish to introduce a lower speed limit on a stretch of road the most common reason from the police for not doing so is that the lower limit would be “unenforceable”. How

5 Letter September 6th 2005

6 3221 killed on roads in 2004, population 60 million, average lifespan 80 years.

7 31130 seriously injured on roads in 2004, population 60 million, average lifespan 80 years.

8 Handbook of Rules and Guidance for the National Safety Camera Programme for England and Wales for 2005/06 published November 4th 2004

9 Recent evidence appears to suggest that in some instances accidents may have increased at some sites. No doubt this is mainly due to the “brake hard for highly visible speed camera” effect.

10 Speed Cameras - how do drivers respond? Dave Keenan, 2002

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could this be so? As the Department of Transport statements indicate the police are free to enforce speed limits as they see fit. The police have never had so many safety cameras. The visibility guidelines along with the requirement for a high number of deaths/serious injuries mean that Safety Camera Partnerships are effectively prevented from enforcing the limits to the maximum of their ability. There is also a financial disincentive preventing the use of cameras in an overt/covert manner (i.e. the police may do it but Safety Camera Partnerships and their funded officers may not, also all related revenue goes to the Treasury).

Research shows that vulnerable road users in close proximity to traffic suffer undue stress¹¹. The effect of such stress was shown to be exacerbated by the closer the vehicle was and the faster that it travelled. The level of stress was also influenced by the direction of travel. Vehicles approaching from behind made the stress worse. This research shows that vulnerable road users are unduly stressed by fast moving vehicles – especially if they approach closely or are travelling excessively fast. This plainly demonstrates that the attitude that “fast roads are acceptable as long as no one is killed or injured” is plainly unacceptable.

Studies by Monash University, Australia state:

1. It is noted, that it is the perceived risks and benefits of committing the offence that determines the utility of the action. Therefore, where the perceived benefit of committing an offence outweighs the perceived disbenefit, an individual will elect to commit the offence.¹²
2. The evaluation of mobile radar enforcement and supporting publicity found evidence of casualty crash reductions during July 1995-June 1997 in rural TOG (Traffic Operations Group) regions of Victoria, particularly when the speed enforcement operations were either:
 - covert (unmarked patrol cars) or
 - a mix of overt and covert (marked and unmarked patrol cars).¹³
3. There is clear evidence that enforcement in general has an impact on driving speed and there is evidence that the method of enforcement is an important factor. Highly visible enforcement strategies act to remind road users that enforcement is present and potentially increases both the actual and the perceived risk of detection. Non-visible enforcement acts to increase road user's sense of uncertainty and to prevent them from adapting their speeding behaviour at specific times and locations when speeding enforcement is clearly being carried out.¹⁴

11 Kiyota, M., Vandebona, U., Sumi, T., and Kim, H. (2000a) Physiological measurement of risk perception of pedestrians in passing traffic, Selected Proceedings of the 8th World Conference on Transport, Pergamon Press, ISBN 0080435904, pp. 57-69.

12 Scientific Basis for the Strategic Directions of the Safety Camera Program in Victoria, Report #202, 2003

13 An Evaluation of the Effectiveness of Overt and Covert Speed Enforcement Achieved Through Mobile Radar Operations, Report #187, 2002

14 The interaction between speed camera enforcement and speed-related mass media publicity in Victoria, Report #201, 2003

4 Law

The European Court of Human Rights has plainly stated the absolute obligations of article 2 include the following¹⁵:

- In this connection, the Court reiterates that Article 2 does not solely concern deaths resulting from the use of force by agents of the State but also, in the first sentence of its first paragraph, lays down a **positive obligation** on States to take appropriate steps to safeguard the lives of those within their jurisdiction.
- The Court considers that this obligation must be construed as applying in the context of any activity, whether public or not, in which the right to life may be at stake.
- The positive obligation to take all appropriate steps to safeguard life for the purposes of Article 2 entails above all a primary duty on the State to put in place a legislative and administrative framework designed to provide **effective deterrence** against threats to the right to life.
- This obligation indisputably applies in the particular context of dangerous activities, where, in addition, special emphasis must be placed on regulations geared to the special features of the activity in question, particularly with regard to the level of the potential risk to human lives. They must govern the licensing, setting up, operation, security and supervision of the activity and must make it compulsory for all those concerned to take practical measures to ensure the **effective protection** of citizens whose lives might be endangered by the inherent risks.

