Human rights and the public sector
Deconstructing the myths

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Today, the fiercest battles about human rights are not waged in the courtroom or in parliament; they are fought on the pages of newsprint and in the blogosphere. There is a cottage industry devoted to myths about the Human Rights Act. It has never been more important to explain the real story.

On one hand, the Act has brought rights home for British citizens. Instead of having to traipse off to Strasbourg, individuals can obtain justice in a British court. Cases brought under the Act in the past 10 years have laid down a marker about the dignity and respect that are due to each individual. They have hastened much-needed changes to practices such as the use of restraint against young people in custody. They have prompted government to issue better guidelines about the detention of people with learning difficulties and mental health problems, making for a more humane and just process.

New cases continue to push the boundaries forward. Recently, for example, the Equality and Human Rights Commission has been involved in the landmark case of Private Jason Smith. Private Smith died on duty in Afghanistan, not from enemy fire, but from heatstroke. The case is subject to appeal, but could have significant implications, potentially making clear that the army must take reasonable steps to ensure that those servicemen and women who are prepared to risk their lives for their country are not put in danger needlessly.

But human rights have a life and meaning that extend far outside the courtroom. Human rights give an ethos by which we can live together successfully in a diverse society, the “rules of the road” for civilised behaviour. As our formal Inquiry found last year, and as participants at our recent Guardian roundtables confirmed, a positive approach to human rights has enabled public services to do their job more effectively. We heard from the mental health care trust who gave their service users a real say in how the trust was run, and in doing so saw the rates of satisfaction rise. We heard from the school which had slashed the rates of bullying and poor behaviour by putting human rights at the heart of their code of conduct. And we have seen organisations such as Oxfam empowering people on the margins of society – from poor families living in cramped and leaky flats, to care home residents being left cold and uncleaned for hours at a time - to use human rights to demand action when their living conditions approach the inhuman and degrading.

Individual freedoms
Similarly, human rights act as a check when an overmighty state threatens to encroach on individual freedoms. The Human Rights Act has empowered the Commission to challenge the government over illiberal proposals such as the extension of detention without charge to 42 days, and the extensive collection and storage of DNA. The pursuit of security, safeguarding everyone’s ability to go about their daily lives free from fear, is a legitimate goal for government, but it is not carte blanche to intrude on basic civic freedoms arbitrarily.

It is essential to keep these stories in mind – of
how human rights make a positive, practical difference in people’s everyday lives - as we approach a time of potential change for the way Britain approaches human rights. The current government has published a discussion paper on the idea of introducing a bill of rights. The Conservative party has promised to replace the 1998 Act with a British bill of rights.

**Non-negotiable claims.**
Our Commission approaches the debate about the future of human rights with some non-negotiable claims. First, no reform should leave anyone worse off than they are now. We want to see the protection of each individual’s dignity strengthened, not weakened. Second, it must be easy to access redress in practice when things go wrong. Justice available only to those with the deepest pockets or most time to spare is no justice at all. Third, there can be no repeal of the Human Rights Act unless a bill of rights that offers an equivalent or superior level of protection to today’s is in place. Fourth, the debate about the future of human rights needs to involve society at large and not just a small circle of lawyers, politicians and activists. Human rights, after all, do not belong to the powerful, the influential and the informed: they belong to us all. The experience of other countries such as Canada shows that a proper process of democratic involvement and engagement can help encourage people at large to feel a sense of ownership about their rights.

Finally, the debate must be based not on myths or misconceptions but on the reality of what human rights are and what they mean in people's everyday lives.

I’m delighted that Guardian Public is helping to tell that story.

*Trevor Phillips chairs the Equality and Human Rights Commission*
*equalityhumanrights.com/*
From a cultural perspective, we have failed
by Afua Hirsch

Ten years on from the introduction of the Human Rights Act, its drafters are in shock. During the 30 years they campaigned for fundamental rights to be given legal force within the United Kingdom, they thought that what began with a new law would end up with a genuine culture of respect for human rights across the UK. They designed rules that would open the door to human rights cases in the courts, but believed the change would go deeper and spread wider than just litigation.

But many people would say the opposite has happened. Human rights are perceived as being about litigation. The link conjures up fatigue not only towards court hearings, lawyers and expensive fees – but even worse – human rights have become associated with undeserving claimants; people who have little sense of responsibility but are quick to invoke their rights to gain access to luxuries which they have not earned.

Transforming public services
This was not the plan. From the beginning, the Human Rights Act was meant to be about transforming public services. The failure of the government to embed human rights in service delivery in local authorities, health trusts and schools is one of the major explanations for the unpopularity of the concept of rights. Ironically – in what risks becoming a perfect circle – people working within the public sector have also absorbed this fear and suspicion of rights, further deterring them from embracing rights as part of their work.

This fear was evident in a series of roundtables organised by the Guardian bringing together public sector bodies in education, health, local government and criminal justice. Across these sectors it was apparent that human rights contained an element of terror – perceived as creating more work at a time of fewer resources. At best, it seems, many managers and staff regarded human rights as an inconvenience they hoped might disappear quietly. At worst, there was positive hostility, influenced by concerns about further resource pressures, and the same misperceptions so effectively spread by much of the press.

Whatever the reason, the reality across the board appears to be that human rights are not being integrated in public service delivery. The implications of this for service users can be profound. At one end of the spectrum, human rights abuses – particularly in health and social care – are still being remedied in the courts. Cases like Adeoti Ogunsola, where a 10-year old girl attempted suicide after being detained despite warnings from a child psychologist, and “B”, where a child with learning difficulties who had been abused was denied a place at a specialist school, are the clearest example of a failure of public bodies to adopt preventative measures to prevent violations of fundamental rights.

