

Human Rights Inquiry

Report of the Equality
and Human Rights
Commission



Equality and
Human Rights
Commission

Human Rights Inquiry Commissioners



Dame Nuala O'Loan was appointed by the Equality and Human Rights Commission to chair the Inquiry.

She was formerly Police Ombudsman in Northern Ireland, with responsibility for investigations of alleged police wrongdoing. She is currently Ireland's Special Envoy for Conflict Resolution to Timor Leste, and for United Nations Security Council Resolution 1325, Women Peace and Security. She is also conducting a review for the UK Border Agency of allegations made by people being detained or deported.



Professor Francesca Klug was the lead Commissioner for the Equality and Human Rights Commission on the Inquiry.

She is a Professorial Research Fellow at the London School of Economics and Political Science and Director of the Human Rights Futures project.



Sir Bert Massie was a member of the Inquiry.

He is a Commissioner for the Equality and Human Rights Commission and the Chair of the Commission for the Compact. He is a trustee of several voluntary organisations including Motability and is a Governor of Liverpool John Moores University.



Dr. Neil Wooding was a member of the Inquiry.

He is the Commissioner for the Equality and Human Rights Commission for Wales, having previously served as the Commissioner for the Equal Opportunities Commission for Wales for a number of years. He is currently a Trustee of the National Aids Trust. His full-time occupation is the Director of Public Service Management Wales.

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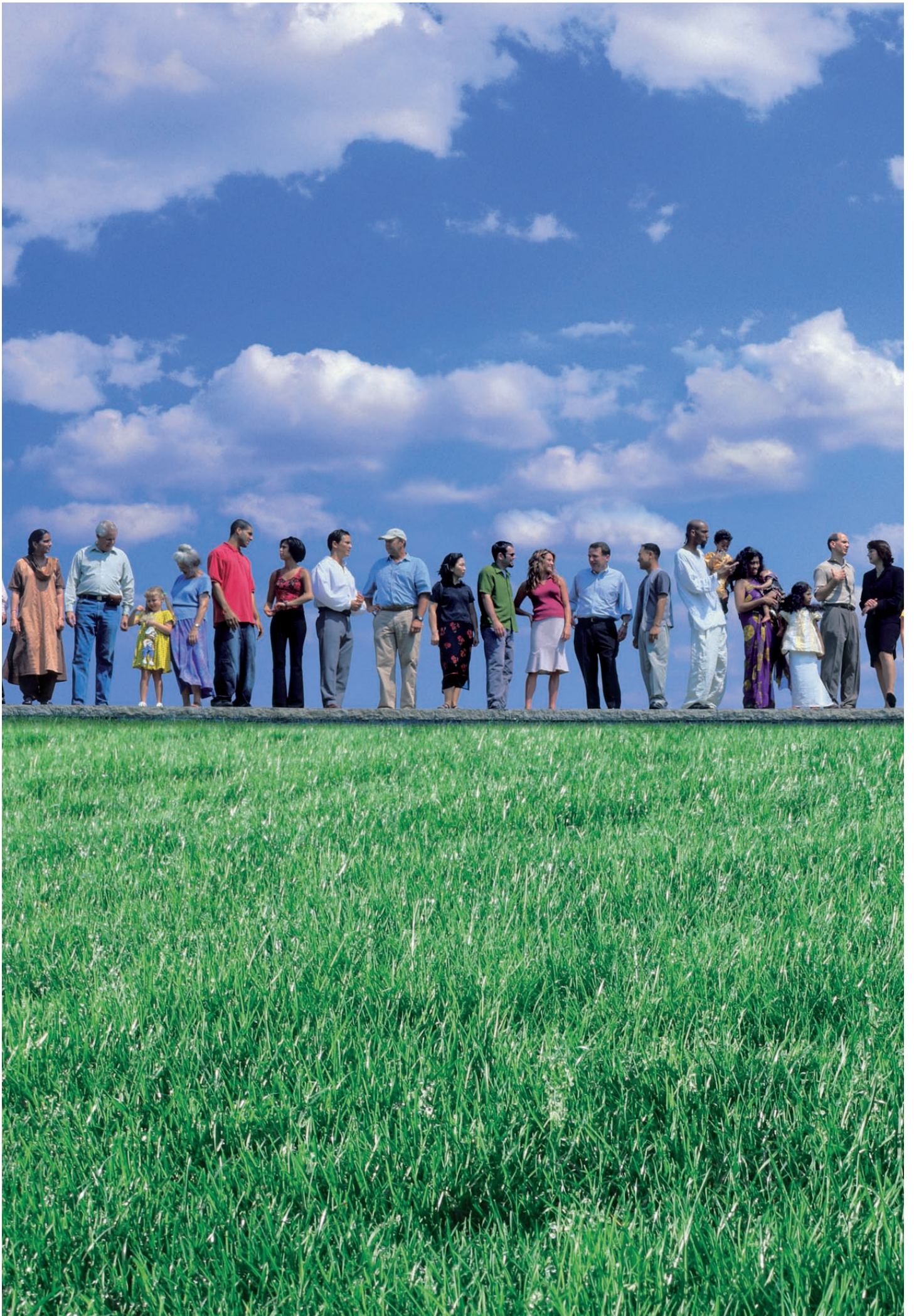
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Foreword

In the overture to Mozart's *Marriage of Figaro*, different themes interlock and interweave to form a majestic composition that lifts the spirits and stirs the soul. The two distinct themes of equality and human rights make up the title of the Commission I lead. As with Mozart, the conjunction of these two themes produces not discord or competition, but harmony. They are complementary – indeed, interdependent. And if they are played together creatively they can produce a symphony of far greater brilliance than either tune played alone.

The melodies of the equality and human rights agendas are bound by the same score. The human rights framework can provide substance to a deeper, more fruitful concept of equality that is more about what we are capable of and less about what has traditionally held us back. A human rights framework could transform our account of equality by taking us beyond narrow comparators and discrimination grounds to a new definition of equality that is based on fairness and freedom.

So it was entirely appropriate for the Equality and Human Rights Commission, in its earliest days, to launch an inquiry into what human rights mean in Britain today. We wanted to get past the hubbub of media rhetoric, in which the supporters and opponents of human rights shout loudly from the margins, to uncover the facts about what the people of Britain really think about human rights and how the Human Rights Act has made a genuine difference in the day-to-day lives of many.

There has been a tendency in Britain, when talking about human rights, to make three big mistakes. Firstly, we fail to think about human rights outside of laws, lawyers and legislation. We forget that beyond the legal frameworks, human rights are fundamentally about how we as individuals interact with those around us. We forget that human rights are about the common bonds of humanity that bind us all together.

Secondly, human rights are all too often seen as mechanisms to protect those individuals who set their own interests against those of the community. But in reality, human rights are the Highway Code on the road to cohesive communities. They are a set of shared principles and values that define how people should treat one another with respect and decency.

And our final mistake is to make the assumption that human rights only really matter to people from far off and foreign lands. But the very fact that they hold such vital importance elsewhere ought to show that they are of equal relevance to us, here and now. Human rights are our best hope for managing society through difficult and troubling times. Peace, cohesion and prosperity are unachievable unless every man, woman and child has a stake in his or her own future, an opportunity to flourish and an entitlement to be treated with fairness regardless of race, religion, gender, class, age, sexual orientation or disability.

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This Inquiry explodes those myths and demonstrates just how great an impact human rights have in our lives and our communities. It offers a significant, authoritative and evidence-based addition to the literature on human rights and is unique in its scope, detail and contemporary British context.

Its findings fill me with optimism. The evidence shows how human rights can fortify individuals to challenge bureaucracies; how they can empower people to participate more fully and effectively in decisions that affect their lives; and how they help public officials to design policies that are more respectful of the most vulnerable people in their care. And it is encouraging most of all, to discover such overwhelming support for human rights in Britain. Over 80 percent of the public recognise the importance of human rights in creating a fair and equal society with decent public services. Our task is to turn that vision into a reality.

The introduction of the Human Rights Act has gone a long way in enabling us to challenge those injustices that fall outside the scope of specific anti-discrimination legislation. Discussions on a Bill of Rights will provide us further opportunity to progress towards a culture whereby human rights are respected and enjoyed by all. The timeliness of this publication will allow the Commission to influence that debate. But more than this it will help us to produce change at a more fundamental level. It equips us with the facts we need to win hearts and minds, to be robust in our explanation of the benefits human rights bring, and strong in tackling their abuse.

This is a piece of work the Commission should be proud of. I commend it most warmly and am confident that it will prove invaluable in helping us to achieve our vision: a society built on fairness, where there is respect and protection of the rights, dignity and worth of all.



Trevor Phillips

Chair of the Equality and Human Rights Commission

Introduction

When teachers tell you of increased morale because of the results of human rights training; when police officers talk of increased confidence to do their difficult and challenging job; when children talk of feeling safer because of human rights values embedded in their schools; and when people from right across the political spectrum tell you that they have been able to resolve really difficult and sensitive problems through the assertion of human rights, it is evident that much is being done in England and Wales to give effect to the State's obligation under human rights law.

When stories are told of a failure to feed patients in hospital, to provide appropriate accommodation and services for disabled people, or to enable young and older people to have the best possible life in sheltered or residential accommodation, it is clear that much remains to be done. When pictures of alleged police brutality, testimonies of abused adults with learning difficulties, and stories of the failure to protect the most vulnerable people in our society from physical injury and death, appear in the world's media, the importance of what remains to be done cannot be underestimated. These are human rights issues. The resolution of such issues may involve common sense and fairness and respect for the dignity of the individual, but it also involves the State's duty to ensure that services are delivered in a way which gives effect to the State's legal obligations under human rights law. These are not small challenges.

The focus of this Inquiry has been to establish the extent to which respect for the human rights of individuals is embedded in service delivery in England and Wales today; to look at the barriers to the assertion, enjoyment and delivery of human rights; and to identify models of good practice, opportunities which may be transferable from one sector or organisation to another. Part of the reason for the Inquiry was to inform the Commission's future strategy to give effect to its statutory obligations on human rights under the Equality Act.

We have received a huge volume of evidence from the different strands of this Inquiry – from public hearings, from written submissions and from those who participated in focus and deliberative groups and in our various research projects. The evidence is being published and will provide a very valuable resource for further work. I would like to thank all those who took the time and trouble to participate in some way in the work of the Inquiry. The evidence came from individuals from all walks of life, from the voluntary and community sector, from central and local government, from the NHS and other public sector bodies, from advice agencies, from regulators, ombudsmen and inspectorates. The complexity of the issues with which people have to deal, the commitment and determination to deliver services using a human rights approach, notwithstanding the continuous and demoralising struggle to make limited resources meet the demands placed upon those responsible for service design and delivery, are clearly articulated.

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The evidence is very clear that a human rights approach has actually facilitated organisational effectiveness, enhanced staff morale and contributed to a better quality of life for many people. We also received evidence of widespread lack of knowledge – and in some cases misunderstandings – about what human rights are really about, and of what is needed to enable more comprehensive enjoyment of human rights in England and Wales.

There is much to be done, and there are many who can contribute to the task. Each of us may have a role to play: it may be that we must recognise that with rights come responsibilities; that on many occasions there must be a difficult balancing of conflicting rights – ours and those of others. There is a huge need to facilitate the understanding that human rights exist to protect everyone from abuse of power, disrespect or neglect, particularly where there are no other legal safeguards. There is a call for all those who might influence the discourse to do so in the best possible way, using the resources available to them in a positive manner. There are pleas for leadership, for guidance, and for training.

Human rights are about such things as the right to life, to liberty, to a fair trial, and the right not to be tortured. They are also about dignified treatment, responsibility for the impact of our actions on others, respect for others and participation in the decisions which affect us. They are important to our functioning as a democratic society based on the rule of law. They will enable us to build a better society.

I would like to thank all the Commission staff who were involved, particularly Claire Lesko, the Project Manager, and the three Commissioners, Professor Francesca Klug, Sir Bert Massie and Dr Neil Wooding for their invaluable contribution to this Inquiry.



Dame Nuala O'Loan

Chair of the Human Rights Inquiry

Equality and Human Rights Commission legal mandate and Human Rights Inquiry terms of reference

1.0 The Equality and Human Rights Commission

The Equality and Human Rights Commission (the Commission) is a statutory body, established by the Equality Act 2006, and launched in October 2007. The Commission brings together the work of the three previous equality commissions – respectively the Equal Opportunities Commission, the Commission for Racial Equality, and the Disability Rights Commission – with new responsibilities for promoting and protecting equality in relation to age, sexual orientation and religion and belief as well and human rights.

1.1 Equality and Human Rights Commission human rights responsibilities

Under section 3 of the Equality Act 2006, the Commission is required to encourage and support the development of a society in which:

- a) People's ability to achieve their potential is not limited by prejudice or discrimination.
- b) There is respect for, and protection of, each individual's human rights.
- c) There is respect for the dignity and worth of each individual.
- d) Each individual has an equal opportunity to participate in society.
- e) There is mutual respect between groups based on understanding and valuing of diversity, and on shared respect for equality and human rights.

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In relation to human rights specifically, section 9 of the Act states that:

1. The Commission shall, by exercising the powers conferred by this Part:¹
 - a) Promote understanding of the importance of human rights.
 - b) Encourage good practice in relation to human rights.
 - c) Promote awareness, understanding and protection of human rights.
 - d) Encourage public authorities to comply with section 6 of the Human Rights Act 1998 (c. 42) (compliance with Convention rights).
2. In this Part “human rights” means—
 - a) The Convention rights within the meaning given by section 1 of the Human Rights Act 1998, and
 - b) Other human rights.
3. In determining what action to take in pursuance of this section, the Commission shall have particular regard to the importance of exercising the powers conferred by this Part in relation to the Convention rights.

1.2 The legal powers of the Equality and Human Rights Commission in relation to a statutory legal inquiry

Under section 16 of the Equality Act 2006, the Commission may conduct inquiries into human rights issues. This may involve inquiries into particular issues or sectors where concerns relating to human rights exist.

The powers to conduct inquiries are detailed and contained in Schedule 2 of the Equality Act. These powers include developing terms of reference for the inquiries, considering representations of human rights issues by the public, requiring evidence to be provided, publishing written reports and making recommendations.

This Inquiry represents a crucial part of the Commission’s developing strategy on human rights. The formal legal process of carrying a statutory inquiry ensures that the inquiry is authoritative and evidence-based. It also provided the Commission with the opportunity to engage with a wide range of participants; and to offer an evidence-based output to the public.

¹ The Commission’s remit is restricted in Scotland by section 7 of the Equality Act 2006. The Scottish Human Rights Commission is responsible for human rights issues in relation to matters within the competence of the Scottish Parliament and the Equality and Human Rights Commission for other matters. However, the legislation allows the Scottish Commission to give the Equality and Human Rights Commission consent to deal with those devolved matters as well. Section 18 of the Equality Act 2006 allows the Equality and Human Rights Commission to work with others to promote and protect human rights ‘within the United Kingdom or elsewhere’.

2.0 The Human Rights Inquiry terms of reference

The Inquiry was announced on the 6 March 2008 with proposed terms of reference. The consultation on the terms of reference was open to all, but the views of 222 particular organisations were sought. A total of 118 (53 percent) responses were received, including from public authorities, individuals, unions, voluntary and community groups.

Having considered the responses, it was decided that although it was not necessary to change the terms of reference themselves, the scope of the Inquiry needed to be clarified by adding a definition to explain the expression 'human rights framework'.

The final terms of reference of the Human Rights Inquiry were therefore:

- To assess progress towards the effectiveness and enjoyment of a culture of respect for human rights in Great Britain.²
- To consider how the current human rights framework³ might best be developed and used, to realise the vision of a society built on fairness and respect, confident in all aspects of its diversity.



² Following consultation with the Scottish Human Rights Commission, it was decided to limit the remit of this Inquiry to England and Wales. However, the evidence does include some examples of good practice from both Scotland and Northern Ireland.

³ The 'human rights framework' will be taken to mean the Human Rights Act 1998 and the principles underpinning it. However, the Inquiry did not exclude evidence of where international human rights treaties, which the UK has ratified but not incorporated into United Kingdom law by the Human Rights Act, may have been used by organisations or taken into account, in developing their approach to public service delivery and a culture of respect for human rights.

Methodology

The Commission was committed to conducting an evidence based inquiry. In order to fulfil the objectives and the terms of reference mentioned in the previous chapter, several different evidence gathering strands were initiated. These included three research projects, a call for written evidence, polling and deliberative research, and Inquiry Panel hearings. The most appropriate methods were selected in order to collect the type of evidence that was required, within the limited time frame of the Inquiry. This chapter gives an overview of the methodologies that were used in the different projects. The details can also be found in each individual report.

1.0 The background study

To facilitate the development of the Inquiry, the Commission appointed a research team from the Human Rights & Social Justice Research Institute at London Metropolitan University and Global Partners and Associates, to conduct a scoping study. The purpose of the review was to assess available evidence on the understanding of human rights and the implementation of the Human Rights Act in Britain. The research was undertaken between December 2007 and April 2008.

The project comprised two phases: the first was an analytical review of the available literature relating to the implementation of the Human Rights Act over the past decade. Evidence was drawn from reports and studies produced by the Government, parliament, public authorities, non-governmental organisations, think tanks, commentators and academics.

The second phase consisted of 30 semi-structured interviews with selected individuals followed by four discussion groups held in London, Cardiff and Glasgow, involving about 40 people in total. Participants were selected on the basis of their senior positions in key organisations in England, Wales and Scotland or their expertise on the Human Rights Act.

Following receipt of the report on the scoping study, 'Human rights in Britain since the Human Rights Act 1998: A critical review' ('the Scoping Report') in April 2008, and after consultation, the Commission formally launched the Human Rights Inquiry on 21 April 2008.

The evidence received by the Inquiry is available on the Commission's website [www.equalityhumanrights.com/humanrightsinquiry] together with a fully referenced copy of this report.⁴

The appendices to this report list all the evidence received.

⁴ This only applies to individuals or organisations who have given their consent for their names or evidence to be included in the final report. We have not published responses provided by individuals or transcripts of the Group Evidence sessions, in order to avoid disclosing personal details or breaching any issues of privacy. We have however taken into account their responses and we have occasionally referred to their evidence in an anonymous way in this report or in the Call for Evidence report.

The Commission used the following methods to gather evidence for the Inquiry:

- Three commissioned research projects:
 - The impact of a human rights culture on public sector organisations – lessons from practice.
 - The role and experience of inspectorates, regulators and complaints-handling bodies in promoting human rights standards in public services.
 - Evaluating the impact of selected cases under the Human Rights Act on public services provision.
- A call for evidence from key organisations, service providers, and individuals, comprising:
 - Solicited written submissions.
 - Meetings with individuals and representatives of organisations involved in human rights issues.
- A national survey on public perceptions of human rights and a series of focus groups with members of the public.
- Inquiry Panel hearings to hear oral evidence from key organisations, service providers, and individuals.

In total 2855 people provided evidence to the Inquiry between April and December 2008. This report is based on their evidence.

2.0 The impact of a human rights culture on public sector organisations – lessons from practice (the ‘Report on Public Services’)

The Commission wished to obtain a fuller understanding of the lessons from practice in the journey to embed a human rights culture in the public sector. In May 2008, the Commission appointed the Office for Public Management to undertake a research project to identify and explore the impact of a human rights culture on public sector organisations, and to identify the outcomes of different human rights initiatives. After reviewing existing research literature, the Office for Public Management selected five organisations – the Welsh Assembly Government, National Policing Improvement Agency, London Borough of Southwark, Mersey Care NHS Trust, and Age Concern Cymru and Age Concern England – for the detailed study.

The Office for Public Management carried out a detailed scoping interview and between six and eight further phone or face-to-face interviews in each case study, to capture the views of a cross-section of individuals with different roles and responsibilities in each organisation. Interviewees were asked questions from a common question bank. In addition, some specific questions were asked of each organisation, to explore the particular programmes or initiatives that were the focus of each study. The Office for Public Management also carried out a brief review of relevant documentation, including corporate strategies and plans, policies covering human resources, equality and diversity and human rights (where available), and background information on particular initiatives or activities relevant to each organisation.

The Office for Public Management analysed findings from interviews and the desk research against a number of broad themes. Some of these were identified at the start of the research project; others emerged during the analysis. Common patterns and exceptions were identified and interrogated further, where appropriate involving additional follow-up research with interviewees.⁵

They analysed them to produce the report 'The impact of a human rights culture on public sector organisations – lessons from practice' (this will now be referred to as the 'Report on Public Services'), which was delivered to the Commission in September 2008.

3.0 The role and experience of inspectorates, regulators and complaints-handling bodies in promoting human rights standards in public services (the 'Report on Inspectorates and Regulators')

The statutory public authorities which inspect, regulate and monitor public services have a vital role to play in promoting human rights standards in those services. The Commission appointed the Office for Public Management to research what regulatory bodies and inspectorates are doing to embed human rights practices in their own work, as well as considering their role in promoting good practice within the services that they regulate and inspect. The research also considered the experiences these statutory bodies have had in promoting human rights standards in public services, the challenges that they face and what is required to overcome the challenges.

The research was conducted between June and August 2008. The researchers used a qualitative research method and selected 11 organisations which monitor, regulate and inspect the following public service areas in England and Wales: health; mental health; social care; housing; education; policing and prisons. The sample included public authorities with different functions ranging from setting and monitoring standards, auditing, inspection and complaints-handling duties.

⁵ L. Spencer, J. Ritchie, J. Lewis, L. Dillon and the National Centre for Social Research, *Quality in Qualitative Evaluations: A Framework for Assessing Qualitative Research Evidence*, 2003.

The study comprised 60 interviews conducted face-to-face and on the phone. Interviewees included front-line staff, middle and senior managers and director-level individuals. Structured information was extracted from interviewee responses to the questions set out in the interview guide and analysed across broad themes of significance. Some of these themes were informed by the research hypotheses and key questions, but other themes emerged during the analysis. Common themes and exceptions were identified and interrogated further where it was appropriate. The Office for Public Management's approach towards the handling and analysis of qualitative information is informed by guidelines of good practice published by the Cabinet Office.⁶

The Office for Public Management delivered their report 'The role and experience of inspectorates, regulators and complaints-handling bodies in promoting human rights standards in public services' (this will now be referred to as the 'Report on Inspectorates and Regulators') in October 2008.

4.0 Evaluating the impact of selected cases under the Human Rights Act on public services provision (the 'Report on Legal Cases')

Cases decided both by the European Court of Human Rights applying the European Convention of Human Rights, and by the UK courts since the Human Rights Act came into force in 2000, have established important principles on how UK public authorities should treat individuals. The Commission appointed Global Partners & Associates and the Human Rights & Social Justice Research Institute at London Metropolitan University to select a number of legal cases. This project aimed to provide a snapshot on whether the principles of the legal cases had been used in practice and how these principles had been implemented by the relevant public authorities.

The research project was conducted between May and August 2008. In discussion with the Commission, the researchers developed criteria for selecting cases across a range of public sectors and of relevance to different people in society. Selected cases also included individuals with particular vulnerabilities or who faced particular hurdles in accessing their rights, and cases which were 'strategic', in that, the implications of the case are wide and may require changes to commonplace policy or practice.

⁶ L. Spencer, J. Ritchie, J. Lewis, L. Dillon and the National Centre for Social Research, Quality in Qualitative Evaluations: A Framework for Assessing Qualitative Research Evidence, 2003.

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Ten cases were selected for an in-depth study using qualitative research methods. The cases selected concern protection for victims of crime, treatment of disabled people (some with severe disabilities), deaths in prison custody, and treatment of people seeking asylum. These cases collectively have an impact on public services in the areas of policing, prisons, immigration, housing, health, and social care.

The researchers developed a self-completed computer-based survey to obtain the experiences of senior operational staff within the relevant authorities, and then conducted in-depth interviews. The survey was sent to directors of adults' and children's social services (73 sent, 17 responses), directors of housing (405 sent, 24 responses) and directors of legal services (417 sent, 36 responses). Sixty-five individuals were involved in the in-depth interviews and 12 people were engaged in the two focus groups.

The report, 'Evaluating the impact of selected cases under the Human Rights Act on public services provision', (this will now be referred to as the 'Report on Legal Cases') was provided to the Commission in October 2008.

5.0 Public perceptions of human rights (the 'Public Perceptions Report')

The Commission wished to obtain an evidence base detailing attitudes towards, and perceptions of, human rights and the Human Rights Act among members of the public. We aimed to understand the reasons behind certain attitudes, and establish a baseline of public opinion towards human rights. We therefore commissioned Ipsos MORI to conduct the research using both quantitative and qualitative, that is, deliberative research methods between August and September 2008.

A face-to-face Omnibus Survey was carried out among a representative sample of 1,994 people aged over 16, across different locations in England and Wales, between 14 and 21 August 2008. These locations were chosen to be representative of the whole country by region, class and demographic characteristics. Computer Assisted Personal Interviewing was used to carry out the interviews.

In addition to the survey, Ipsos MORI held two 'Deliberative Workshops' in Cardiff and London, with 46 members of the general public divided into three groups based on their age (younger, middle aged and older). In order to achieve a good mix of people with different characteristics, the researchers used a quota system to recruit people of different age, gender, work status, ethnic background, social class, and care responsibility. In Cardiff, the researchers also ensured that Welsh speakers were selected.

The deliberative research also involved a series of mini-groups and in-depth interviews with minority groups in London, Manchester, Leicester, Oxfordshire and Cardiff, in order to ensure that different groups within the community were represented. These included people from ethnic minorities, lesbian, gay, bisexual and transsexual people, people who are learning disabled and physically disabled, teenagers and one older person and their carer. Twenty-seven people in England and Wales were involved in the mini-group and interview sessions. A discussion guide and case study materials, including different articles in the Human Rights Act and different stories illuminating certain aspects of human rights, were used to facilitate the discussion at the workshops, and during the in-depth interviews.

Ipsos MORI provided the Commission with anonymised copies of the transcripts for the Deliberative Workshops which took place in London and Cardiff. We have used some of these quotes in the final report.

The report, 'Public perceptions of human rights' (this will now be referred to as the 'Public Perceptions Report') was provided to the Commission in September 2008.

6.0 The call for evidence

The Commission issued a public call for evidence between April and July 2008. Evidence was sought from key stakeholders, including public, private and voluntary organisations, and services users and other individuals, about the extent to which the Human Rights Act had been relevant to their lives. The call for evidence forms were issued in different formats in order to seek evidence from a wide range of sources including the Government, government agencies, regulators and inspectorates, service providers, voluntary and community groups, service users, and individuals, other people and organisations with an interest or expertise in human rights. These forms were disseminated by post and email to more than 800 public, private and voluntary sector organisations and were posted on the Commission's website so that individuals could respond. Information in relation to the call for evidence was also sent to Members of Parliament in London and the Welsh Assembly. The Commission received a total of 218 written submissions from individuals, voluntary sector organisations and public authorities.

The Commission also organised and facilitated six 'Group Evidence Sessions' and 20 interviews with a total of 167 service users, user groups, grassroots representatives and local service providers. They and their organisations were concerned with the interests of disabled people, older people, carers (including child carers), young people more generally, women, lesbian, gay, bisexual and transgender people, Gypsies and Travellers, other ethnic minority groups, faith groups, migrants and asylum-seekers. These Group Evidence Sessions and interviews were held in London, East Midlands, Cambridge, Dale Farm, Newcastle, Cardiff, Conwy, Nottingham and Essex. The Group Evidence Sessions in London was held jointly with the British Institute of Human Rights and 54 representatives of grassroots voluntary sector organisations attended.

The Commission has summarised and analysed the evidence received both from the written submissions and the Group Evidence Sessions through a thematic content analysis. The 'Call for Evidence Report' is published on our website.

7.0 Inquiry Panel hearings

An Inquiry Panel was convened between September and December 2008 to take oral evidence from witnesses. It was chaired by Dame Nuala O'Loan, the Chair of the Human Rights Inquiry and one or more of the following Commissioners: Professor Francesca Klug; Sir Bert Massie; Dr Neil Wooding; and Dr Nicola Brewer. The purpose was to explore emerging findings from the evidence-gathering strands in more depth with people who have knowledge, experience and influence.

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The Panel invited several significant groups of witnesses to come to our sessions in Cardiff, North Wales, London and Manchester. These groups included representatives of voluntary and community groups; public service providers; inspectorate or complaints bodies; civil servants in government departments; government ministers and politicians; media groups and commentators; individual service users or claimants in human rights cases; and other legal and human rights organisations. Eighteen panel sessions were convened, involving 154 individuals and representatives of organisations (see Appendix 2).

All the Inquiry Panel hearings were conducted in the same format. The witnesses were asked questions related to the following five themes:

- The impact of the Human Rights Act on their work and lives.
- The barriers to the effective application of human rights law and principles, and how these could be overcome.
- The factors influencing public perception of the Human Rights Act (for example, the impact of negative reporting of human rights by some parts of the media), and why certain perceptions are prevalent.
- Witnesses' opinions on the appropriate roles of the Equality and Human Rights Commission, central government, and other political and professional leaders in relation to human rights.
- The extent to which the Human Rights Act provides a useful framework to balance 'competing rights', and the need to articulate the importance of that framework in public debate.

A wide variety of witnesses, including: government ministers; civil servants; inspectors and ombudsmen; public authorities; equality and human rights groups; stakeholder groups; representative organisations of women; lesbian, gay, transsexual and bisexual people; children and young people; older people; disabled people; ethnic minority groups; different faith and religious groups; professional and voluntary advisers; individual service users; and representatives of the media, came to provide evidence to the Inquiry Panel. They provided us with a range of perspectives on the five key themes. They also gave evidence specific to their areas of experience and expertise.

Most of the witnesses gave their evidence in public, and the transcripts of these Panel sessions are available on our website. A few witnesses asked to give some or all of their evidence in closed session. In these cases we have not published the transcripts of the sessions, or have only published those sections which were given in public.





Pupils at Knights Enham school in Hampshire, recognised as a rights-respecting school by UNICEF

Chapter 1

Human rights and the Human Rights Act

The Human Rights Act 1998 came into force on 2 October 2000. It sets out fundamental human rights to which everyone in the UK is entitled. The Act requires all public authorities, including the Government and the judiciary, to uphold these rights, and provides the context within which the state may legitimately interfere with them.

The rights protected by the Human Rights Act:⁷

- The right to life (Article 2).
 - The right not to be subjected to torture, inhuman or degrading treatment or punishment (Article 3).
 - The right to be free from slavery and forced labour (Article 4).
 - The right to liberty (Article 5).
 - The right to a fair and public trial or hearing (Article 6).
 - The right not to be subject to arbitrary or retrospective criminal penalties (Article 7).
 - The right to respect for private and family life, home and correspondence (Article 8).
 - The right to freedom of thought, conscience and religion (Article 9).
 - The right to freedom of expression and to receive and impart information (Article 10).
 - The right to assembly and to associate with others, including in organisations like trade unions (Article 11).
 - The right to marry and start a family (Article 12).
 - The right not to be discriminated against (Article 14).
 - The right to peaceful enjoyment of possessions and property (Protocol 1 Article 1).
 - The right to education, including respect for the religious and philosophical convictions of parents (Protocol 1 Article 2).
 - The requirement to hold free and fair elections (Protocol 1 Article 3).
 - Abolition of the death penalty (Protocol 6 Article 1).
- There is no entitlement to abuse rights to destroy, or unnecessarily limit the rights of others (Article 17).

⁷ Rights are referred to by reference to the Articles in the European Convention on Human Rights.

Human Rights Inquiry

1.0 Background

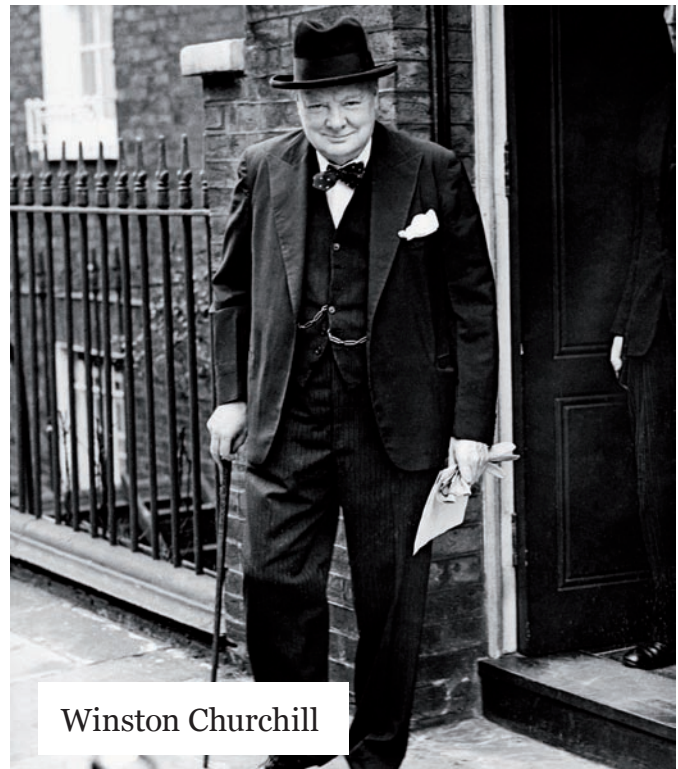
There is a long tradition of defending freedom in this country. The Magna Carta, signed nearly 800 years ago, put limits on the absolute power of the monarch and upholds individual liberty and justice. The first Bill of Rights in history was passed in Britain in 1689, following the civil war, heralding the enduring absolute prohibition on torture, by banning ‘cruel and unusual punishments’.

The Human Rights Act reflects these earlier traditions and other, more recent events. As a response to the genocide and destruction of the Second World War, members of the United Nations came together in 1948 to adopt the Universal Declaration of Human Rights, described by Eleanor Roosevelt,⁸ one of its prime drafters, as “the international Magna Carta” for mankind. The Universal Declaration is not a legally binding treaty but a statement of the values and minimum standards to which every government should adhere, and of the fundamental human rights to which everyone in the world is entitled, because of their common humanity. It is addressed to the people of the world, as well as to governments, and calls on everyone to “act towards one another in a spirit of brotherhood”. It states that individuals have responsibilities to the community in which they live, and that proportionate limitations on rights are necessary to secure the rights of others and “the general welfare in a democratic society”. In addition to the Universal Declaration, the United Kingdom and other members of the Council of Europe also ratified the European Convention on Human Rights in 1950, inspired by Winston Churchill’s vision for a new Europe with a human rights charter at its

heart. Drafted mainly by British Government lawyers, the European Convention on Human Rights gives legal effect to many of the values of the Universal Declaration, making them enforceable through the European Court of Human Rights in Strasbourg.

2.0 Values

Human rights principles are based on the values of freedom, fairness, respect, equality, dignity and autonomy, all of which are recognised in the Universal Declaration of Human Rights. The Human Rights Act encourages public authorities to take steps to protect and respect these fundamental values. It provides an ethical and legal framework for guiding decisions by public authorities, where those decisions impact on fundamental human rights, but it does not necessarily prescribe what the decision should be.



Winston Churchill

⁸ Representing the United States of America.

⁹ Not all the rights in the European Convention on Human Rights are contained in the Human Rights Act and there are some qualifications to rights to freedom of religion and expression not taken from the European Convention on Human Rights.

3.0 Human rights in the Constitution

The rights in the 1998 Human Rights Act are largely those contained in the European Convention on Human Rights.⁹ The Human Rights Act is a ‘higher law’ influencing all other relevant law and policy. It therefore operates in a similar way to the bills of rights of many other democracies, but is shaped to reflect our own unique constitutional arrangements.

The Human Rights Act respects the sovereignty of the United Kingdom Parliament. The courts have no power to strike down Acts of Parliament under the Human Rights Act, but are required to interpret all laws compatibly with it, if possible. Ministers presenting a bill to Parliament must state whether, in their opinion, the proposed legislation complies with the Human Rights Act. If judges in the higher courts¹⁰ rule that an Act is inconsistent with the Human Rights Act, they have the power to declare it incompatible.¹¹ Parliament can then decide what changes, if any, should be made. If any law continues to infringe people’s human rights, individuals can still go to the European Court of Human Rights in Strasbourg to seek remedies against the United Kingdom Government.

The Human Rights Act gives everyone present in the United Kingdom or subject to the jurisdiction of the United Kingdom Government, the entitlement to claim any of the specific rights set out in the statute (see page 23). For the first time in British law, people have a legal basis for ensuring that the public services which they receive comply with the European Convention on Human Rights, together with the underlying values of freedom, fairness, respect, equality, dignity and autonomy.

Individuals can cite the Human Rights Act to negotiate better public services or treatment from those providing the services, and so avoid the need to go to court (see Chapter 3 for examples from the evidence). However if there are breaches of human rights, judges in the courts in the United Kingdom can rule that the public authority in question is in breach of the law.

Examples of what the Human Rights Act does in practice:

- Requires that public officials consider people’s individual rights together with other financial, administrative and professional considerations.
- Provides a framework for deciding what the balance should be between the state’s duty to protect its citizens and individuals’ right to freedom.
- Seeks a fair result where people’s rights conflict.
- Provides a framework for balancing individuals’ rights with their responsibilities to others and the wider community.
- Balances the public’s right to information against individuals’ right to privacy and the state’s need to protect national security and the public interest.
- Can provide protection for fundamental rights and freedoms where no other laws apply.
- Provides a framework to articulate and challenge unfair treatment.

¹⁰ High Court, Court of Appeal or House of Lords.

¹¹ Otherwise known as a Declaration of Incompatibility.

Everyday situations in which the Human Rights Act might apply:

- Not being able to eat properly while in hospital or a care home (Articles 2 and 8).
- Provision of facilities or food which do not meet religious or cultural needs (Article 9).
- Abuse or neglect of older, those who are learning disabled or other vulnerable people (Articles 2 and 3).
- Lack of respect for privacy on a hospital ward (Article 8).
- Disproportionate use of stop and search powers against young black males and other ethnic minorities (Article 14).
- Not respecting gay and lesbian partners as next of kin and inheritors of tenancies (Article 8 and 14).
- Excessive surveillance of law-abiding people (Article 8).
- Loss of personal data by public officials (Article 8).
- Curfews preventing law-abiding young people from going out at night (Article 8).
- Failures by the authorities to protect people from being stalked and harassed (Articles 2, 3 and 8).
- Not being sufficiently protected from domestic violence (Articles 2, 3 and 8).
- Not being allocated suitable housing for special needs that have been identified (Article 8).
- Bullying of all kinds in schools (Articles 3 and 8).
- Disregard of gay and lesbian couples in adoption policies (Article 14).
- Unexplained death in prisons, police stations and psychiatric hospitals (Article 2).
- Wearing religious symbols or dress at work or in schools (Article 9 and Protocol 1, Article 2).
- Inadequate provision for children with special educational needs (Protocol 1, Article 2 and Article 14).
- Refusal to permit the staging or broadcasting of artistic works (Article 10).
- Refusal to allow people to attend a demonstration (Articles 10 and 11).

Who has responsibilities under the Human Rights Act?

- The Government and government agencies such as regulators and inspection bodies.
- Local authorities, social services, housing departments, public hospitals and health clinics, public schools and universities, police, prisons and probation services, immigration services.
- Many private companies and charities when providing public functions on behalf of the state such as prisons, hospitals and care homes.

Those exercising the right to free speech must act responsibly in the way in which they exercise this right.¹²

No-one is entitled to use the rights in the Human Rights Act to infringe the rights of others; for example by inciting racial hatred.¹³

Every individual who exercises any right which may impact on others has implicit responsibilities in the way they exercise their rights because their rights may impact on the rights of others. (Articles 10 and 11).

4.0 Limitations on individuals' rights

Properly applied, the Human Rights Act should not encourage a culture of individual rights at the expense of responsibilities. On the contrary, the Human Rights Act provides a template for a properly functioning society, by providing a framework within which many rights can legitimately be limited. It can require, in many instances, the balancing or restricting of individual rights.

Any restriction on human rights must be lawful, necessary and proportionate. In protecting some people's rights, the fundamental human rights of others must not be obliterated. For example, the Human Rights Act does not permit a child's right to life to be jeopardised, in order to protect a parent's right to family life; nor does it prioritise the parole of a prisoner convicted of a violent crime over the safety of members of the public. People convicted of a crime can legitimately lose those human rights which are

necessary to protect others, but do not forfeit all their rights; for example, if they are imprisoned, they lose the right to liberty but retain the right to correspond in confidence with their lawyers.

The rights in the Human Rights Act are not all of equal status. There are three types of rights: absolute, qualified and limited.

Absolute rights

These are rights which governments must uphold in all circumstances. They include the prohibition on slavery and torture and on punishment outside the law.

Qualified rights

These are rights which may be balanced against other rights and the wider public interest such as national security, public health or safety, the rights or freedoms of others and the prevention of crime. They include freedom of expression, assembly and association, and rights to property and to a private and family life.

¹² Article 10(2). ¹³ Article 17.

Limited rights

These are rights which have limitations built into them such as the right to liberty which can be restricted by imprisonment to protect the rights of others, or forced labour which can be required in jail.

5.0 Positive obligations on public services

The Human Rights Act not only protects people from abuse by public authorities but also imposes some 'positive obligations' on public bodies to take proactive steps to secure people's human rights:¹⁴

“Where the Convention rights incorporate the impositions of a positive obligation on the UK, that positive obligation is also placed upon public authorities that are subject to the Act.”¹⁵

Public authorities in the United Kingdom are required not to act incompatibly with the rights in the Human Rights Act.¹⁶ The courts have determined that there may be occasions where public bodies must take active steps to prevent infringements of people's human rights (even where they may be caused by private persons). Public authorities may need to ensure that proper systems are in place and that operational measures are taken in certain circumstances to protect people's human rights.

Examples of positive obligations on public authorities:

- The need for an effective police force and criminal justice system to protect people from violence from others and to protect life when there is a known or foreseeable real and imminent threat to the life of an individual.
- The need for an independent investigation following a death in custody or allegations of violent abuse by police officers or others, and the duty to give reasons to a person detained by a public authority.
- To have a fair and independent court system (and to provide legal aid if the right to a fair trial requires it).
- To ensure that the law protects people from others who want to unnecessarily interfere with their private and family life.
- Protecting specific groups who would otherwise not be able to exercise their fundamental human rights, for example, through adjustments to accommodation or social facilities.
- To protect freedom of expression (for instance, when the premises of a newspaper are threatened with violence).

¹⁴ European Convention on Human Rights, Article 1, puts a duty on governments to secure all the rights and freedoms in the European Convention on Human Rights to everyone within their jurisdiction.

¹⁵ Baroness Andrews, OBE – Parliamentary under Secretary of State – Communities and Local Government – Letter sent to Andrew Dismore MP, Chair of the Joint Committee of Human Rights, on 23 March 2009.

¹⁶ Section 6(1).

- Where conflicting groups wish to exercise their right to peaceful protest, to ensure both can exercise that right where possible.
- The right to an effective remedy if other rights have been violated.
- The right to vote, to free elections, to a secret ballot and to be a candidate.

6.0 A human rights approach in public services

The Human Rights Act can provide a framework for public bodies, such as local authorities, health services, care homes, police forces, prisons and schools, to plan and deliver public services.

Where this framework is used, it is underpinned by the values of human rights and the legal responsibilities of the Human Rights Act. It also involves an institutional commitment to respect human rights in practice.