The government is failing its absolute obligation under article 2 in respect of the criminal offence of speeding in the following ways:

- Fixed/time average camera placement requires a disproportionately high number of deaths/serious injuries before placement may occur
- Fixed and mobile cameras may only be used in locations with an accident history (i.e. after the fact and not preventively)
- Fixed and mobile cameras must be highly visible
- Covert speed enforcement is only permitted by the police and not Safety Camera Partnerships
- Covert speed enforcement is effectively discouraged by financial disincentive

The government is failing its absolute obligation under article 3 in respect of the criminal offence of speeding in the following way:

- Failing to adequately protect vulnerable road users from undue stress and anxiety on roads that have a known speeding problem but no significant accident record by not providing an effective deterrent

The government is failing its obligation under article 1, protocol 1 in respect of the criminal

¹⁵ ÖNERIYILDIZ v. TURKEY, no. 48939/99, §71, §89, §90, ECHR 2004

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offence of speeding in the following way:

- Failing to adequately protect cyclists and horse riders from undue stress and anxiety on roads that have a known speeding problem but no significant accident record by not providing an effective deterrent

A logical conclusion of the Human Rights Act is that all road users have the right to use the road free of fear and anxiety.

5 Conclusions

As can be seen article 2 places a positive obligation upon public bodies to provide an effective deterrent to dangerous activities that are a threat to life. Providing limited enforcement on less than 5% of the road network is not an effective deterrent. The government has effectively placed most speed enforcement capability into the hands of the more severely restricted Safety Camera Partnerships. A consequence of this reduced effectiveness is that speeding appears to be just as endemic on our roads as ever¹⁶.

It appears that the police have no reason to argue that a reduction in speed limit (e.g. 40mph to 30mph in a village) is “unenforceable” given the powers at their disposal regarding the overt or covert use of speed cameras as detailed by the Department of Transport. In fact to do so would be illegal given their positive obligation to provide an effective deterrent against activities likely to lead to death.

Councils must seriously consider all residents requests for reduced speed limits (e.g. to 30mph in villages), for 20mph Home Zones and Quiet Lanes. They have a legal positive obligation to do so. As the government has stated it expects all road users to obey the posted speed limits. This means that, in general, it should not be necessary for traffic calming measures to be introduced for a reduction in speed limit to occur¹⁷. Most residential areas that already have the benefit of 30mph speed limits do not generally have any traffic calming measures.

The 3 year evaluation report on safety cameras¹⁸ shows that Safety Camera Partnerships are effectively self financing. As the report states “*There was a positive cost-benefit of around 4:1. In the third year, the benefits to society from the avoided injuries were in excess of £221million compared to enforcement costs of around £54million*”. As they provide a service that does help prevent deaths due to speeding a future government would not be able to dismantle them unless a more effective body was being put in their place. It would be illegal to do so under article 2 and its positive obligation for an effective deterrent to prevent the loss of life.

16 Vehicle Speeds in Great Britain: 2004, Department of Transport

17 This was demonstrated by Suffolk County Council who managed to reduce the speed limit in most of their villages to 30mph in the space of 2 years in the mid-nineties.

18 The national safety camera programme, Three-year evaluation report, June 2004, UCL PA Consulting

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There is a wealth of freely available significant research/studies regarding the most effective use of safety cameras published by Monash University Accident Research Centre (MUARC)¹⁹. This should be used to help make decisions regarding the more effective use of Safety Camera Partnerships in speed enforcement and accident reduction. The only possible research/study that may be essential for the Department of Transport to pursue is something that has not already been investigated.