Last week I talked to an 18-year old who was evicted from his family home after his parents left the country, unable to pay the rent despite working full-time on a low salary. Only the threat of litigation invoking the human rights act persuaded the local authority that pushing him into homelessness would be contrary to their legal obligations and, crucially, likely to cost far more in the long-term.
The fact that adopting a human rights approach from the outset can actually save money, is one of the most significant knowledge gaps caused by the lack of education and training on human rights within public bodies.

Pilot schemes have sought to address these gaps, but on a limited scale. More than 1,000 schools across the UK have registered for the Unicef rights-respecting schools award, expanding an initial project which saw reduced bullying, increased attendance among students and improved morale among teaching staff.

Entering new ground
The British Institute of Human Rights has also piloted a new human rights based approach in five NHS trusts – which has moved on from strategy to frontline service delivery, and is now into its third phase. A new collaboration between BIHR and the Improvement and Development Agency to produce guidance and good practice for five local authorities will see these methods entering new ground.

The aim of these pilots is to create a template and indeed a momentum capable of changing practices throughout the public sector. But even allowing for the time this process will naturally require, it may not be enough to win the battle of hearts and minds. And it would be disingenuous to present the advantages of mainstreaming a human rights approach as a concrete list, because the reality is that while some benefits are already apparent, further research and robust data has yet to be compiled. For the sceptics, of which there are still many, nothing less will suffice.

Last year’s inquiry by the Equality and Human Rights Commission was the most serious and comprehensive study yet of how far human rights have become embedded in public service delivery to date. The conclusion was unambiguous about the benefits of public sector bodies adopting a rights-based approach, but that take up so far was too little, too narrowly and for some of the most vulnerable who should have been benefiting for a decade already, too late.

It is not too late, however, for strong leaders within the public sector to demonstrate the potential for future change. And given the relative hostility of future governments to sustaining current levels of human rights protection, let alone embedding them further, the status quo is not going to be an option.

Afua Hirsch is the Guardian’s legal affairs correspondent

“Adopting a human rights approach from the outset can actually save money”
Tabloid readers have fumed over it. Politicians have clashed over it. Even after a decade on the statute books, the Human Rights Act still gets many people hot under the collar. Just last October, director of public prosecutions Keir Starmer found himself embroiled in a row with the Conservatives over the issue, criticising the party’s call for the act to be repealed, as well as “fundamentally flawed” analyses of its origin and relevance to society.

In the same month as Starmer’s comments, at the Crown Prosecution Service’s annual lecture, Guardian Society in partnership with the EHRC convened a roundtable to discuss the Act in relation to the public sector. Conducted under Chatham House rules, some of the public sector managers in attendance have been interviewed below for their thoughts on the importance of embedding human rights into the delivery of local government services.

Misunderstanding and misrepresentation
Dogged by misunderstanding and misrepresentation since it came into law in 2000, one of the main issues raised about the Act was one of language and communication. Filtered through the red-tops, the term “human rights”, it was agreed, has become loaded, associated by many with “offender-sues-victim” stories that have appeared in the press recent years.

“We need to go beyond conversations about the rights and wrongs of particular cases, and the spin people put on political correctness to convince people this act is relevant to their daily lives,” says Jennifer Crook, head of diversity for the London Borough of Brent.

One way of achieving this would be to improve the way the Act, which incorporates into law the list of shared values enshrined in the European Convention on Human Rights and Fundamental Freedoms, is communicated. The general public may be forgiven for not fully grasping the wider implications of the legislation, when even some senior public sector managers are reported to be having trouble getting to grips with it.

Rosalind Hardie Ejiohuo, head of equality and diversity for Hackney London Borough Council, believes the basic concepts of human rights are well understood by people, but are obfuscated by the terms in which the legislation itself discussed. “Our adult social care standards uses the word ‘dignity’ to convey what we mean by human rights, for example – it is a term most of staff and residents find easier to understand,” she says. “The Act has very helpful core principles, but it’s up to us to make those principles accessible.”

Another thorny issue inherent in the Act is the delicate balancing act necessary to protect the rights of the individual as well as those of the collective. Despite the fact that there isn’t much in the act to disagree with - the right to life, education, family, and the right not to be tortured, for example – emotive individual cases have obscured the wider relevance of the legislation. There is a need, believes Crook, “for us as public authorities to show that this is not just about people using it in a specific way for their own gain – as highlighted in some of the more sensationalist papers – but for everyone”.

Other misconceptions about the Act and its application may have something to do with its origins: instead of growing organically from a
grassroots movement in this country, and then being taken up politically, the legislation has landed in the statute books through a “top-down” approach – the “top” being Europe.

“For some people, straight away that’s bad – it’s the myth of the European monster doing it to us, and the Act is a negative thing by association,” says Crook. “That said, we need to see the benefit of the legislation as a way of ensuring the services that we provide really do take account of the Act articles, for example freedom from discrimination.”

Also discussed was the need to convey that the legislation has a practical purpose. The EHRC’s Human Rights Inquiry, published in 2009, indicates that a greater understanding of human rights is necessary for a more practical application of the act: its articles should be seen as “effective tools” rather than “abstract concepts”. Brent council, for example, relies upon the legislation to resolve sensitive issues around harmful traditional practices, such as female genital mutilation, while Hackney is finding the Act helpful in unpicking potential clashes with other equality strands.