A human rights approach should:

- Recognise that everyone has the right to be treated with respect and to receive fair and dignified treatment.
- Provide a framework for balancing competing rights and duties and so encourage social responsibility.
- Facilitate early resolution of disputes.
- Help improve public services for everyone who uses them.

7.0 Conclusion

Human rights exist to protect everyone from abuse of power, disrespect or neglect, particularly where there are no other legal safeguards. The principles in the Human Rights Act reflect the belief that everyone is entitled to certain minimum necessary fundamental rights and freedoms to enable them to flourish. The Act underpins basic ethical norms and provides a framework for balancing the rights of an individual against those of the wider community. These values are widely viewed as the hallmarks of a fair and democratic society, and are embraced in the constitutions or bills of rights in democracies throughout the world.



Paul and Dorothy Mesner, who could go on holiday thanks to Torfaen health board's rights-based approach

Chapter 2

Public perceptions of human rights

Most of the evidence received by the Inquiry came in response to the Commission's call for evidence and invitations to give oral evidence or attend meetings. Such evidence tended to be provided by people who are professionally concerned with, or have an interest in, human rights and the Human Rights Act. In order to obtain evidence from people who may not have any particular connection with human rights, the Inquiry commissioned polling and Deliberative Workshops with the general public. This chapter considers some of the opinions expressed by members of the public to the Inquiry about human rights in principle. These opinions and perceptions offer a context for considering the evidence received by the Inquiry on the impact of the Human Rights Act on people's lives and the public services they receive (see Chapter 3 for more information).

Evidence from polling and focus groups on more detailed questions such as knowledge of the Human Rights Act and its portrayal in the media, are considered later in this report. (see Chapter 4)

1.0 Levels of support for human rights

Results from the polling revealed considerable support among members of the public for a law that protects human rights and for human rights standards in public services. Overall, human rights are seen to be important in reaching the goal of a fairer society:

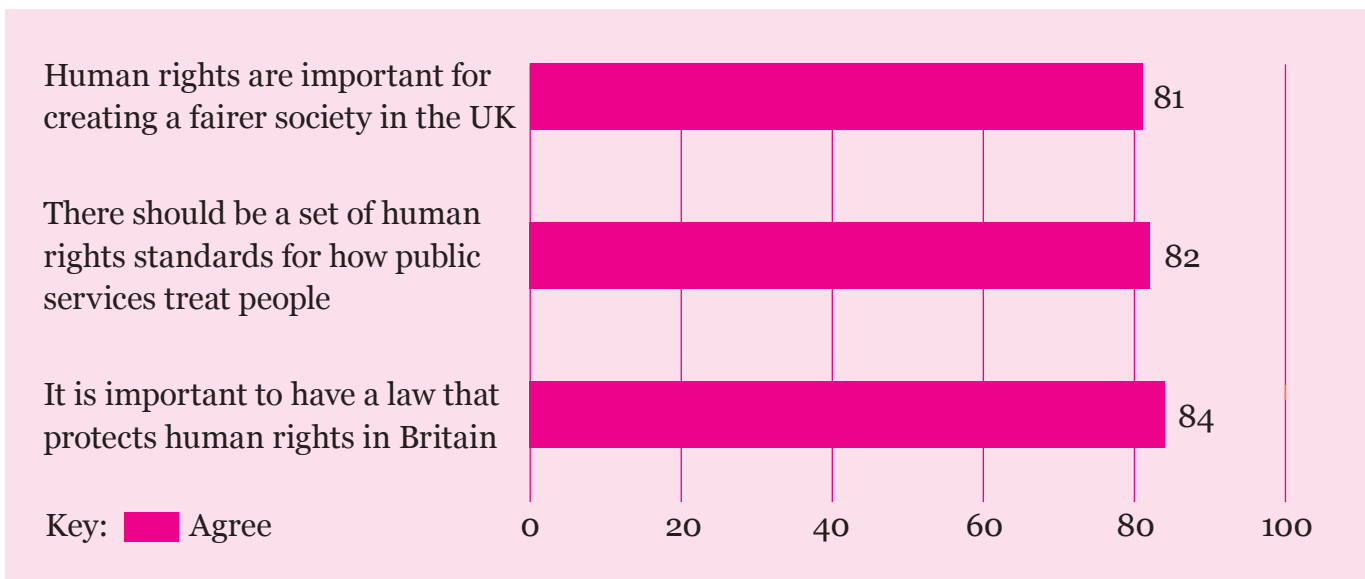
- 84 percent of people polled agreed that it is 'important to have a law that protects human rights in Britain'.¹⁷
- 82 percent of respondents agreed that 'there should be a set of human rights standards for how public services treat people'.¹⁸
- 81 percent of people polled agreed with the statement: 'human rights are important for creating a fairer society in the UK'.¹⁹

¹⁷ Public Perceptions Report, p.22. A Government poll published in October 2007 revealed an identical percentage of people agreeing that it is "important to have a law that protects human rights in Britain" – 'Human Rights Insight Project', Ministry of Justice, October 2007, p.27.

¹⁸ Public Perceptions Report, p.19.

¹⁹ Public Perceptions Report, p.20.

Agreement with human rights statements (percent)



2.0 Diversity of views

People attending the focus groups were invited to give their opinions on human rights in principle. Mixed views were expressed. Some people were opposed to human rights:

“Oh, human rights is a load of rubbish.”

Male, older group, Cardiff²⁰

“Certain countries have nothing like this, I think we probably have too many rights.”

Male, ethnic minority group, London²¹

People who have need of human rights protection felt quite differently. A man who was physically disabled described what life would be like for people in his situation without the protection of human rights or disability legislation:

“Well, without human rights you’ve got nothing. You haven’t got choice, you haven’t got freedom, you can’t do what you want to do. You can’t go to the shop or whatever when you want. If your human rights are taken from you, you’re stuck at the mercy of someone else.”

Male, physically disabled, Cardiff²²

²⁰ Public Perceptions Report, p.45.

²¹ Public Perceptions Report, p.48.

²² Public Perceptions Report, p.45.

A number of people saw human rights in fundamental and essential terms:

“[The Human Rights Act] is just a group of laws that basically determines the rights that you have as a human being.”

Female, younger people group, Cardiff²³

“Human rights ... aren’t earned ... it isn’t like you can lose your human rights.”

Male, younger people group, London²⁴

“Like the same way you breathe without thinking about it. As soon as you’re not able to do it then you suddenly realise, I should be able to do this and the same way with rights.”

Female, younger people group, Cardiff²⁵

Several participants in the focus groups referred to the need for legislation that guarantees fundamental rights and acts as a brake on State power:

“... wherever you get big government human rights tend to be infringed.”

Male, middle-aged group, Cardiff²⁶

“The point about having rights is that if the government changes ... these rights are fixed.”

Female, older group, London²⁷

“... I think the state in this country is quite good, but I think you shouldn’t give them the benefit of the doubt.”

Male, younger people group, London²⁸

3.0 Limitations on human rights

People attending focus groups recognised that there are valid limitations to the exercise of rights:

“You’ve got a right to do what you feel like as long as it’s not hurting someone else’s feelings.”

Male, younger people group, Cardiff²⁹

“It should be my job ... to ensure that I don’t do things that are infringing on other people’s rights.”

Female, younger people group, Cardiff³⁰

Participants suggested that responsibilities are also important:

“In order for someone to respect you, you have to respect them.”

Female, younger people group, London³¹

“We all want all these rights but what is [our] own responsibility to make it happen?”

Female, older group, London³²

²³ Summarised in the Public Perceptions Report / Deliberative Workshop transcripts.

²⁴ Summarised in the Public Perceptions Report / Deliberative Workshop transcripts.

²⁵ Summarised in the Public Perceptions Report / Deliberative Workshop transcripts.

²⁶ Summarised in the Public Perceptions Report / Deliberative Workshop transcripts.

²⁷ Summarised in the Public Perceptions Report / Deliberative Workshop transcripts.

²⁸ Summarised in the Public Perceptions Report / Deliberative Workshop transcripts.

²⁹ Summarised in the Public Perceptions Report / Deliberative Workshop transcripts.

³⁰ Public Perceptions Report, p.30.

³¹ Summarised in the Public Perceptions Report / Deliberative Workshop transcripts.

³² Public Perceptions Report p.30.

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“... I said this right from the beginning ... that rights come with responsibilities and it seems to be very one-dimensional, this conversation, where [do] responsibilities [come] in this.”

Male, middle-aged group, London³³

Despite the overwhelming level of support for human rights legislation, respondents to the Inquiry’s poll were evenly split on the question whether the ‘only people to benefit from human rights in the UK are criminals and terrorists’ (42 percent agreed, 40 percent disagreed).³⁴

Mixed views were expressed at the focus groups about people’s entitlement to their rights when they had done something wrong. Some people thought that rights should be conditional on behaviour:

“Why should someone have rights if they decide to take away the rights of others?”

Male, ethnic minority group, London³⁵

“They have more rights in prison than someone in a nursing home, or sick in hospital. I think prisoners have more rights, they have more money spent on them than deserving old people.”

Female, middle-aged group, London³⁶

“It seems like these people get more rights than the law abiding people. The criminals that break in they have more rights than what we do.”

Female, younger people group, London³⁷

The alternative view was that everyone should be entitled to their human rights even if they had done something wrong:

“But even though they’re criminals and we look at them, oh they did this and they hurt kids, even as bad as that is, they’re still entitled to those rights.”

Female, younger people group, Cardiff³⁸

Other people felt that the essence of human rights is that everyone should be treated fairly, regardless of whether they had done something wrong and regardless of people’s differences from each other. People are entitled to human rights because of their humanity:

“Just treat everybody fairly regardless, full stop. Doesn’t matter if you’re a gay man, paedophile, criminal. You should be treated fairly. It doesn’t matter what identity you subscribe to, you should be treated fairly. Even some of our dodgiest characters, even in prison, all should be treated fairly.”

Male, lesbian, gay, bisexual and transgender group, Manchester³⁹

³³ Summarised in the Public Perceptions Report / Deliberative Workshop transcripts.

³⁴ Public Perceptions Report p.16.

³⁵ Public Perceptions Report p.30.

³⁶ Public Perceptions Report p.46.

³⁷ Public Perceptions Report p.46.

³⁸ Public Perceptions Report p.35.

³⁹ Public Perceptions Report p.36.

“Because you’re born a person and on top of that you might be black, or you might be gay, but at the end of the day you’re a person.”

Male, younger people group, London⁴⁰

As has been demonstrated by the quotations reproduced in this chapter, many opinions were expressed about the nature, purpose and perceptions of fundamental human rights. The Commission’s Inquiry, however, looked beyond these opinions for concrete evidence of the impact of human rights principles on people’s lives and on organisations providing public services which have responsibilities under the Human Rights Act. There is an obvious and practical imperative for investigating what difference human rights make, as expressed by someone attending a focus group in Cardiff:

“... even though we have all these human rights ... how is it improving living in Britain?”

Female, middle-aged group, Cardiff⁴¹

⁴⁰ Public Perceptions Report p.36.

⁴¹ Summarised in the Public Perceptions Report / Deliberative Workshop transcripts.

Fairness, Respect, Equality, Dignity
Family Rooms - Right to Home +
Right to be involved as equal
Right to respect



Ms Catherine Mills, service user, and Ms Lindsey Dyer, Director of Service Users and Carers, Mersey Care NHS Trust

Chapter 3

The impact of human rights on public services

1.0 Introduction

The Inquiry sought evidence from all viewpoints on the impact of the Human Rights Act on public services. Witnesses informed the Inquiry that the application of human rights principles has brought positive changes to people's lives, whether by individuals asserting their rights themselves, or by charities and voluntary groups advocating on their behalf. Other witnesses told the Inquiry that the adoption of a human rights approach has encouraged broader systemic changes within public services.⁴² The evidence provided in this chapter is illustrative of the effects of applying human rights law and values to the design or delivery of public services, and to upholding people's rights.

2.0 Providers of public services

Evidence was received about the differences human rights have made to public services from the perspective of the public authorities providing them. Given the importance attributed by members of the public to the need for human rights standards in public services, (see Chapter 2) this section describes the evidence received about how such standards have been applied in practice.

Following their research into five selected organisations, the Office for Public Management concluded that “engagement with human rights has clear benefits” for public services.⁴³ Although benefits were not currently being recorded in very systematic ways, they found a growing body of activity which is perceived to be benefiting users, carers and communities, staff, and public sector organisations. Key benefits include:

- Establishing some non-negotiable service standards that apply to everyone.
- Providing a framework for making better decisions.
- Helping to re-energise staff and re-connect them with core public service values.

⁴² In particular, health and social care services, education, other local authority services and policing.

⁴³ Report on Public Services, p.8.

- Managing organisational risk.
- Enhancing organisational reputation and distinctiveness.
- Strengthening advocacy.⁴⁴

A witness giving oral evidence provided a personal impression of the connection between human rights principles and ‘core public service values’:

“What is valuable [about] the codification of human rights as binding standards is they actually remind those public institutions what they are there for in the first place. They bring those abstracts for a free society and they make them real, which by and large having worked in central government myself as a government lawyer, you are conscious that really that's not what they focus on day-to-day in their ordinary work and they should.”

Dr Eric Metcalfe, Director of Human Rights Policy, Justice – transcript 15.09.08

3.0 Health and social care services

3.1 Overall impact of the human rights framework

Human rights principles are now expressed to be fundamental to the National Health Service (NHS) in England. The new National Health Service Constitution, published on 21 January 2009, makes both the obligations of the National Health Service and the rights of healthcare users clear:

“The NHS provides a comprehensive service, available to all irrespective of gender, race, disability, age, sexual orientation, religion or belief. It has a duty to each and every individual that it serves and must respect their human rights.⁴⁵

[Users of healthcare services] have the right to be treated with dignity and respect, in accordance with [their] human rights.”⁴⁶

Evidence was given to the Inquiry by both the Minister and the Permanent Secretary at the Department of Health on the impact of the Human Rights Act on healthcare services in England:

“It [human rights] helps solve complex issues, sometimes difficult issues, it helps with better decision making, it helps leaders in organisations, particularly in health and social care, to drive forward change and it certainly helps practitioners think about, on a day to day basis, how they go about doing things.”

Mr Phil Hope MP, Minister of State for Care Services, Department of Health – transcript 19.11.08

⁴⁴ Report on Public Services, p.8.

⁴⁵ National Health Service Constitution, Article 1.

⁴⁶ Ibid, p.6.

“The [Human Rights] Act has provided a helpful underpinning [and] some important safeguards.”

Mr Hugh Taylor, Permanent Secretary,
Department of Health – transcript 30.10.08

The **Human Rights in Healthcare** initiative involves five primary care and National Health Service trusts in England in a pilot scheme to adopt a human rights approach, sponsored by the Department of Health with the participation of the British Institute of Human Rights. The Permanent Secretary described its effects:⁴⁷

“What [the pilot project] does is help to focus attention of the organisation on things which are absolutely crucial to quality services which is about fair, effective and personal services to people. It goes right to the core values and service ambitions of both health and social care ... What it has proved is an energising way of using the human rights ambitions and features to get an organisation thinking about how it does its job better, which seems to me to be absolutely what it should be about.”

Mr Hugh Taylor, Permanent Secretary,
Department of Health – transcript 30.10.08

During the period of the Inquiry, the Department of Health published an independent evaluation of the Human Rights in Healthcare initiative, conducted by Ipsos MORI, which drew the following conclusion:

“Our evidence to date does demonstrate that a human rights based approach to health and social care can, and will increasingly in the future, have a tangible impact on the treatment and care of service users.”

(Department of Health Evaluation, 2008)⁴⁸

The Welsh Assembly Government

provided the Inquiry with extensive information on the application of human rights principles within health services in Wales. The National Health Service Centre for Equality and Human Rights, funded by the Welsh Assembly Government Department for Health and Social Services, has been established to develop the capacity and capability of health organisations to promote equality and human rights. The Inquiry was informed that the National Health Service Centre for Equality and Human Rights seeks to integrate equality and human rights and to develop awareness and understanding that the right to fair and equal treatment is a fundamental human right across health services in Wales.⁴⁹ The Equality and Human Rights Champion told the Inquiry that the restructuring of the National Health Service in Wales provided an opportunity to take a human rights approach across a range of health services in Wales.⁵⁰

⁴⁷ Surrey and Borders Partnership Trust, Southwark Health and Social Care, Heart of Birmingham Teaching PCT, Mersey Care NHS Trust, Tees, Esk and Wear Valleys NHS Trust. See ‘Human Rights in Healthcare – A Framework for Local Action’, Department of Health / British Institute of Human Rights, March 2007.

⁴⁸ ‘Human Rights in Healthcare Evaluation’, Department of Health, 31 July 2008, p.1.

⁴⁹ National Health Service Centre for Equality and Human Rights Wales, Call for Evidence response.

⁵⁰ Ms Denise Puckett, Equality Project Manager, Department of Health, Welsh Assembly Government – transcript 07.10.08.

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The Welsh Assembly Government provided the Inquiry with practical examples of how a human rights approach was applied in health services. For example, in making difficult decisions about funding treatments, local health boards in Wales now consider the human rights of the patients as well as their basic clinical needs. They believe this makes their decisions fairer (see the following case study).

Considering human rights as well as clinical needs in Wales

Torfaen Local Health Board did not initially organise care for a patient with long-term complex needs so he could have a holiday outside the UK, because of associated risks to the patient's health. After doctors confirmed that it was clinically feasible to meet the patient's needs abroad, the Health Board considered the patient's rights to respect for private life, liberty and freedom from discrimination and decided to approve the care package.

Welsh Assembly Government⁵¹

The President of the Association of Directors of Social Services in Wales told the Inquiry he believed the Human Rights Act had changed the culture of social services and that this benefited the people to whom the services are being provided. He said that formerly, social workers were trained to 'think that they know best'. Now, the Act has made them listen more to service users which, in his opinion, is beneficial because in fact people are often good at assessing their own needs.⁵²

Health trusts gave evidence of the overall impact of the Human Rights Act on their work:

"In mental health, we are working with people who have more than one disadvantage ... health issues, how society views them and how the law applies to them. We deal with the only part of the population outside the judicial system that can be detained against their will. This is why human rights matter ... human rights give us a consciousness of the seriousness of what we do."

Mersey Care NHS Trust⁵³

"By raising awareness of the [Human Rights] Act through staff induction and training programmes, the Trust feels that as an employer and provider of patient care we have enhanced the way we treat and respect people."

Newcastle upon Tyne Hospitals NHS Foundation Trust⁵⁴

⁵¹ Welsh Assembly Government, Call for Evidence response.

⁵² Mr Stewart Greenwell, President, Association of Directors of Social Services, Wales – transcript 07.10.08.

⁵³ Report on Public Services, p.34.

⁵⁴ Call for Evidence Report, p.8.

Individual professionals working in healthcare services in Wales and England told the Inquiry about their experiences in applying the Human Rights Act:

“The Human Rights Act has vastly improved the lives of the citizens in this country. It has given us a structure of rights and abilities to challenge authority that have improved people's situations. It has made sure that we are now as institutions actively thinking about what we do to people much more than we did before and that is really, really positive.”

Dr Peter Lepping, Consultant Psychiatrist,
North Wales NHS Trust⁵⁵

“Generally we find it [the Human Rights Act] very helpful. We find it a useful way of thinking and we find it a useful way of saying: we're a hospital, we're here to treat patients. Our results are extraordinarily good in terms of what people do before they come to Broadmoor and what they do after they leave. And we are going to go on doing it.”

Dr. Kevin Murray, Associate Medical Director,
Broadmoor Hospital – transcript 23.10.08

The Parliamentary **Joint Committee on Human Rights** has conducted an inquiry into the treatment of older people in healthcare.⁵⁶ The Chairman told this Inquiry that his Committee has received evidence of cost savings in applying human rights principles in health services:

“All the evidence we have collected on these issues is that, generally speaking, it costs very little ... to do things in the correct context of human rights and in fact some of the doctors said it actually works out cheaper, because if you treat people properly in the first place they are less likely to complain, you are more likely to get your systems right, and you are more likely to get the patients better quicker.”

Mr Andrew Dismore MP, Chairman, Joint Committee on Human Rights – transcript 24.10.08

3.2 Examples of improved outcomes

The Inquiry received evidence that providers of health and social care have been able to improve services for users after adopting a human rights approach.

The Minister for Care Services gave the Inquiry examples of what he described as:

“... exactly the kind of day to day changes people can make to their practice, which improves the quality of care.”

⁵⁵ Additional written evidence provided after the Inquiry Panel session with the North Wales NHS Trust on 19.09.2008 – unpublished.

⁵⁶ ‘The Human Rights of Older People in Healthcare’, Joint Committee on Human Rights, 18th report, session 06-07, HL Paper 156-II HC 378-II.

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In accident and emergency:

“What happens in A and E, the curtains are pulled open and some poor person is lying there in whatever state they've come in ... and the curtains are just flung open for the whole world to see ... The matron there said, "Have you thought about human rights and dignity?" ... [Now] they've put overlapping curtains in ... so when the doctor goes in to see the patient they have to wind their way around, so [the patient has] ... privacy.”

In a care home:

“[There are] elderly residents [in a care home] who are vulnerable ... and, frankly a risk to themselves and could be a risk to each other ... The care home decided they were going to lock all the doors, but of course not all of them are vulnerable and at that level of risk. Actually you were infringing people's human rights, locking them up when they should not be locked up. That was a good example of a [change in] policy: [the care home said] we will lock the doors of people who are vulnerable and unsafe and at risk but not other [residents] ... It is so simple, it is not like you spend a huge amount of money to give somebody their human rights.”

Mr Phil Hope MP, Minister of State for Care Services, Department of Health – transcript 19.11.08

Considering people's individual needs:

“A mental health team in a local authority in North England has developed a communication strategy to deal with patients in crisis. Most of their crisis intervention is telephone based, and they covered different languages but they never thought about deaf people, especially sign language users, who cannot use a telephone, until a deaf person raised this with them. They are now working with a voluntary organisation so that they can help deaf people in times of mental health crisis.”

The Royal National Institute for Deaf People⁵⁷

3.3 Changes to policy and practice

Health trusts provided information to the Inquiry on how they have adopted a human rights approach throughout their organisation and across their services:

“The Trust has adopted a human rights based approach in practice by incorporating dignity, privacy, equality, fairness and autonomy in policy and planning, empowering staff and patients with knowledge, skills, leadership and a commitment to achieving human rights based approaches, ensuring accountability throughout the organisation, and giving the highest priority to preventing discrimination of vulnerable patients.”

Conwy and Denbighshire NHS Trust⁵⁸

⁵⁷ The Royal National Institute for Deaf People, Call for Evidence response.

⁵⁸ Call for Evidence Report, p.7.

“The obligations [under the Human Rights Act] permeate a wide range of the Trust’s activities, from making treatment decisions and providing care to individuals, through designing care pathways and premises, to confidential record keeping, the management of scarce public resources and as an employer.”

Medway NHS Foundation Trust⁵⁹

Incorporating a human rights approach into healthcare policies:

“[...] The PCT’s Chief Nurse has written a Dignity in Care policy. It is underpinned by recognising that being treated with dignity and respect is every patient’s right. It goes on to say that patients have the right to:

- Be treated as individuals.
- Be listened to and have their views taken into account.
- Be treated courteously at all times.
- To know who is looking after them.
- Be cared for in a single sex environment.

This policy will be ratified by our Trust Board in the autumn of 2008.”⁶⁰

Isle of Wight NHS Primary Care Trust⁶¹

In its 2003 report, the Audit Commission recommended that public bodies integrate their implementation of **human rights and equality responsibilities**.⁶² The National Health Service Centre for Equality and Human Rights in Wales told the Inquiry it is supporting Welsh National Health Service Trusts and Local Health Boards in doing this.⁶³

The President of the Association of Directors of Social Services in Wales told the Inquiry he believed the Human Rights Act strengthens efforts to promote equality in social services:

“I think it [the Human Rights Act] has provided a much stronger foundation for both promoting equality and tackling inequality.”

Mr Stewart Greenwell, President, Association of Directors of Social Services, Wales – transcript 07.10.08

A health trust provided a practical example of promoting equality within a human rights framework:

“Examples of promoting equality include ensuring patients are not denied essential treatment based on their age.”

Conwy and Denbighshire NHS Trust⁶⁴

⁵⁹ Call for Evidence Report, p.35.

⁶⁰ The ‘privacy and dignity’ policy has been ratified by the Trust Board in January 2009.

⁶¹ Isle of Wight NHS Primary Care Trust, Call for Evidence response.

⁶² ‘Human rights: improving service delivery’, Audit Commission, 2003.

⁶³ Ms Tracy Good, Senior Equality Manager, NHS Centre for Equality and Human Rights – transcript 08.10.08.

⁶⁴ Call for Evidence Report, p.10.

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The Inquiry was advised that some health authorities recognise the importance of involving all relevant professionals in implementing a human rights approach and that human rights considerations should be included when contracting out services:

“Tees, Esk and Wear Valley NHS Trust have worked on an excellent pilot human rights-based approach to healthcare. This is not yet embedded in all its services, but does illustrate potential ways of developing human rights in health services. It represents good practice in partnership working with its constituency and medical professionals to develop the approach.”

Vision Sense⁶⁵

“Neath Port Talbot Local Health Board and Bridgend Local Health Board are in the process of strengthening their procurement processes to ensure that contracts which have equality and human rights as core elements clearly state our expectations from service providers. Robust monitoring would then need to be implemented to ensure compliance.”

Welsh Assembly Government⁶⁶

The Inquiry was told that providers of mental health services are using the human rights framework when making decisions on restricting the rights of mental health patients:

“Providers [of services have told commissioners] that the framework of the Human Rights Act in terms of balancing what is necessary and what is proportionate has been helpful in understanding that although somebody is detained under the Mental Health Act and therefore they are deprived of their liberty ... that does not mean ... they don't still have very clear rights to liberty in certain other ways and that the restrictions on them need to be proportionate.”

Ms Gemma Pearce, Chief Executive, Mental Health Act Commission – transcript 25.09.08

Evidence was received that more than the concept of respect was needed to secure the rights of transgendered people:

“The Royal College of Nursing through Mental Health Research projects are looking at their practice and treatment of trans people using human rights principles based on respect and dignity. Unfortunately the concept of respect does not bring home and ensure the enforcement of human rights as it manifests itself in policy and service provision. It is just a small part of the total package that is needed to bring about both attitudinal and social change within a public body, essential before service provision and practice for trans people is improved.”

Press for Change, Call for Evidence response⁶⁷

⁶⁵ Vision Sense is an independent body providing training, policy, service design, involvement and social justice work with disabled and deaf adults in the North East of England. Call for Evidence Report, p.13.

⁶⁶ Welsh Assembly Government, Call for Evidence response.

⁶⁷ Press for Change, Call for Evidence response.

Other examples of the impact of the human rights framework on policy and practice in health and social care services provided to the Inquiry follow.

The impact of a human rights framework on policy and practice in health and social care

In Wales:

- Healthcare Standards for Wales have ensured that the local health board addresses human rights issues as part of a continuous improvement process.
Flintshire Local Health Board⁶⁸
- In planning and delivering mental health services, the local health board considers, and where appropriate undertakes assessments of, the need to protect the right to liberty (Article 5) of mental health patients in residential settings.
Denbighshire Local Health Board⁶⁹

In England:

- The right to family life (Article 8) has been used to keep families of foreign nationals together, rather than placing the children in care.
Hull City Council⁷⁰

- Human rights principles are included in professional practice and in commissioning services, for example, in the monitoring of residential and nursing care providers to cover dignity and privacy issues.

London Borough of Waltham Forest⁷¹

- In considering the needs of people with learning disabilities and mental health issues and in providing increased participation by service users, the organisation feels it treats its customers with dignity and respect and tailors its services to suit the needs of different individuals.

Hampshire Primary Care Trust⁷²

- The council's social services department uses a human rights approach to help improve the quality of the services they provide.

London Legal Services Department and Social Inclusion Division, Borough of Southwark⁷³

⁶⁸ Flintshire Local Health Board, Call for Evidence response.

⁶⁹ Denbighshire Local Health Board, Call for Evidence response.

⁷⁰ Call for Evidence Report, p.7.

⁷¹ London Borough Waltham Forest, Call for Evidence response.

⁷² Hampshire Primary Care Trust, Call for Evidence response.

⁷³ Call for Evidence Report, p.10.

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The Inquiry's case law researchers established that an important court decision on how severely disabled people should be lifted and handled had resulted in new guidance being issued and changes being made in practice.⁷⁴ The guidance is no longer 'prescriptive' about when hoists should be used but instead seeks to 'equip nurses to make balanced judgements' about how best to handle people in order to maintain respect for their dignity at the same time as making sure nurses do not risk injury to themselves.⁷⁵

3.4 Effects on staff morale and efficiency

Health and social care organisations reported that a human rights approach can help to re-energise staff and re-connect them with core public service values. This in turn can increase morale and efficiency:

"We've faced some opposition from staff ... saying we're giving service users too much emphasis and not enough to staff. It's about helping them understand that it's not a zero sum game. It's not that they lose power ... they actually get more power, through increased respect.

[The human rights approach] serves as a constant reminder that when we strip everything else away; every vested interest, all politics and tribalism that this is why the organisation exists."⁷⁶

Public sector staff reported to the Inquiry's researchers that human rights training had helped build their confidence:

"It's good to have a better basis on which to argue issues/cases relating to client care, and contribute to decision making in the service."⁷⁷

However, as another respondent stated, it was first necessary to make sure all members of staff understood what human rights were:

"[It's all about] making people realise human rights are for everyone, not just refugees and prisoners."⁷⁸

During their inquiry into the treatment of older people in healthcare the Joint Committee on Human Rights received evidence from nurses:

"Nurses were saying to us, this actually helps us take on management. If they are asking us to do things or work in a way which we don't think is human rights compliant with our obligations professionally to our patients, we can say to our management: our patients have the right not to be treated this way or to be treated this way. It strengthens their arm."

Mr Andrew Dismore MP, Chairman, Joint Committee on Human Rights – transcript 24.10.08

⁷⁴ R v East Sussex County Council ex parte A, B, X and Y [2003] EWHC 167, Report on Legal Cases, pp.79,80.

⁷⁵ Report on Legal Cases, pp.79, 80.

⁷⁶ Report on Public Services, p.48, 70.

⁷⁷ Report on Public Services, p.50.

⁷⁸ Report on Public Services, p.48.

3.5 Involving service users – Mersey Care NHS Trust’s experience

One of the participants in the Department of Health’s Human Rights in Healthcare initiative, Mersey Care NHS Trust, decided that greater involvement of service users in decisions made by the Trust was integral to a human rights approach:

“I think we’re more likely to get things right if we’re involving ... service users and carers, and we’re seeing issues in a sense from 360 degrees.”

Ms Lindsey Dyer, Director of Service Users and Carers, Mersey Care NHS Trust – transcript 17.09.08

Service users and carers told the Inquiry that involvement in the recruitment and selection of staff responsible for dealing with mental health crises, was very important to them.⁷⁹ Users and carers have now been involved in the appointments of about a third of the Trust’s workforce.⁸⁰

One service user who also is a co-opted member of the Trust’s board and gave oral evidence to the Inquiry, said:

“[It’s] not just being involved for the sake of being involved and saying: well, I sat on an interview panel ... it was actually about getting the staff in post who had personal qualities such as sensitivity and empathy ... and, through that way, driving up the standards of care which ultimately impact upon the service user and carer’s life.

Ms Catherine Mills, service user and Co-opted member of the Trust, Board, Mersey Care NHS Trust – transcript 17.09.08

It’s a given now within the culture of Mersey Care Trust. Service users and carers are involved ... in appointments, that’s the way we do things around here.”

Ms Lindsey Dyer, Director of Service Users and Carers, Mersey Care NHS Trust – transcript 17.09.08

Mersey Care NHS Trust conducted a survey among users to find out their levels of satisfaction with services since becoming more involved in Trust decision-making. The survey found that service users and carers:

- “Feel valued”.
- “Have meaningful things to do”.
- Have “more confidence” and have “learned new skills”.
- See real improvements in information, staff attitudes and clinical practice, family provision and in-patient environments.

Mersey Care NHS Trust⁸¹

⁷⁹ Ms Catherine Mills, service user and Co-opted member of the Trust Board, Mersey Care NHS Trust – transcript 17.09.08.

⁸⁰ ‘Involving Service Users And Carers – The Mersey Care Way’, Mersey Care NHS Trust, 2007.

⁸¹ Call for Evidence Report, p.10.

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The Inquiry received evidence that service user involvement in the work of Mersey Care Trust has reportedly had an impact on their mental health and well-being:

“In the evaluation of service users and carers ... we actually asked ... has involvement, has contributing to the Trust ... made an impact upon your recovery? And I think it was 89 percent of service users resoundingly said yes, and not just said yes but qualified it with a raft of statements to support that: ... this has meant that I've stayed out of hospital; this has meant that I've needed less teams treating me; this has helped me in my recovery; this has given me a life. The actual quotations were quite moving really.”

Ms Catherine Mills, service user and Co-opted member of the Trust, Board, Mersey Care NHS Trust – transcript 17.09.08

The Director of Service Users and Carers told the Inquiry that as a broad calculation, Mersey Care NHS Trust had spent 0.25 percent of its annual income on a human rights approach. She considered this expenditure to be a good investment as, in her opinion, it meant that the other 99.75 percent of the income could be spent more “wisely”.⁸²

4.0 Policing, probation and criminal justice

4.1 Overall impact of the human rights framework

The Human Rights Act has a significant impact on the police who have to fight crime and maintain public order, and who rely on the community to help them. The Act protects officers in the line of duty as well as vulnerable individuals:

“The [Human Rights] Act in an everyday policing context uniquely brings protection both for those state officials charged with upholding the rights of the state against deviant individuals, and for individuals who might be vulnerable to the misuse of state power.”

Member of the Association of Chief Police Officers⁸³

The Inquiry heard evidence from policing agencies on how the Human Rights Act works in practice:

“The Human Rights Act gives us a framework around which to work.”

Mr Duncan McCausland, Assistant Chief Constable, Police Service of Northern Ireland – transcript 24.10.08

“If human rights are done right, they can have a powerful legitimising effect. They are a key part of effectiveness in policing.”

National Policing Improvement Agency⁸⁴

⁸² Ms Lindsey Dyer, Director of Service Users and Carers, Mersey Care NHS Trust – transcript 17.09.08.

⁸³ Member of the Association of Chief Police Officers responding in a personal capacity, Call for Evidence response.

⁸⁴ Report on Public Services, p.34.

Often the police have to make split-second decisions in difficult circumstances and they must take the Human Rights Act into account where relevant:

“The [Human Rights] Act is in daily use within the police service and acts, in the best examples of its use, as a catalyst in ensuring that before police officers act in any situation their actions are considered within some very clear guidelines and must be seen to be lawful, necessary, reasonable, and proportionate. My experience has been that the Act at its best promotes better strategic, operational and tactical decision making by police officers in crisis situations.”

Member of the Association of Chief Police Officers⁸⁵

A Home Office review of the Human Rights Act confirmed that criminal justice agencies found the Act provided a useful framework:

“The broad findings [of the review] were that we didn't have a problem with the Human Rights Act per se. If anything, one of the things we got back from many, many people on the front line, especially police, is that it gave them a framework within which they could work comfortably and safely.”

Mr Tom Dooley, Human Rights and Devolution Co-ordinator, Better Regulation Team, Home Office – transcript 30.09.08

The Inquiry received evidence that the Human Rights Act has underpinned practice in the Home Office rather than fundamentally changed it:

“It has always been an integral part of policy development work in the Home Office to think about the balance between the liberties and rights of the individual and the requirements of collective security and defending the public in the wider sense.

You can see impacts over time as both the cases are developed and the Human Rights Act has brought rights home. But it wasn't a fundamental shift. Those were always preoccupations and issues that the Home Office had at the forefront of its mind.”

Mr Peter Wrench, Assistant Director, Home Office – transcript 30.09.08

⁸⁵ Member of the Association of Chief Police Officers responding in a personal capacity, Call for Evidence response.

The Association of Police Authorities has recently produced guidance⁸⁶ to assist police authorities in meeting their responsibility to monitor the performance of the police force in their area in complying with its duties under the Human Rights Act.⁸⁷ The guidance sets out the legal framework of the Act in the context of policing, together with a checklist to assist police authorities in meeting their monitoring function. The guidance recommends, among other things, that police authorities have in place a human rights action plan informed by impact assessments, and appoint a member and officer to lead on human rights for the police authority and provide training for staff. Practical action to assist police authorities in meeting the responsibility to monitor police forces is also recommended.⁸⁸

4.2 Examples of improved outcomes

The Police Service of Northern Ireland told the Inquiry that taking a human rights approach brings more transparency to the decision-making process.⁸⁹ Board level commitment to the role of human rights in transforming the organisation's services was seen to be crucial:

“At the top end, planning was fundamental ... My role, which I saw as a leadership role, was saying, [The Human Rights Act] ... is important and it is not something to be frightened of.”

Sir Hugh Orde, Chief Constable, Police Service of Northern Ireland – transcript 24.10.08

The Inquiry learned that knowledge of human rights within the Police Service of Northern Ireland has resulted in growing levels of confidence among staff and made decision-making easier.⁹⁰ The Assistant Chief Constable, who described himself in evidence as the ‘human rights champion’ at the Police Service of Northern Ireland, said that officers see the Human Rights Act as a “sword and a shield”.⁹¹

⁸⁶ ‘Human rights guidance for police authorities’, Association of Police Authorities, January 2009. Available at: <http://www.apa.police.uk/NR/rdonlyres/318C814B-7E32-4F3E-928A-A081374D41BB/o/HumanRightsGuidanceJan09.pdf>

⁸⁷ Police Authorities (Particular Functions and Transitional Provisions) Order 2008, came into force on 14 March 2008 pursuant to S. 6ZB Police Act 1996 (inserted by S. 51 Police and Justice Act 2006).

⁸⁸ Ibid, Annex C.

⁸⁹ Mr Duncan McCausland, Assistant Chief Constable, Police Service of Northern Ireland – transcript 24.10.08.

⁹⁰ Mr Keir Starmer, Former Human Rights Adviser, Northern Ireland Policing Board – transcript 24.10.08.

⁹¹ Mr Duncan McCausland, Assistant Chief Constable, Police Service of Northern Ireland – transcript 24.10.08.

The Association of Chief Police Officers described the impact of the Human Rights Act on police officers:

“For a lot of our people who are at the more critical end, human rights is part of their professional bit of kit ... it's how they protect themselves to a certain extent. But it's also part of their pride I think in knowing what to do.”

Mr Stephen Otter, Head of Race and Diversity, Association of Chief Police Officers – transcript 26.09.08

Other witnesses provided evidence of changes that the police have made in response to the Human Rights Act:

“Public bodies are taking positive steps to ensure that all service users are treated with dignity and respect, regardless of sexual orientation. These include police forces taking proactive steps on hate crime reporting.”

Stonewall⁹²

The Welsh Language Board stated to the Inquiry that North Wales Police have absorbed a culture of linguistic rights in their recruitment, training and services.⁹³

4.3 Changes to policy and practice

The Northern Ireland Policing Board had to decide on the appropriate use by the Police Service of Northern Ireland of the Taser electroshock device.⁹⁴ The Board took human rights advice and insisted on a full impact assessment before a decision was taken. The Inquiry was told of the impact of the Human Rights Act on the decision-making process:

“I think the Human Rights Act was critical in the decision about Taser for a number of reasons. But if you hadn't had a human rights yardstick, you would have ended up with anecdote versus anecdote which takes you nowhere and to say, "There is a test, let's identify what it is", and then hold the police to that test was a far more useful way forward. It allowed the Board to take a really strong line on this: this is the standard, this is the test, this is what's required substantially and procedurally.”

Mr Keir Starmer, Former Human Rights Adviser, Northern Ireland Policing Board – transcript 24.10.08

⁹² Stonewall, Call for Evidence response.

⁹³ Ms Meri Huws, Chair, Welsh Language Board – transcript 07.10.08.

⁹⁴ The inquiry did not investigate the appropriateness of the use of Taser.

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Evidence from the Independent Police Complaints Commission was that for custody, firearms and surveillance officers, human rights issues are “part of their ordinary discourse”.⁹⁵

The Inquiry was told that the aims of the National Offender Management Service are to reduce re-offending and protect the public and that it is “only through treating people decently in compliance with the [Human Rights] Act” that those aims are likely to be achieved.⁹⁶

North Wales Police gave evidence that it has become routine for the police to consider human rights principles when considering operational matters:

“Now the training has worked and is embedded in our training systems, the main issue is that it does not become something that people trot out without thinking, that it becomes something that you can see some rationale and thinking behind. Certainly, I see a lot of thought going into it. When I look at intrusive surveillance, and at the right to family life, I see rationale and understanding very heavily involved in decision processes, and embedded in what we do.”

Mr Ian Shannon, Assistant Chief Constable, North Wales Police – transcript 19.09.08

In the **Osman** case (decided by the European Court of Human Rights before the Human Rights Act came into force in the United Kingdom), it was held that the duty to protect life under Article 2 requires the police to take protective measures when they are aware or should be aware that there is a ‘known or foreseeable real and immediate risk’ to someone’s life (see Chapter 1). The Inquiry’s researchers found that the majority of the 43 police forces in England and Wales have specific policies on handling threats to life as a result of this case.⁹⁷

The **Osman** decision articulates the state’s general duties under Article 2 and is therefore relevant to a range of situations beyond those examined by the Court.⁹⁸ The Association of Chief Police Officers has produced a set of minimum standards relevant to ‘protective services’.⁹⁹ These services include counter-terrorism, serious organised crime, emergency planning, public order and protecting vulnerable people.¹⁰⁰

The **Osman** principles also affect the prison service because of their responsibility to protect prisoners at risk from other inmates. All the professionals working in prisons interviewed by the Inquiry’s researchers were already aware of their legal duties under Article 2 (the right to life) even though most of them had not heard of the **Osman** case.¹⁰¹

⁹⁵ Mr Nick Hardwick, Chair, Independent Police Complaints Commission – transcript 26.09.08.

⁹⁶ Ms Pat Baskerville, Head of Offender Policy Rights Unit, National Offender Management Service – transcript 10.09.08.

⁹⁷ Report on Legal Cases, pp.32, 33.

⁹⁸ Report on Legal Cases, pp.32, 33.

⁹⁹ Report on Legal Cases, p.37.

¹⁰⁰ Report on Legal Cases, p.37.

¹⁰¹ Report on Legal Cases p.38.

The Home Office now includes human rights considerations in its guidance on impact assessments:

“We have just re-written our impact assessment guidance ... and ... for the first time [it] includes specific directions as to considerations for human rights.”

Mr Tom Dooley, Human Rights and Devolution Co-ordinator, Better Regulation Team, Home Office – transcript 30.09.08

4.4 Balancing rights in the criminal justice system

A number of witnesses told the Inquiry how they applied the Human Rights Act to the critical business of balancing rights in the criminal justice system. The Crown Prosecution Service gave the Inquiry a practical example of where a decision had to be made between conflicting rights. The Chief Prosecutor decided not to prosecute a protester for handing out anti-homosexual leaflets at the Cardiff Mardi Gras festival after considering the protester’s right to freedom of expression (Article 10).¹⁰² Evidence from other witnesses as to how they go about the process of balancing rights and duties are set out on the right.