6 Recommendations

The rules governing Safety Camera Partnerships should be enhanced to permit the following:

- Permitted to use safety cameras both covertly as well as overtly²⁰.
- The only requirement for speed enforcement should be a history of speeding at the location in question²¹.
- Time average speed cameras to be used in preference to highly visible localized spot cameras²².
- Be required to provide Community Speedwatch²³ programs.
- All revenue generated to be used for speed enforcement or other road safety/speed reduction measures.

Other measures:

- Make it easier for vulnerable road users to obtain compensation from drivers of vehicles when a collision has occurred. The vulnerable road user should not have to prove the driver was negligent just demonstrate that they themselves were not negligent.
- Minimum gap for overtaking vulnerable road users by vehicles to be 1m. This would help to significantly reduce the stress felt by vulnerable road users.
- Permit the use of 30mph repeater signs where appropriate/effective (e.g. on a main road through a village).
- Introduce a Road Safety Ombudsman. To be independent of the government. To have similar powers to the Health and Safety Executive with regard to roads. To arbitrate in road safety decisions taken by councils/Safety Camera Partnerships.
- Encourage insurance companies to have higher excess values for personal injuries to vulnerable road users.

¹⁹ <http://www.monash.edu.au/muarc/>

²⁰ A 25% covert/75% overt mix is recommended.

²¹ Evidence of speeding could be provided by stakeholders requesting a measurement of vehicle speeds by the partnership using the equipment they use for normal activities.

²² Speed Cameras - how do drivers respond? Dave Keenan, 2002

²³ These programs typically have the police training stakeholders (e.g. local residents/parish councillors) in the use of portable radar guns. It normally involves providing the radar gun users with high visibility marked jackets (e.g. reading "Community Speedwatch"). The users then note down the license plates of speeding cars and provide the list to the police for warning letters to be issued.

7 HRA Article 2 Cases

The following cases are Article 2 related cases. The most significant of which is *ÖNERYILDIZ v. TURKEY*. This case is significant because it was council *inaction* in the maintenance of a rubbish dump that led to deaths (they failed to take action to prevent a build up of methane).

The cross referenced sections from the other related cases have been provided.

7.1 L.C.B. v. UK (14/1997/798/1001)

36. The applicant complained in addition that the respondent State's failure to warn and advise her parents or monitor her health prior to her diagnosis with leukaemia in October 1970 had given rise to a violation of Article 2 of the Convention.

In this connection, the Court considers that the first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (cf. the Court's reasoning in respect of Article 8 in the *Guerra and Others v. Italy* judgment of 19 February 1998, *Reports* 1998-I, p. 227, § 58, and see also the decision of the Commission on the admissibility of application no. 7154/75 of 12 July 1978, *Decisions and Reports* 14, p. 31). It has not been suggested that the respondent State intentionally sought to deprive the applicant of her life. The Court's task is, therefore, to determine whether, given the circumstances of the case, the State did all that could have been required of it to prevent the applicant's life from being avoidably put at risk.

7.2 OSMAN v. UK (23452/94)

115. The Court notes that the first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see the *L.C.B. v. the United Kingdom* judgment of 9 June 1998, *Reports of Judgments and Decisions* 1998-III, p. 1403, § 36). It is common ground that the State's obligation in this respect extends beyond its primary duty to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and sanctioning of breaches of such provisions. It is thus accepted by those appearing before the Court that Article 2 of the Convention may also imply in certain well-defined circumstances a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual. The scope of this obligation is a matter of dispute between the parties.

116. For the Court, and 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 authorities. Accordingly, not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. Another

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relevant consideration is the need to ensure that the police exercise their powers to control and prevent crime in a manner which fully respects the due process and other guarantees which legitimately place restraints on the scope of their action to investigate crime and bring offenders to justice, including the guarantees contained in Articles 5 and 8 of the Convention.