“We’re increasingly conscious that staff in commissioned services aren’t always as respectful towards certain communities as we require them to be,” says Hardie Ejiohuo. “Strong religious beliefs can mean prejudice against people based on their sexual orientation, for example. We are having a conversation with a number of other authorities across the adult social care sector about developing some kind of common equality standard, which would embed human rights principles. The argument is not whether sexual orientation or religious belief takes priority; human rights principles are the bottom line.”

She adds that human rights are vital to supporting broader community understanding of issues around safeguarding vulnerable adults from abuse from family members, particularly relevant in the case of older people with dementia.

Mashuq Ally, chief executive of the policy and partnerships team in Birmingham, says the city council’s equalities agenda relies upon the Act, particularly its work on community cohesion. He says an action plan to ensure the Act is being delivered across all sectors, and is already contributing to higher standards of service. A human rights approach to education is producing better schools, while a steering group of voluntary and statutory sector bodies is monitoring the positive effects of human rights in reducing hate crimes.

Julian Horsler, lead on diversity at Barnsley Metropolitan Borough Council, agrees with the EHRC that the Act can become an effective tool for delivering services, but only if there is more guidance on how to wield it. “There is a lack of clarity about what that means in practice, and what it will mean to the decisions we make as an authority,” he says. “We are beginning to sit down with public sector partners, such as health, police and fire authorities, to get our heads around how to apply a common approach at a local level.”

Slow to respond to challenges
The public sector has been slow to respond to the challenges – and opportunities – presented by the Act primarily because of a lack of understanding about how it can be used in every day planning, he believes. More education would not only bulk up its efficacy, but buff up its media-tarnished reputation, Horsler says, adding that health, social care and children’s services have a more advanced grasp of the issues, but that the same degree of guidance has been lacking in other services and partners within the public sector.

“Social services in Barnsley are able to be more proactive than reactive because human rights principles are already embedded within such things as the government’s personalisation agenda and Fair Access to Care Services
guidance, which helps them understand what the implications of the Act actually are,” he adds.

Meral Ece, a Liberal Democrat councillor in Islington, and now a commissioner for the EHRC, says more guidance is vital if the public sector is to live up to expectations that it will take the lead on human rights. She has spoken to senior managers in local authorities who are supportive of the Act, and well versed in protecting equalities as part of the public services they already deliver, but who are “floundering” when it comes to the Act. She anticipates a shift towards a more proactive application with the arrival of more guidance from the EHRC.

“At the moment, the onus seems to be on the individual to challenge the fact that their rights have been infringed or they haven’t received a service, rather than on local councils or PCTs making sure they’re compliant. The Act has been on the statute books for a decade, but is not being applied in the way it should be – human rights must underpin everything.”

**Cost of delivering the Act**

Concern had also been expressed at the roundtable that to adopt a fully-integrated human rights approach across all sectors would be prohibitively expensive, especially in light of looming budget cuts and a possible change in government, but Ally observes that the cost of delivering the Act “isn’t much if it’s actually ensuring that citizens’ rights are being met”. Ece agrees that it would be a false economy not to take the long view.

“Members of the public who are familiar with the legislation and feel their rights are being infringed could mount challenges against, for example, a low standard of education,” she says. “The Act will be an increasingly important benchmark of whether we’re doing the right thing, and may well become a tool to drive standards higher – which makes local authorities nervous as they consider their budgets. There were strong voices at the roundtable saying that full integration of the Act would be unaffordable, but if you don’t protect children, for example, ensuring they have a decent family life, supporting them so they do well at school, then you end up paying for them as adults. The point should be that we can’t afford not to invest in human rights.”

_Eifion Rees is a freelance journalist and regular contributor to Guardian Public_
Healthcare and human rights go hand in hand
by Liza Ramrayka

From the government’s drive to personalise adult social care to promoting world-class commissioning of health services, the current focus for the health and social care sectors is all about improving the quality of the ‘patient experience’. Much of this work promotes independence, dignity, choice and fairness for patients and carers – echoing the fundamental rights and freedoms enshrined in the Human Rights Act.

But as health sector professionals acknowledged at a recent event convened by The Guardian, there is still some way to go before the rhetoric becomes a reality.

Despite considerable appetite among those delivering, commissioning, overseeing and making policy, to find out more about human rights and how they relate to their work among people using health and social care services, it’s clear that, while some organisations have embedded a human approach into their work and can demonstrate the benefits, others are still struggling with the concept.

Human rights at ‘the heart’
The NHS Constitution, which came into law as part of the Health Act in January 2010, makes it clear that healthcare and human rights go hand in hand. Professor Carol Baxter, head of equality, diversity and human rights at NHS Employers, says the challenge now is to ensure that human rights is positioned “at the heart” of trusts’ strategic planning and is integral to the day-to-day business of patient care.

“Achieving this will require proactive champions at the highest level,” she says. “Leaders must visibly and proactively demonstrate a commitment to human rights and give full consideration to the potential human rights implications of the decisions they take. We also need to improve how we monitor and collect data so that we can better showcase the benefits an integrated human rights approach has on service delivery.”

The aim of the ‘Human rights in healthcare’ project is to support the NHS in using a human rights-based approach to improve service design and delivery for everyone. This approach comprises five principles: putting human rights principles and standards at the heart of policy and planning; empowering staff and patients with knowledge, skills and organisational leadership and commitment to achieve human rights based approaches; enabling meaningful involvement and participation of all key stakeholders; ensuring clear accountability throughout the organisation and non discrimination and attention to vulnerable groups.