Balancing rights in the criminal justice system

“[The Human Rights Act] recognises the need to provide practical protection to the citizen and to officials doing the state’s bidding in the context that the rights of the community have in many cases to be balanced against the rights of the individual. It tries to deal with the classic democratic dilemma of freedom of expression versus privacy; liberty versus protection from crime.”

Member of the Association of Chief Police Officers¹⁰³

“We know that ... the Human Rights Act recognises the need for Government to act flexibly to ensure the protection of people and that is something that we balance every day in the Home Office ... and we need to make sure we get that balance right and we are constantly striving to do that.”

Ms Meg Hillier MP, Under-Secretary of State for the Home Office – transcript 14.10.08

“The message we wish to impart to staff [through human rights training] is that when working in a law enforcement agency – with its own statutory duties – we need to ensure that we use a common sense approach in balancing our duty to protect the public with an appreciation of the rights of the individual offender.”

London Probation¹⁰⁴

¹⁰² Crown Prosecution Service, Call for Evidence response.

¹⁰³ Member of the Association of Chief Police Officers responding in a personal capacity, Call for Evidence response.

¹⁰⁴ Call for Evidence Report, p.6.

5.0 Local authority services

The Inquiry received evidence from local authorities about the impact of the Human Rights Act on services in addition to those referred to above.

5.1 Overall impact of the human rights framework

Several local authorities told the Inquiry that the Human Rights Act was part of the everyday functioning of their organisation and was applied across a range of services.¹⁰⁵ One English district council felt that the Human Rights Act had made the council “more responsive to the public at an individual level”.¹⁰⁶

The Welsh Local Government Association provided evidence that the human rights framework has started to become embedded within Welsh local authorities. In particular, community plans are being developed with commitments to issues of fairness and equity and respect being expressed within the 10-year vision for their area.¹⁰⁷

Most of the evidence from local authorities demonstrated the value of the Human Rights Act and the benefits that had accrued from applying the human rights framework. This was not necessarily the case in asylum decisions where some local authorities in England reported to the Inquiry’s researchers that the adversarial climate in which they work meant it was more difficult to use human rights principles as a tool to improve services:

“[Local authorities] are beaten around the head quite substantially by solicitors who seek to challenge virtually every decision we make. That ... is a negative side to human rights – you get into a very defensive position in terms of trying to justify your own decisions rather than looking at how you can use human rights to improve [services].”

Strategic manager for asylum and persons from abroad, Metropolitan Authority¹⁰⁸

¹⁰⁵ Selby District Council, London Borough of Southwark, Flintshire County Council, Call for Evidence responses.

¹⁰⁶ Individual working for South Norfolk District Council and responding in a personal capacity, Call for Evidence response.

¹⁰⁷ Ms Naomi Alleyne, Director of Equalities and Social Justice, Welsh Local Government Association – transcript 07.10.08.

¹⁰⁸ Report on Legal Cases, p.76.

5.2 Examples of improved outcomes

The Welsh Local Government Association told the Inquiry of the impact of the Human Rights Act on local authority work with Gypsies and Travellers in Wales:

“In terms of assessment of outcomes, I think the Human Rights Act and the considerations and principles behind it have certainly influenced a lot of work round the Gypsy and Traveller communities ... I know that issues about proportionality, entitlements to education and health services and things like that have certainly had an influence.”

Ms Paula Walters, Equality Policy Officer,
Welsh Local Government Association –
transcript 07.10.08

This evidence was corroborated by a local community support worker who told the Inquiry that following a court case under the Human Rights Act, a local council in North Wales had transformed its approach to Travellers in the area:¹⁰⁹

“It's a different way of working. Instead of being negative ... within a week of the Travellers moving on to the sites, the Council's liaison officer had been up to assess the welfare, the Local Health Board's health worker had been up to assess whether there were any health issues, and the local Traveller education support worker also went up with a view of getting the children into the local schools and to sort out any educational needs which is what the Council have to do but they did it with no fuss.”

Local advice worker, North Wales Group
Evidence Session¹¹⁰

¹⁰⁹ ‘Wrexham County Borough Council v NAW and Berry’, Court of Appeal, 2003.

¹¹⁰ Summarised in the Call for Evidence Report / North Wales Call for Evidence Group Evidence Session.

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Local authorities provided practical examples to the Inquiry in situations in which the Human Rights Act had an impact in practice – see below.

Examples of local authority application of human rights principles

- Providing support to someone with suicidal tendencies who had been released from hospital but did not have access to local support services and who would otherwise have faced destitution.

West Berkshire Council¹¹¹

- Adjourning a hearing on Article 6 (fair trial) grounds because the person providing information could not attend and questions needed to be put about the information.

Selby District Council¹¹²

- The council considered both Article 2 (right to life) and Article 5 (right to liberty) in making a decision whether to take an individual into care for his own safety.

Selby District Council¹¹³

Other local authorities provided the Inquiry with practical examples of situations in which rights have to be weighed in the balance. For example, Hull City Council referred to care proceedings where lawyers must balance the right to family life with the child's rights and freedoms to be protected.¹¹⁴

Norwich City Council stated that they balanced the qualified right to respect for private life under Article 8 to make decisions on the use of surveillance to tackle anti-social behaviour.¹¹⁵

Other examples of local authorities balancing rights and duties are provided below.

Balancing the right to public cultural events with duty to ensure public safety

“We authorise temporary road closures for cultural, religious and social events after consultation with the police who are required to provide a police officer to attend and ensure the safety of the public.

The local police force decided that they would not provide a police officer, as they did not wish to be subject to litigation in the event of any injury to members of the public. It was only after protracted written and telephone correspondence over several months and our insistence upon the Article 11 rights of the public that we were able to persuade the police to agree. We doubt the police would have agreed if the above article had not existed.”

Selby District Council¹¹⁶

¹¹¹ West Berkshire Council, Call for Evidence response.

¹¹² Selby District Council, Call for Evidence response.

¹¹³ Ibid.

¹¹⁴ Hull City Council, Call for Evidence response.

¹¹⁵ Norwich City Council, Call for Evidence response.

¹¹⁶ Call for Evidence Report, p.11.

Curfews on young people: applying the concept of proportionality

“When anti-social behaviour is carried out by a handful of young people, is it fair to establish a curfew that says all young people are not allowed in certain areas after a specific time? By adding a Human Rights Act perspective ... you can ask whether this proposed policy solution is necessary and proportionate. Have other options been explored and who is the policy option designed to serve best – the community or the public sector agencies?”

Welsh Local Government Association¹¹⁷

5.3 Changes to policy and practice

A district council in the North of England stated their opinion that explicitly including Human Rights Act assessments in policy-making demonstrates to service users that the local authority is aware of its obligations.¹¹⁸ One local authority told the Inquiry’s researchers that it has a human rights assessment form for all asylum claims with key cases on the front sheet.¹¹⁹

A Welsh county council provided the Inquiry with examples of areas where the Human Rights Act is used:

- Informing decision-making about unauthorised Gypsy and Traveller sites, balancing factors such as where the site is based and any community safety concerns with health, education, child welfare and accommodation.
- Safeguarding personal information in introducing biometric systems in schools.

Flintshire County Council¹²⁰

One London borough stated that human rights principles are being used across council services:

- In the education authority to address bullying and discipline in schools.
- In the housing department where decisions are made about sharing information with other agencies and tackling anti-social behaviour.
- The Council’s standard conditions of contract now impose an obligation on contractors to make sure that the way in which they deliver services is consistent with the principles, rights and duties set out in the Human Rights Act.

London Borough of Southwark¹²¹

¹¹⁷ ‘Rights, Responsibilities and Respect for Everyone’, Welsh Local Government Association, January 2006, p.5.

¹¹⁸ Wakefield Metropolitan District Council, Call for Evidence response.

¹¹⁹ Report on Legal Cases, p.43.

¹²⁰ Flintshire City Council, Call for Evidence response.

¹²¹ London Borough of Southwark, Call for Evidence response; Report on Public Services, p.77.

An individual working for South Norfolk District Council said that the Human Rights Act had led to “greater availability of hearings, additional concern for vulnerable minorities and vulnerable individuals”.¹²²

Although the **Mental Health Foundation** referred to continuing examples of poor practice in the treatment of people with learning disabilities, it also provided the Inquiry with examples of good practice since the introduction of the Human Rights Act. The latter include public authorities using person-centered approaches to support disabled people in enjoying family and community life and providing secure funding for advocacy so disabled people can learn about, and be supported, to exercise their rights.¹²³

Several local authorities told the Inquiry that human rights underpinned their work on equality.

Human rights principles underpinning local authority work on equality:

- “Human rights serve to pull things together, integrating existing equalities legislation into a more holistic framework.”

London Borough of Southwark¹²⁴

- The local authority “intends to adopt a human rights approach and go beyond anti-discrimination to encompass fairness of treatment, dignity, respect and access to all the fundamental rights which enable people to play their part in our democracy.”

Luton Borough Council¹²⁵

- The Human Rights Act is used to provide “a foundation for equality and diversity progress within the organisation and to challenge poor practice.”

Individual, working for Dundee City Council¹²⁶

¹²² Individual working for South Norfolk District Council and responding in a personal capacity, Call for Evidence response.

¹²³ Mental Health Foundation, Call for Evidence response.

¹²⁴ Report on Public Services, p.34.

¹²⁵ Luton Borough Council, Call for Evidence response.

¹²⁶ Individual working for Dundee County Council, Call for Evidence response.

6.0 Children, young people and education

A senior civil servant told the Inquiry about the impact of the Human Rights Act on the work of the Department for Children, Schools and Families:

“[There is] a very strong strategic fit between the principles underlying the Human Rights Act and the strategic mission of the department ... Our own experience of developing policy within the department is that the Human Rights Act has acted as a very useful framework for us to pick our way through difficult issues and hopefully deliver better policy as a result.”

Mr Paul Kissack, Acting Director of Strategy, Performance and Analysis, Department for Children, Schools and Families – transcript 30.09.08

The Welsh Assembly Government informed the Inquiry that it has adopted the United Nations Convention on the Rights of the Child (which like the Human Rights Act, is based on the Universal Declaration of Human Rights) as the framework for all its work with and for children and young people:

“Since devolution the Convention [on the Rights of the Child] has been used proactively to shape policy and determine the way services are delivered for children and young people in Wales.”

Welsh Assembly Government¹²⁷

The Inquiry received a considerable amount of evidence about the effects of teaching children and young people about rights and responsibilities in schools.

6.1 UNICEF’s Rights Respecting Schools scheme

UNICEF’s Rights Respecting Schools scheme aims to raise pupil achievement at school and improve the quality of their own and their families’ lives. Pupils learn what rights and responsibilities are according to the United Nations Convention on the Rights of the Child. They then learn how to use this understanding of rights and responsibilities as a guide to living. The scheme aims to give children and young people more say about issues that affect them as individuals and collectively.¹²⁸

The award scheme which started in 2002 has over 500 schools across the United Kingdom registered with the project involving over 240,000 children and young people.¹²⁹ In 2008, the University of Sussex conducted an interim evaluation of the UNICEF project. They found improved behaviour and self-esteem among pupils and some improvements in learning and standards and recommended, resources permitting, that local authorities offer more support to schools engaged in the scheme.¹³⁰

¹²⁷ Welsh Assembly Government, Call for Evidence response.

¹²⁸ University of Sussex’s evaluation, August 2008.

¹²⁹ UNICEF, Call for Evidence response.

¹³⁰ University of Sussex op.cit.

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The Department for Children, Schools and Families has provided funding for development of the Rights Respecting Schools' awards scheme in partnership with five English local authorities: Durham, Rochdale, Bracknell Forest, Dorset and Hampshire.¹³¹ The Inquiry received a large amount of evidence about Hampshire schools, which is considered in the next sub-section.

6.2 Hampshire schools project

During the past five years, Hampshire County Council's education department has been carrying out a programme for school improvement called Rights, Respect and Responsibility. It aims to embed human rights principles (drawn from the United Nations Convention on the Rights of the Child) across all areas of school life.¹³² So far, 380 primary schools and 45 secondary schools in Hampshire have implemented the programme to some extent.¹³³ Some of the outcomes from this project are listed below.

Significant reductions in bullying

John Hanson Community School is a secondary school in Andover with 980 pupils aged 11-16. The school was concerned about disruptive behaviour in the classroom, low aspirations among some students and parents, and even low expectations among some

teaching staff. After implementing the Rights, Respect and Responsibility programme, the school reported improvements throughout the school including significant reductions in bullying.¹³⁴ The Head Teacher, Mr Steve Evatt, reported the following:

“[A pupil survey from 2005] showed that 35.6% of our then Year Seven reported having been bullied in the previous year. This worrying figure compared with a county average of 25.1%. In 2007, only 7.4% of the same cohort of students reported having been bullied in the previous year, while the county average stood at 19.3%.”¹³⁵

Improved behaviour of pupils

In the Office for Standards in Education, Children's Services and Skills' subsequent inspection of John Hanson School in 2007, inspectors stated:

“The significant improvement of the school's ethos by systematically emphasising 'rights, respect and responsibilities' for all members of the school community. As a result, behaviour is good ... Students feel safe and well cared for ... Students strongly adopt the school's core values of 'rights, respect and responsibilities'. One student spoke of it as, 'a guide to living' that will last throughout his life ... The [students] have little fear of bullying and have positive and tolerant attitudes towards each other.”¹³⁶

¹³¹ University of Sussex op.cit and Mr Andrew Baxter, Deputy Director, Head of Health and Wellbeing Division, Department for Children, Schools and Families – transcript 30.09.08.

¹³² Mr Ian Massey, Inspector for Intercultural Education, Hampshire Schools – transcript 15.09.08.

¹³³ Written evidence submitted by Mr Ian Massey following the Inquiry Panel session.

¹³⁴ Rights, Respect and Responsibilities at John Hanson School Andover. 'Stories of positive change in Hampshire schools'. Available at: <http://www3.hants.gov.uk/education/hias/childrensrights/changestories.htm>

¹³⁵ Ibid.

¹³⁶ Office for Standards in Education, Children's Services and Skills, Section 5 Inspection, John Hanson Community School, Inspection date 31/10/2007. Available at: [http://www.ofsted.gov.uk/oxedu_reports/display/\(id\)/89666](http://www.ofsted.gov.uk/oxedu_reports/display/(id)/89666)

In 2008 nearly three-quarters of 16 year olds in John Hanson School reported positive changes in the behaviour of pupils following lessons on human rights.¹³⁷

Knights Enham Junior School, also in Andover, has many pupils from disadvantaged backgrounds with double the national average entitled to free school meals. Children from the school said the following about the Rights, Respect and Responsibility programme:

“It makes us feel safe in school because we can go to the teachers and know that they will listen and answer our questions.”

It helps us to respect other people’s rights and respect that everybody is different.”

We enjoy coming to school because it helps make us feel special.”¹³⁸

Teachers in other Hampshire schools identified “a much happier and calmer atmosphere around the school” as a result of the project and felt that “children now see the value of their education and are keen to come to school.”¹³⁹ The head teacher of a primary school in Fareham reportedly said:

“The Rights Respect Responsibility framework is not another add-on: it is part of everything we do at Harrison. We believe that by using RRR we can improve children’s social skills, helping them to become responsible, fully involved citizens within the community: enjoying, achieving and contributing in every aspect of their lives.”¹⁴⁰

The Inquiry was told that parents had reported a positive impact at home as a result of their children participating in the programme.¹⁴¹

The Rights Respect Responsibility initiative was independently evaluated in 2007.¹⁴²

Researchers investigated 16 schools speaking to 15 head teachers as well as a total of 69 classroom teachers and 96 pupils within those schools.¹⁴³

¹³⁷ Rights, Respect and Responsibilities at John Hanson School Andover. ‘Stories of positive change in Hampshire schools’. Available at: <http://www3.hants.gov.uk/education/hias/childrensrights/changestories.htm>

¹³⁸ Presentation by pupils of Knights Enham Junior School at Rights Respect and Responsibilities Schools Conference 17.10.08.

¹³⁹ Knights Enham Junior School, Call for Evidence response.

¹⁴⁰ ‘Rights Respecting Schools in England,’ Briefing Paper, September 2008 quoting Ms Carolyn Clarke, Chair of Primary Head Teachers Executive, Harrison Primary School, Fareham, Hampshire.

¹⁴¹ Mr Ian Massey, Inspector for Intercultural Education, Hampshire Schools – transcript 15.09.08.

¹⁴² Rights, Respect and Responsibility: Final Report on the County of Hampshire Rights Education Initiative” by Ms Katherine Covell & Mr R. Brian Howe Children’s Rights Centre, Cape Breton University Sydney, Nova Scotia, Canada, Sep 2008 available at http://www3.hants.gov.uk/rrr_full_report-2.doc.

¹⁴³ Ibid.

Rights, Respect and Responsibility programme in Hampshire Schools

– Independent Evaluation¹⁴⁴

Impact on pupils:

- Pupils were more respectful and helpful to others, and less aggressive and disruptive.
- Pupils showed greater respect for the school environment.
- Pupils showed improved critical thinking skills and confidence in tackling new tasks.
- SATs scores showed steady improvements.
- Pupils accepted that with rights came responsibilities.

Impact on teachers:

- Fewer feelings of exhaustion as a direct result of their work.
- More energized when dealing with students.
- Less frustration with teaching.
- Increase in a sense of personal job achievement.

Experience of head teachers:

- Improvements in pupils' academic achievement.
- Improvements in pupils' behaviour – exclusions were significantly reduced or ended.
- A calmer atmosphere in school.
- Teachers had become less confrontational in their dealings with children.

(Evaluation Report, 2007)

The Department for Children, Schools and Families told the Inquiry they have commissioned a further evaluation of the practical benefits to pupils and teachers of the rights, respect and responsibility approach in Hampshire schools.¹⁴⁵

¹⁴⁴ Ibid.

¹⁴⁵ Mr Andrew Baxter, Deputy Director, Head of Health and Wellbeing Division, Department for Children Schools and Families – transcript 30.09.08.

6.3 Other human rights work with young people

A research organisation working with young people told the Inquiry that human rights principles can act as a framework for resolving conflict and so can be useful in supporting local work on community cohesion.¹⁴⁶

The Inquiry received evidence of the sessions that they have held with young people on the relevance of human rights to their lives:

“At the start, most people didn't really understand the relevance of human rights. They had an idea of what they were, they'd heard of the Human Rights Act but not necessarily much about it but, by the end ... 100 percent of the young people who took part then saw the relevance of human rights, not just for their project but in terms of their daily lives.”

Mr Lewis Parle, Head of Youth Programmes and Research, Independent Academic Research Studies – transcript 30.10.08

The Inquiry was told that difficult obstacles could be overcome by using the “neutral language and framework” of human rights.¹⁴⁷ In particular, Independent Academic Research Studies had brought together two very different groups of young people in their human rights sessions. The first group contained young people who were concerned with homophobic bullying and the second group – consisting of people who had either been involved in gangs or had been affected by gangs – were looking at gun and knife crime. The Head of Youth Programmes admitted to the Inquiry that they had taken a risk but that it had paid off.¹⁴⁸

“What we found is that through looking at these issues through a human rights framework and putting it into that language, any tensions or any sorts of embarrassment, anything like that wasn't really detected because they weren't discussing it on that sort of personal level. It was thinking about it in terms of how they treat each other and how you use human rights in a way that can resolve the particular problems”

Mr Lewis Parle, Head of Youth Programmes and Research, Independent Academic Research Studies – transcript 30.10.08

An organisation working with young black and ethnic minority people also gave evidence to the Inquiry about the application of human rights principles in community work:

“The Human Rights Act and the values language that we have used, and by that I mean ... the term FRED: fairness, respect, equality and dignity as framework to work with the public.”

Dr. Theo Gavrielides, Chief Executive, Race on the Agenda – transcript 26.09.08

¹⁴⁶ Mr Lewis Parle, Head of Youth Programmes and Research, Independent Academic Research Studies – transcript 30.10.08.

¹⁴⁷ Mr Lewis Parle, Head of Youth Programmes and Research, Independent Academic Research Studies – transcript 30.10.08.

¹⁴⁸ Ibid.

6.4 Higher education

The Inquiry received some evidence of the impact of the Human Rights Act on higher education, particularly from universities and colleges in Wales:

“Academic freedom is at the heart of higher education, and in this context it is perhaps the rights to freedom of belief and free expression which are both most important and most challenging. The University continues to explore how these rights can be upheld in a way which is consistent with the prohibition of discrimination, so that all members of its community are confident in encountering, expressing and evaluating the widest range of views.”

Individual, working for Cardiff University¹⁴⁹

Swansea University informed the Inquiry that the Human Rights Act “provides an important background to the context in which other University Policies and Procedures are produced”. The University has identified situations where challenges to university procedures based on human rights are likely to arise, such as employee monitoring and surveillance of communications at work in relation to the right to privacy, as well as academic teaching with regards to freedom of expression. The University will check whether, in relation to those sorts of issues, their systems and policies are fair and proportional.¹⁵⁰

The Open University’s equality and diversity strategy states that it:

“... recognises the notion of the right to access higher education. It also recognises the gradual shift toward a single equalities framework and the increasing convergence between the equalities and human rights agendas.”

The Open University¹⁵¹

7.0 Regulatory authorities

Public services are subject to statutory and non statutory scrutiny, regulation and inspection mechanisms. These processes provide important safeguards for people who use public services. A number of different regulators, inspectorates and ombudsmen are responsible for a variety of monitoring functions across a range of services. These bodies are themselves ‘public authorities’ under Human Rights Act and so are subject to the same legal duties as providers of public services. We use the term ‘regulatory authorities’ generically to include inspectors, regulators and ombudsmen.

¹⁴⁹ Call for Evidence Report, p.6.

¹⁵⁰ Swansea University, Call for Evidence response.

¹⁵¹ Equality and Diversity Strategy supplied to the Inquiry.

7.1 Role of regulatory authorities

Regulatory authorities have considerable potential to make a difference to people's lives and they play a critical role in making sure that providers of public services comply with the law:

“And at least one person in three in England makes use of the services we inspect or regulate. That puts us in a position to make a difference to the lives of many millions of fellow citizens of all ages. It is a privilege and a great responsibility.”

Ms Miriam Rosen, Director for Education, Office for Standards in Education, Children's Services and Skills – transcript 14.10.08

“I remember being in a prison where all the prisoners' correspondence was opened and read, which is actually illegal, but the prison staff did it because they said it helps to know what's going on in their lives, and any notion of what the law would call the private space around somebody, which is small enough in a prison anyway, was completely absent ... I think all institutions default to institutional convenience if you don't watch them and closed institutions default much more easily and it's so easy for the language of security to be used.”

Ms Anne Owers, Her Majesty's Inspectorate of Prisons for England and Wales – transcript 26.09.08

Regulatory authorities are typically concerned with issues of high importance to the public, such as protecting privacy:

“[We] asked people what issues ... feature highly on their agenda. Fighting crime and fighting terrorism are top, but protecting privacy, it varies but I think last year it was second, maybe third. It can come above education and the health service.”

Mr David Smith, Deputy Information Commissioner – transcript 17.09.08

Regulatory authorities also have a key influencing role in promoting improvements in services by providing guidance and examples of good practice to public service organisations. Those who gave evidence to the Inquiry said that a human rights focus is fundamental to their ethos:

“[Ombudsmen were originally set up] as a means of humanising the bureaucracy of the state ... that path from the humanising role to the espousal of human rights principles is in my view really quite a short one ... Human rights are absolutely part of the mix of our work.”

Ms Ann Abraham, Parliamentary and Health Service Ombudsman – transcript 14.10.08

“Our policies, procedures and practices, very much reflect the principles and ethos of the [Human Rights] Act ... As a public body clearly what we do is covered by the Act, it has to run through what we do.”

Mr Rob Pickford, Chief Inspector, Care and Social Services Inspectorates, Wales – transcript 08.10.08

“When inspectors enter a [care home] we want them to see the people and the lives they are experiencing and not to see the carpets and the curtains and the walls.”

Mr John Fraser, Director of Quality, Performance and Methods, Commission for Social Care Inspection – transcript 25.09.08

“We believed that giving ourselves a human rights framework would make us better at doing our work effectively.”

Mental Health Act Commission¹⁵²

The Audit Commission identified the connection between human rights and the “citizen-centered approach to services”, the focus on “outcomes for people” and wider social justice considerations.¹⁵³

7.2 The impact of the Human Rights Act on regulatory authorities

The Inquiry’s research among regulatory authorities identified criteria ‘which make for a strong integrated approach’ in implementing human rights (this is outlined in Chapter 4).¹⁵⁴ The Inquiry established that while most of the regulatory authorities which were the subject of the Report on Inspectorates and Regulators met some elements of these criteria, no one regulatory authority met all of them.¹⁵⁵ The Mental Health Act Commission provided comprehensive information on what they had done to implement a human rights approach in their work (see right).

¹⁵² Mental Health Act Commission, Call for Evidence response.

¹⁵³ Ms Tracy Dennison, Managing Director, Human Resources, Audit Commission – transcript 23.10.08.

¹⁵⁴ Report on Inspectorates and Regulators, p.32.

¹⁵⁵ Report on Inspectorates and Regulators, p.33.

Mental Health Act Commission

What they did:

The ‘Making it Real’ project, launched January 2006, involved:

- In-depth consideration of what human rights mean for the Commission as a whole.
- Extensive consultation with staff, commissioners and service users.
- Training of staff and publication of a DVD with best practice examples.
- Development of a integrated strategy for human rights, equality and diversity.
- Identification of opportunities to implement a human rights approach.
- Board level responsibility for implementing human rights.¹⁵⁶

What they aimed to achieve:

- Understanding throughout the organisation of what human rights mean to people detained under the Mental Health Act.
- A strategy that seeks to make a difference at ward level, at hospital level and at trust level in the National Health Service.

- Improving the effectiveness of the Commission itself.
- Raising issues at a national policy level and encouraging wider systemic changes in mental health services.¹⁵⁷

What they and others found:

- More effective monitoring of compliance by mental health trusts with human rights responsibilities.
- The emphasis on what is appropriate for every individual has made a “really significant difference” to the way that they work.
- Internal discussions about human rights among people with different roles gave the Commission a clearer focus and more synergy.¹⁵⁸
- An integrated human rights and equality strategy places them in a stronger position to cope with the complexity of individuals’ needs because “real life means that individuals rarely fit into single categories”.¹⁵⁹
- Other inspectorates cited the Commission’s work as a good model to follow.
- The Joint Committee on Human Rights commended ‘Making it Real’ for its accessible and practical approach.¹⁶⁰

¹⁵⁶ ‘The Human Rights Framework as a Tool for Regulators and Inspectorates – Draft’, Ministry of Justice – unpublished at the time that this report was written; and Report on Inspectorates and Regulators, p.28.

¹⁵⁷ Ms Gemma Pearce, Chief Executive, Mental Health Act Commission – transcript 25.09.08.

¹⁵⁸ Ms Gemma Pearce, Chief Executive, Mental Health Act Commission – transcript 25.09.08.

¹⁵⁹ Report on Inspectorates and Regulators, p.24.

¹⁶⁰ Report on Inspectorates and Regulators, p.66.

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The Commission for Social Care Inspection provided evidence to the Inquiry of the steps it had taken to implement a human rights approach:

“Our human rights activity is managed through a Programme board which is chaired at the highest level by the Chief Inspector and ... the Programme board supports the work of four diversity groups within the Commission.

Our leadership group ... has received training on human rights issues from the British Institute of Human Rights and ... we have integrated [that] within our training programmes for all of our staff ... in relation to human rights values and principles and the things which underpin our work.

I think where the Commission for Social Care Inspection has been able to give a lead is that because we are the one body which most of these organisations will experience we are able to give a national perspective and to drive things at a national level ...

... I think our principal role is the way in which we have tried to reshape how we inspect and regulate and assess services. We have tried to mirror to the sector the principles which are important and ... to drive through changes in the sector.”

Mr John Fraser, Director of Quality,
Performance and Methods, Commission for
Social Care Inspection – transcript 25.09.08

The Inquiry’s research found that seven out of eleven inspectorates examined, have set out their commitment to human rights in their strategies and corporate plans. They include the following:

- “It is a strategic priority for the Audit Commission ‘to challenge service providers to promote equality, diversity and human rights’ ”
- The Healthcare Commission’s strategic plan states that it will use assessments “to improve people’s experiences of healthcare and access to services through greater respect for human rights and diversity”
- The Independent Police Complaints Commission’s corporate plan states that it needs to operate “in the context of the challenge ... of striking a balance between protection and preservation of human rights.”¹⁶¹

¹⁶¹ Report on Inspectorates and Regulators, p.21.

7.3 Regulatory authority training for the Human Rights Act

It was recognised that the right kind of training and support is critical for facilitating employees in embedding human rights principles in their everyday work:

“We've engaged in very good training from the British Institute for Human Rights for all our staff ... we didn't do it by grade they were mixed up so everybody could see how what they did from the moment they pick up the phone to the moment they sign off a report needs to have human rights considerations into the process.”

Mr Andrew Walsh, Director of Investigation and Corporate Services, Public Services Ombudsman for Wales – transcript 07.10.08

“We undertook some very specific training ... about understanding how everybody in the organisation could play their part ... The benefit of the training, as people reported it back to us, was making sure that the training was designed to give people practical tools around their roles in the organisation and how they could use the Human Rights Act in a way that enabled us to be more effective as an organisation.”

Ms Gemma Pearce, Chief Executive, Mental Health Act Commission – transcript 25.09.08

7.4 Regulatory authority staff use of the Human Rights Act

Managers and front-line staff in inspectorates were interviewed in the course of the research about the application of human rights in their work. Several respondents could readily contextualise their day-to-day activities in human rights terms:

“We have the legal power to say this person has the right to see their family.”

“[The Human Rights Act has] brought clarity to what we already do.”

Front-line worker

“We have worked really hard to weave human rights into our inspection processes and people are now used to working within them ... People are now growing in confidence.”

Senior manager¹⁶²

7.5 Engagement with users of services

Both the Commission for Social Care Inspection and the Mental Health Act Commission involve users of services in their inspections. After training, they accompany inspectors on visits to care homes and mental health facilities respectively. This is reported to have made “an enormous difference to how professionals view people's experience” and has made inspectors see “the ward environment with new eyes and in a different way”.¹⁶³

¹⁶² Report on Inspectorates and Regulators, pp.47,20,65.

¹⁶³ Mr John Fraser, Director of Quality, Performance and Methods, Commission for Social Care Inspection – transcript 25.09.08; and Gemma Pearce, Chief Executive, Mental Health Act Commission – transcript 25.09.08.

Witnesses agreed that individuals using services should know about their human rights and that regulators and service providers had a role to play in providing that information:

“[We would say to a complainant]: look, as a public authority, the local authority has a duty to consider your right to family and private life.”

Mr Andrew Walsh, Director of Investigation and Corporate Services, Public Services Ombudsman for Wales – transcript 07.10.08

“I wish we were successful in disseminating to the users of services what their rights are ... I would welcome a requirement on owners ... of residential homes or providers of domiciliary services to make people aware ... of what their rights are under the [codes of practice ... and what] they can expect from their own social care workers.”

Sir Rodney Brooke, Chair, General Social Care Council – transcript 25.09.08

7.6 The impact on inspections

The Inquiry’s researchers found that most inspectorates appear to be working actively to integrate the Human Rights Act in their inspection work. The degree to which they have achieved this is variable.¹⁶⁴

Some organisations reported to the researchers that they were inspecting whether public services met human rights values such as dignity, respect and privacy, but they did not make an express link to the Human Rights Act.¹⁶⁵ Other inspectorates recognised that if they did not refer to the Act explicitly in their work then it would do little to increase awareness of the importance of human rights within their own organisation, or amongst service providers whom they inspect and who need to use the framework of the Act to give better protection to service users.¹⁶⁶

Some inspectorates noted that references to human rights in inspections can help reverse negative attitudes by demonstrating how human rights can lead to the improvement of services. It also shows that inspectorates will use human rights principles to challenge inadequate services.

¹⁶⁴ Report on Inspectorates and Regulators, p.53.

¹⁶⁵ Report on Inspectorates and Regulators, p.48.

¹⁶⁶ Report on Inspectorates and Regulators, p.50.

The right for people with learning disabilities to form personal relationships:

“A Mental Health Act Commissioner visited an independent hospital for people with learning disabilities. Residents will live for a number of years if not probably for the remainder of their life in such a hospital. The Commissioner asked the hospital about its policy on relationships between the people living there. The staff said that residents were not allowed to have relationships. The Commissioner asked the hospital to think about whether it was appropriate to have a blanket policy on relationships or whether they might think about what was appropriate for the individuals concerned.”

Mental Health Act Commission¹⁶⁷

The Office for Standards in Education, Children’s Services and Skills told the Inquiry that because the national minimum standards contain a clear reference to privacy, it is a relevant consideration when inspecting children’s homes:

“There are also areas around privacy that are to do with the kind of facilities that are available to children that we check, when they are bathing, when they are in the secure estate for example ... There is a strong focus on their personal dignity. We [also] have to check to make sure that any disciplinary measures that are put in place for them are very much in line with their human rights.”

Ms Jean Humphrys, Deputy Director, Children’s Directorate, Office for Standards in Education, Children’s Services and Skills – transcript 14.10.08

¹⁶⁷ Ms Gemma Pearce, Chief Executive, Mental Health Act Commission – transcript 25.09.08.

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The Information Commissioner's experience is that the Human Rights Act can reinforce an argument that they are already making:

“There's no doubt the Human Rights Act actually helped, in [a particular] case, further to what we had always argued was right and proper under data protection provisions. It gave us an extra string to our bow ... We would always have referred back ... to the [European] Convention [on Human Rights] anyway but I think the fact that it is now enshrined in UK law helps us most definitely. It's not just the specific legal provisions but being able to argue or increase awareness particularly in government departments that there is a package of ... rights of individuals, of which data protection is a part, makes our work easier.”

Mr David Smith, Deputy Information Commissioner – transcript 17.09.08

Under the core standards set by the Department of Health, healthcare organisations must show they “challenge discrimination, promote equality and respect human rights.”¹⁶⁸ The Chairman of the Healthcare Commission gave evidence about the importance of human rights principles in the provision of healthcare:

“Much of what we do is measuring the outcome of treatment or access to care, and I take the view that the measures having to do with respect for the principles of human rights, diversity and equality, are as important a part of the tools we use as, did he or she get an injection within a certain time?”

Sir Ian Kennedy, Chairman, Healthcare Commission – transcript 10.10.08

National Offender Management Service standards inform the inspection criteria for HMI Probation. These stipulate that:

“[Offender management] will be done with due regard to the human rights, dignity and safety of offenders, victims and partners, and that services will be respectful and responsive to the diverse needs and circumstances encountered in correctional work.”¹⁶⁹

Where people's human rights are threatened, the regulatory authorities can make findings on human rights grounds and take enforcement action:

“We use our enforcement activity to drive up standards in care services and because we put a premium on ... dignity and respect, we are much more likely to take enforcement action where we think those things are threatened. That is about reshaping the focus of inspection towards the things which are important to people.”

Mr John Fraser, Director of Quality, Performance and Methods, Commission for Social Care Inspection – transcript 25.09.08

¹⁶⁸ Core standard 7e, referred to in Report on Inspectorates and Regulators, p.44.

¹⁶⁹ Report on Inspectorates and Regulators p.43.

When investigating poor services, some regulatory authorities will make the requirements under the Human Rights Act clear. Ombudsmen said they ask public authorities whether they have taken a person's human rights into account in making decisions. They find they get a variable response. Some apparently assume this is a legal matter and refer it to their lawyers, which the Health Services Ombudsman told us she regrets:

“Reaching for the lawyers is something that will always make my heart sink because ... we are not asking legal questions. We are saying good administration means that if you are going to get this right in designing this service, in delivering this service, you have to take [human rights] into account and we are asking people to demonstrate that they have done that.”

Ms Ann Abraham, Parliamentary and Health Services Ombudsman – transcript 14.10.08

Applying human rights principles in the Local Government Ombudsman's review of public authority action

In a case involving eviction of Travellers from an unauthorised site, the local council published sensitive information about the families' medical conditions, financial affairs, children's schools and a named child's learning difficulties. The Local Government Ombudsman found that the publication of this information constituted maladministration and concluded that:

“The Council should have given more considered and conscious attention to the principle of respect for private life enshrined in Article 8 and, if it had done so, it is likely that it would have reached a more proportionate decision that did not imperil the privacy of vulnerable children and members of their families.”

Ministry of Justice¹⁷⁰

7.7 Promoting good practice among service providers

The Inquiry's researchers were told that examples of good practice among inspectorates can be passed on to providers of services. The “innovative approaches” to involving service users that the Mental Health Act Commission and the Commission for Social Care Inspection have adopted (see above) were cited as case studies that others could follow.¹⁷¹

¹⁷⁰ Local Government Ombudsman quoted in the ‘Human Rights Framework as a Tool for Regulator and Inspectorates – Draft’, Ministry of Justice – unpublished at the time that this report was written.

¹⁷¹ Report on Inspectorates and Regulators, p.69.

Human Rights Inquiry

The Inquiry was informed that the Healthcare Commission has produced reports on specific areas of healthcare which have drawn attention to the connection between practices used in hospitals and the human rights implications for patients. In his oral evidence to the Inquiry, Sir Ian Kennedy, the Chairman of the Healthcare Commission, gave examples of two reports where human rights considerations had been relevant. The first was a report on the care of children in hospitals where it was said they had noted that when children are not in dedicated paediatric environments, pain, distress, privacy and being cared for by a relative or parents, may become neglected. The second report was on the care of the elderly and it focused on the importance for older people of dignity and privacy, being listened to and not being talked about without being able to participate.¹⁷²

Regulators and inspectorates recognise that they have the potential to influence the development of good practice:

“I think we can do more, a lot more in seeing our role as in promoting good practice.”

Ms Jane O’Brien, Head of Standards and Ethics, General Medical Council – Council of Healthcare Regulatory Excellence – transcript 23.10.08

Providing some privacy in high street chemists for offenders in drug rehabilitation

The pharmacy project was involved in a partnership with Boots the Chemist in Northamptonshire, where a private room was provided for probation staff at chemists across the county one day a week, to allow the supervision and drug testing of offenders involved in drugs rehabilitation when they were collecting their medication. This was an innovative idea designed to improve compliance with a challenging group of offenders.¹⁷³

The Inquiry was told that staff in public service organisations, need human rights terminology explained to them. People can be quite unsure of what inspectors mean if they just use the term "human rights" but, as one commission told us, when they explain that they mean dignity in care or access to fresh air, then people become “keen to take these issues forward”.¹⁷⁴

¹⁷² Sir Ian Kennedy, Chairman, Healthcare Commission – transcript 10.10.08.

¹⁷³ Report on Inspectorates and Regulators, p.56; referring to HM Inspectorate of Probation’s Offender Management Inspections Programme 2003-2006.

¹⁷⁴ Ms Gemma Pearce, Chief Executive, Mental Health Act Commission – transcript 25.09.08.

Inspectorates demonstrated how they can provide support to service providers with the difficult business of balancing rights. For example, the freedom of residents of care homes needs to be balanced with the care home's need to make sure residents are safe:

“You start from providing as much independence and liberty as you can and then there have to be really good reasons as to why you might want to balance that in particular circumstances. A practical example ... would be guidance we have recently issued, for inspectors, on the use of ... CCTV [in care homes]. It can be liberating if used appropriately or they can be very restrictive if used inappropriately.”

Mr John Fraser, Director of Quality, Performance and Methods, Commission for Social Care Inspection – transcript 25.09.08

Regulators and inspectorates have a role in guiding other aspects of public services, such as recruitment and training of staff. For example, the Mental Health Act 1983 introduced the Second Opinion Appointed Doctor Service as a safeguard of the rights of patients detained under the Act who either refuse the treatment prescribed by the approved clinician, or are deemed incapable of consenting. The Mental Health Act

Commission is responsible for appointing ‘second opinion’ doctors to a panel and managing the service. The role of the second opinion appointed doctor is not to give a second clinical opinion in the conventionally understood medical form of the expression, but to decide whether the treatment recommended is clinically defensible and whether due consideration has been given to the views and rights of the patient.¹⁷⁵

The Commission's Chief Executive told the Inquiry that they now make sure that consultant psychiatrists, who are applying to be appointed to the second opinion doctor panel, understand that they must include the human rights of the patient under the Human Rights Act as part of their considerations.¹⁷⁶

The Inquiry was told that the training of social workers is now based on human rights principles:

“The occupational standards which form the core of [social care worker's] training are very much human rights based.”

Sir Rodney Brooke, Chair, General Social Care Council – transcript 25.09.08

Inspectorates are encouraging service providers to include human rights considerations in procurement arrangements. The Commission for Social Care Inspection told the Inquiry that because councils and primary care trusts are increasingly buying in services, they can encourage them to insist on ‘top quality services’ which meet human rights standards in their contracts with third parties.¹⁷⁷

¹⁷⁵ Mental Health Act Commission website, 15 February 2009.

¹⁷⁶ Ms Gemma Pearce, Chief Executive, Mental Health Act Commission – transcript 25.09.08.

¹⁷⁷ Mr John Fraser, Director of Quality, Performance and Methods, Commission for Social Care Inspection – transcript 25.09.08

8.0 Voluntary organisations, user groups, advice services and individuals

The Inquiry received evidence that voluntary sector staff, advice agencies and some individuals have successfully applied the principles of the Human Rights Act in negotiations with public authorities to achieve improvements in public services in particular cases. These changes can then be applied more widely for the benefit of other people in similar situations.

8.1 Importance of human rights

One witness from a leading charity told the Inquiry how important it was, for people receiving public services, that values such as dignity and respect are now underpinned by legal obligations:

“The fundamental point ... is that dignity and respect, by definition really, are patronising. It's ... what you hope somebody else will give to you. Rights are what you have a right to expect.”

Mr Gordon Lishman, Director General, Age Concern – transcript 24.10.08

The Chief Executive of the Welsh Refugee Council explained his understanding of a ‘human rights-based organisation’:

“For an organisation to be a human rights organisation it must be proactive and ensure that human rights are embedded in all aspects of its work and in all its internal procedures. At the Welsh Refugee Council, we do not take a pick & mix approach to human rights, they are part of all we do, from our recruitment procedures, to our user involvement strategy ...”

Mr Mike Lewis, Chief Executive, Welsh Refugee Council – transcript 08.10.08

Vision Sense’s experience has been that although the Human Rights Act has not resulted in “automatic protection” of people’s rights, it does serve as “a driver for resolution through mediation”.¹⁷⁸ Another witness told the Inquiry’s researchers that a reference to human rights can make a difference in a particular case:

“Sometimes the mere mention of human rights can be a force for change.”¹⁷⁹

The Human Rights Act can fill a gap in anti-discrimination legislation:

“For me the Human Rights Act reaches the parts that the Disability Discrimination Act cannot reach. So it is not just about having equal access along with everybody else to some rubbish service, it is about changing the nature of the service and the nature of the change. It is not about the equality of misery. It is about standards that everybody should be able to expect.”

Ms Caroline Ellis, Deputy Chief Executive, RADAR – transcript 23.10.08

¹⁷⁸ Vision Sense, Call for Evidence response.

¹⁷⁹ Report on Public Services, p.68.