In the opinion of the Court where there is an allegation that the authorities have violated their positive obligation to protect the right to life in the context of their above-mentioned duty to prevent and suppress offences against the person (see paragraph 115 above), it must be established to its satisfaction that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk. The Court does not accept the Government's view that the failure to perceive the risk to life in the circumstances known at the time or to take preventive measures to avoid that risk must be tantamount to gross negligence or wilful disregard of the duty to protect life (see paragraph 107 above). Such a rigid standard must be considered to be incompatible with the requirements of Article 1 of the Convention and the obligations of Contracting States under that Article to secure the practical and effective protection of the rights and freedoms laid down therein, including Article 2 (see, *mutatis mutandis*, the above-mentioned McCann and Others judgment, p. 45, § 146). For the Court, and having regard to the nature of the right protected by Article 2, a right fundamental in the scheme of the Convention, it is sufficient for an applicant to show that the authorities did not do all that could be reasonably expected of them to avoid a real and immediate risk to life of which they have or ought to have knowledge. This is a question which can only be answered in the light of all the circumstances of any particular case. On the above understanding the Court will examine the particular circumstances of this case.

7.3 PAUL AND AUDREY EDWARDS v. UK (46477/99)

54. The Court reiterates that the first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, judgment of 9 June 1998, *Reports* 1998-III, p. 1403, § 36). This involves a primary duty on the State to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person backed up by a law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions. It also extends in appropriate circumstances to a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual (see *Osman v. the United Kingdom*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3159, § 115).

55. Bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the scope of the positive obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Not every claimed risk to life, therefore, can entail for the authorities a Convention requirement to take operational

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measures to prevent that risk from materialising. For a positive obligation to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (see *Osman*, pp. 3159-60, § 116).

7.4 ÖNERYILDIZ v. TURKEY (48939/99)

71. In this connection, the Court reiterates that Article 2 does not solely concern deaths resulting from the use of force by agents of the State but also, in the first sentence of its first paragraph, lays down a positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction (see, for example, *L.C.B.*, cited above, p. 1403, § 36, and *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 54, ECHR 2002-II).

The Court considers that this obligation must be construed as applying in the context of any activity, whether public or not, in which the right to life may be at stake, and *a fortiori* in the case of industrial activities, which by their very nature are dangerous, such as the operation of waste-collection sites (“dangerous activities” – for the relevant European standards, see paragraphs 59 and 60 above).

89. The positive obligation to take all appropriate steps to safeguard life for the purposes of Article 2 (see paragraph 71 above) entails above all a primary duty on the State to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life (see, for example, *mutatis mutandis*, *Osman*, cited above, p. 3159, § 115; *Paul and Audrey Edwards*, cited above, § 54; *İlhan v. Turkey* [GC], no. 22277/93, § 91, ECHR 2000-VII; *Kılıç v. Turkey*, no. 22492/93, § 62, ECHR 2000-III; and *Mahmut Kaya v. Turkey*, no. 22535/93, § 85, ECHR 2000-III).

90. This obligation indisputably applies in the particular context of dangerous activities, where, in addition, special emphasis must be placed on regulations geared to the special features of the activity in question, particularly with regard to the level of the potential risk to human lives. They must govern the licensing, setting up, operation, security and supervision of the activity and must make it compulsory for all those concerned to take practical measures to ensure the effective protection of citizens whose lives might be endangered by the inherent risks.

Among these preventive measures, particular emphasis should be placed on the public’s right to information, as established in the case-law of the Convention institutions. The Grand Chamber agrees with the Chamber (see paragraph 84 of the Chamber judgment) that this right, which has already been recognised under Article 8 (see *Guerra and Others*, cited above, p. 228, § 60), may also, in principle, be relied on for the protection of the right to life, particularly as this interpretation is supported by current developments in European standards (see paragraph 62 above).

In any event, the relevant regulations must also provide for appropriate procedures, taking into account the technical aspects of the activity in question, for identifying shortcomings in the processes concerned and any errors committed by those responsible at different levels.