Launched in 2006, the pilot project is led by the Department of Health in conjunction with the British Institute for Human Rights and five NHS trusts: Mersey Care NHS Trust; Surrey & Borders Partnership Foundation NHS Trust; Southwark Health & Social Care; Heart of Birmingham Teaching PCT and Tees, Esk & Wear Valleys NHS Trust.

The starting point for the project is to look at an issue through a ‘human rights lens’. For example, malnutrition in hospitals or care homes violates the right to be protected from inhuman and degrading treatment and, potentially, the right to life. Disabled children whose parents have no say in their schooling are, in effect, being denied the right to education. Blanket policies preventing patients from receiving visitors can
breach the respect for private and family life.

The project has generated a practical guide to help those working in the NHS to put human rights principles into practice. ‘Human Rights in Healthcare – a Framework for Local Action’ combines introductory information about human rights and their relevance to health care; a practical framework and tools for taking this work forward and case studies that share learning from the pilot NHS trusts on how they have applied the framework.

Lucy Matthews, acting training and consultancy manager at the BIHR, says the project is producing “really exciting” results. “The first phase demonstrated that a human rights approach can help influence cultural change within an organisation. Whether ensuring older people in residential care homes are properly fed, or the voices of people with learning disabilities are heard, we are now starting to see the difference that applying human rights can make at a more operational level, going above and beyond good practice.”

People with learning disabilities

Mersey Care NHS Trust has made human rights central to its approach to meaningful involvement of people with learning disabilities and people living with mental health problems. It has gathered feedback from service users on what they would like from services and this is now shaping policies and processes related to communications, care and treatment. Heart of Birmingham Teaching PCT’s project work has included a statement of human rights principles to guide service commissioning and references to human rights in service contracts.

The pilot NHS trusts are now looking at applying a human rights-based approach to a specific operational area of their work. Areas being explored include palliative care, residential and community services for older people and respite care services.

An evaluation of current project work by Ipsos Moris will be published in September. The interim evaluation concluded that a human rights-based approach “...goes above and beyond good practice in providing renewed quality of care for service users, and staff are empowered to challenge care decisions ... it defines a common shared value base more effectively than other guidelines about standards of care ... [and is] an empowering tool for service users to hold organisations to account”.

A human rights-based approach to cancer care is being explored in a separate project led by Department of Health with Macmillan Cancer Care, the BIHR and the Equality and Human Rights Commission with pilots in Bury, Chester, London and Merseyside. The project looks at how organisations apply the key human rights indicators – fairness, respect, equality, dignity and autonomy – to care of cancer patients. Organisations are using eight key indicators, which can be observed by patients, family, carers and staff. These include using the patient’s preferred name and addressing potentially degrading situations in a sensitive manner.

NHS Bury’s work has involved getting detailed feedback on end-of-life cancer care from 20 patients and carers and over 180 members of staff. The trust has also analysed complaints and compliments related to this field from health and social care organisations in Bury. This work has highlighted areas where human rights need to be considered more fully, for example when a patient is highly dependent on a carer who may have very different views or priorities. The trust plans to use a “co-design approach” – involving patients, carers and staff as equal partners – to redesign service provision.

Identifying and addressing health inequalities is a key part of a human rights-based approach to healthcare. The 2008 Michael Inquiry into access to healthcare for people with learning disabilities cited research showing that, compared to the general population, this group receives fewer measurements of BMI. They are less likely to be given pain relief or receive palliative care. Cervical screening and mammography are less likely to be undertaken.

The General Medical Council (GMC) is contributing to a number of initiatives by government, charities and other regulators to improve
care for patients with learning disabilities. Jane O'Brien, assistant director, standards & fitness to practise at the GMC, says: "We plan to work with people with learning disabilities and doctors to develop a learning resource on our website, to be launched late this year. This will focus on communication skills, seeking consent, and respect for dignity which often form an underlying cause for breakdown in care in both GP and hospital settings."

A new online resource
As part of the development process, the GMC will hold forum theatre events to engage doctors, people with learning disabilities and their carers or family members "in identifying common problem areas in the care process and how these can be addressed", says O'Brien. It will use the storyline and recordings of these events as a core part of the new online resource.

Some believe that increased awareness of employees' human rights is also needed. In January 2010, NHS Employers launched a briefing paper – 'Human rights and human resources in the NHS' – to help employers understand the implications for human rights in the workplace. This follows recent cases such as Kulkarni v Milton Keynes Hospital NHS Foundation Trust, where the Court of Appeal ruled that NHS doctors and dentists were entitled to legal representation if facing charges, which if proven, could prevent them from practising.

Better training – from medical school to continued professional development – could counter what some feel is poor buy-in for human rights in health and social care. Surrey and Borders Partnership NHS Foundation Trust has developed human rights training to underpin its equality and diversity strategy. The train-

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“A good reputation helps attract talent from all communities and the best results”
How can human rights shake off a negative image?

by Liza Ramrayka

Balancing a human rights approach with the demands of the criminal justice system continues to be the subject of much debate among those involved in frontline policing, sentencing, detention and offender rehabilitation.

Research published last year by the EHRC revealed that 42% of the public believe that the only people to benefit from human rights in the UK are criminals and terrorists. Many in the sector blame the media for creating misconceptions around human rights, fed by stories about alleged preferential treatment of criminals to protect their human rights. Meanwhile the government’s recent introduction of airport scanners – designed as an anti-terrorist measure – has been criticised by many, including the EHRC, as a possible violation of individual human rights.