A representative of a faith organisation told the Inquiry that the human rights framework can be used in the case of competing rights:

“I think the human rights framework at its best does provide a context in which rights in conflict can be accommodated with one another.”

Mr Richard Zipfe, Representative, Catholic Bishops Conference – transcript 13.11.08

Witnesses understood the relevance of human rights across the range of their work in the voluntary sector:

“There is potential for human rights arguments in much of our work, as all our work involves promoting disabled people’s rights – for example, to housing, to independent living and to accessing the community.”

Choices and Rights Disability Coalition¹⁸⁰

“Getting people in public bodies to realise that elder abuse is also human rights abuse is critical for preventing poor treatment.”¹⁸¹

8.2 Application of human rights principles by individuals

The Inquiry heard from individuals who had used human rights principles to obtain better public services:

“In the past I have referred to the Human Rights Act to challenge the healthcare profession in order to obtain the right treatment.”

Individual responding to the Call for Evidence¹⁸²

A 16 year old carer from South Wales gave oral evidence to the Inquiry. Although in full-time education, she helps her parents care for her younger brother and sister, both of whom have disabilities, one quite severe. She also offers emotional support to her mother who has recovered from serious illness.¹⁸³ In addition to her responsibilities, this young woman is an active member of a group which supports her and other young carers. She told the Inquiry that she had found out about the young carers group by chance (her mother had seen a poster in the local civic centre). She also described what the group had provided for her personally in asserting her human rights and those of her parents:

“For me, Young Carers has helped me with more emotional aspects if there is anything I want to speak to anyone about, they are there. If I needed any help with Social Services or anything like that, they are there to help.”

Ms Hannah Spokes, Young Carer, South Wales – transcript 08.10.08

¹⁸⁰ Call for Evidence Report, p.15.

¹⁸¹ Report on Public Services, p.48.

¹⁸² Individual, Call for Evidence response.

¹⁸³ Ms Hannah Spokes, Young Carer, South Wales – transcript 08.10.08.

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The Chair of the Young Carers network told the Inquiry that a human rights approach was important to the work of young carers:

“The reason why we try and take a rights based approach [is because] these young people have a right to be informed of what is happening to their parents but also to input as their carer. But this is very often an issue we have to fight for.”

Mr Richard Andrews, Chair, Young Carers Network, South Wales – transcript 08.10.08

A young woman from a Gypsy community in West Wales told the Inquiry her parents were concerned about her transferring to secondary school. However, she had pursued her right to education and a special facility for Gypsy Traveller children has been set up in her primary school. She is now employed as a learning support assistant at the same school:

“I would like every Gypsy Traveller my age to have the same rights that I had to gain my qualifications. They'll never be out of a job, they will have education, they will be able to write; they will be able to read. I can remember coming home from school, my Mum and Dad couldn't read, help me with homework or anything.”

Ms Kirby Jones, Young Gypsy and Learning Support Assistant, West Wales – transcript 08.10.08

Diane Blood's legal battle to use her husband's sperm to start a family after his early death is well-known. That case was decided under European human rights law. After her sons were born, Mrs Blood wanted to register their father's name on their birth certificates. Before the Human Rights Act, the law would have prevented her from doing that. She gave evidence to the Inquiry that, because of the Act, she was able to persuade the Secretary of State for Health that the right to private and family life meant that her boys, together with another child, Jonathan Tarbuck had the right to have their late fathers' names on their birth certificates.¹⁸⁴ Mrs Blood said that before all this happened to her she was just “Mrs Average” and never would have expected to have needed to use the Human Rights Act.¹⁸⁵

A witness who is an expert on polling told the Inquiry a personal story. When his five year old daughter was undergoing open heart surgery, a hospital official told him and his wife they were not allowed to stay the night with their daughter in hospital. It was only after the couple saw a notice which made it clear they did have that right, that they felt able to challenge the decision. The anxious parents were then able to be with their young daughter during the night at such a critical time.¹⁸⁶

¹⁸⁴ The law was amended by the Human Fertilisation and Embryology (Deceased Fathers) Act 2003.

¹⁸⁵ Ms Diane Blood – transcript 25.09.08.

¹⁸⁶ Mr Stephen Shakespeare, YouGov, Co-Founder and Chief Innovations Officer – transcript 17.10.08.

8.3 Evidence from the voluntary sector

Many voluntary and community groups told the Inquiry of the ways that they have used the Human Rights Act and the impact that it has had on their organisation and the people whose interests they are advancing.

Evidence of voluntary organisations using human rights:

- The **National Aids Trust** works with other organisations and intervenes in legal cases to defend the human rights of people with HIV and AIDS.¹⁸⁷
- **Eaves Housing / The POPPY Project**, a domestic violence support organisation, uses the Human Rights Act to influence key Government policy in areas affecting their service users.¹⁸⁸
- **Disability Awareness in Action** provides advice, information and training in how disabled people can use human rights to gain protection.¹⁸⁹

- **The Royal National Institute for Deaf People** uses the Human Rights Act to support the rights of deaf people and remind public authorities of their duties, for example, under Article 6 (fair hearing) to ensure that deaf people are able to access the legal system.¹⁹⁰
- A local community organisation supporting young people considered the Human Rights Act in terms of young people “understanding that they don’t deserve abuse and about understanding their rights within their own personal sexual relationships.”¹⁹¹
- **Counsel and Care** provides advice and information on the Human Rights Act to older people, their families and carers to ensure they are aware of their rights and entitlements and how to challenge local social services if their human rights are being curtailed.¹⁹²
- The **British Humanist Association** said that the Human Rights Act is a “vital tool” for making the case for equality when dealing with the Government and other public authorities.¹⁹³

¹⁸⁷ National Aids Trust, Call for Evidence response.

¹⁸⁸ EAVES Housing / The POPPY Project, Call for Evidence response.

¹⁸⁹ Disability Awareness in Action, Call for Evidence response.

¹⁹⁰ The Royal National Institute for Deaf People, Call for Evidence response.

¹⁹¹ Summarised in the Call for Evidence Report / Participant, Nottingham Group Evidence Session.

¹⁹² Counsel and Care, Call for Evidence response.

¹⁹³ British Humanist Association, Call for Evidence response.

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A number of different charities and other voluntary groups in England and Wales provided examples of cases where they have used the principles of the Human Rights Act to negotiate with public officials for improvements in public services for people they represent. Help the Aged reported positive consequences in a case where a public authority was challenged in this way:

“A letter before claim was sent arguing both Article 8 and public law consultation issues. As a result the consultation was extended and improved. In this case the proposal went ahead, but the tenants felt that their bargaining position had been improved and that their rights were better recognised.”

Help the Aged¹⁹⁴

Examples provided to the Inquiry, of situations where human rights principles have been used to achieve changes in public services, are set out on the next few pages.

Case studies from voluntary and community organisations using human rights principles to achieve changes in public services:

1. Choices and Rights Disability Coalition, an organisation based in the North East providing advice, information and support to disabled people, used human rights arguments to help an older disabled man continue to live independently and participate in local community life.¹⁹⁵
2. A South London anti-poverty organisation used the right to respect for private life to stop a residential assessment centre using a CCTV camera in the bedroom of a young learning disabled couple.¹⁹⁶
3. A women’s centre used the right to respect for family life to persuade a North London council not to expect unmarried Gypsy girls to move out of their homes at 18, given a strong Gypsy tradition of young girls not leaving home until they are married.¹⁹⁷

¹⁹⁴ Help the Aged, Call for Evidence response.

¹⁹⁵ Call for Evidence Report, p.14.

¹⁹⁶ Summarised in the Call for Evidence Report; Participant, Equality and Human Rights Commission / British Institute of Human Rights Group Evidence Session.

¹⁹⁷ Summarised in the Call for Evidence Report; Participant, Equality and Human Rights Commission / British Institute of Human Rights Group Evidence Session.

4. An organisation based in London providing advice and support to migrants and refugees used human rights arguments to negotiate for a destitute asylum-seeker to pay the £5,000 bill for her son's hospital care by instalments rather than in a lump sum as originally demanded.¹⁹⁸
5. **Age Concern Cymru** used the right to respect for the person to persuade a psychiatric unit to revise their plans so that when a patient was discharged he was given the support he needed to live in the community.¹⁹⁹
6. **Counsel and Care**, a national charity giving advice and information to older people, used the right to respect for family life to help a man persuade social services that his wife who has Alzheimers and is blind should be allowed to stay in a nursing home close to her family.²⁰⁰
7. **Choices and Rights Disability Coalition**, a disability organisation based in North East England, used human rights arguments to negotiate a severely disabled young man's return to college, with proper and respectful provision for his needs.²⁰¹
8. **Help the Aged**, a national organisation providing a range of services to older people, helped an older couple threatened with eviction (because of funding changes) from a private care home where they had been settled for a long time, to use the right to respect for the home to persuade the local authority that they could stay.²⁰²
9. A local authority gave planning permission to a housing association to demolish and replace bungalows inhabited by older and disabled people. A national age charity successfully argued that the council and housing association had to take into account the human rights of the residents (particularly the right to respect for the home and the right to life) before they went ahead with the development.
Help the Aged²⁰³
10. A charity supporting older people in Oxfordshire, suggested to a care home which was concerned about the safety of some confused older residents, that it should make it clear to all residents how much freedom they had to go where they liked, to comply with the right to liberty.²⁰⁴

¹⁹⁸ Summarised in the Call for Evidence Report; Participant, Equality and Human Rights Commission / British Institute of Human Rights Group Evidence Session.

¹⁹⁹ Report on Public Services p.68.

²⁰⁰ Call for Evidence Report, p.15.

²⁰¹ Call for Evidence Report, p.16.

²⁰² Call for Evidence Report, p.16.

²⁰³ Call for Evidence Report, p.17.

²⁰⁴ Equality and Human Rights Commission / British Institute of Human Rights, Group Evidence Session.

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The British Institute of Human Rights provided the Inquiry with a new publication containing case studies showing the changes to people's lives made by the Human Rights Act. It contains 16 new cases in addition to 15 which were published in 2006. Two of the new cases are referred to in this report (see previous case studies) because they were discussed in the evidence-gathering session the Inquiry held jointly with the British Institute of Human Rights. Their publication demonstrates that people are, in the charity's words, "benefiting from human rights law without resorting to the law."²⁰⁵ They have concluded that the "language and ideas of human rights" are now being adopted by a range of third sector and public sector organisations.²⁰⁶

8.4 Evidence from the advice sector

The human rights group, Liberty, provides an advocacy and legal advice service to people needing protection of their human rights. Sometimes a case can be settled through negotiation, sometimes legal proceedings are brought. Liberty provided the Inquiry with a number of case studies where they have represented people under the Human Rights Act.

Some people represented by Liberty under the Human Rights Act:²⁰⁷

1. Inquest for murder victim

Naomi Bryant was murdered by a man wrongly released on licence. Her mother was seeking more information on the circumstances in which a prisoner on parole came to kill her daughter. Acting on behalf of Mrs Bryant and citing Article 2 (the duty to protect life), Liberty persuaded the coroner to reopen the inquest so that it can inquire into the facts and consider what lessons can be learned.

2. Protecting a patient in hospital

A has cerebral palsy. Because of the risk that he might choke on his food, the National Health Service trust responsible for his care refused to allow his carers to feed him orally. Instead he was fed through a tube directly into his stomach. Despite the risk he wished to be able on occasions to eat normally and to enjoy his food. Relying on Article 8, Liberty persuaded a specially established ethical panel to agree to his request.

²⁰⁵ 'The Human Rights Act – Changing Lives', 2nd edition, British Institute of Human Rights, November 2008.

²⁰⁶ 'Changing Lives', op.cit. p.25.

²⁰⁷ Information supplied by Liberty to the Inquiry.

3. Helping an adopted person

B was placed for adoption by an adoption society in the 1950s. Her birth parents and her adoptive parents are now dead. She wished to have access to the relevant files but the adoption society refused. Relying on Article 8 (right to personal information), Liberty obtained a court order for the release of the files.

4. Protecting a worker

C was sacked from her job in airport security after she was refused counter-terrorism clearance. She had no idea why she might be thought to be a risk and was not given any reasons. Liberty took judicial review proceedings relying, among other arguments, on Article 6 (right to a fair hearing). During the case, it became obvious that the decision to sack her had been made on flimsy grounds. The Department of Transport conceded that the process was flawed and paid C compensation. It has also now altered its procedures.

5. Helping a bereaved family

Liberty represented the family of a prisoner, D, who had died in prison after suffering an asthma attack. The High Court held that Article 2 required that there be an independent inquiry into his death.

6. Challenging restrictions on freedom

On behalf of E, a 14 year old boy, Liberty brought a challenge to the police's power, in designated areas, to take young people under the age of 16 home if they were out after 9pm. Among other arguments, Liberty relied on E's rights under Articles 5, 8 and 14 (liberty, respect for the person and right not to be discriminated against). The Government conceded that the power could only be used against those engaged in anti-social behaviour and not against people like E who were law-abiding.

7. Protecting the right to protest

Five protesters held a peaceful protest during the Queen's visit to Wakefield. Silently, they held up posters demanding fair pensions for all. They were arrested and held at the police station for five hours. Liberty obtained damages for wrongful arrest and false imprisonment because the arrests were a disproportionate interference with the protesters' Article 10 and 11 rights (free expression and peaceful protest).

8. Protecting free speech

Jon Gaunt, presenter of the radio programme, TalkSport was fired by his employers after he called a local councillor a 'Nazi' during a live broadcast. Liberty supported Mr Gaunt arguing that Article 10 permitted contentious speech and the summary termination of his contract was a 'disproportionate' restriction of his right to free expression.

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Other witnesses working in the advice sector gave evidence to the Inquiry about the impact of the Human Rights Act on the cases they deal with:

“[Law Centres have] said to me that since the Human Rights Act has been in operation, the ability to mount a human rights argument when advocating for a client now has more weight. The impact of this strengthened argument is that it can avoid having to take a matter to court. The fact that the Act exists makes it possible for them to include this as an argument and so the argument can be much more effective.”

Ms Julie Bishop, Director, Law Centres Federation – transcript 15.09.08

The Inquiry was informed that Law Centres were using human rights arguments in areas such as community care, instances involving young people, people who are learning disabled, homelessness, repossessions and educational access to schools:

“Avon and Bristol Law Centre were able to use a human rights argument quite successfully with a landlord. It was a same sex couple and the partner died and the landlord decided that meant he could get rid of the standing tenant. He believed that they could not be regarded as a couple in the usual sense of the law. In addition he raised the rent ...The Law Centre successfully used a human rights argument and succeeded in achieving for the surviving partner that he was able to stay in the accommodation at the same rent.”

Ms Julie Bishop, Director, Law Centres Federation – transcript 15.09.08

Advice UK provided similar evidence to the Inquiry:

“Our members are using the Human Rights Act predominantly as an extra tool and they use it alongside legislation but they find it a useful tool, a useful kind of extra argument.”

Ms Savita Narain, Development Consultant – Discrimination and Equalities, AdviceUK – transcript 15.09.08

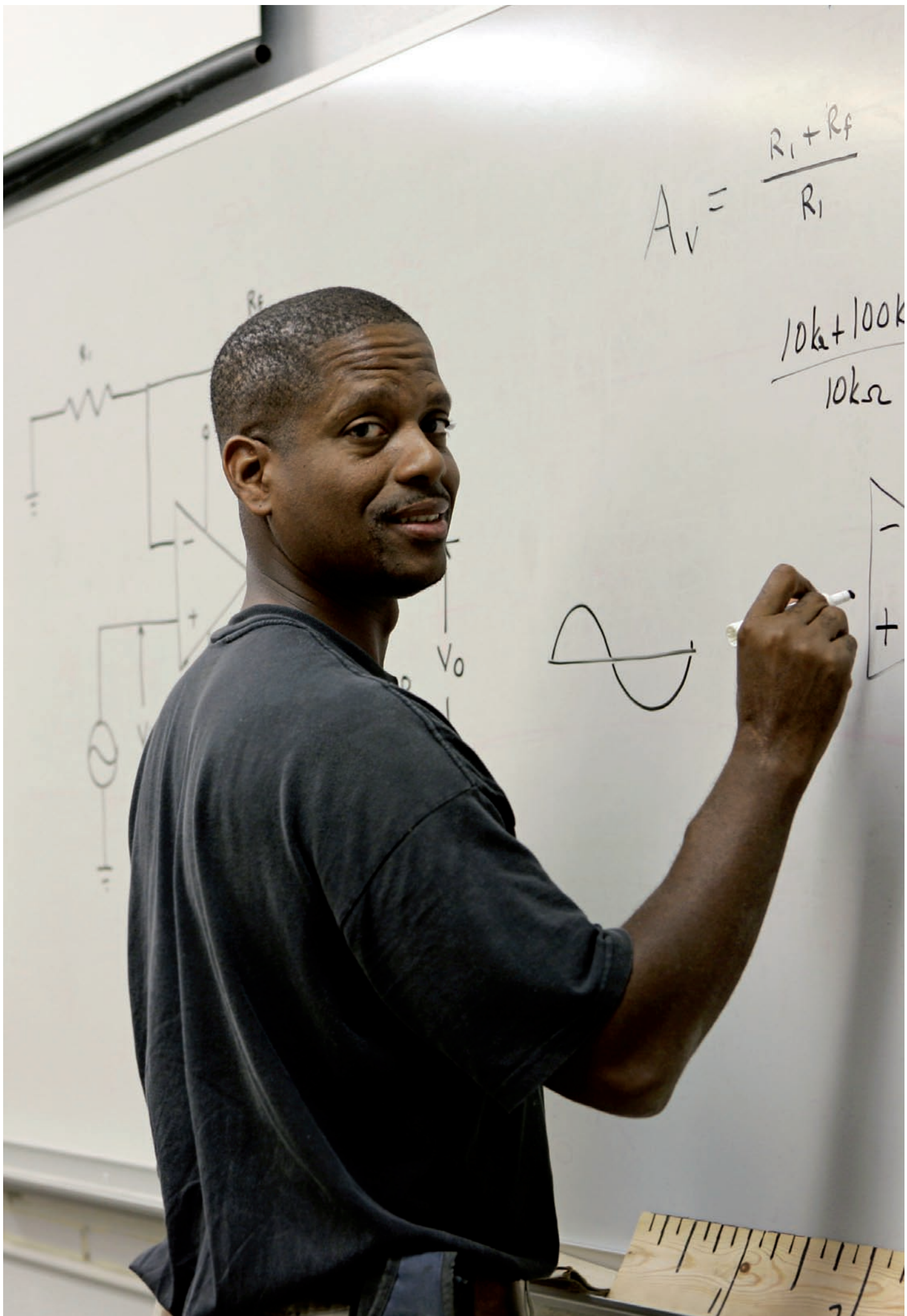
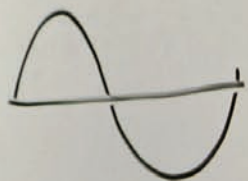
9.0 Conclusion

This chapter includes evidence received from numerous individuals and organisations from many different regions, and from across the public service spectrum. The experiences described, observations made, and case studies provided, demonstrate both a capacity to understand how the principles of the Human Rights Act apply in everyday public service situations, and a confidence to apply them. The case studies were mostly settled without recourse to litigation. By talking to each other, individuals, advocates and public authorities were able to reach an understanding of the appropriate approach to be used in a specific case. Although these case studies amount to justified appeals, to common sense and common decency, it was the human rights arguments that made the difference by providing a framework and a set of standards to guide the decision-making.

The evidence shows that many public bodies regard the Human Rights Act as an ethical framework which guarantees greater fairness and respect for users of public services. This suggests that the Act has had, and can have, a transformative function and that it can help to build public trust and confidence in public services.

$$A_v = \frac{R_i + R_f}{R_i}$$

$$\frac{10k\Omega + 100k\Omega}{10k\Omega}$$





Mrs E, the carer for HL, an autistic man whose legal case against Bournewood Hospital won new rights for vulnerable people in the care system

Chapter 4

Barriers to the assertion, provision and enjoyment of human rights

Evidence given to the Inquiry identified multiple barriers to the assertion, provision and enjoyment of human rights in England and Wales. Those barriers involve:

- Lack of leadership on human rights.
- Lack of knowledge and understanding.
- The perception of legalism and complexity.
- Negative perceptions.
- Inaccurate portrayal by some print media.
- The use of general, rather than specific language.
- Lack of capacity and confidence.
- Organisational culture and structure.
- Lack of resources.
- Lack of access to, and shortage of, advice.
- Lack of guidance and information.
- Lack of training.

1.0 Lack of leadership on human rights

Much of the evidence received by the Inquiry emphasised the central role that leadership can play in ensuring that human rights principles are understood, perceived to be relevant, and meaningfully integrated into policies and working practices across an organisation, and the consequences when such leadership is not available. The Report on Public Services states that:

“Senior level commitment to human rights has been a critical success factor in all case studies. Visible support from politicians, chief executives, board members and senior staff has been fundamentally important in beginning the journey to embed human rights.”²⁰⁸

²⁰⁸ Report on Public Services, p.9.

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However, there was also almost universal agreement, among those who gave or submitted evidence, that one of the major barriers to the establishment of a culture of respect for human rights is lack of leadership. Evidence received during the course of all the research work, from the Inquiry Panel process, and from the responses to the call for evidence, articulated a perceived lack of leadership, in relation to human rights, from many of those in positions of power in public authorities, both at a local and national level, from central government, and from some politicians.

It is suggested that this lack of leadership has existed both prior to, and after, the enactment of the Human Rights Act. The Chair of the Parliamentary Joint Committee on Human Rights stated that:

“Well, I think the starting point was that the ground work wasn't done in the first place to argue why we need the Human Rights Act incorporated into UK law ... the work wasn't done in the beginning by us, collectively from our leadership as a government, through to us as MPs and then disseminated through the political parties.”

Mr Andrew Dismore MP, Chairman, Joint Committee on Human Rights – transcript 24.10.08

An Age Concern England Legal Policy Adviser also stated that:

“There is definitely a lack of leadership at government level.”

Ms Nony Ardill, Legal Policy Advisor, Age Concern England – transcript 24.10.08

This lack of leadership is perceived to lead to failure to embed human rights and henceforth, to consequential failure to respond to human rights arguments:

“We, both at national level and local level, have experienced the fact that authorities don't show leadership in taking on or using [human rights] arguments themselves. For example, we had a national campaign ... and the [government department] were not convinced at all by the human rights arguments that were put forward ... they absolutely should have been but they weren't.”

Ms Ali Harris, Head of Equality & Diversity, National Association of Citizens Advice Bureaux – transcript 15.09.08

There was also a perception that:

“The Act has never been properly promoted in my view by Government as yet and by any public body with that responsibility.”

Ms Shami Chakrabarti, Director of Liberty – transcript 10.10.08

“Promotion of human rights is not coming from the top. We're trying to promote human rights from the bottom but there is nothing coming from the top.”

Race Equality Council, Southern England²⁰⁹

²⁰⁹ Race Equality Council, Southern England, Call for Evidence response.

The Inquiry was told of a lack of leadership to help voluntary organisations use the Human Rights Act:

“The Government has so far failed to recognise the role that the voluntary sector could have in using the Human Rights Act to further the interests of vulnerable client groups including women (and their children) who have experienced domestic violence and victims of trafficking.”

Eaves Housing / The POPPY Project²¹⁰

The Inquiry had invited the Government and all the major political parties to submit evidence. Given the public statements made on the Human Rights Act by some Shadow Ministers, the Inquiry sought, on a number of occasions, to obtain evidence from them. However no evidence was forthcoming.²¹¹

It was also suggested that, on occasion, lack of resources is used as an excuse for leadership deficiencies:

“I mean at the end of the day, they will talk to us about lack of resources and all that other kind of **** you know, but it is attitudes at the end of the day, it is the attitudes of the management and leadership of these institutions and public bodies who don't understand the people they are paid to support and work with.”

Youth worker, Newcastle Group
Evidence Session²¹²

2.0 Lack of knowledge and understanding

There was a variety of responses when the issue of knowledge about human rights was raised through the various Inquiry processes. Central government departments generally did not see the Act itself or its obligations as a barrier to human rights, and they articulated no problems in relation to levels of knowledge about human rights generally. In response to a question about barriers, 16 central government departments were very clear that, from their points of view, they had experienced no barriers in achieving compliance:

“Compliance with the Human Rights Act is always considered by the [Department name]. The Human Rights Act has not generally proved to be a barrier to the [Department name] in the development or in the operation of its policies or procedures.”²¹³

The response set out above was repeated in very similar terms by 15 other central government departments.

The situation was different in local government, and among non-governmental organisations and individuals:

“We knew human rights were very relevant to our work, but we weren't sure what this meant for everyone in the organisation.”²¹⁴

Inspectorate/regulatory body, London

²¹⁰ Eaves Housing / The POPPY Project, Call for Evidence response.

²¹¹ We launched a call for written evidence in April 2008 which was open to everyone. We also invited three spokespersons of the Conservative party to give oral evidence to the Inquiry on several occasions. However no testimony was received.

²¹² Summarised in the Call for Evidence Report / Newcastle Group Evidence Session.

²¹³ Government Call for Evidence Response, Memorandum of Evidence, Memorandum II.

²¹⁴ Call for Evidence Report, p.33.

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Many respondents recognised this barrier:

“Human rights are ... particularly important in those areas where local government is responsible for providing services for vulnerable people [but] there isn't ... a more deep-rooted and systematic understanding of a human rights approach.”

Ms Angela Mason, National Adviser on Equality and Diversity, Improvement and Development Agency – transcript 26.09.08

“Asylum seekers and refugees are very vulnerable and don't know their human rights but are the ones who need it most.”

Voluntary and community sector organisation supporting older people²¹⁵

“There are groups of people who are particularly disadvantaged in terms of knowing and being able to press for their rights, such as people who have profound learning disabilities and disabled people from minority ethnic communities.”²¹⁶

“There is a general consensus ... that greater awareness ... needs to be undertaken in order to increase understanding of the Human Rights Act would [sic] will ultimately lead to improvements in patient care.”²¹⁷

Submissions to the Inquiry's call for evidence stated that members of the public had a low level of knowledge about the Human Rights Act. No submission reflected a view that members of the general public were well, or even adequately, informed about the Human Rights Act. Similar comments were made in groups participating in the Ipsos MORI Deliberative Workshops:

“People go on about human rights, but not many know what they are. I think there's about 12 basic human rights, and even I, a law student, can only write down five.”

Male, lesbian, gay, bisexual and transgender group, Manchester²¹⁸

“I don't understand the difference between the European human rights thing and the British one. I just don't know much about it.”

Female, older group, Cardiff²¹⁹

The Ipsos Mori poll supported these findings, indicating that 50 percent of the people interviewed stated that they 'did not know much' about their human rights generally or about the Human Rights Act, itself. Forty percent of people said that they knew 'a fair amount' about human rights generally, but only 25 percent said they knew 'a fair amount' about the Act itself.²²⁰

²¹⁵ Summarised in the Call for Evidence Report / Participant, Equality and Human Rights Commission / British Institute of Human Rights Group Evidence Session.

²¹⁶ Call for Evidence Report, p.21.

²¹⁷ Call for Evidence Report, p.34.

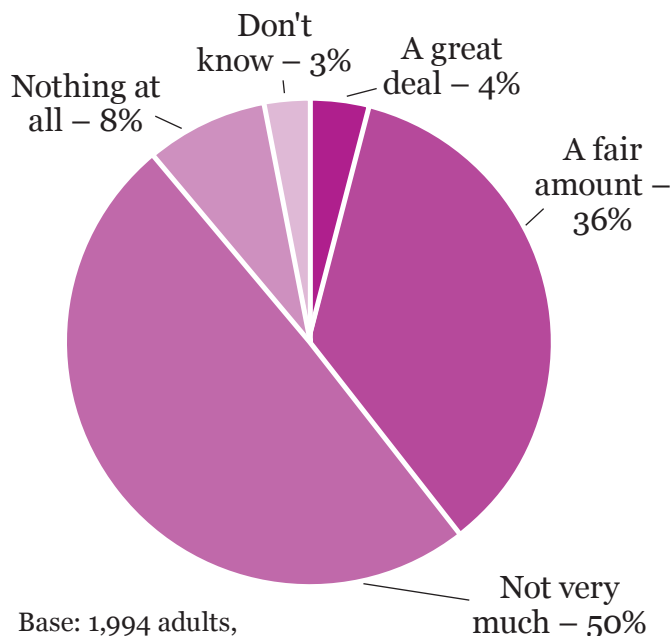
²¹⁸ Public Perceptions Report, p.49.

²¹⁹ Public Perceptions Report, p.49.

²²⁰ Public Perceptions Report, p.17.

Knowledge of human rights

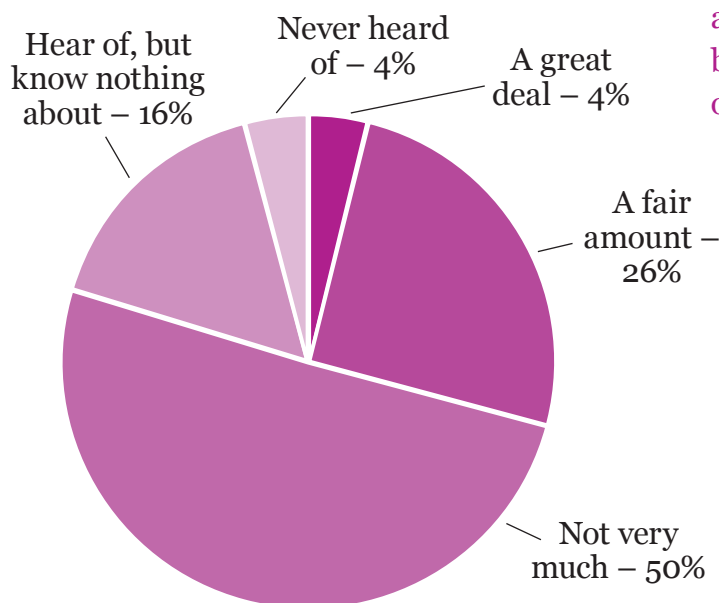
How much would you say you know about human rights generally?



Base: 1,994 adults, 14-21 August 2008 – Ipsos MORI

Knowledge of the Human Rights Act

Before this interview, how much did you know about the UK's Human Rights act?



Base: 1,994 adults, 14-21 August 2008 – Ipsos MORI

Frequent references were made by voluntary and community sector organisations to the lack of human rights knowledge of public sector staff involved in directly delivering services or dealing with members of the public, despite the existence of policy documents stating the organisations commitment to mainstreaming the Human Rights Act into service delivery:

“People had little knowledge about the Human Rights Act ...”

Black Voluntary Sector Network, Wales²²¹

One notable issue which emerged as a barrier throughout the call for evidence was the apparent confusion that existed in some public authorities about the overlapping concepts of equality and diversity, and human rights, and about the fact that human rights law is distinct from, and complementary to, existing equality obligations and rights:

“[There is] evidence of confusion within both inspectorates and inspected bodies as to the key differences between equality and diversity and human rights, and the inter-relations between these different functions within the organisations.”²²²

²²¹ Call for Evidence Report, p.27.

²²² Report on Inspectorates and Regulators, p.63.

3.0 The perception of legalism and complexity

Evidence received stated that the Human Rights Act was perceived, both within public authorities and by members of the public, as complex and a matter for lawyers only, despite the fact that the schedule of rights in the Human Rights Act is relatively simple and short, compared to most legislation. A Ministry of Justice Official stated:

“Part of the problem with the Human Rights Act is it had got stuck on lawyers' desks.”

Mr Edward Adams, Head of Human Rights Division, Ministry of Justice – transcript 10.10.08

Or, as the Chair of the Parliamentary Human Rights Committee put it:

“Human rights has become a prisoner of the lawyers.”

Mr Andrew Dismore MP, Chairman, Joint Committee on Human Rights – transcript 24.10.08

Some employees in public authorities, who were not employed in legal departments, reported seeing the Human Rights Act as something that was not relevant to them in their roles:

“Within social care the use of the term ‘human rights’ can imply a legalistic approach to a problem and can often be dismissed as an abstract notion, devoid of meaning.”

General Social Care Council²²³

The Human Rights Lawyers Association took a similar view:

“[There is] a lack of highly developed human rights culture in certain parts of public authorities which approach human rights in a legalistic fashion as something to be complied with by lawyers rather than a set of principles or reflecting a set of values which need to be woven into their work generally.”

Mr Stephen Grosz, Vice Chair, Human Rights Lawyers Association – transcript 15.09.08

Members of the public, and those who advised them, did not always perceive the Human Rights Act as being of use to them:

“The Human Rights Act appeared to be legalistic and in the realm of the legal profession.”²²⁴

The Report on Legal Cases identified that:

“A significant number of interviewees within local authorities said mechanisms to review policy and guidance in the light of case law are haphazard and overly dependent on legal colleagues to flag relevant case law that might affect policy, or wait to be alerted through specific channels.”²²⁵

²²³ Call for Evidence Report, p.27.

²²⁴ Call for Evidence Report, p.27.

²²⁵ Report on Legal Cases, p.108.

It also stated that:

“... monitoring arrangements are variable and often highly specific to each public authority ...”

The Report on Inspectorates and Regulators states that the language of human rights was perceived by some respondents as “legalistic and Byzantine” and that a key challenge is to “de-mystify people’s perceptions of human rights.”²²⁶

4.0 Negative perceptions of the Human Rights Act

A number of submissions from public authorities, voluntary and community sector organisations and individuals, stated that negative perceptions of human rights and the Human Rights Act were a barrier to the effective implementation of the Act. It was felt that the negative perceptions surrounding the Human Rights Act influenced the extent to which public authorities, in carrying out their functions, could openly refer to human rights principles as guiding or underpinning their work, and that often this negative perception creates a barrier to even discussing the issues:

“There is certainly a negative public perception of the Human Rights Act as there is with health and safety, for example often cited as ‘political correctness gone mad’.”

Hull City Council²²⁷

In addition to this, the Under Secretary of State at the Home Office, acknowledging the existence of many myths, observed that:

“Too often people cite the Human Rights Act as a reason we can't do things ... The myths come out too often ... It is important we are straight about when it is a human rights issue that is at debate and when it is other parts of the law that are being debated.”

She also stated that:

“[The publication of myths] is a concern for us because it undermines the valuable work of the Human Rights Act quite considerably and it is not very helpful all round.”

Ms Meg Hillier MP, Under-Secretary of State for the Home Office – transcript 14.10.08

5.0 Inaccurate portrayal of human rights issues by some print media

Witnesses recognised the importance of freedom of expression of the media. However, concerns were expressed about inaccurate reporting, and the negative effects of such reporting.

The Report on Inspectorates and Regulators suggests that there is a:

“... strongly held view that recent years have brought a “savaging of human rights by the media.” Many respondents feel that this has created a culture of disregard for human rights, or a lack of understanding about what human rights means.”

“The media makes it seem like the law is there to protect the guilty not the innocent ... and that makes it difficult, people have a bad image of human rights because of this.”

Manager

²²⁶ Report on Inspectorates and Regulators, p.62.

²²⁷ Call for Evidence Report, p.31.

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“... the British media is seen to present an additional barrier to raising awareness of and knowledge about the Human Rights Act, and is held accountable, at least in part, for stunting the growth in understanding of how human rights relates to the everyday functioning of inspectorates and public bodies.”²²⁸

Many witnesses and many submissions to the call for evidence also identified some of the media as playing a significant role in developing and sustaining negative perceptions of the Human Rights Act:

“The Human Rights Act seems to get such a bad press and only seems to be used as a vehicle to demonise certain communities, for example asylum seekers, illegal immigrants. It is only used in terms of sensationalist journalism.”

Voluntary and community sector mental health organisation²²⁹

"If you read the tabloid press, the impression of the Human Rights Act is overwhelmingly negative ... and those are the kinds of places that people take their views of the Human Rights Act from."

Participant, North Wales, Group Evidence Session²³⁰

Various national non-governmental organisations, including the National Association of Citizens Advice Bureaux, told the Inquiry that the “myths and bad press” about human rights are a “significant barrier” to using the Act effectively in their work.²³¹

Evidence was received that, on occasions, public officials can struggle to use human rights principles in a public service context, when press headlines portray the Human Rights Act as a charter for criminals and terrorists or as “political correctness gone mad”.²³² Bad press made them more reluctant to develop worthwhile programmes and apply them more widely:

“I think it is fair to say there are sections of the press that have taken ... a stance [on] the Human Rights Act which makes it more difficult perhaps to get a fair hearing of some of the issues that we have talked about.”

Ms Lorraine Langham, Director Corporate Services, Office for Standards in Education, Children’s Services and Skills – transcript 14.10.08

“One negative story about ‘mad axe men in the community’ can undermine 12 months of work.”

Ms Lindsey Dyer, Director of Service Carers and Users, Mersey Care – transcript 17.09.08

²²⁸ Report on Inspectorates and Regulators, p.63.

²²⁹ Call for Evidence Report, p.31.

²³⁰ Summarised in the Call for Evidence Report / North Wales Group Evidence Session.

²³¹ Ms Ali Harris, Head of Equality & Diversity, National Association of Citizens Advice Bureaux – transcript 15.09.08.

²³² Call for Evidence Report, p.31.

One senior media executive²³³ cited an Immigration Tribunal decision not to deport Learco Chindamo, the 15 year old killer of head teacher Philip Lawrence, upon his release from custody, as an example of a case where he believed the balance under the Human Rights Act had gone wrong.²³⁴ However, although the Human Rights Act was a factor in the case, the Court made it clear that the decision not to deport was not made under the Human Rights Act. In fact it was made under the European Union laws on freedom of movement restricting the expulsion of citizens of one member state from another member state.²³⁵ A number of newspapers reported, inaccurately, that this case was decided under the Human Rights Act.²³⁶

Witnesses drew attention to the fact that some newspapers have reported inaccurately cases in which it is alleged that officials do not act appropriately because of the Human Rights Act.

One such case involved a report²³⁷ that a convicted murderer, Dennis Nilsen, was allowed access to pornography in his prison cell because of his 'human rights'. This story was false, and was confirmed as such, in the Government's 'Review of the Human Rights Act' published in July 2006.²³⁸ Despite this rebuttal, the story was cited in a newspaper leader in November of that year. Two days later the paper published a letter from the Human Rights Minister, in which she wrote:

*"Dennis Nilsen was denied access to the gay art book he had requested, in the first instance by the prison governor. His subsequent legal case fell at the first hurdle when he was refused permission to have his case heard because he did not establish that a breach of his human rights had occurred. Thus he was not given access to the book."*²³⁹

²³³ Mr Robin Esser, The Executive Managing Director of the Daily Mail – transcript 17.10.08.

²³⁴ 'Learco v Secretary of State', Asylum and Immigration Tribunal, 21 August 2007. Available at: http://www.judiciary.gov.uk/docs/judgments_guidance/chindamo_21082007.pdf

²³⁵ The Immigration Tribunal had heard evidence from the Prison and the Parole Board that the young man had made considerable progress during his 12 years in prison and their view was that he no longer posed a danger to the public. They also recognised that he had lived for almost his entire life in England and had little connection with Italy. Immigration (European Economic Area) Regulations 2006.

²³⁶ For example, see The Daily Telegraph, 24 August 2007; The Times, 21 August 2007; BBC News, 20 August 2007.

²³⁷ For example, see The Sun, 13 May 2006.

²³⁸ Department for Constitutional Affairs Review, July 2006, p.30.

²³⁹ Ms Cathy Ashton, Parliamentary Under Secretary of State, Department for Constitutional Affairs, The Daily Telegraph, Letter to the Editor, November 16 2006.

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Many witnesses referred to the story that the Human Rights Act required a prisoner, who had escaped to the roof of his prison, to be fed Kentucky Fried Chicken (KFC). The Daily Telegraph for example, summarised this case as being about “A suspected car thief who bombarded police with bricks and tiles during a rooftop siege [in Gloucester] was given a Kentucky Fried Chicken takeaway meal by officers to ensure his "well-being and human rights".”²⁴⁰ The Government investigated this allegation and made it clear publicly that the Human Rights Act had nothing to do with the decision that was made.²⁴¹

Even where the truth behind false stories is acknowledged, some media reports have suggested that the Human Rights Act is to blame for other decisions by public authorities, deemed absurd and inappropriate. For example, a report in one newspaper, stated:

“Ministers complain that the pernicious influence of the Act has been exaggerated, insisting it was not, as has been claimed, responsible for a criminal involved in a siege being given KFC. But the truth is it has created a climate in which such absurdities are possible and in which public bodies are so afraid of being sued they take decisions verging on the criminal.”²⁴²

The Inquiry received no evidence that public authorities take decisions which verge on the criminal to avoid being sued.

Witnesses were consistent in their criticism of such reporting:

“I think ... it is all too easy for a journalist and others to use examples which come out and to say ... whether it is real or whether it is the myth of the sort of Kentucky Fried Chicken on roof tops that it becomes always about people who are in terms of public debate "undesirable" and it is stopping [you] doing what you want to do.”

Mr Peter Facey, Director, Unlock Democracy – transcript 25.09.08

“The media makes it seem like the law is there to protect the guilty not the innocent ... and that makes it difficult, people have a bad image of human rights because of this.”²⁴³

“The Human Rights Act] seems to get such a bad press and only seems to be used as a vehicle to demonise certain communities, for example asylum seekers, illegal immigrants. It is only used in terms of sensationalist journalism.”

Participant, Cardiff Group Evidence Session²⁴⁴

“The way the Human Rights Act is reported in the media makes the voluntary and community sector and public authorities unwilling to use it.”

Participant, Nottingham Group Evidence Session²⁴⁵

²⁴⁰ See The Daily Telegraph, 8 June 2006.

²⁴¹ Review of the Implementation of the Human Rights Act, Department for Constitutional Affairs, July 2006 (KFC) and Ms Cathy Ashton, The Daily Telegraph, March 8 2007; Letter to the Editor (wanted posters).

²⁴² The Daily Mail, 7 November 2008.

²⁴³ Manager cited in Report on Inspectorates and Regulators, p.63.

²⁴⁴ Summarised in the Call for Evidence Report / Cardiff Group Evidence Session.

²⁴⁵ Summarised in the Call for Evidence Report / Nottingham Group Evidence Session.

Such negative representations can promote reluctance among some senior people to exercise appropriate and effective leadership on Human Rights:

“Politicians should be fighting back against this but they are so afraid of these newspapers that they don't. The Government should be standing up to the stereotypes ...”

Mr David Howarth MP, Liberal Democrat Spokesman on Justice – transcript 19.11.08

The Chair of the Parliamentary Joint Committee on Human Rights referred to this matter also:

“You get the most bizarre things – the way our [select committee] reports are twisted around to say the opposite of what we meant.”

Mr Andrew Dismore MP, Chairman, Joint Committee on Human Rights – transcript 24.10.08

The Liberal Democrat Spokesman on Health took a similar view of the extent to which some media reporting is a significant barrier to the effective implementation of human rights:

“I think [coverage of the Human Rights Act] is very damaging. I think it is very regrettable. I think it is extremely one-sided and I think it needs to be challenged as strongly as possible because a lot of the negative stories about the Human Rights Act actually have been about rather bizarre cases that have been brought and often those cases have failed and been thrown out of court, and yet that is not reported.”