So how can human rights shake off what some in the criminal justice sector feel is a negative image? As participants at a recent event on this subject convened by The Guardian suggested, there is a need for better communication in the sector – both external and internal – around the issue of how a human rights approach can benefit the criminal justice system.

Neil Crowther, human rights programme director at the EHRC, says: “Myths about how human rights are used in criminal justice divert people from the real human rights issues in the UK. These basic rights, which are enshrined in the Human Rights Act, are protecting people from being bullied in school, neglected in hospital or protected from domestic violence. But these good news stories rarely make headlines.”

Crowther cites examples of inaccurate press reporting such as the roof-top protester being given a takeaway on human rights grounds, when in fact it was a negotiating technique used by the police; and a legal case in which a prisoner claimed he should have access to pornographic material as a human right, which he actually lost.

“Our Human Rights Inquiry revealed that few people understand how human rights laws are working for them every day,” says Crowther. “Some people think human rights are just something lawyers need to understand, while others have been persuaded by inaccurate press reports that the human rights act just creates red tape or stops justice being done.”

Fundamental rights and freedoms

The Human Rights Act enshrines in law a set of necessary fundamental rights and freedoms for all. The police, as a public sector body, are required to act compatibly with those rights. Tim Godwin, deputy commissioner at the Metropolitan Police, believes it is important to demonstrate that human rights is not a new concept but one already inherent to policing: “The police have always had a duty to protect the public, and in discharging this duty making sure that our action is proportionate and necessary for the safety of all. Human rights issues have long been embedded in the principles of every day policing. Every day our officers have to make decisions about key issues such as whether to arrest someone or whether the use of force is justified.”

Many of the provisions in the Human Rights Act – for example around torture – already existed before the legislation so officers are accustomed to them. Crowther says the Act brought with it “no significant change” for the Met’s policing
practices. It did however highlight the need to challenge the force's actions against the benchmarks of necessity and proportionality. “[This was] a message that we reinforced through a series of training programmes in 2000, while equally seeking to bust the myths and misperceptions that the HRA would in some way inhibit police activity.”

The oath that officers make on joining commits them to “upholding fundamental human rights and according equal respect to all people”.

Godwin comments: “As leaders we ourselves must live up to that promise and ensure that our people do.”

Other guidance could also help to reinforce a human rights approach in this sector. The National Policing Improvement Agency (NPIA) recently launched an equality standard for the police service, which provides a framework for forces across England and Wales to assess how far they have developed beyond basic compliance with equality law, and improve delivery of services for their local communities.

In parallel with the equality standard, ACPO, the Home Office and the Association of Police Authorities have launched an overarching strategy for improving equality in the police service. The equality, diversity and human rights strategy sets out the direction and priorities for future change and improvement.

Embedding a human rights approach into other parts of the criminal justice system has been more challenging. Philip Whitehead, senior lecturer in criminology at Teesside University, believes there needs to be a better balance between criminal and social justice when applying human rights to the criminal justice system, which goes beyond the government’s current focus on business efficiencies.

He says: “It has been increasingly difficult for the probation service, for example, to facilitate the human rights agenda because it has been centralised and nationalised; the cultural divide between prisons and probation has been inexplicably narrowed; and its ability to recount the lives of people who offend has been weakened because 70% of its reports for the courts must be in the form of Fast Delivery Reports.

“This means that human stories have been reduced to tick boxes to promote business efficiency, rather than enlarging our understanding of those personal and social complexities which underlie offending.”

National Offender Management Service
Since 2004 the National Offender Management Service (NOMS), an integral component of the criminal justice system because it combines prisons and probation under one organisational umbrella, has pursued a policy of contestability. This means that the public, private, and third sectors, have been encouraged to compete with each other for the ‘business’ of providing offender services. Whitehead comments: “While there are concerns about this development it also has the potential to engage with the human rights agenda, specifically through the work of the third sector. This means that it is possible for the third sector – comprising faith communities, community chaplaincies, mentors, volunteers, boards of social responsibility within the churches, in addition to academics and other interested parties – to keep human rights on the agenda by drawing attention to criminal and social justice concerns.”

Gaining a better understanding of the complexities that underlie offending is the focus of a ‘human rights and poverty’ project. Launched last December with backing from EHRC, City Parochial Foundation and Joseph Rowntree Foundation, the project is supporting six London-based voluntary and community sector organisations that are working with and for people facing poverty or social injustice. The aim is to help organisations use human rights to strengthen their voice and influence with national and local policy makers.

Women in Prison (WiP) is among the organisations taking part in the project. According to the charity, around a third of women lose their homes (and often possessions) while in prison and 41% of women do not have accommodation arranged on release. Only a third of women who wanted advice about benefits and debt got it while in prison. The project will help WiP’s client campaign group - Women Moving Forward - to understand that they are rights holders. Group
members who participate in the programme will empower other women offenders and ex-offenders to understand their rights and use a human rights approach to campaigning.

Laurel Townhead, policy and campaigns manager at WiP, explains that losing accommodation while in prison exacerbates the problems for women offenders on release. And if a mother is housed as a single person on release, she cannot regain custody of her child because of this accommodation. Lack of access to housing for example limits access to other things such as access to benefits and healthcare.

**The poverty project**

"There is at present a lack of confidence in the group that people in positions of power and influence want to hear what they have to say or will respond to it. The poverty project will help address this - empowering the group to interact with those responsible for safeguarding their rights."

In a separate project, the Women's Institute's 'Care not custody' campaign is calling for an end to the inappropriate detention of people with mental health problems. Of the 82,000 prisoners in England and Wales it is estimated that nine out of 10 have one or more mental health disorders. The WI believes that prison mental healthcare is overstretched and understaffed and argues that many people currently in prison would be better off had they been diverted to a safe alternative, focused more fully on treatment. It says they would then return to their families better able to deal with their mental health problems and are far less likely to reoffend.

Crowther, at the EHRC, believes that a clear lead from government and those involved in the criminal justice system can help demonstrate the power of a human rights approach to this sector. "We're doing our utmost to promote human rights values and hope other public sector bodies will follow our ambitious lead. We're looking to those in positions of responsibility, including our politicians, to avoid misrepresenting the human rights act."
Jane Dudman talks to Professor Geraldine Van Bueren

As you would expect from a barrister and academic, Professor Geraldine Van Bueren, who was appointed in November as a commissioner for the EHRC, is measured and reflective.

But beneath her careful answers lies a true passion for human rights.

Van Bueren is professor of international human rights law at Queen Mary College, University of London, a visiting fellow at Kellogg College, Oxford, and a barrister who works extensively with governments around the world on human rights, particularly children’s rights.

She is one of the original drafters of the United Nations’ convention on the rights of the child and also helped draft the United Nations’ rules for the protection of juveniles deprived of their liberty, the UNHCR Guidelines on refugee children and the United Nations’ programme of action on children in the criminal justice system.

**Popularity of human rights**

Van Bueren argues that this is an important time to restore the popularity of human rights, because without popular support, the surveillance state will creep in inexorably. For her, the more discussion about human rights, the better.

Talk of a British bill of rights provides, she says, an opportunity for a “national conversation” on human rights, which did not happen with the Human Rights Act and is one of the principal reasons for its lack of enthusiastic support.

“I’ve always had a passion for human rights. I’ve wanted to work in human rights from the age of about 11,” says Van Bueren, who says that her combination of a working class background and professional career gives her a “wide viewpoint” on life. “It helps me listen more to people’s concerns about human rights.” That’s important because listening to what people tell the commission will help it take the right actions. “Unless we listen, people feel marginalised,” she comments.

“One of my roles as a human rights champion is to try and open up the commission to a broad range, not just stakeholders but also people who may have felt themselves not included before.”

**Broad discussions**

According to Van Bueren, the commission takes a “Human Rights Act Plus” approach: “We want to retain the Human Rights Act, we want to have a very broad discussion and we also want to consider other rights which the government is legally obligated to effect which haven’t yet been brought over here,” she comments. The right to the highest attainable standard of healthcare, for instance, could affect how decisions are made about NHS facilities. Van Bueren’s experience of working in other countries gives her insight into different ways that such conversations could be held, as well as opening her up, she says to “different ways of doing things, which helps to prevent reinventing the wheel when work has been done elsewhere”.

In South Africa, where she has worked extensively, for instance, she says there is a dialogue between the courts, the government and the people. Such conversations were based on rights enshrined in the country’s constitution and while the UK does not have a written constitution, Van Bueren points out that we do have a constitutional document in the Human Rights Act. “So we’re quite capable of enshrining human rights that way.”
The commission faces a lot of work on a number of fronts, acknowledges Van Bueren. In addition to debate about a possible bill of rights, she sees privacy and datasharing as a big issue and is working with the commission on how organisations, such as local authorities, are using their powers of, for instance, surveillance.

She says such powers are necessary in a democratic society — but one of the commission’s jobs is to see if they are being used disproportionately. The commission has, for instance, recently called for an independent, transparent review to investigate allegations that the government knew of, and was complicit in, the torture of British citizens being held abroad.

But Van Bueren emphasises that she wants to work on getting the positive impact of human rights to be better understood. “I’m anxious to show how human rights help us reach the goals of society, rather than be an obstacle,” she comments. This includes highlighting examples of good practice, such as in the criminal justice system, where evidence shows that a more egalitarian manner of policing, based on explaining human rights, can help build up trust in a community and bring down crime rates.

Myths
The commission also intends to react more quickly to some of the myths that surround human rights (see page 20) and provide a resource to which public services can turn.

Some might have thought twice before joining the commission at what has been a not entirely easy time. Van Bueren, however, is clear: “We’re a united board and we are determined to turn things around and show how human rights and equality together can help strengthen society’s goals,” she says. “What’s important is that we don’t focus on individuals. What’s important is the work we do, because human rights are so fundamental to both the present and the future.”

One role being explored by the commission is to act as a mediator in instances where there may be tensions between different groups in society. The obvious example is that of religious bodies who have views on, for instance, adoption, that are in conflict with the equality requirements in the Human Rights. Van Bueren says such tensions exist in many countries that have been through periods of great turbulence, South African and Argentina are just two examples. Getting together to talk has proved to be an effective way of cutting through difficulties, and she hopes the commission will do more of this.

One thing is clear: Van Bueren says she brings “a capacity for hard work” to the commission. She is going to need that capacity; but her passion for the subject and her immense experience in this area will be a huge advantage.

Jane Dudman is editor of Guardian Public

I’ve wanted to work in human rights from the age of about 11. I’ve always had a passion...
Introduction

Attention-grabbing headlines and inaccurate reporting have increased ignorance and misunderstanding of the value of human rights in both the public eye and the public sector. While human rights organisations argue that its biggest influence has been on protecting the day-to-day rights of ordinary people, the marginalised and the vulnerable, negative perceptions are being reinforced by persistent myths and misconceptions. Below are some of the most common.