Mr Greg Mulholland MP, Liberal Democrat Spokesman on Health – transcript 14.10.08

While the Inquiry was underway, further critical stories about the Human Rights Act appeared in certain newspapers. One²⁴⁶ suggested that the Human Rights Act prevented the Royal Navy from detaining Somali pirates in the Gulf of Aden.²⁴⁷

6.0 The use of general, rather than specific human rights language

Some submissions from voluntary and community sector organisations highlighted the use of general terms such as ‘dignity’ and ‘respect’ rather than the specific language of individual rights, which have universal application, as a barrier to meaningful progress. It is recognised that there is a value in using these concepts:

“Dignity, equality, fairness, they are at the base of all human rights ... it's an easier way to explain human rights in a nutshell to a non legal audience or to someone who doesn't know what they're about.”

Ms Shami Chakrabarti, Director, Liberty – transcript 10.10.08

²⁴⁶ See article written by Nick Herbert on 9 November 2008 in the Daily Telegraph entitled ‘Human Rights Act: The law that has devalued your human rights’.

²⁴⁷ This is disputed. See Ministry of Defence website dated 12 November 2008. Available at: http://www.blogs.mod.uk/defence_news/2008/week39/index.html

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However, submissions pointed to the propensity of public authorities to use these general terms, without linking them to their legal underpinning in the Human Rights Act. This was perceived to dilute the potential impact of the Human Rights Act, and make the obligations on public authorities appear optional and aspirational. Such a view was expressed by the Chief Executive of the Council for Healthcare Regulatory Excellence. The need for the use of specific language was identified:

"Once you talk about fairness in its general sense, it means so many things to different people, it doesn't help you as a yardstick for the compliance with the Human Rights Act."

Mr Keith Starmer, Former Human Rights Adviser, Northern Ireland Policing Board – transcript 24.10.08

The Report on Inspectorates and Regulators found that:

"... human rights language was being replaced by softer language such as dignity, respect and freedom from discrimination (some interviewees were aware of the risks of avoiding human rights language).

Some people are using human rights and don't necessarily know about it ... more ... use the currency of dignity.

There are clear risks attached to the deliberate avoidance of human rights based language, which may impede understanding, awareness and the prioritisation of issues relating to human rights. Some feel that a 'drip feed' approach is called for when introducing human rights language."²⁴⁸

Such an approach has been described as 'human rights lite'.²⁴⁹ Major problems associated with 'human rights lite' were identified, such as the fact that:

1. It obscures the important fact that human rights are enshrined in law and that people can, if necessary, enforce them by way of the Human Rights Act.
2. It tends not to be part of a meaningful process across a whole organisation, and rarely leads to any significant change – for example, staff may respond to introductory information about the ideas or values behind the Human Rights Act by saying 'we are already doing this, we don't need to waste any more time learning about this'.

It has been emphasised that the embedding of human rights principles, in isolation from their legal foundations, cannot ensure that the specific human rights set out in the Human Rights Act are realised:

"Principles such as fairness, respect, equality, dignity, autonomy, universality and participation are essential ingredients if the full realisation of rights is to be achieved, but they are insufficient on their own. They are immensely useful as an entry point for helping people to understand what human rights are about at heart, but need to be reinforced by a sound understanding of human rights law, and specific human rights standards in particular."²⁵⁰

²⁴⁸ Report on Inspectorates and Regulators, p.63.

²⁴⁹ British Institute of Human Rights, Call for Evidence response.

²⁵⁰ British Institute of Human Rights, Call for Evidence response.

A number of submissions from public authorities made repeated reference to human rights principles being incorporated into policy making, without referring to the underlying legislation, thus diminishing the potential for understanding and impact of the policy.²⁵¹

The Report on Inspectorates and Regulators states that in “some cases, this is a deliberate and strategic decision to avoid concern amongst employees or public bodies”.

It goes on to state:

“There are clear risks attaching to the deliberate avoidance of human rights based language which may impede understanding, awareness and the prioritisation of issues relating to human rights.”²⁵²

7.0 Lack of confidence and capacity

The Inquiry identified the fact that vulnerable and excluded groups within society were not only unlikely to know about their rights under the Human Rights Act, but were also unlikely to have either the capacity and/or the confidence, to assert their rights through challenging the practice of public authorities. Submissions to the call for evidence, and people interviewed during the Inquiry Panels, emphasised the power imbalance between public authorities delivering services to individuals who might be subject to human rights abuses.

The range of vulnerable groups identified in submissions to the call for evidence, as likely to experience significant issues, was very wide, leading to the suspicion that it is possible that more people experience barriers to using the Human Rights Act, than are able to use it with ease:

“People facing poverty are the least likely to be able to challenge human rights abuses, because of lack of resources, inability to use technology and difficulties in accessing information.”

Voluntary and community sector organisation²⁵³

“There is a particular issue for people with enduring mental health problems, and people with learning disabilities around an individual’s capacity to obtain and understand information about the Human Rights Act ... There are groups of people who are particularly disadvantaged in terms of knowing and being able to press for their rights, such as people who have profound learning disabilities ... For people with mental health problems there can be an issue of fluctuating capacity that means they may be seen as able to stand up for their own rights, whilst not in fact able to do so at times.”

Mental Health Foundation²⁵⁴

“We could have hundreds [of disabled] people who don't have adequate bathing, people who don't have adequate toilets, people who don't have family support who can't live with family due to the budgetary constraints ... if you live in this life, it is very hard to find a way out, human rights ... would be the last thing ... you would think of.”

Participant, Newcastle Group
Evidence Session²⁵⁵

²⁵¹ Call for Evidence Report, p.38.

²⁵² Report on Inspectorates and Regulators, p.63.

²⁵³ Call for Evidence Report, p.20.

²⁵⁴ Call for Evidence Report, p.21.

²⁵⁵ Summarised in the Call for Evidence Report / Participant, Newcastle Group Evidence Session.

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“If deaf people want to challenge human rights infringements, then they are often placed in a catch-22 situation: the human rights infringements may have come about because there was no communication support, and then they need communication support to challenge the public authority which may not be available.”

The Royal National Institute for Deaf People²⁵⁶

“For example, deaf people often felt they were excluded and neglected by the police forces because they do not want to take responsibility to arrange interpreter services, even in emergency situations.”

Islington Deaf Campaign²⁵⁷

“Seniors, whose rights are most at risk, are often the least able to use the law to protect themselves. Litigation is a very daunting commitment for seniors or their relatives, so often not an option. This should not be taken as a reflection of how strongly they feel about their treatment.”

Southampton Seniors Council²⁵⁸

Many individuals who submitted evidence to the Human Rights Inquiry had not used the rights conferred by the Human Rights Act, or referred to human rights principles to challenge public authorities, even in instances where they may have been justified to do so:

“I fed my wife when she was at hospital because she was not fed properly by staff. I did not realise that I could use the Human Rights Act to challenge the poor service my wife received at the time. I just did it.”

Individual²⁵⁹

“I think a lot of people who use some public services have low expectations and do not believe they will get anywhere if they challenge authority. Many of our (Children’s Services) service users are traumatised and have low self esteem.”

Individual working for a local authority who responded in a personal capacity²⁶⁰

“A Transgender group have an example of a female to male transgender person who has been raped and is now pregnant. The rape has not been reported. He felt support would not be there for him.”

Voluntary and community sector transgender organisation²⁶¹

“People facing poverty are the least likely to be able to challenge human rights abuses, because of lack of resources, inability to use technology and difficulties in accessing information.”

Participant, London Group Evidence Session²⁶²

²⁵⁶ Call for Evidence Report, p.22.

²⁵⁷ Islington Deaf Campaign, Call for Evidence response.

²⁵⁸ Call for Evidence Report, p.22.

²⁵⁹ Call for Evidence Report, p.20.

²⁶⁰ Call for Evidence Report, p.23.

²⁶¹ Call for Evidence Report, p.23.

²⁶² Call for Evidence Report, p.20.

Individuals spoke of barriers caused by their lack of confidence and capacity. The Black Voluntary Sector Network Wales & Mewn Cymru gave evidence that a lack of personal confidence prevented individuals using the Human Rights Act to challenge poor public services.²⁶³ Both individuals and voluntary and community sector organisations supported this evidence:

“I am not confident on how best to apply the provisions of the Human Rights Act on day to day issues.”

Individual²⁶⁴

“They're aware that they can use it but they kind of lack the confidence, a lot of them seem to lack the confidence to use it. And if they did use it in a legal argument and were challenged, they then lacked the confidence to go back on that challenge.”

Ms Savita Narain, Development Consultant – Discrimination and Equalities, AdviceUK – transcript 15.09.08

There can be also a lack of capacity and confidence about human rights among those responsible for the delivery of public services. The Report on Public Services notes that:

“Some service directors acknowledged that, even where staff are aware of human rights principles, they are not always confident in applying them to individual cases or particular populations.”²⁶⁵

8.0 Organisational culture and structure

One of the major barriers identified during the Inquiry was the organisational culture and structure of many public authorities, which public sector organisations, individual respondents and voluntary and community sector organisations felt could inhibit the creation of a culture of respect for human rights. The Report on Inspectorates and Regulators also identified a situation in which capacity within inspectorates to assess compliance with human rights requirements, and to explore practical ways to move things forward, becomes squeezed.²⁶⁶

Submissions highlighted different elements of the structure and culture of public authorities, which were perceived to act as a barrier to work to embed human rights in organisational culture. These included:

1. Fear of the unknown
2. A disconnect between policy and delivery
3. Lack of mainstreaming
4. Lack of joined up working between public authorities / departments within public authorities.

²⁶³ Black Voluntary Sector Network Wales & Mewn Cymru, Call for Evidence response.

²⁶⁴ Individual, Call for Evidence response.

²⁶⁵ Report on Inspectorates and Regulators, pp.63, 64.

²⁶⁶ Report on Inspectorates and Regulators, p.62.

8.1 Fear of the unknown

The fact that changes to long established practices would be necessitated by meaningfully integrating a human rights culture into every day functioning, was also identified as a barrier to progress.

“Organisations and individuals have institutionalised and entrenched existing behaviour and they fear change.”

Participant, London Group Evidence Session²⁶⁷

8.2 A disconnect between policy and delivery

The Inquiry received evidence of obstacles within public service organisations which hinder their ability to achieve change in practice. These obstacles mean that human rights are not being embedded as effectively as they could be. For example, even if policy documents do refer to human rights considerations, there can be a failure to follow through such considerations into practice on the ground. As was stated:

“There is a huge implementation gap in some areas between the excellent policy initiatives and the actual services that children face on the ground.”

Ms Maria Battle, Deputy Children’s Commissioner Wales – transcript 08.10.08

“[Human rights] is not there yet in the sense of delivery on the ground throughout.”

Mr Phil Hope MP, Minister of State for Care Services, Department of Health – transcript 19.11.08

“We find that public authorities will quite often have used human rights principles in policy development, and it is possible to identify them in policy and guidance. However they are usually implicit and often there is a mismatch between policy and practice.”

The Royal National Institute for Deaf People²⁶⁸

Many voluntary and community sector submissions highlighted what they perceived as the ‘paper-based’ nature of some public authorities’ compliance with the Human Rights Act. A number of submissions described the approach as ‘box-ticking’. Voluntary and community sector organisations stated that when challenged or questioned around the Human Rights Act, such staff did not respond positively, indeed some believed that the responsibility for raising the Human Rights Act should lie with voluntary and community sector organisations.

“The Home Office and local authorities have policies in line with the Human Rights Act but the people on the frontline don’t know. When they are challenged on the Human Rights Act they are baffled by it or stubborn and stick to their previous decision.”

Voluntary and community sector migrant organisation²⁶⁹

²⁶⁷ Call for Evidence Report, p.25.

²⁶⁸ Call for Evidence Report, p.24.

²⁶⁹ Call for Evidence Report, p.24.

“Whenever I call them [public authority] on behalf of clients I have to remind them of the Human Rights Act, the same points over again ... I asked them how many times I would have to keep doing this, they said it was my job.”

Voluntary and community sector refugee support organisation²⁷⁰

The Inquiry was told that the drive to meet targets, inhibited implementation of a human rights approach to services. It was suggested that:

“Public authorities ignore human rights in order to meet targets.”

Ms Ali Harris, Head of Equality and Diversity, National Association of Citizens Advice Bureaux – transcript 15.09.08

“Targets ... are set by government, not by the Healthcare Commission... they don't always address what matters... they're centrally imposed rather than, as I would have it, standards -- what we should be looking at should be grown organically by proper consultation between patients and between clinicians who look after that.”

Sir Ian Kennedy, Chair, Healthcare Commission – transcript 10.10.08

There was a curious use of the words ‘day job’ when referring to matters other than human rights, which suggested a perceived disconnection between the service provided and the human rights obligations of the service provider:

“Capacity to implement human rights even by the willing becomes squeezed because individuals are still doing the day job.”²⁷¹

The Report on Public Services acknowledged that opinions in an organisation “can differ markedly”.²⁷² It states that whilst some practitioners spoke positively about human rights as a set of underpinning principles for their work, others had experienced human rights as a “stick to beat us with”, “a line of attack” or “as the basis for unrealistic or unfounded claims to services”.²⁷³

8.3 Lack of mainstreaming

The Report on Inspectorates and Regulators identified a lack of time for inspectorate staff to commit to mainstreaming human rights and sustaining a human rights approach during inspections.²⁷⁴

²⁷⁰ Call for Evidence Report, p.24.

²⁷¹ Report on Inspectorates and Regulators, p.62.

²⁷² Report on Legal Cases, p.106.

²⁷³ Report on Legal Cases, p.105.

²⁷⁴ Report on Inspectorates and Regulators, p.66.

Individual witnesses and submissions, particularly those from focus groups, stated that lack of mainstreaming and meaningful integration of human rights principles had resulted in isolated examples of good practice from individuals working within public authorities who had a particular knowledge of or interest in human rights. When these individuals left the organisation, it was felt that the drive to promote human rights and the knowledge necessary to deliver change was lost:

“Some individuals are very good, but practice is not mainstreamed or integrated enough, so there is over-reliance on (and lack of availability of) good individuals.”

Voluntary and community sector organisation²⁷⁵

In addition to this, general lack of awareness was felt to be a causative factor for failure to mainstream human rights:

“A lack of awareness of human rights issues can be a barrier to mainstreaming throughout the organisation.”

Gwynedd Local Health Board²⁷⁶

A number of submissions from public authorities identified legal staff as having expertise in human rights. Those formulating policy or delivering front line services were not often referred to as having such expertise.

8.4 Lack of joined-up working

Individuals and voluntary and community sector organisations described the negative impact which, they felt, lack of joined-up working between public authorities, and in some instances between departments within public authorities, had on their experience of services. Evidence received described services which were structured in ways that made little sense to those receiving them. This point was particularly emphasised by young carers and those representing them:

“A huge issue is the structures, the way the structures – for example health services in one box, social care in another box. People's lives, particularly young carers' lives and their family's lives, are not experienced in boxes. They are experienced as a whole. Services don't meet those needs.”

Young Carers Network²⁷⁷

9.0 Lack of resources

The Report on Legal Cases states that:

“Interviewees said that a significant barrier to applying the lessons of case law systematically is the need for additional resources (for example, the cost of a social care budget) or additional capacity (for example accessible prison space or housing stock).”²⁷⁸

²⁷⁵ Call for Evidence Report, p.25.

²⁷⁶ Call for Evidence Report, p.39.

²⁷⁷ Young Carers Network, Call for Evidence response.

²⁷⁸ Report on Legal Cases, p.106.

In other evidence, lack of resources as a barrier to public authorities complying with their obligations under the Human Rights Act, was highlighted as an issue by voluntary and community sector organisations and individuals, as well as by public authorities. It was also recognised that the relationship of dependency, which is consequential upon funding arrangements, can thwart the ability of the voluntary and community sector organisation which seeks the funding, to challenge the funder.

A number of submissions highlighted situations where the implementation of human rights principles had been adversely affected by resource constraints:

“Service users are being left to sit in their own urine ... but this is not the fault of the nurses themselves; it is due to not having enough staff.”

Voluntary community sector service user organisation²⁷⁹

“With regard to my son’s future – I fear he may not have one. We will have to battle and fight for secondary education (he has severe learning difficulties too and we want to keep in mainstream education), 6th form (little or no vocational education for children like my son in my Borough), college (nonexistent and likely not enough support to take him there and provide 1-1 or whatever he needs) and then he is going to sit in a room in a day centre with other disabled people aged 18 – 60/70 and vegetate because there are not enough support staff or things to do ... I know this because I know people in this position now and I know people who visit these dreadful places and see the overcrowded hopelessness.”

Individual²⁸⁰

“One example, where we encounter difficulties in using the Human Rights Act, involves asylum seekers who have been denied leave to remain in the UK. Although we have no duty to provide services to them, if they choose to remain, albeit illegally, there is a risk they may become destitute. We have many failed asylum seekers who have turned 18 and are not able to look after themselves and therefore, to prevent them from becoming destitute and to comply with the Human Rights Act, ongoing support is provided. This is very expensive and uses up funds for Unaccompanied Asylum Seeking Children and Care Leavers. This would not be necessary if the Home Office deported them after declaring they have no right to remain in the UK.”

West Berkshire Council²⁸¹

²⁷⁹ Call for Evidence Report, p.28.

²⁸⁰ Call for Evidence Report, p.28.

²⁸¹ West Berkshire Council, Call for Evidence response.

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Resource constraints were viewed by some voluntary community sector organisations as undermining positive work on training and awareness raising work around human rights, carried out by some public authorities:

“If high level staff understand the Human Rights Act then [other] staff will do so too. In wards, rights and dignity are picked-up in training but, in practice, staff cannot relate these words to their day to day jobs because of lack of time and resources.”

Voluntary and community sector organisation supporting people with a learning disability²⁸²

10.0 Lack of access to, and shortage of, advice

There are problems of a lack of local access to advice centres generally. There is also a shortage of resources to train advisers on human rights law, and on where it does and does not apply. In addition to this, there is a scarcity of expert advisors to assist the resolution of cases involving human rights issues without litigation, and to bring human rights cases to court where necessary:

“A lot of the advice services are under resourced and it is obviously time consuming ... for advisers to research another area of law that they are not used to using.

There is a lack of funding to be able to take the cases to court [or] to take human rights challenges to judicial review ... we have a lot of member organisations that don't get money from the Legal Services Contract so they don't have access to legal aid and, therefore, they wouldn't be able to support judicial review.”

Ms Savita Narain, Development Consultant – Discrimination and Equalities, AdviceUK – transcript 15.09.08

“A really big issue and I suppose another key problem that we face in terms of funding is the fact that there is no public funding available for tribunal representation before the special educational needs and the disability tribunal.”

Ms Alison Fiddy, Deputy Practice Manager, Children's Legal Centre – transcript 30.09.08

Evidence was also given by the National Association of Citizens Advice Bureaux that the “success rate of cases doubles with an advocate”²⁸³ and that voluntary and community sector organisations have a capacity, albeit limited, to use mediation and conciliation processes to resolve cases without the necessity for recourse to litigation.

²⁸² Summarised in the Call for Evidence Report, Participant, Equality and Human Rights Commission / British Institute of Human Rights Group Evidence Session.

²⁸³ Ms Ali Harris, Head of Equality and Diversity, National Association of Citizens Advice Bureaux – transcript 15.09.08.

11.0 Lack of guidance and information

Nearly all of the public authorities, and many individuals and organisations from all sectors which submitted evidence to the Human Rights Inquiry, called for information and guidance to be provided on the Human Rights Act:

“The fact [is] that we never had the major campaign which people called for at the beginning in terms of explaining ... to people that it was about them ... about Mrs Gins, my Mum, my Dad down the street in terms of ensuring their human rights ... People don't see it as something which is fundamentally about them and protecting them against the state and about abuse.”

Mr Peter Facey, Director, Unlock Democracy – transcript 25.09.08

When appearing before the Inquiry, the Government acknowledged this deficiency:

“With hindsight it is fair to say we took a lot of what we saw as the obvious benefits of the Human Rights Act for granted and ... we didn't spend enough effort on promoting it.”

Mr Michael Wills MP, Minister of State for Justice – transcript 13.10.08

Evidence was given, that on one occasion a newspaper reported that the Human Rights Act prevented the police from publishing photographs of suspects on the run. In this case a witness from the Home Office told the Inquiry that the problem had been caused, not by inaccurate reporting but by incorrect guidance which was amended when the media report was published:

“We had a case where one constabulary didn't want to publish photographs of people who had absconded some nine months after they had absconded. They thought it might be breaching their human rights by putting their photographs on the web ... We immediately revisited all of the guidance ... and it was found to be wrong ... so the guidance was reissued in 48 hours.”

Mr Tom Dooley, Human Rights and Devolution Co-ordinator – Better Regulation Team, Home Office – transcript 30.09.08

Public authorities requested detailed, targeted, sector specific guidance:

“This is a very complex area, the Trust would benefit from guidance on how to apply the different parts of the Human Rights Act to healthcare needs.”

North East Ambulance Service NHS Trust²⁸⁴

In the survey conducted as part of the Report on Legal Cases, as few as 25 percent of directors responding: “felt they received sufficient information about human rights cases, or that their operational managers and frontline staff received sufficient, timely and accessible guidance.”²⁸⁵

²⁸⁴ Call for Evidence Report, p.39.

²⁸⁵ Report on Legal Cases, p.109.

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Respondents to the call for evidence also requested case studies setting out good practice examples of implementation of the Human Rights Act within different sectors. Particular emphasis was given to requests for case studies dealing with resolution of conflict situations where rights had been appropriately balanced:

“Central health-specific or LHB-specific guidance and/or training which clearly identifies Human Rights issues and requirements directly pertinent to our role and responsibilities.”

Flintshire Local Health Board²⁸⁶

There were also requests for guidance on procurement issues in the context of human rights as it seems that there is no cross-department policy on compliance with the Human Rights Act at present.²⁸⁷

Inspectorates told the Inquiry’s researchers that there was a “dearth of good practice examples”.²⁸⁸ Some public service providers may be approaching the implementation of human rights responsibilities from scratch, because of a lack of good practice models to share and follow:

“[A] Hospital commissioned an independent review of all of their policies and their compliance with the Human Rights Act. For whatever reasons, that was not very widely shared ... In many ways we are all set to invent the wheel individually and the development of some policy templates that were demonstrably human rights compliant by the Department of Health would save us a lot of work.”

Dr Kevin Murray, Associate Medical Director, Broadmoor Hospital – transcript 23.10.08

12.0 Lack of training

Many witnesses articulated an urgent need for training to enable them to comply with the Human Rights Act better. Whilst witnesses accepted the value of general training, there was a clear demand for sector and role-specific training.

A submission from a local authority, which has carried out an in-depth human rights training programme for staff in key directorates, highlighted the challenges they had encountered in introducing a new and untried concept to employees:

“Getting very busy people to engage in training, which is new, and unfamiliar to them: effectively the hardest part can be selling the training product. It appears resource intensive in terms of time and cost, when staff do not know what real value the training can give to a division.”

Southwark Council²⁸⁹

²⁸⁶ Call for Evidence Report, p.48.

²⁸⁷ Ms Rachel Sandby-Thomas, Solicitor and Director General, Department for Business, Enterprise & Regulatory Reform – transcript 13.10.08.

²⁸⁸ Report on Inspectorates and Regulators, p.69.

²⁸⁹ Call for Evidence Report, p.34.

Despite this, that local authority also told the Inquiry that:

“Staff who have attended the training are positive about the worth and encourage others to adopt a human rights approach. Staff who have attended the course are encouraged and supported to become departmental human rights champions. We empower staff by getting them to produce an action plan by the end of the course. The actions are then applied in day to day activities.”

There was recognition of the failure to provide training in some sectors. It was reported that where training is provided it can be mixed with equality and diversity training, with the focus tending to be on the latter:

“There has been, and still is, quite a lot of training in relation to human rights and communications. Much of the policy guidance, however, tends to be on diversity and equality issues rather than specifically focused on human rights”

Ms Rachel Sandby-Thomas, Solicitor and Director General, Legal Services, Department for Business, Enterprise and Regulatory Reform – transcript 13.10.08

13.0 Conclusion

The evidence received by the Inquiry about the barriers to the implementation, use and enjoyment of human rights was very compelling. They are not for the most part insuperable. Indeed many of them will be overcome by relatively simple actions by organisations and individuals, which will enhance access to, and understanding of, human rights. The next chapter of this report articulates some of the initiatives and activities which have been demonstrated to enhance service delivery in a human rights framework.



Chapter 5

Making human rights effective

1.0 Introduction

The Inquiry received evidence on the action public authorities and voluntary groups have taken to embed a human rights approach in order to safeguard people’s human rights and to improve public services, as shown in Chapter 3. It also received evidence of the multiple barriers to the assertion, provision and enjoyment of human rights, as shown in Chapter 4. This chapter brings the two together: it outlines the steps that witnesses either stated they are taking or they believe need to be taken to overcome the obstacles so that human rights are given more effect. It covers fundamental areas such as the need for leadership and increased understanding of human rights, to improving information, guidance and dissemination of good practices. It also includes evidence as to the key role to be played by the Equality and Human Rights Commission in making human rights more effective.

2.0 Leadership

Many witnesses emphasised the central role played by leadership in embedding human rights into policies and working practices. This starts at the top with Ministers and government departments needing to have a clear understanding of their responsibilities particularly in providing consistent and public support for the Human Rights Act. The evidence also shows that leadership is no less important at the public service and voluntary organisation level, where visible support for human rights from chief executives, board members and senior staff are seen as key to its success.

2.1 Government leadership

Leadership at the government level essentially refers to the policies and actions taken by government departments led by Ministers. This was described by Mr Andrew Dismore MP, Chairman of the Joint Committee on Human Rights, as the Government having the “flagship leadership role”.²⁹⁰ And, as the Inquiry evidence shows, it is a role with several components.

²⁹⁰ Mr Andrew Dismore, MP, Chairman, Joint Committee on Human Rights – transcript 24 .10.08.

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For example, it is considered to be fundamental that Ministers and their departments have a clear understanding of the Human Rights Act, which they then support and encourage:

“I detect a sea change ... with a definite shift away from seeing human rights as being just about civil liberties, crime, national security to a much more inclusive approach that recognises the small places where human rights play a part in ordinary daily life. And that shift in perception – and I am thinking here of the sort of encouragement offered by the Ministry of Justice [and] by the Joint Committee on Human Rights – has opened the human rights door to ombudsmen whose daily case load is very concerned with just those small places in public service and administration that actually do make a real difference to people's lives.”

Ms Ann Abraham, Parliamentary and Health Services Ombudsman – transcript 14.10.08

This view of their role was endorsed by several Government Ministers in evidence to the Inquiry:

“I see my role very much as supporting and promoting human rights both within the Home Office, with staff training and so on but also in the work of the Home Office and its agencies. I think the first leads to improvements in the latter ... I think it behoves us all to show leadership on this issue.”

Ms Meg Hillier MP, Under-Secretary of State, Home Office – transcript 14.10.08

“I don't think you can have good quality health and social care unless you respect human rights. I think they are two sides of the same coin, they go hand in glove ... human rights helps us drive towards better quality care because those values underpin how people would want to be treated by the health and social care system.”

Mr Phil Hope MP, Minister of State for Care Services, Department of Health – transcript 19.11.08

A comparable statement came from the Welsh Assembly Government:

“The Welsh Assembly Government has a leadership role to fulfil – to ensure that our policies and strategies are designed with the human rights principles of fairness; respect; equality and dignity at their heart. Much excellent work has been done in Wales to promote and protect the human rights of each and every citizen. I hope that this is used to share good practice across Wales and in the wider world.”

Dr. Brian Gibbons AM, Minister for Social Justice and Local Government, Welsh Assembly Government²⁹¹

²⁹¹ Statement provided to the Inquiry which we have included in the Welsh Assembly Government Call for Evidence response.

A particular aspect of Government leadership highlighted in the evidence is the need to tackle the inaccurate portrayal of human rights issues by some of the media as shown by the examples in Chapter 4:

“When stereotypical uninformed or straightforwardly malicious attacks are made on the concept of human rights [they should] say: ‘no, that is wrong, it is incorrect.’ It is a matter of political will. It is a matter of believing that certain values are more important than the political risks that are involved in supporting those values publicly.”

Mr David Howarth MP, Liberal Democrat Spokesman on Justice – transcript 19.12.08

It was important therefore, that Ministers in their evidence to the Inquiry, acknowledged the need to counteract media myths and consequent negative public perceptions:

“We are proud of this Act. That bears repeating over and over again ... there are considerable lobbies that take it as a synonym for lots of things that are wrong in our political culture and I think they are wrong and mistaken. It has been an important step forward ... in the shift of power towards the citizens and away from the state.”

Mr Michael Wills MP, Minister of State for Justice – transcript 13.10.08

“I think we do have a role to play [in dispelling myths about human rights]. I think we've got an overall responsibility to promote this in a way that isn't making people feel negative towards the very thing that we want people to feel they are benefiting from ... not just to individuals who have rights that need to be recognised and fulfilled, but also to improving the quality of services, actually improving the morale of staff. [Human rights] is about people winning all round.”

Mr Phil Hope MP, Minister of State for Care Services, Department of Health – transcript 19.11.08

For similar reasons, the Report on Inspectorates and Regulators found that stronger national leadership on human rights is needed to begin a “reframing and rebranding” of human rights showing how the principles apply to everyday life.²⁹² Interviewees for the Report on Inspectorates and Regulators looked to government departments – particularly the Department of Health and the Ministry of Justice – to take the lead in explaining to public bodies that human rights is as much about the treatment of people and a change in culture, as about legislation.

In fact, the evidence in relation to these two government departments does show that with leadership from the centre, human rights principles can be embedded more effectively in both the relevant department and the public services which it supports (see Chapter 3).

For the Ministry of Justice, the evaluation of the department's own human rights programme undertaken in 2007 (referred to in Chapter 3) found that the support of the then Secretary of State and Minister was “a key factor in the success” of its work in this area.²⁹³

²⁹² Report on Inspectorates and Regulators, p.71.

²⁹³ ‘Human Rights Programme Evaluation Report’, Ministry of Justice, 2007, p.8.

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At the same time officials from the Ministry of Justice referred in evidence, to the Department's 'Review of the Implementation of the Human Rights Act (2006)' which has led to establishing a human rights programme to give effect to its recommendations. An extensive range of actions was undertaken under this programme by the Ministry of Justice.²⁹⁴

For the Department of Health, the Report on Public Services found that internally led and nationally sponsored projects such as the Human Rights in Healthcare initiative (see Chapter 3) have "deepened understanding and helped to identify concrete ways in which human rights principles can be put into practice." They considered that "there is a strong case for further sponsoring of pieces of work of this kind."²⁹⁵

The Permanent Secretary in the Department of Health endorsed this view of the healthcare pilot as establishing a good practice tool that can be spread more widely:

"I think it's been a very promising development in the sense that it's given us a framework within which to operate but, more important than that, it's given rise to lots of good tools which people can use and share around the system; so living examples, really, of how other organisations are approaching it."

Mr Hugh Taylor, Permanent Secretary,
Department of Health – transcript 30.10.08

The Welsh Assembly Government was praised for the way it has raised the profile of human rights within Wales, prioritising the issues and making clear the responsibilities of public authorities, as well as for leading by example offering support and guidance to other departments.²⁹⁶ Save the Children (Wales) described the Welsh Assembly Government to the Inquiry as an "open listening government ... which knows the agenda they need to be taking on board."²⁹⁷

2.2 Political leadership

Many witnesses emphasised the need for strong political leadership to go hand-in-hand with Government leadership. This was summed up succinctly by the journalist, Mary Riddell:

"I would like to see the Justice Secretary ... and the Prime Minister really making a positive of the Human Rights Act and how much it has done and how much it means for the country."

Ms Mary Riddell, Columnist, The Daily Telegraph – transcript 13.11.08

²⁹⁴ Ministry of Justice written evidence Memorandum 1 and Mr Edward Adams Ministry of Justice, Head of Human Rights Division and Ms Jiwan Raheja Ministry of Justice, Head of Performance and Delivery – Human Rights Division, 10.10.08.

²⁹⁵ Report on Public Services, p.92.

²⁹⁶ Report on Inspectorates and Regulators, p.19.

²⁹⁷ Summarised in the Call for Evidence Report / North Wales Group Evidence Session.

It was also acknowledged by Michael Wills MP, Minister of State for Justice, when he was clear about his and the Secretary of State's role in supporting the Act, not only through Government leadership but also by providing political leadership:

“It is our job in this department to provide political leadership, that's our constitutional place and remit, and that's what we are doing ... Jack Straw and I have given many speeches since we have taken office on this and constantly stressed the importance of the Human Rights Act [and] the fact we are proud of it.”

Mr Michael Wills MP, Minister of State for Justice – transcript 13.11.08

At the same time, the Inquiry was told that the defence of the Human Rights Act should be above party politics:

“All of us who believe in the human rights agenda [should not] be afraid to bang our fist on the table and say: this is so essential, so that every single person in this country ... knows when they go into any healthcare setting or receive healthcare at home that their rights as an individual are properly and fully respected as part of the whole make-up of the health and social care system in this country. So I think we need to really be quite bold and quite blunt in talking about that [Human Rights Act] and it very much isn't ... a party political tool.”

Mr Greg Mulholland MP, Liberal Democrat Spokesman on Health – transcript 14.10.08

One witness specifically made a point about politicians needing to avoid unhelpful comments:

“I think what government has to do in particular is avoid slipping into the lazy rhetoric around human rights and ‘it is a disgrace that these leftie lawyers have got this person off’ type account. So I think to stop denigrating the concept would be a help, frankly, let alone do anything positive.”

Mr Nick Hardwick, Chair, Independent Police Complaints Commission – transcript 26.09.08

Another witness lamented the lack of public discourse explaining the moral and philosophical underpinning of the Human Rights Act, at the time it was passed:

“What we need to do is step back a bit and say ... what is the theology, the philosophy, what are the values, what are the ethics, what is the morality behind this framework that we put together.”

Mr Mohammed Aziz, Director, Faithwise – transcript 13.11.08

Leadership will require a willingness to engage positively with the underlying ethical framework of the Human Rights Act.

2.3 Leadership by the Equality and Human Rights Commission

The Inquiry received evidence from a number of sources on the role of the Commission in providing leadership on the Human Rights Act:

“The Commission [should] engage in a visible and audible defence of the Act to counter the unfortunate tabloid propaganda and government reticence.”

Mr Stephen Grosz, Chair, Domestic Human Rights Reference Group, The Law Society – transcript 15.09.08

“The [Commission has a] general educational role ... recognising the difficulty of moving into a public discourse about Human Rights with capital letters rather than human rights with small letters and the fact that in a sense the depiction of human rights has been stolen from public discourse by the extreme and rather strange examples that appear and sometimes actually by political parties who might know better.”

Mr Harry Cayton, Chief Executive, Council for Healthcare Regulatory Excellence – transcript 23.10.08

“I think the Commission needs to put human rights at the very forefront of what it is doing.”

Sir. Geoffrey Bindman, Chair, British Institute of Human Rights – transcript 15.09.08

“I really want to make this challenge to the Commission [EHRC]. You have the continuing responsibility. There will always be people who concentrate on one subject rather than another ... [but] you will be going for those themes all the time which will be raising the long-term profile.”

Mr Gordon Lishman, Director General, Age Concern – transcript 24.10.08

“I do think it is incumbent on the Commission in particular to step up in putting some resources behind public information about the Human Rights Act but also there's the rear guard action too, which is the myth busting and the responding to things that are said that aren't true.”

Ms Shami Chakrabarti, Director, Liberty – transcript 10.10.08

One leading voluntary organisation said that even the process of this Inquiry by the Commission has made it think about its own approach to human rights principles:

“I think one of the advantages we are starting to see of both the Commission having human rights as part of its remit and of you choosing to undertake this inquiry is that it's causing people like us to go back and reflect and go "hold on a second, we haven't used the language of human rights for years, where do we sit?"

Mr Derek Munn, Director of Public Affairs, Stonewall – transcript 26.09.08

2.4 Organisational leadership

The Report on Public Services concluded that senior level commitment to human rights was “a critical success factor” in all the case studies. This was defined as visible support for human rights from politicians, chief executives, board members and senior staff and the creation of a supportive network of committed champions who can advocate for human rights among staff across the organisation, stimulate interest, and create pressure for change.²⁹⁸

Witnesses from public services and voluntary groups working across a range of sectors voiced the same view as to the importance of leadership:

“We are a leadership organisation and if you are the president of a leadership organisation you have got to act out your own leadership ... we've all got a great deal to learn and there is a sense in which exposing the things which we don't know to others ... positively can lead to others learning from what might be our relative ignorance at times and our being directors of social services ... I think that's the main position – to ensure that as a leadership organisation we don't encourage defensiveness.”

Mr Stewart Greenwell, President, National Association of Directors of Social Services Wales – transcript 07.10.08

“We are changing the culture of our organisation by mainstreaming equality, diversity and human rights. This comes down from the highest level of University management. The Vice-Chancellor personally champions equality and diversity.”

Individual working for Cardiff University²⁹⁹

“We need cheerleaders in powerful positions who can really bring about change ... [that] could actually shift the agenda forward and quite quickly.”

Voluntary community sector, lesbian, gay, bisexual, transsexual organisation³⁰⁰

“I come back to the point about leadership. I think this is really, really important. If there isn't a culture which says – in our hospital ... are we satisfied that we are giving good quality healthcare to marginal groups, in this case people with learning disabilities? What steps are we going to take to ensure we are? What sort of monitoring procedures do we have in place? Do we create a culture where if something goes wrong it feeds through to the chief executive?”

Mr David Congdon, Head of Campaigns and Policy, Mencap – transcript 24.10.08

Witnesses suggested that more leadership on the benefits of human rights could change public perceptions:

“I think that if the positive aspects of [the] decision making process [under the Human Rights Act] were better reflected in training and perhaps more effectively articulated by senior police leadership, some of the perceived difficulties associated with the Act voiced by some of the more vociferous critics might reduce in public prominence.”

Individual working for the Association of Chief Police Officers and responding in a private capacity³⁰¹

²⁹⁸ Report on Public Services, p.9.

²⁹⁹ Individual working for Cardiff University, Call for Evidence response.

³⁰⁰ Call for Evidence Report, p.33.

³⁰¹ Call for Evidence Report, p.33.

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These views on organisational leadership and what it can achieve are reflected in the case studies in the Report on Public Services. These show that one of the most important leadership actions in establishing an active human rights approach is to demonstrate to staff and stakeholders how human rights fit with and reinforces other corporate strategies.

Similarly, the Office for Public Management suggests that senior management need to give more thought to articulating what their organisation might look like and how it might operate if human rights were embedded into every aspect of their work.³⁰²

3.0 Increasing knowledge and understanding

The evidence to the Inquiry indicates that, apart perhaps from central government departments, a true understanding of human rights as a tool to improving people's lives is not widespread. In part this follows from a perception that the issues are complex and should be left to lawyers; and, in part, to the language used which often avoids reference to the Human Rights Act itself. There is also the question of understanding the relationship between human rights and equality.

There was a general consensus amongst witnesses, that improved knowledge and understanding of human rights amongst those delivering public services, the voluntary and community organisations, and the public in general, is essential. The significance of this was clearly stated:

“As we're moving to put more stress on a human rights-based approach to services, then I think some of the anxieties about the Act itself begin to melt away so people begin to see it as a more positive agenda.”

Mr Hugh Taylor, Permanent Secretary,
Department of Health – transcript 30.10.08

As well as providing more information and guidance (see section 6.0, Information, guidance and good practice models, further in this chapter) various other suggestions were put forward to tackle this deficit in understanding. For example, it was pointed out that a shift in thinking is required to understand that the need to treat people properly derives from a legal right and not from mere benevolence:

“[People who work in social care] ... tend to talk about abuse of dignity, respect ... because that is the language they are comfortable with. [But] those things tend to still come from ... a sort of benevolence, that it is the right thing to do. Whereas what we need to do is shift to [thinking], actually these are people's rights and [it is] about changing the relationship between people who provide care and support and people who receive care and support and shifting the balance of power [between them].”

Mr John Fraser, Director of Quality,
Performance and Methods, Commission for
Social Care Inspection – transcript 25.09.08

³⁰² Report on Public Services, p.9.

A participant in a workshop facilitated for the Inquiry by Ipsos MORI, felt that what was needed were “stories of human rights being a positive thing.”³⁰³ A journalist told the Inquiry that it was necessary to “paint [human rights] in human terms and what it's done for human beings.”³⁰⁴ Another witness working in the voluntary sector, with experience of training young people on human rights, provided some guidance:

“Every time we try to adapt [the information about human rights] so that it makes sense to them, whether they are coming from a specific social problem such as the gun culture or knife culture, or if they are victims of hate crime. It helps them to enter into a process of reflection and of informed decision-making.”

Dr. Theo Gavrielides, Chief Executive, Race on the Agenda – transcript 26.09.08

The Commission received specific advice from another organisation about engaging young people in learning about human rights:

“It's not necessarily floating the idea once and expecting it to stick ... It's instilling [the] values and [the young people] being able to see the relevance of it to them and then them taking that forward in their own lives, in their own approaches to different things.

The Commission ... should think about not just engaging [young people] but empowering [them] to be involved as well ... Empowering young people to hold their own sorts of events on these issues is one way to do that [they will] buy into it if they feel they have ownership over it.”

Mr Lewis Parle, Head of Youth Programmes and Research, Independent Academic Research Studies – transcript 30.10.08

3.1 Using the language of human rights

The Report on Inspectorates and Regulators said the Government and the Commission should use human rights language more explicitly in public speeches, external publications and in their dealings with public bodies. However witnesses were also concerned that the understanding of human rights is being hindered by the lack of specific reference to the Human Rights Act itself. In particular, language about ‘dignity’, ‘respect’ and ‘personal choice’ should be more clearly and publicly linked to the articles of the Human Rights Act.³⁰⁵

This was further emphasised by the Chair of the Joint Human Rights Committee, who said it was necessary for civil servants to refer explicitly to human rights language in their paperwork rather than the more vague aspirations of ‘dignity and respect’ in order to ground policy within the framework of the Human Rights Act.³⁰⁶ The evidence was that a human rights approach allayed people’s concerns about the Act and promoted its benefits.

³⁰³ Public Perceptions Report, p.48.

³⁰⁴ Ms Mary Riddell, Columnist, The Daily Telegraph – transcript 13.11.08.

³⁰⁵ Report on Inspectorates and Regulators, p.69.

³⁰⁶ Mr Andrew Dismore, MP, Chairman, Joint Committee on Human Rights – transcript 24.10.08.

The relationship with equality

Some witnesses demonstrated their understanding of the relationship between human rights and equality. Others are seeking explicit guidance on the practical implications:³⁰⁷

“The Bar Council considers the Human Rights Act is a potentially powerful additional tool for those working towards equality. The concepts contained within the Human Rights Act can be usefully deployed in cases where multiple or intersectional discrimination has occurred as an alternative to traditional approaches which require the need to box the individual concerned into a particular equality strand.”

The Bar Council³⁰⁸

“More work needs to be carried out to join up human rights, equality and community cohesion in policy and practice ... What would help us are practical tools and guidance which clarifies ... how human rights supports existing equalities legislation.”

Legal Service Commission³⁰⁹

“We are going through a process ... of looking at how we can set a new vision and strategy for equality and diversity and human rights and how those things fit together ... moving away from strand-based competition ... with each strand competing against each other, to looking very much at the experience of the individual and around equality issues ... and this is where human rights comes in.”