The Human Rights Act is a “villain’s charter” designed to help criminals not ordinary people

According to research carried out by the EHRC last year around 40% of British people believe the only beneficiaries of human rights legislation were criminals and terrorists. In 2008, the justice secretary, Jack Straw, told a tabloid newspaper that he understood why critics described the Human Rights Act as a “villain’s charter”, which protected criminals and terrorists. But while attention has mainly focused on a small number of high-profile criminal cases, campaigners argue the outstanding successes of the Act have been in protecting ordinary people – ensuring older couples split by local authorities are reunited, for example; improvements to hospital conditions and helping victims of domestic violence. But while it is here that the Act has had the most impact, these stories are almost never reported. The British Institute of Human Rights says the Act is “a vital lifeline for thousands of ordinary people seeking to challenge poor decisions and secure a fairer deal from public services.”

Prisoners are able to claim their human rights to receive goods like porn and special treatment in jail

The press inaccurately reported in 1983 that the notorious serial killer Dennis Nilsen was able to receive pornography in his prison cell after claiming his human rights. Although this story was officially found to be untrue – Nilsen was unable to establish a breach of his rights and was refused a case – one publication still repeated it in a leader four months later.

The Act prevents people finding out the identity of dangerous criminals in the community

According to some reports, the police have been unable to issue descriptions of offenders or their crimes, for fear of infringing their human rights. While it is true that the Act has to balance the right to privacy with the public interest, Kier Starmer, the director of public prosecutions, said last year that there was no reason why the police couldn’t identify criminals. “A police force unable to circulate a photo of a wanted, dangerous and violent criminal because it might breach his Article 8 rights to privacy? My advice - go ahead - it is essential to protect the public,” he said.

Public sector workers and organisations are forced to act inappropriately for fear of being sued for infringing human rights

There are regular reports in the local press playing on the absurdity of decisions taken in the name of human rights. One well-known example
appeared in 2006 after a prisoner staged a 20-hour roof sit-in and was given a meal from KFC to “look after his wellbeing and human rights.” A subsequent government investigation publicly stated that the Human Rights Act had nothing to do with the decision.

**Teachers in schools are no longer able to discipline children for fear of infringing their human rights**

While Article 3 of the Act says that it is an absolute right to not be tortured or subjected to inhuman or degrading treatment, the DPP Kier Starmer said last year: “Human Rights mean school teachers cannot enforce discipline at school? No – it is domestic legislation – section 548 of the Education Act 1996 – passed two years before the Human Rights Act – that banned corporal punishment in schools.”

And while it is often believed to stop corporal punishment, there have been claims to the contrary: In 2005 the law lords rejected a plea from a parent group who claimed the ban on corporal punishment at four Christian schools infringed their human rights.

**Human rights are an imposition from Europe**

British lawyers, diplomats and politicians have all played a pivotal role in developing human rights both in the UK and in Europe, including the European Convention on Human Rights in 1951. They were also instrumental in shaping the first human rights treaties after world war two. The Magna Carta was published here in 1215 and the absolute ban on torture originated here in 1641, Britain has a long tradition of values of liberty, dignity and respect. Starmer has highlighted the danger of losing human rights because of “a fundamentally flawed analysis of their origin and relevance to our society.”

**The Act allows anyone to come and settle in the UK and prevents people from being deported**

One commentator wrote that “human right” meant “anyone who gets past passport control [is] pretty much guaranteed to stay.” While the Human Rights Act does prevent individuals from being sent home if they face torture or unfair trial, a number of legal cases have given rise to the belief that officials can’t deport anyone. This includes the case of Learco Chindamo, jailed for life for killing headteacher Philip Lawrence in 1995. The decision not to deport Chindamo to his native Italy following his sentence in 2007 was taken not because of the HRA, as was reported, but under the terms of an EU directive. While asylum seekers and immigrants to the UK do claim their human rights, it is for the law to decide if that claim is valid.

**Other religious groups can use human rights to change a fundamental Christian way of life in the UK**

Prominent cases that have involved those with a claim for religious freedom, under Article 9 of the Act, have included people from different faiths – from Shabina Begum, who successfully won the right to wear a Muslim jilbab to school to Sarika Singh who won the right to wear a Sikh religious bangle. Nadia Eweida, an employee of British Airways, is currently appealing under Article 9 of the European Convention of Human Rights a ruling that BA did not discriminate against her by asking her to stop wearing a visible Christian cross at work.

*Jo Adetunji is a freelance journalist*
A day in the life of the Human Rights Act

by Eifion Rees

Schools, prisons, hospitals and homes are all bound by the Human Rights Act, which underpins much of the UK’s existing equalities and diversity legislation, and ensures public authorities respect the rights of everyone in the UK. A few of the ways in which the Act touches on the lives of those in the public sector are exemplified in the day of Sally Smith, a 54-year-old nurse, who is married with two children, and whose parents live in a care home. Sally is fictional, but the examples and quotes are all real.

Sally’s day starts at 8.30am with the school run on her way into work at a city-centre hospital. The school’s reputation has improved in the decade since the Act came into law, with better academic scores and less bullying. Clear disciplinary guidelines protect the school, as well as the rights of pupils or teachers against whom procedures have been taken, in compliance with Article 6: the right to a fair trial. Rights and mutual respect are taught in class by teachers like Stefan Viggiani, head of religious studies and philosophy at a comprehensive school in Surrey, and has resulted in a marked decrease in problems. “Cyber-bullying has been a real issue, with fights in the playground spilling over into Facebook,” he says. “A rights-based approach means children becoming more aware of what is and isn’t acceptable behaviour, and becoming better members of society as a result.”