Mr Stephen Otter, Head of Race and Diversity, Association of Chief Police Officers – transcript 26.09.08

The Office for Public Management Report on Public Services reported that while most interviewees appeared to have clear conceptualisations of the links between human rights and equality and diversity (with human rights as the overarching ‘umbrella’, or the bedrock or foundation, of principles that apply to all), a few were unclear and felt that further guidance would be helpful on how to draw these issues together and develop an integrated corporate response.³¹⁰

4.0 Strategic and business planning

The Inquiry received evidence from a range of public authorities that have used a human rights framework and set of standards in planning and delivering services. The positive impact of this can be seen from the examples referred to in Chapter 3, particularly the Human Rights in Healthcare initiative and the Hampshire schools project; Rights, Respect and Responsibility.

³⁰⁷ For example, see Redbridge Primary Care Trust, Call for Evidence response.

³⁰⁸ Call for Evidence Report, p.8.

³⁰⁹ Call for Evidence Report, p.36.

³¹⁰ Report on Public Services, p.93.

The importance of using human rights issues in strategic and business planning has therefore been a theme touched upon by many witnesses, as well as being reported on in the Report on Public Services.³¹¹ One witness described the rationale behind this in these simple terms:

“It is demonstrating to people that if you consider human rights right at the beginning and factor it into your policy making and process for service delivery, you can save yourself a lot of time, effort and money later on unpicking things when they've gone wrong.”

Mr Edward Adams, Head of Human Rights Division, Ministry of Justice – transcript 10.10.08

Rather than repeat the examples already given in Chapter 3, this chapter considers some further suggestions given to the Inquiry of ways in which planning and delivery of public services is designed around human rights, including the importance of integrating such features into existing plans and procedures.

For example, to overcome lack of joined-up working, it was proposed that there is co-ordination between public authorities in any given locality. This would mean that the human rights framework informs the design of public service agreements, national indicators and local agreements so that all public authorities – fire and rescue services, primary care trusts, police and local council – in that area could ensure that human rights considerations were embedded in their planning and business processes.³¹²

One suggestion was that national contracts for commissioning services should be amended:

“Were national NHS contracts for GPs and primary health care providers to include explicit reference to their obligations to promote and respect human rights we would then be able to work monitoring mechanisms into our contracts around this and ensure we and they meet our obligations.”

Brighton and Hove Primary Care Trust³¹³

Another suggestion was that through monitoring emerging legal cases on human rights, existing policy and practice arrangements could be reviewed to determine whether change is necessary, and then to effect such change.³¹⁴

There was also advice from the Report on Public Services that further work is now required to help organisations in the public sector “to establish what a performance management regime that embedded human rights might look like.” They said such work needs to build on emerging lessons from current initiatives, such as the Department of Health’s Human Rights in Healthcare project.³¹⁵

³¹¹ Report on Public Services, p.85.

³¹² West Sussex Fire and Rescue Authority, Call for Evidence response.

³¹³ Call for Evidence Report, p.50.

³¹⁴ Report on Legal Cases, p.108.

³¹⁵ Report on Public Services, p.11.

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Whilst there was recognition that existing plans and procedures should reflect human rights principles, the Report on Public Services advises against starting from scratch. It suggests that rather than creating a host of new, separate, human rights tools and decision-making frameworks, integration into existing tools and frameworks that staff are familiar with, might be more successful.³¹⁶ For example, they found that inclusion of human rights principles in existing impact assessments can ensure that human rights are properly considered in planning and decision-making.³¹⁷ The Inquiry was given several examples of this happening in practice:

“Since the equality duties ... came in, authorities have been developing impact assessment processes ... but many authorities are taking a much broader approach ... and in some instances, not in all, have started to build in human rights considerations to their impact assessment processes.”

Ms Naomi Alleyne, Director of Equalities and Social Justice, Welsh Local Government Association – transcript 07.10.08

Another example, related to the re-structuring of the National Health Service in Wales as providing an opportunity to take a human rights approach:

“We've developed a human rights check list alongside the impact assessment tool ... which really links into the articles [in the Human Rights Act] which are ... health related.”

Ms Denise Puckett, Equality Project Manager, Department of Health, Welsh Assembly Government – transcript 07.10.08

There was also a call for nationally set systems and processes to include human rights which would help drive changes at the local level. For example, it was suggested that a “useful exercise” would be for the Department of Health to provide human rights policy templates for business planning, which could then be adapted for local use.³¹⁸

This need for national guidance was endorsed by several witnesses who suggested that the Commission should take the lead in this area particularly in integrating human rights and equality and in identifying measurable outcomes that public authorities could use:

“The [Equality and Human Rights Commission] needs to adopt an integrated approach to human rights and equality, explain the extent of its human rights duties and powers and provide practical guidance to organisations to ensure they understand and can implement the principles effectively within their work.”

Legal Services Commission³¹⁹

“The definition of equality in the equalities review and the work on the ten domains really have human rights as their basic underpinning ... It is under developed at the moment but ... if the Commission is able to come up with some measurable outcomes ... based on human rights, I think that would be quite important and we could all work with that.”

Ms Angela Mason, National Adviser on Equality and Diversity, Improvement and Development Agency – transcript 26.09.08

³¹⁶ Report on Public Services, p.91.

³¹⁷ Report on Public Services, p.55.

³¹⁸ Call for Evidence Report, p.50.

³¹⁹ Call for Evidence Report, p.47.

5.0 Staff development and performance

There is no doubt from the evidence received, that staff development is seen as being at the heart of making human rights more effective – not least in lessening any potential mismatch between the policy of an organisation and its delivery, which is viewed as a major obstacle to be overcome.

As the Report on Public Services found, focusing on “winning hearts and minds” and creating human rights ‘champions’ within organisations makes “a real difference in embedding human rights and creating energy for change.” Good quality training has played a critical role in achieving this by raising awareness of the benefits of focusing on human rights, helping to overcome misconceptions, and generating enthusiasm among staff.³²⁰

Similar views were expressed by many witnesses. For example, it was emphasised that public sector staff need to understand their human rights responsibilities and how these fit with their other responsibilities, to ensure mainstreaming of human rights throughout an organisation:

“Staff awareness is one of our top priorities on human rights ... it should be led by directors of local authorities to ensure that we're not just having documents to rest on shelves. It is no good saying we can wave this and we've done our job. Staff awareness [of] human rights must be from the very moment that the customer walks through the door speaking to reception staff.”

Cllr. Lindsay Whittle, Welsh Local Government Association and Councillor, Caerphilly County Borough Council – transcript 07.10.08

As Chapter 4 shows, staff may be aware of human rights principles but not be confident in applying them, which is why there is a need for staff to develop competence and confidence:

“If you are really going to change the culture of the organisation you need officers who are confronting different situations on a daily basis to have the confidence to do it and not just pick up the phone to a lawyer to get advice. So, you know, if it's going to be everyday policing it has to be something they have to have the confidence to do without backup, that's how you get the cultural change and that's why we were keen to keep it at that level.”

Mr Keir Starmer, Former Human Rights Adviser, Northern Ireland Policing Board – transcript 24.10.08

³²⁰ Report on Public Services, p.90.

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One witness referred to the Commission's recent publication, 'Ours to Own'³²¹ saying that it exemplified the need for human rights concepts to be broken down "into very basic language and making it instantly relevant ... for staff on the ground". The witness suggested an outreach role for the Commission:

"I think what the Commission can do is help take [human rights concepts] off the page, through some sort of outreach work with organisations, and implant it in the hearts and minds of the staff because I think essentially that's where change will happen, not necessarily in the upper echelons of management, it's people who are dealing with the public in an everyday world."

Mr Lewis Parle, Head of Youth Programmes and Research, Independent Academic Research Studies – transcript 30.10.08

The Report on Public Services was specific about the kind of staff training that was most effective, when it: is conducted with the active buy-in of senior managers; is tailored to the specific needs of each service or department; and includes an element of action planning, allowing staff to identify concrete ways in which they can embed lessons learnt into their working practice. It also found that a strong focus on human rights in recruitment and induction also appears to be important in instilling human rights principles and values from the start:³²²

"For instance, one example, of how you might do this with a group of children ... is with a traditional tale like Cinderella ... and how you would tease out issues to do with rights and responsibilities within that kind of framework ... the teachers would say 'we can do that with another story.'"

Mr Ian Massey, Inspector for Intercultural Education, Hampshire Schools – transcript 15.09.08

It was pointed out that staff should understand that a human rights approach is beneficial for them, as well as for service users:

"One way into this and it is implicit in our approach, is ... the human rights of health professionals themselves ... to help people understand, actually, this is about ... better relationships not about one group of people acquiring something because others are giving it up."

Mr Harry Cayton, Chief Executive, Council for Healthcare Regulatory Excellence – transcript 23.10.08

Evidence was received that learning about human rights should be incorporated into further education in order for professionals to make sense of training within organisations:

"It's about [providers of] undergraduate and postgraduate education which we are wholly reliant on. If human rights are not part of the curriculum and it goes all the way through training then you know we've missed a trick."

Ms Mary Burrows, Chief Executive, North Wales NHS Trust – transcript 19.09.08

³²¹ 'Ours to own – your human rights'. Equality and Human Rights Commission, March 2009.

³²² Report on Public Services, p.90.

Similarly, the need for on-going training was recognised. For example, one official from the Department for Communities and Local Government said he felt “it's time for another push” in terms of human rights training in his department.³²³ It was also suggested that joint training between the voluntary and public sectors would help to bring the groups together and improve understanding and relationships.³²⁴

6.0 Information, guidance and good practice models

The Inquiry received evidence of the widespread need for information and guidance. This ranged from calling for a national education campaign to requests for sector specific guidance with good practice models. There was also a general plea for information to be provided in “plain English”:³²⁵

“There needs to be a national campaign to raise awareness like there was with drink driving or wearing a seatbelt, to let people know that they have rights and how they can use them.”

Participant, London Group Evidence Session³²⁶

Advice was received about what kind of information should be provided to the public:

“One of the very important messages to the public, is that human rights in the main is about making government and public authorities do their job properly and work for the public and of course private organisations need to come into it where they are performing public functions ... what it is really about is getting public authorities to do their job and helping them to do it.”

Sir Geoffrey Bindman, Chair, British Institute of Human Rights – transcript 15.09.08

When it came to public education, many witnesses spoke of the important role to be played by the Commission:

“I think the Equality and Human Rights Commission is going to have a vitally important role here in trying to capture the public imagination on this issue.”

Traveller Support Worker³²⁷

³²³ Mr David Williams – transcript 24.10.08.

³²⁴ Summarised in the Call for Evidence Report / Equality and Human Rights Commission / British Institute of Human Rights event.

³²⁵ Mr Derek Munn – transcript 26.09.08.

³²⁶ Summarised in the Call for Evidence Report / London Group Evidence Session.

³²⁷ Call for Evidence Report, p.47.

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“I think [the Equality and Human Rights Commission] is the only body which has an obligation and actually has the opportunity to ... fill the gap in terms of giving information to people ... [by] feeding in to organisations ... about how [to] give people basic information on what their rights are, whether it be pensioners groups ... youth groups ... users et cetera, but in a way which is accessible. [It] doesn't need to cost the Commission huge amounts but it does actually need to be somebody who is doing this and actually is seeking to reach out to people ... I am not talking about sophisticated stuff for lawyers. I am talking about really basic stuff.”

Mr Peter Facey, Director, Unlock Democracy – transcript 25.09.08

“It's taken a long time to get into the public psyche the whole issue of equality and now you are a merged Commission, as it were, with human rights as part of that responsibility and I think that part of the job is to make human rights as prominent in the popular psyche as the right to equality.”

Mr Andrew Dismore MP, Chairman, Joint Committee on Human Rights – transcript 24.10.08

Many witnesses who were providers, called for guidance which would assist them in applying the Human Rights Act to their particular organisation and services:

“As this is a very complex area, the Trust would benefit from guidance on how to apply the different parts of the Human Rights Act to healthcare needs.”

North East Ambulance Service NHS Trust³²⁸

“We need good guidance and education to public authorities ... with examples of good practice and policies, strategies, funding arrangements and so on, which are fully inclusive of people of all different beliefs and backgrounds. There needs to be a vast increase in understanding at all levels of government, so that public authorities are fully aware of the specific issues and their direct duties of equal treatment, respect and dignity under the Human Rights Act 1998.”

British Humanist Association³²⁹

Such guidance should address the

“[...] human rights issues and requirements that are directly pertinent to [the organisation's] role and responsibilities.”

Gwynedd Local Health Board; Flintshire Local Health Board³³⁰

Evidence was received that government departments can learn about the practical application of human rights from each other, even though they may be supporting different public service sectors. An official from the Department for Children, Schools and Families, told the Inquiry they are watching developments in the Department of Health's Human Rights in Healthcare pilot programme to see what the “learning points” will be for their own area.³³¹

³²⁸ Call for Evidence Report, p.39.

³²⁹ Call for Evidence Report, p.48.

³³⁰ Call for Evidence Report, p.48.

³³¹ Mr Paul Kissack, Acting Director of Strategy, Performance and Analysis, Department for Children, Schools and Families – transcript 30.09.08.

Similarly, voluntary organisations and advice agencies working at the local level need information that can help them identify breaches of human rights, and use human rights principles in challenging public authorities to improve their performance.³³² Witnesses told the Inquiry that the information provided needs to be “easy to understand” with examples of how voluntary and community organisations can challenge public service practices that do not respect people’s human rights.³³³ The information also needs to be tailored to the people receiving it so that they can see it is obviously addressed to them – otherwise, as one witness said, they will not consider that it is for them. This is particularly true for groups who are often on the margins of society such as Gypsies and Travellers.³³⁴

Some organisations sought information on human rights principles in general. Other witnesses said they needed more specific guidance on human rights law:

“We are aware of limited cases in which homeless individuals or homelessness agencies have used the Human Rights Act to challenge poor public services. Most of our members and homeless individuals would require significant legal advice to be able to understand the legislation to the extent to be able to challenge practice in this manner.”

Homeless Link³³⁵

The law is still unclear on the circumstances where voluntary organisations providing public services have legal responsibilities under the Human Rights Act. This is particularly problematic for organisations providing housing – as one organisation that supports women (and their children) who have experienced domestic violence and victims of trafficking, explained:

“[We need] guidance on the potential liability of our organisation as a provider of services under the [Human Rights] Act ... To implement this, the Government needs to provide the additional funding necessary to train the voluntary sector about the legal responsibilities introduced by the Human Rights Act. Training/guidance to date has focused almost exclusively on the judiciary as well as certain statutory public sector and private and voluntary organisations providing public services but no such guidance was received by our organisation.”

Eaves Housing / The POPPY project³³⁶

³³² Call for Evidence Report, p.42.

³³³ Summarised in the Call for Evidence Report / Participant, Nottingham Group Evidence Session.

³³⁴ Summarised in the Call for Evidence Report / Participant, Newcastle Group Evidence Session.

³³⁵ Call for Evidence Report, p.42.

³³⁶ Eaves Housing / The POPPY project, Call for Evidence response.

7.0 Dissemination of legal case decisions

In addition to disseminating examples of good practice as part of information-giving (see previous section), the evidence proposes that similar action needs to be taken over legal case decisions. As highlighted by the Report on Legal Cases, one of the ways in which human rights will become embedded in the public service is through monitoring such cases and then reviewing existing policy and practice arrangements to determine whether change is necessary and then to effect such change.

In other words, good systems are needed for translating the legal decisions into practical implications for services, passing on those implications to the people who need to know about them, and then monitoring the results. For example, after the East Sussex decision about use of hoists for lifting severely disabled people, the guidance for staff was amended.³³⁷ Moreover, we found that the Office for Criminal Justice Reform has compiled a database of legal cases³³⁸ which are related to potential breaches of human rights, and detailed their outcomes as well as their policy implications. Examples of this are shown below.

Subject	Prisoners’ “right” to possess pornographic magazines and prisoners’ right to possess a gay art book and gay pornography (Dennis Nilsen case)
Agencies	Prison Service
European Convention on Human Rights Articles	Article 3,10 and 14

Prison Governors have a wide margin of discretion in determining what restrictions are necessary to maintain order in prisons, and the courts have held that this extends to refusing prisoners access to ‘top shelf’ magazines.

In the case of Morton (25/4/2003) there was a challenge to the refusal to allow prisoners to possess ‘top-shelf’ magazines on the grounds that it was a breach of Article 10 (freedom of expression). The application was refused as the case had no realistic prospects of success.

In 2001, Dennis Nilsen sought to challenge the refusal of the Prison Governor to allow him access to a gay artbook (with depictions of male nudity) and a ‘top-shelf’ gay magazine. Nilsen argued that this constituted a breach of Article 3 (inhuman or degrading treatment) or in the alternative, a breach of Article 14 (prohibition of discrimination) as discriminating against gay men. Nilsen was found not to have an arguable case and permission for the challenge was refused by the court.

³³⁷ Report on Legal Cases, Chapter 8.

³³⁸ See Victim and Witness Delivery – index of quick case summaries. Available at: <http://frontline.cjsonline.gov.uk/search/index.php?searchterm=Index+of+quick+case+summaries>

Subject	Refusal to allow visits by a child until risk assessment conducted
Agencies	High Security Psychiatric Hospitals, Prison Service
European Convention on Human Rights Articles	Article 8

L had been convicted of murder and sentenced to life imprisonment and then transferred to a high security psychiatric hospital. He was not allowed to be visited by his child nephews until a risk assessment had been conducted (such visits had been allowed at prison). This policy applied to all patients convicted of murder, manslaughter or sexual offences. L claimed a breach of his Article 8 (right to respect for private and family life) rights.

The court decided that restrictions on child visits to patients at high security psychiatric hospitals who had been convicted of murder, manslaughter or sexual offences were justified and that there had been no breach of Article 8.

R(L) v Secretary of State for Health (2001) 1 FLR 406

Subject	Policing protests – turning protestors back before they reach the protest
Agencies	Police
European Convention on Human Rights Articles	Articles 5, 10, 11

In the case of **Laporte**, anti-war protestors were prevented from reaching an anti-war demonstration at RAF Fairford by the police, under section 60 of the Public Order and Criminal Justice Act 1994. The protestors' coaches were stopped before reaching the site and searched. No arrests were made for any behaviour or items found. Nevertheless, when the passengers re-boarded, they were forcibly escorted back to London.

The House of Lords held that the police had acted unlawfully, both in preventing coach passengers from reaching the site of a demonstration, and in escorting the coaches back to London. The forcible escort of the coaches back to London amounted to unlawful detention under Article 5. There had been a breach of Articles 10 (freedom of expression) and Article 11 (freedom of assembly and association) in preventing the protestors from reaching the demonstration when no breach of the peace was imminent.

R (Laporte) v Gloucestershire Chief Constable (2006) UKHL 55, (2007) 2 WLR 46

Explanation of the principles of a legal decision is particularly important in relation to cases which were decided in one sector but had relevance to other public service areas. For example the **Osman** case (referred to in Chapter 3) relating to the duty on public authorities to protect life from ‘real and immediate risk’, directly concerned community policing but potentially had implications for other areas of policing and for mental health and prison services.³³⁹

The case law researchers noted differing responses to the House of Lords decision in the **Limbuella** case, that asylum seekers in England could not be left to become destitute under human rights law, even though immigration law prevented them from either working or receiving state support in certain circumstances.³⁴⁰ According to the researchers’ findings, the decision is interpreted narrowly by the UK Border Agency and practice in local authorities’ varies.³⁴¹ Although local authority legal directors interviewed during the research said that policy had not changed as a result of the case,³⁴² other interviewees said they did use the case to guide their practice – whether this was on the basis of a bottom-line guiding principle or a more progressive approach:

“**Limbuella** is very helpful for drawing a bottom line ... **Limbuella** sets that context where – as it should – the Human Rights Act sets a higher order of things and says ... ‘you cannot be treated lower than this standard’.”

Director of a large adult social care department³⁴³

“Our starting point is the difference between a power and duty ... Some local authorities may err on the side of only acting where they have a duty ... and not on a more generous application of utilising their powers. Whereas we as a team will always look at what we can do and ask ‘where’s the case law that backs us up on that?’” (emphasis in original)

Local authority manager³⁴⁴

This latter kind of approach is an example of what the researchers described as the “transformative and remedial roles” that the Human Rights Act was anticipated as playing a decade ago.³⁴⁵

8.0 Embedding human rights in inspection and regulatory processes

Witnesses told the Inquiry that the process of regulating and inspecting public services is an important way to make sure that the human rights framework is embedded in the policy and practice of public authorities (West Sussex Fire and Rescue Authority).³⁴⁶

³³⁹ For example, see Report on Legal Cases, p.77.

³⁴⁰ See Report on Legal Cases, p.69.

³⁴¹ Report on Legal Cases, p.74.

³⁴² Report on Legal Cases, p.74.

³⁴³ Report on Legal Cases, p.75.

³⁴⁴ Report on Legal Cases, p.44.

³⁴⁵ Report on Legal Cases, p.151.

³⁴⁶ Call for Evidence Report, page 49.

To emphasise this, some public service organisations suggested to the Inquiry’s researchers that if external inspections made more explicit reference to human rights, this might help to raise the bar in relation to service quality and ensure that people’s human rights are respected.³⁴⁷

In looking at what regulatory authorities and inspectorates need to do internally to play this role effectively, the Inquiry’s commissioned research identified the following criteria which “make for a strong integrated approach” to implementing human rights into their work:

- “Strong visible leadership on human rights within the organisation.
- Explicit reference to human rights in corporate plans and strategies.
- Procedures in place to review practices and make changes where necessary.
- On-the-job training for employees.”³⁴⁸

Examples provided by a number of inspectorates which demonstrate that they have met aspects of these criteria, are set out in Chapter 3. In terms of the action that needs to be taken, several inspectorates explicitly recognised their leadership role:

“We do [have a responsibility for helping to promote understanding of human rights]. It is ... a key thing and part of our role to help explain ... what the issues are, what some of the dilemmas are.”

Mr Nick Hardwick, Chair, Independent Police Complaints Commission – transcript 26.09.08

“[Our] human rights strategy and action plan ... was discussed at our executive board and signed off at that level ... Certainly senior level engagement and visibility are absolutely key for us.”

Ms Ann Abraham, Parliamentary and Health Service Ombudsman – transcript 14.10.08

At the same time, the Inquiry received evidence that the right kind of training and support tailored to the practical needs of specific organisations, is critical for making sure that employees of these organisations are able to embed human rights principles in their everyday work. See Chapter 3, section 7.3 for illustrations.

In addition to implementing a human rights approach in their own organisations, inspectorates have the important role of including human rights standards in the criteria that they use for assessing whether public services meet nationally-set standards. For example, the Commission for Social Care Inspection told us that because councils and primary care trusts are increasingly buying in services, inspectorates can encourage them to insist on “top quality services” which meet human rights standards in their contracts with third parties.³⁴⁹

The Mental Health Act Commission uses relevant articles of the Human Rights Act as criteria for assessing mental health services. An example is shown on the following page.

³⁴⁷ Report on Public Services, p.92.

³⁴⁸ Report on Inspectorates and Regulators, pp.33.

³⁴⁹ Mr John Fraser, Director of Quality, Performance and Methods, Commission for Social Care Inspection – transcript 25.09.08.

Article	Mental Health Act reference	Key considerations	Other comments
Article 2 – the right to life	Para 19 CoP	<ul style="list-style-type: none"> ■ Preventing death of those detained. ■ Preventing self-harm. ■ Management strategy of violent patients who pose a risk to others (patients and staff). 	There is a positive obligation to protect this right. In other words, reasonable steps should be taken to protect life.
Article 6 – the right to a fair trial	s132 patient rights s23 managers hearings MHRT (part V of MHA)	This covers all aspects of procedural fairness. It is particularly relevant when other rights, such as the right to liberty or the right to respect for private life, are in play.	A limited right. This includes the right to participate effectively in proceedings and in some cases a public hearing, and the right to legal representation.
Article 9 – the right to respect for freedom of thought, conscience and religion	CoP Para 1.1 guiding principles	<ul style="list-style-type: none"> ■ Lack of facility for celebrating own religion. ■ Having a particular food diet (for example, kosher), which expresses a religion or belief. 	Freedom to manifest / carry out religious belief is a qualified right. Freedom of thought, conscience and religion is an absolute right.
Article 10 – the right to respect for freedom of expression	s134 (power to withhold mail)	The right entitles people to hold opinions and receive and impart information and ideas including pornography.	A qualified right allowing a balance to be struck between individual right and the wider public interest.

There was a call for the Audit Commission to adopt a human rights framework more explicitly within its Comprehensive Area Assessment procedures and the accompanying ‘key lines of enquiry’ guidelines.

West Sussex Fire and Rescue Authority³⁵⁰

To help in this standard-setting role, some inspectorates asked for more support in exploring the complexities of applying human rights principles in practice:

“We in this inspectorate are strong supporters of the provisions of human rights legislation, and we have years of collective past experience in working with offenders to ethical standards that were sometimes in advance of what was required in English law at the time. But that does not mean that this topic is problem-free in practice, and it would be useful if some of the problems we raise could be discussed.”

Mr Andrew Bridges, Chief Inspector of Probation³⁵¹

Overcoming misconceptions of human rights was also said to be a key challenge:

“[We need to] demystify people’s perceptions of human rights ... it is a bit like health and safety with the headlines about needing to wear goggles to do everyday tasks which led to accusations of health and safety gone mad.”

Inspector³⁵²

“The work we have done in trying to build a level of confidence amongst investigative staff, people who are looking at cases who are posing the questions, in order to persuade them that human rights concepts [and] principles are not a million miles away from concepts and principles that they are used to working with ... for decades, some of them.”

Ms Ann Abraham, Parliamentary and Health Service Ombudsman – transcript 14.10.08

In recognition of the role of regulating authorities and inspectorates in furthering both the understanding and delivery of human rights, the Ministry of Justice has hosted meetings to discuss ways in which human rights principles can be more effectively applied in inspections and regulatory frameworks. As a result, it will shortly be publishing guidance for regulators and inspectorates.³⁵³

The Commission is regarded as having a specific facilitative role in providing targeted information and support, disseminating good practice and making sure that inspectorates and public bodies are receiving the right kind of guidance:³⁵⁴

“[The Equality and Human Rights Commission] is best placed to play a facilitative role in this and to work with people at a more practical level.”

Senior Manager³⁵⁵

³⁵⁰ Call for Evidence Report, p.50.

³⁵¹ HM Chief Inspector of Probation, response to consultation on the Inquiry Terms of Reference – unpublished.

³⁵² Report on Inspectorates and Regulators, p.62.

³⁵³ The Human Rights Framework as a Tool for Regulators and Inspectorates. Draft, Ministry of Justice unpublished at the time this report was written.

³⁵⁴ Report on Inspectorates and Regulators, pp.68, 71.

³⁵⁵ Report on Inspectorates and Regulators, p.71.

“Everyone is being bombarded with stuff from government ... The whole thing creates a sense of “too much” and it starts to become too much of a burden. The [Equality and Human Rights Commission] should have a role in trying to clarify that.”

Senior Manager³⁵⁶

One witness suggested that the Commission should work with the inspectorates to encourage the use of human rights language in the standards used for inspections and in the development of toolkits for self-assessment.³⁵⁷ The Report on Inspectorates and Regulators referred to the Audit Commission’s self-assessment toolkits for local authorities to assess how well they are performing in relation to human rights and equalities standards as an “innovative project.”³⁵⁸

The Office for Public Management noted in their report that current policy developments with mergers of existing commissions, involving new joint inspections, may have an impact on the degree to which human rights are embedded in public services standards. Although witnesses were apprehensive that this could have an adverse effect on how human rights are taken forward, the creation of the Care Quality Commission is providing opportunities for implementing human rights.³⁵⁹

In particular, the founding legislation of the new commission (merging the Healthcare, Mental Health and Social Care commissions) requires it to “have regard to the need to protect and promote the rights” of users of health and social care services.³⁶⁰

The Report on Inspectorates and Regulators also notes that the Department of Health’s consultation on requirements for registration of adult health and social care providers, makes explicit reference to embedding human rights into the registration framework so that relatives and carers are treated with respect.³⁶¹

9.0 Strengthening effective advocacy services

Witnesses said greater use should be made of services which specialise in advocating on behalf of others, which can reduce the need for people to bring legal claims. The Office for Public Management advised that public service organisations “need to support the creation and strengthening of advocacy arrangements which help service users to articulate their needs and concerns.”³⁶² Evidence was received that advocacy services provide a vital role in speaking up for people who are not necessarily able to do so themselves:

³⁵⁶ Report on Inspectorates and Regulators, p.66.

³⁵⁷ Dr. Theo Gavrielides, Chief Executive, Race on the Agenda – transcript 26.09.08.

³⁵⁸ Report on Inspectorates and Regulators, p.52.

³⁵⁹ Report on Inspectorates and Regulators, pp.9.

³⁶⁰ Health and Social Care Act 2008, Section 4.

³⁶¹ Report on Inspectorates and Regulators, p.9.

³⁶² Report on Public Services, p.10.

“It’s very difficult for people with dementia. It’s very hard to prove that their rights are not respected because they cannot talk for themselves. This is why we need ... advocacy bodies.”

Participant, London Group Evidence Session³⁶³

“There are lots of disabled people who, until they found [advocacy organisation] have been wallowing, literally, in their own excrement ... and have had horrendous lives.”

Participant, Newcastle Group Evidence Session³⁶⁴

Evidence was received that when advocates know how to use the law, they can achieve changes for the people they represent:

“It is not until they come across somebody who actually understands and knows how to use legislation correctly to be able to change something ... [that] changes in these people’s lives happen.”

Participant, Newcastle Group Evidence Session³⁶⁵

The Inquiry was told that there are not enough advocacy services to meet the demand and that more are needed.³⁶⁶ It was suggested that the Commission may have a specific role in promoting the need for greater resources:

“How is [the Commission] going to be providing resources to ensure that we as organisations can capacity build [and] share information to our local communities so they can use the [Human Rights] Act? The Commission [can] ... play a role [in making] sure that public authorities are encouraged and supported with greater resources and expertise to be able to deliver [human rights] training. There needs to be some action taken ... to hold public authorities accountable and responsible for the delivery of the services.”

Participant, Nottingham Group Evidence Session³⁶⁷

Another witness made it clear that the Commission has a proactive role when it comes to community advocacy and action:

“[The Equality and Human Rights Commission] needs to be pro-active at a grassroots level. There is no point in having a Commission that is an overseeing body. It’s got to get to grips with the grassroots to establish what is the experience of communities, what is the experience of disadvantaged groups, what is the experience of vulnerable people?”

Participant, North Wales Group Evidence Session³⁶⁸

³⁶³ Call for Evidence Report, p.43.

³⁶⁴ Call for Evidence Report, p.43.

³⁶⁵ Call for Evidence Report, p.43.

³⁶⁶ Individual, Call for Evidence response.

³⁶⁷ Nottingham Group Evidence Session.

³⁶⁸ Call for Evidence Report, p.47.

10.0 Engaging with the media

Evidence of some inaccurate and, on occasion sensational, reporting on the Human Rights Act by some print media, and the consequential negative impact, is outlined in Chapter 4. Witnesses felt strongly that something needed to be done about it:

“I think [coverage of the Human Rights Act] is very damaging. I think it is very regrettable. I think it is extremely one-sided and I think it needs to be challenged as strongly as possible because a lot of the negative stories about the Human Rights Act actually have been about rather bizarre cases that have been brought and often those cases have failed and been thrown out of court, and yet that is not reported.”

Mr Greg Mulholland MP, Liberal Democrat Spokesman on Health – transcript 14.10.08

The Justice Minister told the Inquiry what his department is doing to counteract incorrect stories about the Human Rights Act:

“We have to reassure people ... that the Human Rights Act is for them, not for a small group of others who are taking advantage of it, and that is a common perception. Now it's not true, it's something that we have tried very hard [to do]. There [is] a rapid rebuttal unit within the Ministry of Justice ... which is very rigorous in trying to combat some of the ridiculous myths.”

Mr Michael Wills MP, Minister of State for Justice – transcript 13.10.08

This ‘rapid rebuttal unit’ within the Ministry of Justice involves networking with press officers across government departments. They have also carried out a rough check of newspaper reporting on the Act since the rebuttal mechanism was put in place. From October 2006 to 2007 they found 74 misleading stories but from 2007 to 2008 they found only 45 stories: a reduction of about 40 percent.³⁶⁹ The department has also published a booklet with the correct facts surrounding common myths circulating in the media, ‘Human Rights Fact and Fiction’.

Other witnesses were not convinced that the Government’s rebuttal strategy was successful. One witness from the public sector thought that it did not work quickly enough.³⁷⁰ One journalist thought that it would be more effective for the Equality and Human Rights Commission to issue corrections than for the Government to do so.³⁷¹ Ministry of Justice officials acknowledged that the Commission might be more successful in engaging the media.³⁷² A witness from the voluntary sector said he expected that the Commission would have its own unit which could “respond to these sorts of misleading coverages which do have a major impact.”³⁷³

³⁶⁹ Mr Edward Adams, Ministry of Justice – transcript 10.10.08.

³⁷⁰ Public Services Ombudsman for Wales – transcript 07.10.08.

³⁷¹ Ms Mary Riddell, Columnist, The Daily Telegraph – transcript 13.11.08.

³⁷² Mr Edward Adams, Ministry of Justice – transcript 10.10.08.

³⁷³ Dr Theo Gavrielides, Chief Executive, Race on the Agenda – transcript 26.09.08.

Where “inaccurate, misleading or distorted information” is published about the Human Rights Act, the Editor’s Code requires that it must be “corrected promptly and with due prominence.”³⁷⁴ No one suggested to the Inquiry that there was a problem with correcting misinformation once it has been published, but it requires someone in authority – as the Ministry of Justice has shown – to make sure it is done.

During his evidence to the Inquiry panel, Mr Esser, Executive Managing Editor of the Daily Mail referred to the Chindamo case as an example of misuse of the Human Rights Act. This case involved an Immigration Tribunal deciding not to deport the 15 year old killer of the teacher Philip Lawrence. When the Chair of the Inquiry explained that the case was in fact decided under European Union freedom of movement law and not the Human Rights Act, he said that the Daily Mail would have published a correction but none had been provided.³⁷⁵

Some journalists giving evidence to the Inquiry noted an irony that the Human Rights Act should be the subject of criticism in the press:

“I don't think the media ... is very good at applying human rights to real people's lives, which of course is exactly what the media is interested in.”

Ms Mary Riddell, Columnist, The Daily Telegraph – transcript 13.11.08

Mr Bob Satchwell of the Society of Editors reminded the Inquiry of the old adage that the job of a journalist is to ‘comfort the afflicted and afflict the comfortable’:³⁷⁶

“I think most journalists would see that as at least one of ways in which they go about their job [and] ... it has a lot in common with any convention on human rights. It's about protecting the small person – and I mean physically – against big government, big business.”

Mr Bob Satchwell, Executive Director, Society of Editors – transcript 17.10.08

Witnesses wanted to see the Human Rights Act portrayed in more accurate and positive terms. They had suggestions as to how the Act should be presented in the media:³⁷⁷

“It needs to be seen as a tool to be used against an impersonal state and to get justice in a way that a lot of people can't get justice from politics and from a society that discriminates against them. So it's a device to fight the dull grey uniformity ... rather than part of it.”

Mr Julian Glover, Chief Leader Writer, The Guardian – transcript 17.10.08

Witnesses were explicit about what the Commission should do to combat inaccurate stories. One media expert told the Inquiry that publicly there needs to be:

“Absolute certainty about what the Commission is defending, what it is promoting [and] what it is rebutting.”

Ms Julia Hobsbawm, Chief Executive, Editorial Intelligence – transcript 17.10.08

³⁷⁴ Editors’ Code of Conduct, Press Complaints Commission paragraph 1 “accuracy.”

³⁷⁵ Mr Robin Esser, Executive Managing Director, Daily Mail – transcript 17.10.08.

³⁷⁶ Attributed to Dunne, Finley Peter (1867 – 1936) or to HL Menken (1880-1956).

³⁷⁷ Mr Julian Glover, and Mr Martin Kettle, the Guardian transcript 17.10.08; Mr Andy Collinson, journalist who has been working for many years in Wales – transcript 17.10.08.

Journalists giving evidence advised the Commission to be available generally as a resource for the media to turn to for authoritative explanations of contemporary issues to do with human rights:

“Don’t be afraid of jumping in ... you need to be a bit proactive [and] don’t be predictable.”

Mr Bob Satchwell, Executive Director, Society of Editors – transcript 17.10.08

“It has got to be done as a matter of daily practice. It is really important to get on the phone to the journalist ... preferably before [the story] appears.”

Mr Martin Kettle, Commentator, The Guardian – transcript 17.10.08

“An aide memoire or a document for journalists laying out some really good uses ... of the Human Rights Act ... would be very useful ... as a generalist I don’t feel I understand and know about all the good uses that [the Act] is being put to.”

Ms Dorothy Byrne, Head of News and Current Affairs, Channel 4 – transcript 17.10.08

11.0 A positive human rights duty in UK law

On a number of occasions, the Joint Committee on Human Rights has recommended that the positive obligations under the Human Rights Act should be made clearer in UK law.³⁷⁸ The Government has now gone some way to doing this by confirming that “where the Convention rights incorporate the impositions of a positive obligation on the UK, that positive obligation is also placed upon public authorities that are subject to the Act.”³⁷⁹

In addition, some national voluntary organisations in their evidence to the Inquiry, called for the imposition of a public duty to promote human rights, along similar lines to the existing three public sector equality duties. It was felt that not only would this be the most effective approach to moving the agenda forward but it would also remove the onus from individuals having to challenge powerful public authorities to assert their rights:³⁸⁰

“A [new statutory] positive duty to promote human rights [is needed]; we know from thirty years of other equality legislation that taking redress for rights not delivered is largely ineffectual in delivering change.”

Vision Sense³⁸¹

12.0 Role of the Equality and Human Rights Commission

The role of the Commission has featured prominently throughout the Inquiry. It was emphasised by many, if not all, the witnesses that the Commission has an essential part to play in making human rights effective. This included the areas covered in this chapter – from leadership and raising awareness to providing information, guidance and support. The Commission’s need to engage with the media by providing accurate, timely and relevant information was especially highlighted.

³⁷⁸ Joint Committee on Human Rights 11th report session 03-04; 18th report session 06-07.

³⁷⁹ Baroness Andrews, OBE – Parliamentary under Secretary of State, Communities and Local Government. Letter to Andrew Dismore MP dated 23 March 2009 – unpublished.

³⁸⁰ Call for Evidence Report, p.48.

³⁸¹ Call for Evidence Report, p.49.

Key aspects of the evidence as to the role of the Commission can be summarised as follows:

- In its essential leadership role it needs to put “human rights at the very forefront of what it is doing” Sir Geoffrey Bindman, Chair, British Institute of Human Rights – transcript 15.09.08
- It should lead in providing “practical guidance to organisations to ensure they understand and can implement the principles effectively within their work”, Legal Services Commission.³⁸²
- Its vital role of enhancing public education is also about “trying to capture the public imagination” on human rights. Voluntary and community sector Traveller organisation³⁸³
- It “is best placed to play a facilitative role” in disseminating examples of good practice particularly amongst inspectorate and regulatory authorities.³⁸⁴
- It needs to be ‘pro-active at a grassroots level’ when it comes to community advocacy and action. Participant, North Wales Group Evidence Session³⁸⁵
- As an authoritative resource for the media there needs to be “absolute certainty about what the Commission is defending, what it is promoting [and] what it is rebutting.” Ms Julia Hobsbawm, Chief Executive, Editorial Intelligence – transcript 17.10.08
- There is no doubt that the overwhelming call is for the Commission to be the independent, authoritative body on human rights, whose views, advice and actions inform a culture and respect for human rights which is embedded from the top levels of Government down to individual members of the public.

13.0 Conclusion

This chapter has identified themes for the effective implementation of a human rights approach in public services, which are common to all public authorities whether they are involved in policy and planning, service delivery or review and inspection. These themes emerged both in the commissioned research and in the evidence received by the Inquiry. At the same time, people working in the voluntary and community sector also told the Inquiry what was needed to help them understand and apply the principles of the Human Rights Act more effectively in their work.

The evidence in this chapter suggests that the effectiveness of the human rights framework in England and Wales is dependent on political and organisational leadership, increased knowledge and understanding and the mainstreaming of human rights in strategic and business planning. It also shows that the work of the regulatory authorities and inspectorates is key to embedding human rights into the policy and practice of public authorities. At the same time, the Equality and Human Rights Commission is identified as having a crucial role in providing essential guidance and support, as well as acting as an authoritative resource for the media.

³⁸² Call for Evidence Report, p.47.

³⁸³ Call for Evidence Report, p.47.

³⁸⁴ Report on Inspectorates, p.71.

³⁸⁵ Summarised in the Call for Evidence Report / Participant, North Wales Group Evidence Session.



Chapter 6

Key findings and recommendations

1.0 Introduction

All findings are based on the evidence gathered throughout the Inquiry. Each key finding³⁸⁶ will therefore cross-refer to a numbered section in this report, which will itself refer to the evidence gathered. This chapter summarises these findings, the recommendations which flow from them and the proposed actions for the Commission.

2.0 General findings

- The fundamental principles set out in the Human Rights Act closely reflect our traditional values of fairness and justice, and the universal standards to which every democratic government is committed. Polling evidence shows that 84 percent of people actually want human rights enshrined in the law for themselves and their families.³⁸⁷
- There is overwhelming general acceptance in society of the value of human rights (81 percent of people agree that human rights are important for creating a fairer society in the UK).³⁸⁸ It is clearly in the public interest and in accordance with the principles of all modern democracies for this support from the public to be reflected in the development of policy and practice.
- Human rights are not merely abstract concepts – they are also an effective tool for delivering organisational success and better services to the public.³⁸⁹ A true understanding of human rights as a tool to improving people’s lives is not widespread: there is a general consensus that improved knowledge and understanding is essential.

³⁸⁶ Except in two instances where we have referred to the evidence directly.

³⁸⁷ Chapter 2, section 1.0.

³⁸⁸ Chapter 2, section 1.0.

³⁸⁹ Chapter 3, section 2.0.

3.0 Effectiveness of the Human Rights Act

3.1 Findings

- There are significant misunderstandings and misconceptions which are reported about human rights, and which remain largely unchallenged, leading to both service users and service providers being uninformed about their rights and responsibilities.³⁹⁰
- The Human Rights Act makes a positive difference to people's lives, and to the effective delivery of public services which focus on individual needs.³⁹¹ Human rights, by focusing on the needs of the individual, can help to restore the power balance between the State and individuals, and between service providers and service users, and can contribute to a fairer, equal and more inclusive society.³⁹²
- The effect of adopting a human rights approach has been to improve the circumstances of the lives of many people and their families.³⁹³
- Where human rights arguments are applied to specific problems there can be a speedy positive resolution of them, often avoiding the need to go to court. In addition to this, there is evidence of consequential systemic change in such cases, resulting in enhanced delivery of services and assurances that they do not fall below a minimum level. This is particularly the case where there is no specific legal tool to deal with a case other than human rights law (for example, in cases such as the provision of adequate food to incapacitated patients, continued occupation of a family home by a bereaved minor, or dignified treatment of severely disabled and older people).³⁹⁴
- Where voluntary and community sector organisations represent the interests of marginalised and vulnerable people using the principles of the Human Rights Act, such people can become empowered, and those organisations can achieve positive change to public services.³⁹⁵
- A human rights approach encourages participation by service users in service planning and delivery, increasing their autonomy, enhancing self-respect and building better relationships.³⁹⁶

³⁹⁰ Chapter 4, section 5.0.

³⁹¹ Chapter 3, section 3.0.

³⁹² Chapter 3, section 2.0; Chapter 3, section 3.1.

³⁹³ Chapter 3, section 3.3.

³⁹⁴ Chapter 3, section 8.3.

³⁹⁵ Chapter 3, section 8.3.

³⁹⁶ Chapter 3, section 3.5.

- There is a very clear reluctance on the part of many public authorities to use the specific language of human rights. There is a tendency to use values based language only³⁹⁷ because of a fear that human rights are too complex to understand, or because of confusion about the relationship between human rights and equality. This inhibits the possibility of understanding and giving proper effect to human rights.
- Where human rights specific language is used, for example, in some police, health and education services, the effect is to enable staff and also to provide better protection for and application of human rights in service delivery.³⁹⁸
- The Inquiry did not seek evidence of abuses of human rights, but it received testimonies about such abuses in England and Wales. For example, a service user of a mental health trust recorded being dragged out of bed in the morning, having the duvet pulled back and then being physically pulled from the bed and made to get dressed in front of people. The patient concerned felt angry and humiliated but had no way of being able to express his/her feelings. On another occasion, a physically disabled service user of a mental health trust reported having absolutely no facilities for washing, bathing or sitting and no furniture or bed suitable for his/her impairments. This individual stated that s/he spent 24 hours a day for six months in one room, and stated that no attempts were even made to support his/her needs.³⁹⁹
- A critical role can be played by regulators in helping public authorities to comply with their obligations under the Human Rights Act and to provide a human rights approach to public services.⁴⁰⁰
- Many witnesses attested to the importance of a mechanism to disseminate good practice examples across the public sector.⁴⁰¹

3.2 Recommendations

1. Human rights need to be mainstreamed into the work of all those who provide relevant public services.
2. Human rights specific language should be used, in addition to the language of values, such as respect, fairness, and dignity, to facilitate the development of a better understanding of human rights.
3. Where appropriate, government departments should include human rights more explicitly in the standards applicable to public services.

3.3 Commission actions

- i. Working with regulators and inspectors and with government departments, local authorities and other public bodies, the Commission will help provide guidance and support to implement a human rights approach institutionally.

³⁹⁷ Chapter 4, section 6.0.

³⁹⁸ Chapter 4, section 3.0.

³⁹⁹ Mind, Call for Evidence response.

⁴⁰⁰ Chapter 5, section 8.0.

⁴⁰¹ Chapter 5, section 6.0.

- ii. The Commission will monitor and promote examples of good practice in the public sector. Where the evidence of successful outcomes are clear, the Commission will encourage the wider roll-out of successful initiatives.
- iii. The Commission will encourage and monitor progress on the inclusion of human rights in standards of service for public authorities.

4.0 Leadership

4.1 Findings

- There is a very strong demand from those who gave evidence, across all sectors, for positive leadership and visible support for human rights from the Government, politicians, the Commission, and others whose responsibility is to formulate national and local public policy. Such positive leadership is necessary in many cases for public officials to have the confidence to give appropriate priority to human rights.⁴⁰²
- Strong and courageous leadership combined with training and development on human rights has resulted in positive outcomes for service users and staff morale.⁴⁰³
- The appointment of human rights champions in public authorities has made a very positive impact on the delivery of services using a human rights approach.⁴⁰⁴

- Inaccurate statements about human rights by leaders inhibit both people's understanding of human rights and the development of a culture of mutual respect for rights and responsibilities.⁴⁰⁵

4.2 Recommendations

- 4. Those in leadership roles in public authorities should recognise their responsibility to provide robust leadership on human rights issues.
- 5. Some central government departments and some other public bodies have successfully used human rights champions to lead the human rights agenda. Public sector organisations should appoint human rights champions where appropriate.

4.3 Commission actions

- iv. The Commission will encourage the Government and other political leaders to provide positive and consistent leadership on human rights and the Human Rights Act.
- v. The Commission will assume a leadership role in raising public awareness of the importance of human rights and the Human Rights Act.

⁴⁰² Chapter 5, section 2.1-2.3.

⁴⁰³ Chapter 5, section 5.0.

⁴⁰⁴ Chapter 5, section 5.0.

⁴⁰⁵ Chapter 5, section 2.1.

5.0 Improved service delivery

5.1 Findings

- Where public service providers had adopted a ‘human rights approach’ to service delivery (rather than a basic compliance approach) they reported improved services, better and more coherent delivery procedures and heightened staff morale.⁴⁰⁶ For instance, schools which have adopted a human rights approach have experienced a reduction in school exclusions and improved pupil behaviour.⁴⁰⁷ Classroom teachers reported that they felt less frustrated and exhausted and they had more energy and job satisfaction. A National Health Service trust has adopted a human rights approach and has involved mental health service users in making recruitment decisions, and in playing a role on various management teams. This approach was found to have an overwhelmingly positive effect on the health of those service users, the quality of care, and a change in the culture of the organisation.⁴⁰⁸
- Whilst witnesses accepted the value of initial general training on human rights, there was clear evidence that role-focused training, tailored to a particular sector, was far more effective in enabling and enhancing service delivery and motivating staff.⁴⁰⁹

- Important legal decisions have clarified the law in relation to human rights, but there is a lack of effective dissemination of the implications of the judgments in these cases, to enable wider policy development in compliance with the law.⁴¹⁰
- The Human Rights Act provides a common framework of values which can be useful for managing competing tensions and ethical obligations within a public authority and between professionals engaged in inter-agency work. This can facilitate a proper focus on the individuals affected by their decisions.⁴¹¹

5.2 Recommendations

6. Where appropriate, public authorities and voluntary and community sector groups should mainstream human rights into their decision making processes, strategies and business plans, as well as into their relevant policies and practices. Service providers should be able to demonstrate the effects of such mainstreaming to the inspectorates and regulators, where relevant.
7. The Human Rights Act can be a useful framework for managing competing tensions and the ethical obligations of, and between, professionals. This framework should form part of the training for such professionals in relation to their ethical obligations.

⁴⁰⁶ Chapter 3, section 3.4.

⁴⁰⁷ Chapter 3, section 6.2.

⁴⁰⁸ Chapter 3, section 3.5.

⁴⁰⁹ Chapter 3, section 5.0.

⁴¹⁰ Chapter 5, section 7.0, see also pamphlet entitled « Protecting rights : How do we stop rights and freedoms being a political football ? » Francesca Klug & Helen Wildbore, 2009. Available from the London School of Economics and Political Science website.

⁴¹¹ Chapter 3, section 5.2.

8. When developing training programmes, organisations should include role specific training on human rights and the Human Rights Act, to clarify what the Act does and does not do, and how it applies in the circumstances for which the training is being delivered.
9. The Government should communicate widely the findings of its human rights initiatives, such as its Human Rights in Healthcare initiative, to facilitate learning and understanding.
10. When framing provisions for service delivery, organisations should work with user groups to ensure maximum accessibility and engagement between service providers and service users, as has been done successfully in a number of health trusts, with resulting benefits to service users and service providers.
11. Public authorities should develop mechanisms to ensure that new legal developments and their policy implications, which impact on their responsibilities, are made known to the relevant staff.

5.3 Commission actions

- vi. The Commission will produce updated guidance on human rights and legal developments related to the Human Rights Act, and encourage public services to produce tailored guidance.

6.0 It's not about litigation

6.1 Findings

- Many positive changes to people's lives and the services they receive are made using the principles enshrined in the Human Rights Act, without recourse to the courts. For example, a voluntary organisation told us that they managed to persuade social services that an elderly lady who has Alzheimers and is blind, should be allowed to stay in a nursing home close to her husband and family.⁴¹²
- There was some evidence that some organisations were approaching human rights merely with a view to avoiding litigation, rather than using human rights to improve services for users and those engaged in service delivery.⁴¹³
- Unnecessary human suffering and a higher risk of litigation arise when there is an insufficient understanding and knowledge of human rights and the Human Rights Act.⁴¹⁴

6.2 Recommendations

12. Government and other funding bodies should consider providing further funding to enable the voluntary and community sector, and where relevant, public authorities, to develop and deliver alternative dispute resolution mechanisms to facilitate the resolution of human rights cases.

⁴¹² Chapter 3, section 8.3.

⁴¹³ Chapter 3, section 5.1.

⁴¹⁴ Chapter 4, section 2.0.

6.3 Commission actions

- vii. The Commission will assist public authorities, where appropriate, to adopt a human rights approach to their organisational risk management processes, and to programmes of training and professional development. The objective should be to provide the best possible service, rather than focusing solely on the protection of the organisation from litigation.

7.0 Media

7.1 Findings

- Most people receive their information on human rights from the media.⁴¹⁵ Evidence shows that the media provide both accurate and inaccurate coverage of human rights issues.⁴¹⁶
- Witnesses said that inaccurate reporting, particularly by the print media, was based on limited understanding and, too often, an erroneous interpretation of the application of the Human Rights Act. On occasion, the inaccuracies have been repeated despite corrections having been issued. For example, it was reported that convicted murderer, Dennis Nilsen was allowed access to pornography in his prison cell because of his 'human rights'.⁴¹⁷

This story was false and was confirmed as such in the Government's 'Review of the Human Rights Act', published in July 2006.⁴¹⁸ Despite this rebuttal, the story was cited in a newspaper leader in November of that year. Moreover, while our inquiry was underway, a flurry of new stories about the Human Rights Act appeared in certain newspapers.⁴¹⁹ One suggested the Act prevented the Royal Navy from detaining Somali pirates in the Gulf of Aden.⁴²⁰ We looked at this claim and found it to be completely false.⁴²¹

- The combination of lack of leadership and inaccurate reporting creates confusion and inhibits the development of human rights policy and practice among some public bodies and voluntary and community groups. It can lead to both the trivialisation and inflation of human rights, and can diminish people's understanding of their human rights. Such inaccurate reporting and the absence of an effective rebuttal mechanism, often results in a failure to take into account the necessity to balance individual rights against each other, and the common good, inherent in the Human Rights Act.⁴²²

⁴¹⁵ Ministry of Justice, 2008. Human Rights Insight Project, page 27. 'In terms of sources of knowledge about human rights and the Human Rights Act, the strongest was the media (64%) with television said to be the most commonly used medium (41%)'.

⁴¹⁶ Chapter 4, section 5.0.

⁴¹⁷ See, for example, The Sun, 13 May 2006.

⁴¹⁸ Department for Constitutional Affairs Review, July 2006, page 30.

⁴¹⁹ Chapter 4, section 5.0.

⁴²⁰ Chapter 4, section 5.0.

⁴²¹ Chapter 4, section 5.0.

⁴²² Chapter 4, section 5.0.

7.2 Recommendations

13. Where the media report human rights issues and cases, they should ensure that they report them accurately and fairly.
14. The inter-departmental Rapid Rebuttal Unit at the Ministry of Justice should continue and enhance its work.

7.3 Commission actions

- viii. Accurate and live-time analysis of issues and cases involving human rights needs to be available to the media. The Commission will provide to the media authoritative information and material on matters relating to the Human Rights Act, where appropriate, to facilitate the development and maintenance, by the media, of an accurate understanding of what the Act does and does not do.
- ix. The Commission will use every available opportunity to explain publicly the purpose, value and benefits of human rights and the Human Rights Act to our society.
- x. The Commission will enhance the human rights section of its website to provide accurate information on human rights and the Human Rights Act in response to widely publicised inaccuracies and misconceptions.

8.0 Duties on public authorities and those who inspect them

8.1 Findings

- The duty on public authorities not to act incompatibly with the Human Rights Act, has sometimes produced a ‘compliance only’ culture in some public authorities. Witnesses recommended that there should be a new statutory duty to promote human rights, similar to the duties imposed by anti-discrimination legislation, to create an integrated approach to equality and human rights.⁴²³
- Where ombudsmen, inspectors and regulators are able to co-operate, and to share information relating to individual human rights cases (subject to necessary privacy protections), there is a greater opportunity to deliver a better service for service users. There is, in many cases, an absence of measurable human rights targets in public sector business planning. Consequently, there is insufficient investment of resources and performance management, contributing to a failure to identify the benefits of a human rights approach to service provision.⁴²⁴
- Whilst, as public bodies, some inspection and audit bodies have taken steps to incorporate human rights standards into their audit and inspection processes, there is no duty on them to do so. However, it is clear that inspection and audit processes have a vital role in ensuring that people’s human rights are protected.⁴²⁵

⁴²³ Chapter 5, section 11.0.

⁴²⁴ Chapter 5, section 2.1.

⁴²⁵ Chapter 5, section 8.0.

8.2 Recommendations

15. The Government should consult as to whether or not a statutory duty should be imposed on all public authorities to take into account human rights before they implement new policies.
16. The Government should consult on legal changes which may be necessary to enable ombudsmen, inspectors and regulators to co-operate and to share information, with the necessary protections, when dealing with individual human rights issues.
17. In the absence of a specific legal duty, inspection and audit bodies should integrate human rights standards into their work.

8.3 Commission actions

- xi. The Commission will assist public authorities to develop mechanisms to integrate positive obligations under the Human Rights Act with their work on public sector duties.
- xii. The Commission will work with regulatory bodies and inspectors to develop appropriate targeted human rights indicators to measure the extent to which public bodies are adopting a human rights approach.

9.0 Information and advice

9.1 Findings

- There is a very widespread concern that there is insufficient knowledge about human rights. There was a strongly expressed desire for accessible and relevant guidance as well as information and advice about human rights.⁴²⁶
- Witnesses gave evidence of a lack of capacity in the advice giving and advocacy sectors, making it difficult to establish whether a human rights violation had occurred and what actions should be taken. It was said that this was compounded by a lack of legal aid, and limited access to lawyers.⁴²⁷
- Witnesses regretted the fact that the Commission has no power to assist members of the public who need to take legal actions which are based solely on human rights.⁴²⁸

⁴²⁶ Chapter 4, section 11.0.

⁴²⁷ Chapter 4, section 10.0.

⁴²⁸ Irish Traveller Movement, Call for Evidence response; Sheffield Law Centre, Call for Evidence response; East Midlands Group Evidence Session.

9.2 Recommendations

18. The provision of better information and advice will necessitate better training and more targeted resources for the appropriate bodies.
19. The Government should review its decision not to give the Commission the power to assist members of the public in strategic cases involving only human rights legislation.
20. The Commission should be empowered to provide conciliation / mediation services on human rights.

9.3 Commission actions

- xiii. The Commission will continuously update the information and advice on human rights it provides through its helpline.
- xiv. In recognition of the importance of young people being informed about human rights and responsibilities, the Commission will actively encourage a wider application of the human rights framework in schools and more human rights education of young people.
- xv. The Commission will review and report on the actions taken, three years after the publication of this report.

10.0 Conclusion

The findings of this Inquiry demonstrate that eleven years after the passing of the Human Rights Act, the overwhelming majority of people want, and value human rights. Despite all that has been achieved, much remains to be done to give effect to the internationally agreed minimum standards and values to which everyone is entitled 'as a consequence of their common humanity'.⁴²⁹ It is possible, in many cases within existing structures, or using the opportunity of ongoing change processes, to incorporate a human rights approach to service delivery.

The recommendations and the various Commission actions identified during this Inquiry, if implemented, should facilitate rapid improvement in public services. The potential benefits have been demonstrated to be highly significant in terms of enhanced service delivery, organisational success, heightened staff morale and increased participation and enjoyment of human rights by those in receipt of public services.

It is time for a new understanding of what human rights are really about. It is time to acknowledge that in a society where human rights are respected, we all have responsibilities to each other, and that the Human Rights Act provides a framework for balancing the rights of individuals with the needs and interests of the wider community. It is time for real leadership.

⁴²⁹ The Universal Declaration of Human Rights.



Appendix 1

Glossary

Article	Definition	For more details...
Absolute rights	The rights in the Human Rights Act can be divided into three categories: absolute, qualified and limited. Absolute rights are rights which governments must uphold in all circumstances. They include the prohibition on slavery and torture and on punishment outside the law.	See Chapter 1, page 27
Convention rights	Under the Human Rights Act, 'Convention rights' means the rights and freedoms set out in Articles 2-12 and 14 of the Convention, Articles 1 to 3 of the First Protocol and Article 1 of the Thirteenth Protocol.	
Declaration of incompatibility	Ministers presenting a bill to Parliament must state whether, in their opinion, the proposed legislation complies with the Human Rights Act. If judges in the higher courts rule that an act is inconsistent with the Human Rights Act, they have the power to declare it incompatible.	See Chapter 1, page 25
European Convention on Human Rights	The European Convention on Human Rights gives legal effect to many of the values of the Universal Declaration, making them enforceable through the European Court of Human Rights in Strasbourg.	See Chapter 1, page 24

Article	Definition	For more details...
Human rights	Human rights exist to protect everyone from abuse of power, disrespect or neglect, particularly where there are no other legal safeguards. They are underpinned by ethical norms which can provide a framework for balancing the rights of an individual with those of the wider community.	See Chapter 1
Human Rights Act	The Human Rights Act 1998 came into force on 2 October 2000. It brings into domestic law most of the rights under the European Convention on Human Rights. It sets out fundamental human rights, to which everyone in the United Kingdom is entitled. The Act requires all public authorities, including the Government and the judiciary, to uphold these rights, and provides the context within which the state may legitimately interfere with them.	See Chapter 1
Human rights approach	We use the term to describe the planning and delivery of services where they are underpinned by the values of human rights and the legal responsibilities of the Human Rights Act.	See Chapter 1, page 29
Human rights framework	We use the term to mean the Human Rights Act 1998 and the principles underpinning it, as well as international human rights treaties, which the UK has ratified.	
Human Rights in Healthcare initiative	The Human Rights in Healthcare initiative involves five primary care and NHS trusts in England in a pilot scheme to adopt a human rights approach sponsored by the Department of Health, with the participation of the British Institute of Human Rights.	See Chapter 3, page 39

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Article	Definition	For more details...
Limbuela case	Limbuela focused on the application of section 55 of the Nationality, Immigration and Asylum Act 2002, which allowed support to be refused to individuals who failed to apply for asylum “as soon as reasonably practicable”, causing many to be destitute.	See Appendix 4
Limited rights	These are rights which have limitations built into them, such as the right to liberty, which can be restricted by imprisonment to protect the rights of others, or forced labour, which can be required in jail.	See Chapter 1, page 28
Magna Carta	The Magna Carta, signed nearly 800 years ago, put limits on the absolute power of the monarch and upheld individual liberty and justice.	See Chapter 1, page 24
Positive obligations	The Human Rights Act not only protects people from abuse by public authorities but also imposes some 'positive obligations' on public bodies to take proactive steps to secure people's human rights.	
Qualified Rights	These are rights which may be balanced against other rights and the wider public interest, such as, national security, public health or safety, the rights or freedoms of others and the prevention of crime. They include freedom of expression, assembly and association, and rights to property and to a private and family life.	See Chapter 1, page 27
Proportionality	Any restriction on human rights must be lawful, necessary and proportionate. In protecting some people's rights, the fundamental human rights of others must not be obliterated.	

Article	Definition	For more details...
Regulatory authorities	We use the term 'regulatory authorities' generically to include inspectorates, regulators and ombudsmen.	See Chapter 3, page 64
Rights, Respect and Responsibility programme	During the past five years, Hampshire County Council's education department has been carrying out a programme for school improvement called Rights, Respect and Responsibility. It aims to embed human rights principles (drawn from the United Nations Convention on the Rights of the Child) across all areas of school life.	See Chapter 3, page 61
The Osman case	The judgment gave consideration to the circumstances in which authorities may fail to meet their positive obligation 'to take preventive operational measures to protect an individual whose life is at risk from criminal acts of another individual'.	See Appendix 4
UNICEF Rights Respecting Schools scheme	UNICEF's Rights Respecting Schools scheme, aims to raise pupil achievement at school and improve the quality of their own and their families' lives.	See Chapter 3, page 59
United Nations Convention on the Rights of the Child	The United Nations Convention on the Rights of the Child is an international human rights treaty that grants all children and young people (aged 17 and under) a comprehensive set of rights. The UK signed the convention on 19 April 1990, ratified it on 16 December 1991.	See: www.everychildmatters.gov.uk/uncrc/
Voluntary and community sector organisations (or 'third sector organisations' in Wales)	We use this umbrella term to refer to the range of organisations which are variously described as voluntary and community groups, charities, and other non-governmental organisations.	



Appendix 2

Inquiry Panel participants

England

AdviceUK, Ms Savita Narain, Development Consultant – Discrimination and Equalities

Age Concern, Mr Gordon Lishman, CBE Director General

Age Concern, Ms Nony Ardill, Legal Policy Advisor

Joint Committee on Human Rights, Mr Andrew Dismore, MP, Chairman

Association of Chief Police Officers, Mr Stephen Otter, Head of Race and Diversity

Audit Commission, Ms Tracy Dennison, Managing Director Human Resources

Audit Commission, Mr Andy McKeon, Managing Director Health

Bar Council, Mr Timothy Dutton, QC Chair

British Humanist Association, Ms Hanne Stinson, Chief Executive

British Institute of Human Rights, Ms Ceri Goddard, Acting Director and Head of Development & Training

British Institute of Human Rights, Sir Geoffrey Bindman, Chair

Broadmoor Hospital, Dr. Kevin Murray, Associate Medical Director

Catholic Bishops Conference of England and Wales, Mr Richard Zipfel, Senior Policy Advisor

Channel 4 News, Ms Dorothy Byrne, Head of News and Current Affairs

Children's Commissioner for England, Ms Jacqui McCluskey, Head of Policy and Research

Children's Legal Centre, Ms Alison Fiddy, Deputy Practice Manager

Children's Legal Centre, Ms Kirsty Anderson, Head of Research and Communications

Church of England Reverend, Dr Malcolm Brown, Director of Mission and Public Affairs

Commission for Social Care Inspection, Mr John Fraser Director of Quality, Performance and Methods

Commission for Social Care Inspection, Mr Nigel Thompson, Strategy Manager

Communities and Local Government, Mr David Williams, Director for Cohesion

Communities and Local Government, Mr Ian Naysmith, Senior Policy Advisor

Communities and Local Government, Ms Naomi Passman, Human Rights Specialist

Communities and Local Government, Ms Jenny Ashby, Deputy Director of the Race Equality and Diversity Division

Council for Healthcare Regulatory Excellence, Mr Harry Cayton, Chief Executive

Council for Healthcare Regulatory Excellence, Ms Jane O'Brien, Head of Standards and Ethics at the General Medical Council

Council for Healthcare Regulatory Excellence, Ms Anna Van de Gaag, Chair of Health Professions council

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Council for Healthcare Regulatory Excellence, Ms Rosie Varley, Chair of Council for Healthcare Regulatory Excellence and Chair of General Optical Council

Daily Mail, Mr Robin Esser, Executive Managing Director, Daily Mail

Department for Business, Enterprise & Regulatory Reform, Mr Paul Drabwell, Senior Policy Advisor, Better Regulation Executive

Department for Business, Enterprise & Regulatory Reform, Ms Helen Benton, Legal Advisor

Department for Business, Enterprise & Regulatory Reform, Ms Sally Moss, Head Legislation and International Policy Unit

Department for Business, Enterprise & Regulatory Reform, Ms Rachel Sandby-Thomas, Solicitor and Director General, Legal Services

Department for Children, Schools and Families, Mr Andrew Baxter, Deputy Director Head of Health and Wellbeing Division

Department for Children, Schools and Families, Mr Daniel Jenkins, Deputy Director, Equality Establishment and EC Law Team, Legal Advisor's Office

Department for Children, Schools and Families, Mr Paul Kissack, Acting Director of Strategy, Performance and Analysis

Department for Children, Schools and Families, Ms Helen Williams, Director, Curriculum and Pupil Well-being

Department for Children, Schools and Families, Ms Katie Driver, Deputy Director Head of Equality and Diversity Unit

Department of Health, Mr Barry Mussenden, Equality and Human Rights Branch Head

Department of Health, Mr Hugh Taylor, Permanent Secretary

Department of Health, Mr Mark Joannides, Human rights lead

Editorial Intelligence, Ms Julia Hobsbawm, Chief Executive

Faithwise, Mr Mohammed Aziz, Director

Fawcett, Dr Katherine Rake, Director

General Social Care Council, Sir Rodney Brooke, Chair

Hampshire Schools, Mr Ian Massey, Inspector for Intercultural Education

Healthcare Commission, Sir Ian Kennedy, Chair

Help the Aged, Ms Kate Jopling, Head of Public Affairs

HM Inspectorate of Prisons, Ms Anne Owers, CBE Her Majesty's Chief Inspector

Home Office, Mr Peter Wrench, Assistant Director – Simplification Project Team Leader

Home Office, Mr Tom Dooley, Human Rights and Devolution Co-ordinator – Better Regulation Team

Human Rights Lawyers Association, Mr Stephen Grosz, Vice Chair

Improvement and Development Agency, Ms Angela Mason, National Advisor on Equality and Diversity

Independent Academic Research Studies, Mr Lewis Parle, Head of Youth Programmes and Research

Independent Police Complaints Commission, Mr Nick Hardwick, Chair

JUSTICE, Dr Eric Metcalfe, Barrister and Director of Human Rights Policy

Law Centres Federation, Ms Julie Bishop, Director

Liberty, Ms Shami Chakrabarti, CBE Director

London Probation, Mr Nick Hammond, Equality and Diversity Officer – Human Rights lead

Appendix 2: Inquiry Panel participants

London Probation, Ms Chitra Karve,
Director of Equality and Diversity

Mencap, Mr David Congdon,
Head of Campaigns and Policy

Mental Health Act Commission,
Ms Gemma Pearce, Chief Executive

Mersey Care NHS Trust, Ms Lindsey Dyer,
Director of Service Users and Carers

Mersey Care NHS Trust, Ms Catherine Mills,
service user

Ministry of Justice, Mr Edward Adams,
Head of Human Rights Division

Ministry of Justice, Ms Jiwan Raheja,
Head of Performance and Delivery –
Human Rights Division

Mr David Howarth MP, Liberal Democrat
Spokesman on Justice

Mr Phil Hope MP, Minister of State for
Care Services, Department of Health

Mr Greg Mulholland MP, Liberal Democrat
Spokesman on Health

Mr Keir Starmer, Former Human Rights
Advisor to the Northern Ireland Policing Board

Mr Michael Wills MP, Minister of State
for Justice

Ms Meg Hillier, Under-Secretary of
State for the Home Office

National Association of Citizens Advice
Bureaux, Ms Ali Harris, Head of Equality
& Diversity

National Offender Management Service,
Ms Pat Baskerville, Head of Offender Policy
Rights Unit

National Secular Society, Dr Anna Behan,
Vice President

Northern Ireland Policing Board,
Sir Desmond Rea, Chair

Ofsted, Ms Lorraine Langham,
Director Corporate Services

Ofsted, Ms Miriam Rosen,
Director for Education

Ofsted, Ms Jean Humphrys, Deputy Director,
Children's Directorate

Parliamentary and Health Services
Ombudsman, Mr Donal Galligan,
Executive Assistant to the Ombudsman

Parliamentary and Health Services
Ombudsman, Mr Nick O'Brien,
Consultant in Disability (HR)

Parliamentary and Health Services
Ombudsman, Ms Gabrielle Crane,
Research and Information Analyst

Parliamentary and Health Services
Ombudsman, Ms Ann Abraham, Ombudsman

Personal Testimony, Mr E, Carer in the
Bournewood case

Personal Testimony, Ms Diane Blood

Police Service Northern Ireland, Mr Duncan
McCausland, Assistant Chief Constable

Police Service Northern Ireland, Sir Hugh Orde
CBE, Chief Constable

Quakers, Mr Michael Bartlet, Parliamentary
Liaison Secretary

RADAR, Ms Caroline Ellis,
Deputy Chief Executive

ROTA, Mr Theo Gavrielides, Chief Executive

SCOPE, Mr Andy Rickell,
Former Executive Director

Scott, Moncrieff, Harbour and Sinclair
Solicitors, Mr Robert Robinson,
Mr Enderby's solicitor

Senior Policy Advisor, Dr Don Horrocks,
Head of Public Affairs

Society of Editors, Mr Bob Satchwell, Chair

Stonewall, Mr Derek Munn, Director of
Public Affairs

Human Rights Inquiry

The Constitutional & Administrative Law Bar Association, Mr Richard Drabble, QC Former Chair

The Guardian, Mr Julian Glover Chief Leader, Writer

The Guardian, Mr Martin Kettle, Commentator

The Independent, Ms Yasmin Alibhai-Brown, Correspondent

The Information Commissioner's Office, Mr David Smith, Deputy Information Commissioner

The Information Commissioner's Office, Ms Geraldine Dersley, Solicitor / Head of Legal Profession

The Law Society, Mr Stephen Grosz, Chair of the Domestic Human Rights Reference Group

The Prison & Probation Ombudsman, Mr Stephen Shaw, CBE Ombudsman

The Daily Telegraph, Ms Mary Riddell, Columnist

Unlock Democracy, Mr Peter Facey, Director

YouGov, Mr Stephan Shakespeare, Co-Founder and Chief Innovations Officer

Wales

Age Concern, Cymru, Ms Louise Hughes Project Officer, Elder Abuse Project

Association of Voluntary Organisations in Wrexham & Wrexham County Borough Council, Ms Janet Williams, Commissioning & Planning officer

Association of Voluntary Organisations in Wrexham & Wrexham County Borough Council, Mr Paul Swann, Commissioning & Planning officer

Association of Voluntary Organisations in Wrexham & Wrexham, Mr John Richard, Member of Wrexham Access Group

Cardiff Law, School Prof. Mr Phil Fennell
Children's Commissioner, Ms Maria Battle, Deputy Children's Commissioner

Citizen Advice Bureau, Ms Fran Targett, Director

Crown Prosecution Service, Mr Christopher Woolley, Chief Crown Prosecutor

CSSIW Care and Social Services Inspectorates Wales, Ms Natalie Cooper, Assistant Chief Inspector

CSSIW Care and Social Services Inspectorates Wales, Mr Rob Pickford, Chief Inspector

Cymuned, Iestyn Ap Dafydd, Director of Lobbying

Funky Dragon, Ms Melanie Blake, Company Secretary & Core Development Worker

Funky Dragon, Ms Victoria Bancroft, South Wales Development Manager

Information Commissioner, Ms Anne Jones, Deputy Information Commissioner

ITV Wales, Mr Andy Collinson, Features Editor

Ms Kirby Jones & Ms Beverley Stevens

National Association of Director of Social Services, Mr Stewart Greenwell, President

North Wales NHS Trust, Dr Peter Lepping, Consultant Psychiatrist / Associate Medical Director / Honorary Senior Lecturer

North Wales NHS Trust, Mr Lloyd Nelson, Head of Learning Disability Nursing

North Wales NHS Trust, Ms Mary Burrows, Chief Executive

North Wales NHS Trust, Ms Mary McGirr, Professional Head of Psychiatric Nursing

North Wales NHS Trust, Ms Sally Hughes Jones, Equalities Manager

North Wales NHS Trust, Ms Stephanie Greenway, Head of Professional Nursing

Appendix 3: Call for Evidence responses

North Wales NHS Trust, Ms Heather Bebbington, Assistant Director HR

North Wales Police, Mr Greg George, Diversity Development Manager

North Wales Police, Mr Ian Shannon, Assistant Chief Constable

Personal Testimony, Ms Wendy Thomas

Personal Testimony, Ms Olwen Williams, Consultant

Professor Robert Moore, Emeritus Professor of Sociology in the University of Liverpool

Public Services Ombudsman for Wales, Mr Andrew Walsh, Director of Investigation and Corporate Services

Save the Children, Ms Eleri Thomas, Interim Programme Director

Torfaen Local Health Board & NHS Centre for Equality and Human Rights, Ms Tanya Strange, Deputy Director of Nursing

Torfaen Local Health Board & NHS Centre for Equality and Human Rights, Ms Tracy Good, Senior Equality Manager

Tros Gynnal, Mr Roger Bishop, Executive Director

Wales TUC, Mr Vaughan Gething, President

Welsh Assembly Government, Ms Denise Puckett, Equality Project Manager, Department of Health and Social

Welsh Assembly Government, Ms Heulwen Blackmore, Head of the Equality and Human Rights Division

Welsh Assembly Government, Ms Margaret Davies, Head of Ethnic Minority and Child Protection Branch, Department of Children, Education and Lifelong Learning and Skills

Welsh Assembly Government, Mr Peter Jones, Deputy Director Community Safety Division and Head of Youth Justice and Domestic Abuse Policy Branch

Welsh Language Board, Mr Andrew White, Head of Third Sector & Health Unit

Welsh Language Board, Ms Meri Huws, Chair

Welsh Local Government Association, Cllr Lindsay Whittle, Spokesperson for Equality, Social Justice and Community Safety

Welsh Local Government Association, Ms Naomi Alleyne, Director of Equalities and Social Justice

Welsh Local Government Association, Ms Paula Walters, Equality Policy Officer

Welsh Refugee Council, Mr Mike Lewis, Chief Executive

Young Carers Network, Ms Hannah Spokes

Young Carers Network, Mr Richard Andrews, Chair

Appendix 3

Call for Evidence responses

Government departments

Attorney General's Office
Business, Enterprise and Regulatory Reform
Cabinet Office
Central Office of Information
Charity Commission
Crown Prosecution Service
Department for Children, Schools and Families
Department for Communities and Local Government
Department for Culture, Media and Sport
Department for Environment, Food and Rural Affairs
Department for International Development
Department for Transport
Department for Work and Pensions
Department of Health
Department of Innovation, Universities and Skills
Foreign and Commonwealth Office
Government Communications Headquarters
Government Equalities office
Government Legal Service
HM Revenue and Customs
HM Treasury

Home Office
Ministry of Defence
Ministry of Justice
National Archives
National Assembly for Wales
Northern Ireland Office
Office of National Statistics
Revenue and Customs Prosecution Office
Serious Fraud Office
UK Statistics Authority
Welsh Assembly Government

The Government Communications Headquarters, the Security Service and the Secret Intelligence Service did not provide evidence to the Inquiry. The Commission's inquiry powers set out in section 16 and Schedule 2 of the Equality Act 2006 do not extend to those organisations.

Service providers and other public authorities

Advisory, Conciliation and Arbitration Service
Bradford District Care Trust
Brighton and Hove City Teaching Primary Care Trust
Broadmoor Hospital
Calderdale Council via Association of West Yorkshire Authorities
Charity Commission

Appendix 3: Call for Evidence responses

Children's Commissioner in England /
Children's Commissioner in Wales
Coleg Glan Hafren
Commission for Social Care Inspection
Community Law Partnership
Conwy & Denbighshire NHS Trust
Criminal Injuries Compensation Authority
Criminal Records Bureau
Denbighshire Local Health Board
Fareham Borough Council
Flintshire County Council
Flintshire Local Health Board
General Social Care Council
GSL UK Ltd, Tinsley House Immigration
Removal Centre
Gwynedd Local Health Board
Hampshire Primary Care Trust
HM Inspectorate of Constabulary
HM Prison Dovegate
Hull City Council
Isle of Wight Primary Care Trust
Kirklees Council via Association of West
Yorkshire Authorities
Knights Enham Junior School
Legal Services Commission
London Probation
Luton Borough Council
Medway NHS Foundation Trust
Mental Health Act Commission
Mersey Care NHS Trust
Merthyr Tydfil Public Library
Monmouthshire County Council
National Assembly for Wales
Newcastle upon Tyne Hospitals NHS
Foundation Trust

NHS Centre for Equality and Human Rights
NHS Employers
North East Ambulance Service
North Tyneside Council
Norwich City Council
Office of Communications
Open University
Parliamentary and Health Services Ombudsman
Qualifications and Curriculum Authority
Queen Victoria Hospital NHS Trust
Royal College of Psychiatrists
Sandwell Borough Council
Selby Council
Serious Organised Crime Agency
South East Coast Strategic Health Authority
Southwark Council
Swansea University
Test Valley Borough Council
Thompsons Solicitors
Transport for London
Velindre NHS Trust
Wakefield Council via Association of West
Yorkshire Authorities
Waltham Forest Council
Welsh Assembly Inclusion Programme
Welsh Language Board
West Berkshire Council

Voluntary and community sector organisations

Age Concern England
Association of Lawyers for Children
Auditory Processing Disorder
Black Voluntary Sector Network Wales
Board of Deputies of British Jews

Human Rights Inquiry

British Humanist Association
British Institute of Human Rights
Cambridgeshire Parliament
Carers UK
Carers Wales
Children's Rights Alliance
Choices and Rights Disability Coalition
Citizen's Advice Bureau
Civil Rights for Men
Community Law Partnership
Counsel and Care
Disability Awareness in Action
Eaves Housing – The Poppy Project
Employers' Forum on Disability
Friends of the Earth
Friends, Families and Travellers' Community Base
Help the Aged England
Help the Aged in Wales
Homeless Link
Housing and Communities Service, Yorkshire and Humber Assembly
In Control
Independent Academic Research Studies
Irish Traveller Movement in Britain
Islington Deaf Campaign
Joseph Rowntree Foundation
Liberty
Medway Older People Communication Network
MENCAP
Mental Health Foundation
MIND
National Aids Trust
National Youth Agency
National Society for the Prevention of Cruelty to Children
Patients Association
Press for Change
Race on the Agenda
Refugee Action
Refugee Council
Royal College of Psychiatrists
The Royal National Institute for Deaf People
Royal National Institute of Blind People
SCOPE
Sheffield Law Centre
SKILL: National Bureau for Students with Disabilities
Soldier Sailor Airman Royal Marines Commando Association
South East Regional Forum on Ageing
Southampton Seniors Council
Stonewall
The Bar Council
Thompsons Solicitors
Turning Point
UNICEF
UNISON
UNITE the union
Vision Sense
Worcestershire Racial Equality Council

Appendix 4

Summary of key findings: Report on Legal Cases

All page references in this appendix refer to the research report 'Evaluating the impact of selected cases under the Human Rights Act on public services provision'.

Selected legal cases

Case 1 – Protecting life: Obligations on public authorities to take steps to protect life, under Article 2 of the European Convention on Human Rights 'Osman v UK'

The judgement gave consideration to the circumstances in which authorities may fail to meet their positive obligation 'to take preventive operational measures to protect an individual whose life is at risk from criminal acts of another individual'. (p.29)

- Nearly 10 years on, Osman principles have become part of policing policy and practice across a range of areas. (p.4)
- The National Policing Improvement Agency monitors case law relevant to police operations to help inform the development of a 'doctrine', including regulations, code, guidance and advice. (p.30) Urgent need to change practice will be communicated through email (p.30) and followed by detailed policies.
- Individual police forces also monitor case law and develop their own policies and processes on a range of different issues. (p.30)

- The policy outcomes of case law monitoring are disseminated in a variety of ways, including being published on the force's intranet, and by holding training seminars. (p.31)
- The process of disseminating policy should be quick in order to make changes. (p.31)
- After the Osman case, the majority of the police forces of England and Wales have specific policies on handling threats or risks to life. (p.32) There were also national-level policies focused on a diverse range of issues to reflect the Osman principle that authorities have an obligation to take reasonable measures to protect the right to life. (Examples on pp35-36.) Osman warnings serve the purpose of both alerting an individual to a possible risk and to measures that could reduce that risk. (p.35) Awareness of the case is high, although concern is sometimes expressed as to whether awareness translates into understanding. Robust policies, robust policy development mechanisms and thorough dissemination are important. (p.39) Discussion is still ongoing about how best to do this. (pp.38)

Case 2 – The rights of detainees – reduce deaths in custody, under Article 2 of the European Convention on Human Rights ‘Keenan, Middleton, Amin, Wright and Edwards’

- **Keenan** concerned a suicide in custody of an individual with mental illness, following a period of segregation.
 - In the light of **Keenan**, segregation in prisons was revised and changed, including the decision on the use of segregation and the processes for monitoring segregation. (p.45)
The Prison Service Order also notes a range of measures to protect the mental health of those in segregation. However, although some healthcare professionals interviewed by the project were aware of the Prison Service Order, they weren't aware of the Keenan case. (p.46)
- **Middleton** concerned the investigative obligations triggered by a suicide in prison.
 - The case of **Middleton** has had an identifiable effect on the work of coroners. (p.46) It has certainly increased in the length of time taken to reach verdicts and subsequent pressure on resources (p.47) but other potential impacts of the case are not clear.
- **Wright** concerned an individual who died from an asthma attack. The case looked at the investigative mechanisms and at Article 3.
- **Edwards** involved a killing by a cell-mate. Both individuals had mental health problems, and the judgment discussed both the investigative obligations and the preventive measures that might have been taken to avert the risk to life.

- The **Amin** judgment was about the investigative obligations of Article 2 following the killing of Zahid Mubarek by his cell-mate.

The process of change in these cases:

- In prisons – the National Offender Management Service policy staff told this project that Prison Service Orders and Prison Service Instructions are subject to a three-yearly review process. This takes into account a variety of sources including case law, investigations, legislation, best practice, learning from previous incidents, and recommendations from inquiries. (p.41) One National Offender Management Service senior manager in prison mentioned that Prison Governors should know the leading cases but he wouldn't expect the staff to know or apply the case without reading the National Offender Management Service's policy guidance.
- In prisons' healthcare – although the interviewees showed a high level of interest in human rights, interviews with healthcare professionals working with, or in, the prison system revealed a low level of awareness of the cases selected. Nearly all said they did not receive training or guidance on case law. They had not received and were not aware of training or guidance on human rights more generally. (p.43)

Other impacts:

- In general, the impact of these selected cases was difficult to discern, given the multiple initiatives to reduce deaths in custody (p.6) and to carry out risk assessment. (p.11)

Case 3 – The positive obligation to address difference, under Article 2 of the European Convention on Human Rights ‘Price v UK’

Price, who is four-limb deficient, spent a night in a Lincolnshire police cell which was wholly unsuited to her needs and dangerous to her health, before being transferred to prison. The court found a violation of Article 3. Separate opinions held that the ‘primary responsibility’ for the violation lay with the judicial authorities for not ensuring that adequate facilities existed, and that to avoid unnecessary hardship, Price should have been treated differently from others because her situation was significantly different. (p.7)

- This research found no indication that Price has had a discernable impact on policy or practice in police or prison services. There is no evidence of the distinct human rights focus on the issue of disability and detention as a driver for change.
- Impact on Lincolnshire Police:
 - Interviewees at the force could not trace ways in which lessons were learned. A Custody Policy was put in place in 2006 – five years after **Price**. The policy reflects the national Guidance on the Safer Detention and Handling of Persons in Police Custody and the force’s own Disability Equality Scheme. Measures are now in place to integrate learning from case law, complaints and the work of other forces. (pp.7-8)

- Impact beyond Lincolnshire:
 - Police personnel from other forces were largely unaware of **Price**.
 - The Disability Discrimination Act, the national Safer Detention guidance and the Home Office Police Custody Buildings Design Guide – all subsequent to **Price** – were noted by interviewees as likely to forestall a recurrence. (p.8) But this research cannot explicitly link this policy and legislation to the Price case.

Case 4 – Destitution in the asylum system: the case of ‘Limbuella’

Limbuella focused on the application of section 55 of the Nationality, Immigration and Asylum Act 2002, which allowed support to be refused to individuals who failed to apply for asylum “as soon as reasonably practicable”, causing many to become destitute. The case established the principle that where the fate of individuals is in the hands of the state – because it denies them support and bars them from working or claiming mainstream benefits – the severe destitution that results, constitutes inhuman or degrading treatment under Article 3. (p.9)

- Impact on the application of section 55:
 - **Limbuella** had a direct impact on reducing destitution within the asylum system by changing the use of a statute which denied late asylum applicants support. Following the judgements by the Court of Appeal (2004) and House of Lords (2005), there was a significant fall both in the number of asylum-seekers being certified section 55 cases, and in the proportion of those applicants deemed ineligible for support. (p.9)

- Revised guidance to asylum case workers and policy teams (now part of the UK Border Agency) adopts the destitution threshold set out in **Limbuella**. It states that where an asylum applicant lacks overnight shelter and basic provisions, such as food and access to sanitary facilities, support should be provided to prevent a breach of Article 3, even if the claimant is judged to have applied late. (p.9)
- Impact on government policy in addressing the rising incidence of destitution among failed asylum seekers:
 - This research found that **Limbuella** has had no impact on government policy in addressing the rising incidence of destitution among failed asylum seekers. **Limbuella** has been interpreted narrowly by the UK Government to apply only to the specific matrix of factors arising in the case. The parliamentary Joint Committee on Human Rights has expressed concern that section 55 is still being used to deny cash-only support to late applicants, and wants it to be repealed. (p.9)
- Impact on local authorities:
 - There is considerable variation and uncertainty in the way local authorities conduct human rights assessments (if they do so at all). Interviewees generally said **Limbuella** was not “high on the radar” of local authorities and had not influenced decision-making. (p.10)
 - However, some service directors and managers in local authorities said the **principles of Limbuella** are relevant in that, they set a baseline of acceptable treatment and remind decision makers that omissions as well as actions can breach Convention rights. (p.10)
 - In general, the broader political climate around human rights and asylum could have an impact on decision-making. Some interviewees in English authorities noted that the adversarial climate in which they work produced defensive attitudes to human rights. Nevertheless, an interviewee in the Welsh Refugee Council mentioned that the climate there was different. Failed asylum seekers in Wales qualify for free health care and Ministers refer to the Human Rights Act in their speeches. (p.77)

Case 5 – Balancing rights: the case of East Sussex

The family of two profoundly disabled young women challenged a local authority ban on care workers lifting them manually. The High Court found a violation of Article 8 and provided a framework for public authorities to balance the interests of the dignity of the individual with the health and safety of employees by means of individualised risk assessments. (p.11)

- The Disability Rights Commission intervened in the case, saying it was “the tip of a no-lifting iceberg.” The Ministry of Justice told us the case was “very much a ‘one off’ with extreme circumstances.” This apparent discrepancy shows how difficult it is to generalise about manual handling practice which is diffused across the social care field. (p.11)

Appendix 4: Summary of key findings: Report on Legal cases

- The principles established in **East Sussex** were not, in the main, new; there was some earlier (non Human Rights Act) case law and guidance, and professional debate, which promoted them. However, the case exerted a “bottom up” impact by validating the efforts of practitioners who were already challenging restrictive policies. (p.11)
- Impact on policy and guidance:
 - The imprint of the case is clearly visible at the level of policy and guidance – notably in the “gold standard” guidance on manual handling. The editor said the guidance differs essentially from pre-**East Sussex** editions in that it is “not prescriptive; it’s about equipping people to make balanced judgments.” (p.11)
 - Some interviewees in English city councils also mentioned that the case had influenced the development of manual handling policy or procedure in their authorities as well as risk assessments. (p.83) An interviewee on the Welsh Local Government Association Manual Handling Forum said “there’s plenty of evidence that all [Welsh authorities] provide a balanced assessment process” after the case. (p.83)
 - The principles of the case were also embedded in the training or advice that manual handling trainers or advisors deliver. (p.84)
 - The positive impacts on practice also include: improved transparency and accountability; improved health and safety for staff because of the balanced decision-making; and enriched understanding of dignity. (pp.11-12)
- Limits to impact:
 - The findings caution against overstating the overall impact “on the ground” of **East Sussex**. The impact across all public authorities and care providers is highly variable and uncertain.
 - Lack of systematic and specific policy review and guidance within authorities, could lead to inconsistency in practice. (p.87)
 - Interviewees said that contracting out services can dilute the impact of manual handling policies that enshrine the primacy of individual risk assessment. (p.90)
 - Some interviewees also said “sensationalised” media coverage had created erroneous perceptions of the case and prompted defensive responses among care staff. However, these attitudes were not shared by all interviewees: one said the principle of balanced decision-making was seen as empowering by care assistants because it helped them understand how decisions are made and allowed them to raise concerns about their own safety. (p.12)
 - Nevertheless, the research highlights the strong potential that informal channels, for example, professional associations and networks, have for translating and disseminating the lessons of case law.

Case 6 – The positive obligation to secure dignity and integrity: the case of ‘Bernard’

The **Bernard** case concerned a severely disabled woman who had knowingly been left in unsuitable accommodation for 20 months, confined to one room and unable to use the toilet. The council had a positive obligation to secure her dignity and integrity; its failure to act without undue delay was a breach of Article 8 and the court awarded £10,000 damages.

■ Impact of the case on the London Borough of Enfield:

– Although changes had been made since the case in the London Borough of Enfield, especially in the interface between housing and social care and the handling of cases of complex housing need, it was not a **direct** result of the case. Instead, it was a subsidiary element in a continuum of other developments, notably the Government’s drive for greater personalisation of care. (p.14)

– The case did not feature prominently in staff training. (p.14)

– Most of our interviewees, including the manager in the London Borough of Enfield, said the £10,000 penalty was not sizeable enough to be a significant factor for most authorities. (p.14)

■ Impact on other public authorities:

– Interviewees suggested that this case had no discernable impact on policy or practice among local authority housing or social care departments, or at a national policy level. (p.13)

– Most of the respondents had not heard of the case. (p.13) Some respondents said the case was viewed as aberrant: “it couldn’t happen here.” A policy officer in the Local Government Association said **Bernard** was “extreme”; she could not recall it being raised in any discussions with senior officers in local authorities. (p.13)

– Interviewees in the Chartered Institute of Housing and the Housing Corporation also agreed that **Bernard** was not a “landmark case” in the housing sector. (p.13)

– The majority suggested that existing legislation, for example, housing legislation, the Disability Discrimination Act and statutory duties, for example, disability equality duties, should have prevented it. (p.13)

■ This research suggests that the potential of the Human Rights Act to drive improvements in public services has been particularly under-explored in relation to housing. There was a marked tendency to view the Human Rights Act as peripheral to other drivers, including equality legislation. (p.14)

■ It might be argued that this perspective neglects the role played by the Human Rights Act, as the overarching legislation that renders visible groups that fall outside the patchwork of anti-discrimination legislation and gives them a voice and a channel for legal redress. (p.14)

■ This suggests further potential to develop integrated human rights and equality approaches within public authorities. (p.14)

Themes that emerge from this research on the impact of selected cases

Problems / issues	Reasons / situations	Steps that need to be taken to improve the situations
Limits to assessing impact of human rights case law	<p>1. Multiple drivers for change</p> <ul style="list-style-type: none"> ■ At an institutional level – the Human Rights Act and human rights cases are rarely the sole or principal driver for change. Others include: statutory requirements, performance targets, codes of practice, inspectorate standards, media coverage and broader policy directions set by the Government. ■ As individual practitioners – interviewees frequently struggled to disentangle their knowledge of case law from other factors (such as their professional ethos and training) as an influence on specific decisions or habitual behaviour. (p.15) 	
Limits to assessing impact of human rights case law	<p>2. The passage of time</p> <p>The time lag between an incident, a legal judgement, and resulting policy changes reaching operational managers, can make it difficult to determine what is attributable to case law and what relates to the evolution of good practice. (p.15)</p>	

Problems / issues	Reasons / situations	Steps that need to be taken to improve the situations
<p>Potential barriers to impact</p>	<p>3. Media coverage and advocacy</p> <p>In some cases, there has been high profile media reporting of a judgement and/or subsequent inquiries, or vocal campaigns by relatives and advocacy organisations to challenge poor practice. Arguably, the Human Rights Act underpins any resulting changes to policy and practice; however, a note of caution is needed when assessing the impact of the case on its own. (p.15)</p> <p>1. Divergent perceptions of human rights</p> <p>The research found both positive and negative views about human rights and the Human Rights Act at different levels of seniority in public authorities.</p> <p>Some service directors and managers had experienced human rights as a “stick to beat us with” or as the basis for unrealistic or unfounded claims Others spoke of the Human Rights Act as being “almost taboo”, an object of derision or something threatening, in contrast to the Disability Discrimination Act which was viewed positively by all those who referred to it. (p.15)</p> <p>However, such views are neither universal nor insurmountable. Service directors spoke positively about human rights as a set of underpinning principles for their work and a constructive challenge function.</p> <p>Practitioners spoke about learning from human rights cases to approach seemingly intractable problems and as a framework within which to resolve competing interests. (p.15)</p>	

Opinions in a single authority can differ hugely. (p.16)

Potential barriers to impact

2. Resources and capacity: an issue of supply and demand

Interviewees said a significant barrier to applying the lessons of case law systematically, is the need for additional resources or additional capacity.

In some cases, public authorities appear to develop ways of interpreting the obligations they might be expected to take on as a result of case law, to fit within available resources. (p.16)

In other instances, case law which, like **Bernard**, is concerned with a minimum level of decency and respect for a claimant's human rights, can struggle to gain purchase in a system driven by the equitable and transparent rationing of resources. The case may be a salient reminder of the 'bottom line' but it does not, interviewees said, assist an authority to make hard decisions about allocating adapted housing stock in conditions of overall scarcity.

On the demand side, variations in the availability of legal representation or advocacy can create something akin to a "post code lottery." (p.16)

Disability organisations say demands by service users to operationalise case law are patchy and certainly have not achieved a sufficient critical mass to drive change. (p.16)

Problems / issues	Reasons / situations	Steps that need to be taken to improve the situations
<p>Potential barriers to impact</p>	<p>3. Variable mechanisms to monitor case law Monitoring arrangements are variable and often highly specific to each authority. Some local authority service directors and managers said mechanisms to review policy and guidance in the light of case law are sometimes haphazard, reactive and overly dependent upon personal initiative. (p.16) However, police officers in four out of five police forces being interviewed were able to outline internal mechanisms for monitoring case law and disseminating relevant points. (p.17)</p>	
<p>Potential barriers to impact</p>	<p>4. Variable mechanisms to disseminate the lessons of case law There are variable experiences within the public authorities in terms of effectiveness of case law dissemination and the extent to which policy responds to human rights case law. There is debate about how far down an organisation it is helpful to label a policy change or guidance as being based on human rights. Some said this can be off-putting or unnecessarily legalistic; others said it helped frontline staff to know that changes were not arbitrary and that a human rights framework could protect them and those using their service. (p.17)</p>	

<p>Human rights as a driver for change</p>	<p>A principle-based approach. Case law is only one way in which human rights influences change. Legal judgments are generally specific interpretations of the law applied to a particular set of circumstances. This can discourage any culture within public authorities of identifying generalisable principles arising from case law. Moreover, there appears to be a generic tendency to view some human rights cases as arising from extreme or aberrant circumstances. (p.18)</p>	<ol style="list-style-type: none"> 1. The idea of “smart compliance” can be further promoted: that is, providing guidance to public authorities on the implications of human rights case law which extend beyond the specific facts of a particular case in ways that may not be immediately apparent. (p.18) 2. There is a need to equip service directors and operational managers to be able to apply human rights principles across a range of circumstances more confidently. (p.18) 3. There is also a need for Equality and Human Rights Commission to promote human rights and ‘translating’ the lessons of law into effective practice. (p.18)
<p>Human rights as a driver for change</p>	<p>Interviewees suggested several levers for promoting the implications of human rights case law to public authorities. (p.18) Sometimes the lever is top-down but sometimes less mechanistic routes from the bottom-up could also work. (p.18)</p>	<p>Promoting “smart compliance” through formal and informal networks:</p> <ol style="list-style-type: none"> 1. National leadership to promote the principles of human rights case law – in particular from central government policy departments in partnership with national associations, together with the Equality and Human Rights Commission. 2. Promotion via the media is an effective way to reach practitioners, particularly given the patchy institutional application of case law. Research findings also suggest the potential to promote human rights principles through professional associations and networks, using new technology such as online forums (p.19)

Problems / issues	Reasons / situations	Steps that need to be taken to improve the situations
Human rights as a driver for change	Human rights has not been embedded in public services	<p>3. Advocacy – both legal representation and campaigning advocacy can boost the “demand side” in relation to human rights cases. (p.19)</p> <p>4. Effective institutional application involves monitoring, review and “lessons learned” mechanisms, dissemination, training and the translation of principles into messages that make sense to practitioners’ everyday roles. (p.19)</p> <p>5. Application across sectors: The principles arising from legal cases, and the implications for practice, are not always immediately transparent to practitioners and are sometimes disputed. This brings us back to the role of national leadership to identify and champion key principles and lessons to a wider range of sectors and circumstances. (p.20)</p>
		<p>Human rights principles need to be communicated to professionals within those services (the “supply” side) and to those using services and the wider public (the “demand” side). Interviewees suggested several strategies for communicating rights in a way which taps into existing organisational cultures:</p> <ol style="list-style-type: none"> 1. Providing guidance that gives practitioners confidence in their judgments is useful. Guidance which makes the resolution of competing interests clear can help to gain consent. (p.20)

2. Human rights and the Human Rights Act are viewed as one among many drivers of policy and practice in public authorities. There is potential to develop integrated equality and human rights approaches which build consensus around the Human Rights Act and set a threshold of treatment to secure dignity and respect for those in vulnerable situations. (pp.20-21)
3. There is an appetite among some of the interviewees to operationalise the lessons of case law based upon a more confident understanding of how human rights principles can be applied across public services, thus promoting both the transformative and remedial roles of the Human Rights Act.

Appendix 5

Summary of key findings: Report on Public Services

All page references in this appendix refer to the research report ‘The impact of a human rights culture on public sector organisations – lessons from practice’.

Although a concern to avoid the risks associated with legal challenge under the Human Rights Act has undoubtedly been a factor in encouraging a focus on human rights, case study organisations have emphasised that their organisations have been driven primarily by a desire to improve services. (p.8) Although the Human Rights Act itself doesn't seem to have been the main driver for change, a stronger focus on the Act is regarded as an important priority in the future. (p.8)

Summary of key findings: Report on Public Services

Current issues / problems	Reasons / situations	Steps that have been taken / need to be taken to improve the situations
<p>Issues regarding embedding human rights into practice at an organisational level</p>	<p>It is difficult to highlight the positive benefits of focusing on human rights.</p> <p>One of the most significant blocks has been the challenge of making the human rights agenda 'real and meaningful' for staff. (p.10)</p>	<p>Interviewees suggested that rather than creating a host of new, separate, human rights tools and decision-making frameworks, integrating human rights into existing tools and frameworks that staff are familiar with, might be more successful: (p.10)</p> <p>1. Create a driver for engaging with human rights – it is important to have internal leadership and championing. Leading individuals can demonstrate in their day-to-day activities how staff can put into practice the values underpinning the Human Rights Act, rather than adopting a more narrow, 'risk-oriented' or compliance focus. (p.28) (Wales Assembly, Mersey Care Trust, National Police Improvement Agency).</p> <p>One of the most important leadership actions is to demonstrate to staff and stakeholders how human rights fit and by reinforcing other corporate agendas. (p.90)</p> <p>2. Understand that human rights could be interpreted in different ways, reflecting the different roles and functions of the organisations and the context in which they are operating. The central principles underpinning the Human rights Act – fairness, respect, equality, dignity and autonomy, were seen to link naturally to wider corporate goals and values. (p.35)</p>

Current issues / problems	Reasons / situations	Steps that have been taken / need to be taken to improve the situations
<p>Issues regarding embedding human rights, integration into service planning and review and front-line decision making</p>	<p>The most significant blocks, barriers and challenges the organisations have experienced in promoting human rights are related to initial lack of understanding about human rights and the Human Rights Act.</p> <ol style="list-style-type: none"> 1. Staff misconceptions about human rights and Human Rights Act as initial barriers to progress. These challenges also include the translation of a 'board set of principles' into concrete action. (p.44) 	<ol style="list-style-type: none"> 3. Integrate human rights into corporate strategies and policies and weave a human rights approach into existing equality and diversity schemes. However, the link between two agendas needed to be clarified and strengthened in corporate documents and in the organisation's approach. (pp.36-37) New guidance and support on how to integrate human rights with equality and diversity would be appreciated. (p.93) 4. It is important to ensure that the Human Rights Act and human rights principles are taken account at the point in which important corporate decisions are being taken, and are explicitly woven into governance arrangements. (p.42) 5. Give staff the responsibility for championing human rights, and give them access to senior level decision makers and support. (p. 45)
<p>Issues regarding embedding human rights, integration into service planning and review and front-line decision making</p>	<p>The most significant blocks, barriers and challenges the organisations have experienced in promoting human rights are related to initial lack of understanding about human rights and the Human Rights Act.</p> <ol style="list-style-type: none"> 1. Staff misconceptions about human rights and Human Rights Act as initial barriers to progress. These challenges also include the translation of a 'board set of principles' into concrete action. (p.44) 	<ol style="list-style-type: none"> 1. It is important to focus on winning hearts and minds and creating human rights 'champions' within organisations in order to create change. (pp.9, 90) Raising awareness among senior managers and building capacity in human rights through quality and tailored training for staff are essential within organisations, and with partners. (pp.23, 49) For example, Southwark Council and Mersey Care Trust.

Lack of understanding about how to translate human rights principles into day-to-day activities (p.51)

2. Keeping up to date with developments in case law and learning lessons from complaints in order to manage risk is important. (p.48)

3. Human rights have not been integrated with service planning and every-day work processes.

2. Interviewees agreed that it was important to monitor and disseminate developments in case law, and to track and learn lessons from complaints, in order to manage risk and help staff to understand how human rights principles need to be interpreted in practice. (pp.52-53) It is important to incorporate this information into training materials. Ongoing support from a knowledgeable external advisor has also been critical. (p.10) Southwark Council, National Police Improvement Agency and Mersey Care have developed mechanisms to do so. (p.15)

3. Interviewees suggested that integration of human rights into impact assessment processes could be an important way of ensuring that human rights were built into the design of services. (p.55) It could provide a thorough and in-depth analysis of a service and its actual and likely impact on different groups. (p.55) However, the process should be used as a framework for encouraging discussion and debate, rather than a 'tick box' approach. (p.55) See examples in Southwark Council (pp.56-57) and Wales Assembly Government. (pp.57-58)

It is important to develop initiatives to integrate human rights into front-line decision-making processes, and to work with individual service users. Interviewees in some of the case study organisations were impressed by the Department of Health Human Rights in Healthcare project. They commented that the project had been beneficial in helping them to develop their approach to human rights. See examples in Mersey Care Trust and Southwark Health and Social Care. (pp.60-64)

Current issues / problems	Reasons / situations	Steps that have been taken / need to be taken to improve the situations
<p>Issues regarding embedding human rights with users and communities, partners and suppliers</p>	<p>Interviewees found that having engagement mechanisms was central to the organisations' attempts to build a human rights friendly culture. (p.67) Apart from the 'general engagement' activities around needs and priorities, it is important to develop more specific engagement work to inform and educate users and the public about their human rights. It could be seen as 'creating pressure for change from below'. (p.67) However, it is not straightforward to do so because the understanding of human rights is not high among some user groups and it can be challenging to find language to describe human rights in simple and accessible way. (p.67) There can also be a degree of nervousness among staff about informing users and the public about their rights. (p.67)</p>	<p>Interviewees also recognised the importance of integrating human rights into performance management arrangements, and monitoring their organisations' progress in embedding human rights. (p.64) However, it is important to understand how to do it correctly. There is no evidence in this research that organisations have developed a systematic corporate performance framework to assess the outcomes of their human rights work across the board. (p.65) Mersey Care Trust and Southwark Council have developed some initiatives in an attempt to achieve this. (pp.65-66)</p>
		<p>Interviewees have highlighted the importance of ensuring strong advocacy arrangements. The Human Rights Act is regarded as having considerable potential to strengthen advocacy arrangements, particularly in highlighting issues that may be overlooked, while serious in nature, not necessarily regarded as 'abuse'. Age Concern Cymru gave an example of successful advocacy story on p.68. But the full potential of the Human Rights Act has yet to be exploited in advocacy. (p.68)</p> <p>Mersey Care Trust has developed an approach which involves both users and carers in a wide range of activities throughout the Trust, and will explicitly link user involvement to human rights in the future. (pp.69-70)</p>

The Welsh Assembly has used the 'Funky Dragon' to engage with children and young people. (pp.71-72)

Southwark Council produce a magazine, Equalities News, to keep residents and service users up to date. (p.72)

Age Concern has put human rights principles such as, dignity and respect, at the heart of their advocacy projects. (pp.72-75)

Putting human rights at the centre of joint working could also help to strengthen partnerships and stakeholder relationships. (p.76) More opportunities to network and to share good practice would be an effective way of strengthening the approach to human rights. (pp.92-93) See example in the Welsh Assembly (pp.76-77) and the National Police Improvement Agency. (pp.78-80)

Interviewees also suggested that human rights principles should be embedded into commissioning and contracting arrangements. However, this work is still at an early stage. Further targeted research will be needed to explore how effective these arrangements are. (p.80)

Southwark Council imposes an obligation on service providers to make sure that their service delivery is consistent with the principles, rights and duties set out in the Human Rights Act. (pp.81-82). The National Police Improvement Agency has also attempted to integrate human rights into contracts. (p.83)

Further promotion of human rights by key stakeholders including government departments, sector development agencies, improvement bodies and partnerships would seem to be helpful. (p.95)

Current issues / problems	Reasons / situations	Steps that have been taken / need to be taken to improve the situations
<p>Difficult to track and measure the benefits of engaging with human rights (p.93)</p>	<p>Organisations are not collecting information about benefits in a systematic way. At the moment, indicators being used to track progress tend to be concerned with activities, rather than outcomes. (pp.93-94)</p>	<p>Further work is required to help organisations in the public sector establish what a performance management regime that embeds human rights might look like. (p.94)</p> <p>A performance framework would need to include:</p> <ol style="list-style-type: none"> Some clear human rights objectives and priorities. A range of indicators to measure performance against these objectives. Incorporation of objectives and indicators into corporate performance 'dashboards', departmental / service and team objectives, and individual performance expectations and appraisals. Regular reporting of progress to senior management teams, governing bodies, and to users and the public. (p.95)

The benefit of engaging with human rights (pp.84-87)

1. Improving services that meet the needs of individual users and contribute to the creation of a fairer, more inclusive society.
2. Establishing a set of service standards that are non-negotiable.
3. Reinforcing related agendas and ensuring continuity.
4. Adding weight to the equality and diversity agenda.
5. Setting out a universal set of standards 'for everyone'.
6. Inspiring staff and re-connecting them with core public service values.
7. Improving decision-making and preventing problems further down the line.

8. Making the case for change.
9. Shining a light on those services that are not subject to extensive scrutiny or inspection.
10. Tackling 'hot topics' – Human rights can be a helpful framework, to explore challenging topical agendas – such as, commissioning, partnership working, or personalisation.
11. Managing organisational risk.
12. Legitimising and differentiating services and organisations – human rights has an important part to play in their attempts to build public trust and confidence in services.

Appendix 6

Summary of key findings: Report on Inspectorates and Regulators

All page references in this appendix refer to the research report ‘The role and experience of inspectorates, regulators and complaints-handling bodies in promoting human rights standards in public services’.



Current issues / problems	Reasons / situations	Steps that have been taken / need to be taken to improve the situations
<p>Integration of human rights in inspectorates since the introduction of the Human Rights Act</p>	<p>Respondents mentioned that a wide range of activities had been undertaken to integrate human rights since the introduction of the Human Rights Act. These activities included incorporating human rights into corporate plans and equalities strategies, training and development programmes, reviewing and re-aligning policies; and monitoring case law. (p.7)</p> <p>Seven out of eleven inspectorates have explicitly or implicitly set out their commitment to human rights as reflected in their corporate plans and value statements. (p.7)</p> <p>Respondents felt that shared ownership and accountability for human rights throughout the inspectorate was helpful, and also the importance of strong senior commitment and leadership. Both ‘bottom-up’ and ‘top-down’ approached were essential. (p.8)</p> <p>A commitment to human rights at the organisational level seems to be manifest through a sound understanding of the relationship between equality, diversity and human rights and willingness to address human rights itself, for example, through the organisation’s values, its policies and strategies, training and support and review processes, as well as leading by example to model human-rights-sensitive behaviour. (p.20)</p>	<p>Several inspectorates have integrated human rights with equalities and diversity strategies. (p.7)</p> <p>For example:</p> <ul style="list-style-type: none"> ■ Human rights principles are fundamental to the Commission for Social Care Inspection’s mission for making social care better for people, but these are not explicitly referred to as human rights. (pp.8-9) ■ The Independent Police Complaints Commission makes a clear public statement that the values of justice and respect for human rights, independence, integrity and openness are key to its business. (p.22) ■ The Audit Commission’s strategic plan describes how important equality and human rights have become for the effective delivery of public services. (p.22) ■ The Healthcare Commission’s strategic plan outlines key activities for securing improvements for patients through better regulation. It explicitly states that it will use assessments and other activities to promote action to reduce inequalities in people’s health and to improve their experiences of healthcare and access to services through greater respect for human rights and diversity. (p.22) ■ Mental Health Act Commission has human rights in the Commission’s strategy and programme of work. (p.23)

Appendix 6: Summary of key findings: Report on Inspectorates and Regulators

<p>Integration of human rights with equality and diversity</p>	<p>Most respondents were keen to emphasise some of the ideas or values relating to human rights as being integral to their equality and diversity strategies.</p> <p>Broadly speaking, through:</p> <ol style="list-style-type: none">1) One strategy for human rights, equality and diversity, with human rights referenced either explicitly or implicitly. For example, the Mental Health Act Commission and the Healthcare Commission draw human rights with equality and diversity together. (p.23)2) Separate strategies addressing different duties. Within this group, human rights can be referred explicitly or implicitly, for example within each equality strategy / scheme itself, or in linked publications, or support structures. (pp.24-25)	<p>Many inspectorates have put in place internal structures to integrate human rights and equalities.</p> <p>Respondents mentioned that some inspectorates had separate committees / working groups for each strand of activities, and a separate one for human rights. Some had one committee / working group that took responsibility for equality, diversity and human rights under one 'umbrella'. (p.26)</p> <p>For example, the Audit Commission's diversity scheme sets out the structures for delivering diversity and human rights within the organisations. Membership is drawn from across the organisation – it has clear objectives and has embedded action plans for equality and human rights across the organisation. (p.26-27)</p>	<p>The Mental Health Act Commission placed responsibility for equality and human rights with the organisation as a whole, ultimate responsibility resting with the board. The organisation's strategy aims to 'embed a human rights-based approach throughout the organisation in order to help safeguard and promote the human rights of all patients who are detained under the Mental Health Act and of all those who worked for or on behalf of the Commission'. (p.28)</p>
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Current issues / problems	Reasons / situations	Steps that have been taken / need to be taken to improve the situations
<p>Integration of human rights through internal policies and procedures</p>	<p>Respondents felt that the introduction of legislation, including human rights was always taken seriously by inspectors. They pointed out that internal policies and procedures had been systematically reviewed as well as processes for auditing or inspecting organisations. For example, in the Audit Commission, HMI Prisons for England and Wales, Healthcare Commission, Mental Health Act Commission and Healthcare Commission. (pp.28-29)</p>	<p>In particular, the Mental Health Act Commission had commissioned a 'Making it Real' project to help it 'fully to incorporate the human rights framework within its work, so that it became a recognised part of regular activity across the organisation'. (p.29)</p> <p>The Healthcare Commission developed the Planning for Inclusion Process (PIP) equality impact assessment which aims to identify the likely impact of, and issues arising from, the Commission's work and, in doing so, 'to identify issues, and plan action to maximise the opportunity for promoting equality and inclusion'.</p>
<p>Integration of human rights into inspection frameworks and complaints-handling procedures</p>	<p>Most inspectors appear to be working actively to integrate the Human Rights Act in their inspection work. The degree to which they have achieved this is variable. The most significant factors determining the extent to which human rights are integrated into the process of inspection, seems to be the role and remit of the inspectorate, together with the impact of the regulatory environment.</p> <p>The legal framework has often been the drivers and challenges for integrating human rights into inspection frameworks. There are a number of examples of inspectorates which have checked their inspection frameworks for assessing public bodies against the Human Rights Act and/or make direct reference to the Human Rights Act within inspection criteria. (p.35)</p>	<p>The Mental Health Act Commission has integrated human rights into its criteria for inspecting mental health services. It has a number of statutory duties, under the Mental Health Act 1983, namely to safeguard the interests of all people detained under the Mental Health Act 1983. It has embedded human rights into a 'Quick Cross Reference' tool for use primarily on monitoring visits to mental health trusts. The relevant Articles of the Human Rights Act have been used to strengthen and inform what inspectors should consider when reviewing aspects of mental health service provision. (Figure 10, p.37)</p> <p>The HMI Prisons is another example of how inspectorates can work in a way which is linked explicitly and obviously with Human Rights Act, by nature of their functions and roles (Figure 11, p.38).</p>

In some inspectorates, for example, the Mental Health Act Commission and the HMI Prisons, there was a strong view that the Human Rights Act posed no significant additional challenge to them, given that their role and remit was determined by laws that encompassed protection of human rights in the first instance. The Human Rights Act has generally been positively received and has strengthened their role, or enabled them to re-visit their work to ensure they are addressing all aspects of their human rights obligations appropriately. (pp.37-38)

It was positive to note that many respondents could readily contextualise their day-to-day activities, in respect of delivering inspections or dealing with complaints, in terms of human rights, through:

1. Positive obligation and inclusivity
2. Protecting the rights of individuals by addressing specific provisions contained within the Human Rights Act
3. Managing potential tensions between the rights of the individual and the rights of the public. (p.48)

In the Independent Police Complaints Commission, they make explicit references to the Human Rights Act in carrying out their work as a complaints-handling body. Human rights are referenced throughout its case work, manuals, protocols and processes. For example, the Independent Police Complaints Commission has a 'Referrals' manual which contains details of the Independent Police Complaints Commission's process and protocol for deciding its mode of investigation. A key part of this is a risk assessment process of determining whether or not the 'complaint or recordable event' involves a potential breach of the Human Rights Act. (Figure 12, p.39)

The Audit Commission has made explicit reference to human rights in its Comprehensive Performance Assessment (CPA) framework for single tier and county councils. The same criteria are also used for district councils. The assessment criteria are used by inspectors to judge how effectively councils are addressing human rights. (Figure 13, pp.40-41)

In the Commission for Social Care Inspection, the values of individual choice, empowerment and personalised care have always been fundamental to their inspections. The Commission for Social Care Inspection, inspectors, assess performance against a range of Department of Health service-area specific National Minimum Standards (NMS) framework and regulations (summarised in section 2.2.2). The inspectors use Key Lines of Inquiry Regulatory Assessment framework (KLORA) to make judgements about services. (Figure 14, pp.41-44)

Current issues / problems	Reasons / situations	Steps that have been taken / need to be taken to improve the situations
	<p>Some inspectors also indicated that where their day-to-day work involves protecting the rights of individuals, they find it easier to make the connection between what they do and the Human Rights Act. It appears that where a role involves ongoing referral to the Human Rights Act, or to a framework that references human rights, this leads to a better understanding of how to implement human rights in the organisation. (p.49)</p> <p>Moreover, there have been some interesting recent developments such as the Audit Commission's self-assessment toolkits for public sector organisations, to assess how well they are performing in relation to human rights. The Audit Commission's toolkit 'Knowing Your Communities' is an innovative project on how local authorities can benchmark themselves against human rights as well as equalities standards. (pp.53-54)</p>	<p>HM Inspectorate of Probation works to the Government's 10 principles of inspection in the public sector when undertaking inspection duties. Human rights are referenced implicitly within the principles which form part of the Inspectorate's Code of Practice (pp.44)</p> <p>The Healthcare Commission uses the Annual Health Check (AHC) to inspect NHS trusts in England. Each trust is given a rating based on 'Quality of Services' and 'Use of Resources'. The Quality of Services rating comprises assessment of performance against the Department of Health's core standards and targets. Some of the core standards make references to human rights explicitly or implicitly. Hospital trusts are assessed against these standards. (Figure 15, pp.45-46)</p> <p>Healthcare Inspectorate Wales inspects against the National Framework for Care Standards. Although no direct reference is made to the Human Rights Act, some principles are related to human rights implicitly. (p.46)</p> <p>The Parliamentary and Health Services Ombudsman works to the 'Six Principles of Good Administration in Public Services'. The rights of the individual are referenced explicitly in these principles. (Figure 17, pp.47-48)</p>

Inspectorates' knowledge of how public bodies have responded to the Human Rights Act

Respondents felt unable to provide any (or significant) relevant comment on how public bodies have responded to the Human Rights Act because of a variety of reasons, for example, a typical reason put forward was that "it's hard to talk about 'public bodies' as they are so different." Respondents also expressed different views but very few could give an overall picture or provide examples of good practice on how human rights had been integrated into specific public sectors. (p.55)

They felt that this seems to stem not only from the varying practice within public service bodies, but also from the nervousness among those working in public bodies about human rights issues. Respondents said "they are aware of fears and concerns within public bodies, and therefore can be reluctant to use the language of human rights." These concerns appear to come from a lack of understanding of the Human Rights Act and how to apply it to their everyday work. (p.56)

Current issues / problems	Reasons / situations	Steps that have been taken / need to be taken to improve the situations
<p>Key challenges:</p> <ol style="list-style-type: none"> 1. Training in human rights and clarity in the language and terminology used 	<p>Respondents acknowledged the need for ongoing training in relation to human rights.</p> <p>However, interviewees felt that providing training and guidance alone is insufficient. It is important to provide clarity in the language and terminology used. They felt that:</p> <ol style="list-style-type: none"> 1. The majority of human rights-based work within inspectorates is not clearly reflected by the implicit language used to describe it. In some cases, this is a deliberate and strategic decision to avoid concern amongst employees or public bodies. (p.63) Other respondents thought that 'forcing' the use of human rights language could be counter-productive, leading to public bodies feeling intimidated. (p.63) 2. Respondents also perceived the language as 'legalistic'. This was exacerbated by the fact they were not always clear what it meant for their everyday work. (p.63) 	<p>Some respondents highlighted that the Independent Police Complaints Commission developed a notable way of facilitating learning about human rights both within the organisations, and to public sector bodies through a staff bulletin developed by the 'Learning the Lessons Committee'. It is a multi-agency group comprising the Independent Police Complaints Commission, the Association of Chief Police Officers, the Association of Police Authorities, HM Inspectorate of Constabulary, the Home Office and National Policing Improvement Agency. (pp.31-32)</p> <ol style="list-style-type: none"> 1. There is also a need to make human rights meaningful in terms of the day-to-day activities of staff, using language with which they are familiar. (p.49) 2. Training and awareness-raising needs to be focused on providing ongoing support, and reassurance, rather than being simply instructive. There can be a need to build confidence, making very clear the expectations of different staff, while also 'myth-busting' and providing specific, relevant examples of human rights in practice. (p.32)
<ol style="list-style-type: none"> 2. Human rights in media 	<p>Respondents feel that recent years have brought a 'savaging of human rights by the media'. It has created a culture of disregard for human rights, and consequently, an uphill struggle for inspectorates working to relate human rights directly to people's everyday working lives. (p.64)</p>	<p>Inspectorates have a positive internal communication job to do on human rights. They need to find innovative ways to illustrate how human rights can lead to the improvement of public services, if human rights is to become part of the day job for inspectorates. (p.64)</p>

Appendix 6: Summary of key findings: Report on Inspectorates and Regulators

<p>3. The differences between equality and human rights issues</p>	<p>1. Both inspectorates and inspected bodies were confused as to the key differences between equality and diversity and human rights, and the inter-relationships between these different functions within the organisations. (p.64)</p> <p>2. Terminology surrounding human rights and equality and diversity is often used interchangeably when discussing the existing systems and ethos driving a human rights approach. (pp.64-65)</p> <p>3. Some respondents perceived that it was unlikely public service bodies would be referring to ‘human rights’. It was more likely that they would use terminology familiar to the public body which generally meant more of a focus on equality and diversity (p.56)</p>	<p>1. Making explicit links to human rights within corporate strategies and plans are important:</p> <ul style="list-style-type: none"> - Inspectorates which do this are better placed to create a corporate realisation of human rights - It is also important to emphasise their role and accountability in relation to the Human Rights Act - An integrated approach to equality, diversity and human rights as set out in equality and diversity strategies within the inspectorates could also strengthen the corporate realisation of human rights. (p.34)
<p>4. Familiarity with the principles and specific articles contained within the Human Rights Act.</p>	<p>There is a widely held perception of human rights principles as being too far removed from day-to-day work to be relevant, and “too theoretical” to apply to the average working life of many employees within the UK. (p.65)</p>	<p>The challenge here appears to be not so much in ensuring compliance at all levels but in ‘translating human rights’ into something meaningful. (p.21)</p>
<p>5. Confidence in ability to manage human rights issues</p>	<p>There is a significant issue in staff’s confidence around human rights in both inspectorates and public bodies. In particular, front-line workers are concerned about the lack of clarity on what they are able to include in reference to human rights through their correspondence and inspection. (pp.49, 66)</p> <p>Other respondents are overwhelmed by the perceived complexity of the Human Rights Act, and are concerned about their lack of understanding of the articles contained within it. (p.66)</p>	<p>Particular needs are highlighted around building up confidence at the front-line to tackle emotive and difficult discussions about human rights, and providing front-line inspectors with the experience to be able to apply the concepts of ‘dignity’ and ‘respect’ to more concrete, work-based tasks. (p.49)</p> <p>Training with staff on the front-line is ongoing, but there is recognition that this will require considerable and continuous work in many cases. (p.66)</p>

Current issues / problems	Reasons / situations	Steps that have been taken / need to be taken to improve the situations
<p>6. A consistent message from the Government</p>	<p>Both inspected bodies and inspectorates are perceived to be 'bombarded' by information and policies from the Government. Respondents note that new government initiatives and multiple structural changes, including those aiming to reduce the 'burden' on inspection, mean that human rights can be 'crowded out' of inspection frameworks. Organisations are finding it challenging to "meet the Government's changing whims", and clearly there are limitations to staff capacity and resources available to dedicate to progressing the human rights agenda, even where the will to do so is strong. (p.67)</p>	<p>The Government's role in terms of leading and providing a steer on human rights was highlighted by respondents from inspectorates in Wales as being particularly helpful. For example, the Welsh Assembly Government was praised by these respondents for the way it has raised the profile of human rights nationally, prioritising the issues and making clear the responsibilities of public authorities, as well as the way it leads by example and offers support and guidance to other departments. (p.20)</p>
<p>7. Time and capacity to address culture change issues</p>	<p>1. There is recognition that human rights can be a vast agenda to tackle, and in some cases requires a dedicated focus on implementing a change in culture and leadership around human rights. Respondents felt that there were few exemplars of government-funded human rights based projects within inspectorates. (p.47)</p> <p>2. One of the biggest obstacles raised by respondents for fully integrating human rights into their work was the pressures put on time, capacity and resources. (p.68)</p>	<p>Many respondents felt that there needed to be a change of attitude towards human rights. Rather than it being seen as an additional burden for people, it should be integrated into everyday practice. (p.68)</p>

Support that could help inspectorates and public bodies in embedding human rights principles into their work (pp.69-74)

1.0 Clearer, more targeted guidance

Clearer and more accessible guidance would be beneficial in explaining how human rights principles can be translated into practice for different sectors, types of organisation and roles (operational versus strategic responsibilities). This guidance needs to be targeted at specific sectors to address the sector-specific challenges in implementing human rights principles in their work.

2.0 Clearer definitions of terminology

Encouragement by the Equality and Human Rights Commission and government departments would be beneficial in starting to model the use of the explicit language of human rights with more confidence in public speeches, external publications and interactions with public bodies. It would also be useful for language around dignity, respect and personal choice to be more clearly and publicly linked to the articles of the Human Rights Act and threaded throughout inspectorate frameworks and methodologies.

3.0 Case studies showing human rights practice

Good examples on implementation, embedding and sustaining of human rights principles should be shared more widely amongst inspectorates and regulatory bodies. For example, there has been a wide range of evidence from inspectorates citing innovative approaches to effective user involvement in the design of their inspection methodology. This information should be captured and translated to other work settings.

4.0 More research into the benefits of human rights

There is a need for more research to provide powerful evidence about the benefits of implementing a human rights approach on outcomes for the local population. Such evidence could be highly effective in providing a clear argument for why human rights should be prioritised, and making explicit the direct link between the investment of resources in human rights and the delivery of better outcomes across the spectrum.

5.0 Awareness-raising activities around human rights

A continued strive towards more targeted awareness raising campaigns around examples of human rights are needed to keep human rights issues fresh and aid the transfer of learning between organisations.

6.0 Stronger leadership at national level

Stronger leadership could bring the culture change required to develop a new reputation for human rights and how it applies to everyday life. A national ‘reframing and rebranding’ of human rights is needed to communicate a positive approach of human rights. Government departments, such as the Department of Health, the Ministry of Justice, alongside the Equality and Human Rights Commission are seen as having a key role in providing this direction and leadership.

7.0 Support from the Equality and Human Rights Commission

The Equality and Human Rights Commission is seen as having a specific facilitative role in providing targeted support through resource centres, access to a library of speakers, trainers, and facilitators, creating and maintaining networks, and providing information about what has been done and worked before. It is also believed that the Equality and Human Rights Commission could support public authorities by ensuring that they are receiving the quality of guidance required to enable the effective implementation of the Human Rights Act and be fully aware of their positive obligations under human rights law.

8.0 Organisational development support for culture change

There is a need to develop a ‘culture of respect for human rights’ at both a national level and within individual inspectorates and inspected bodies. At an organisational level, the provision of additional staffing capacity and advice will be needed to support internal culture changes within inspectorates. The promotion of dedicated ‘human rights leads’ for driving the human rights agenda forward and holding the organisation to account will serve to elevate human rights within inspectorates and avoid situations of shifted responsibility.

9.0 Training sessions / development courses

Human rights training should be provided for all front-line staff involved in the delivery of services to the public (such as social care, health, education, housing and asylum) and it should be ongoing and integrated with existing training programmes. There are also a wide range of training needs that need to be addressed through more targeted and focused training, including:

- Confidence building around raising and discussing emotive and human rights issues.
- Ongoing support and reassurance around the delivery of a rights-based approach.
- Support in translating and applying human rights principles to specific organisational functions.
- The provision of a methodology to assist staff in making judgements and decisions relating to human rights cases.



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