The right to an effective education

Sally’s younger son has a pronounced stammer, and felt one particular student teacher was unwilling to let him read aloud in class or would hurry him when he tried to answer a question. After a discussion with the headteacher, and as per Article 2 of Protocol 1: the right to an effective education, the teachers now take this into account during lessons.

As her children disappear into the throng of students dressed in the same purple jumpers, Sally heads into work. The school held discussions with parents and the wider community before deciding on its uniform, addressing the concerns of minority ethnic and religious groups. In 2005, Shabina Begum won an appeal case against Denbigh High School, Leeds, for refusing to allow her to wear a full-length jilbab gown, instead of the regulation shalwar kameez, on the grounds that it contravened her right to manifest her religion under Article 9, and by her exclusion therefore also her right to an education. The high court overturned the judgement a year later, saying there was no right to be educated at a particular school, and she could have moved to a school where the jilbab was permitted.

At the hospital, Sally’s first duty is to get a patient’s consent to send his records and treatment footage to a cardiologist in Glasgow for an expert opinion – sharing records with third parties without the patient’s permission, and transmitting the data without adequate levels of protection, would constitute a breach of Article 8. She types in several passwords to access and send the footage over a secure internet connection. She talks to her friend about a patient in a permanent vegetative state on another ward – his doctors are considering withdrawing the treatment that would keep him alive. An appeal court in 2005 ruled that this would not breach Article 2: right for life, provided it was compatible with Articles 3 and 8.
A day in the life of the Human Rights Act

For lunch, Sally grabs a sandwich and heads off for a swim at her nearby pool. After a spate of robberies the management has installed CCTV camera in the ladies’ changing rooms. The same situation occurred last year at Tooting Leisure Centre, where claims that the cameras were trained only on the lockers failed to reassure female swimmers concerned for their privacy.

Back at the hospital, a patient recovering from a head trauma, needs to be transferred from his bed into a wheelchair. He allows the nurses to remove his turban to treat him, but asks them to wash their hands first, his right under Article 9. Explaining that he shouldn’t try to walk un-aided in case of injury, she recalls an instance in another hospital, where, for the same reason, a patient was strapped into her wheelchair – a clear breach of Article 5: right to liberty, as well as a contravention of her right not to be subjected to inhuman and degrading treatment (Article 3). All wards in the hospital are now same-sex: some patients have personal and cultural reasons for not wanting to be on mixed wards. All have the right to privacy and dignity, however, so when Sally helps patients to dress or bathe, she makes sure she draws the curtain around their bed first.

Freedom of religion
She finishes up the day on the children’s ward, where a seven-year-old girl is having a blood transfusion. Her Jehovah’s Witness parents opposed the procedure on the grounds that it violated their right to respect for private and family life, free from interference by public authorities (Article 8) and freedom of religion (Article 9). The hospital’s duty is to protect the girl’s fundamental right to life (Article 2), however, entitling them to limit the parent’s qualified rights.

Rush-hour traffic makes for an hour’s drive to see her parents, both in their nineties, at their care home. There is a private home closer to where Sally lives, but until 2008 a legal loophole meant residents there whose care had been contracted out by the local authority were not covered by the Act. (An appeal court ruled in 2002 that charity Leonard Cheshire was entitled to close one of its care homes regardless of residents’ human rights since it did not provide “functions of a public nature”.) Sally chose the publicly funded home slightly further away. It is registered with and assessed regularly by the Care Quality Commission, the independent regulator of health and social care in England, which adheres to the Care Standards Act and has the values of the Human Rights Act woven throughout. “In the past we talked about a duty to provide instead of a right to receive,” says Nigel Thompson, CQC head of equality, diversity and human rights. “Now we look not at processes but at outcomes based on what service users tell us they want. The Human Rights Act puts them at the heart of everything.”

Respect for family life
Sally arrives at the home at 19.30, and walks along a bright and airy corridor – residents were able to choose the colour themselves – to her parents’ shared room, part of their right to respect for family life under Article 8. There are pictures of Sally’s family on the walls: this has been her parents’ home for six years, and providing the council keeps paying the fees they’ll be here a long time yet. Eviction would be justified as a last resort, though not if to move them would pose a significant health risk. It would be justified for another resident, for example, whom she can hear being abusive to staff again. His family have been called in to discuss his challenging behaviour, but their own doesn’t help matters. A 2006 case led to an 84-year-old woman with Alzheimer’s being given notice from a Southern Cross Healthcare home because of the conduct of her husband and daughter. Claiming the right to respect for her home (Article 8), the family sued and lost, though after discussion
the home did allow the woman to stay.

Sally’s mother has Type 1 diabetes, and likes Sally to give her her insulin injections when she visits. Trained care workers ensure her medical needs are met day to day, and also know if and when to call in a doctor, as per Article 2: right for life. Next, Sally opens her father’s mail and reads his letters to him. He is partially sighted and sometimes asks a member of staff to do this. Article 8: right to respect for correspondence prevents them from doing so without his permission.

She leaves after an hour, and on her way out says hello to another resident, a practising Hindu, who is allowed to burn incense in her room. The care home has a duty not to interfere with its residents’ choice of religion under Article 9: freedom of thought, conscience and religion.

**Right to a family**

Back at home, Sally’s husband has cooked a late dinner. She is grateful she married him, her right under Article 12, which also encompasses her right to a family. Sally was 37 when she had her first child and while she didn’t need infertility treatment, would have been entitled to it under the same article. The family relaxes in front of the TV in the evening – difficult with so many planes flying overhead. Noise at night has become a problem since a new runway was added to the airport nearby, and Sally is part of a campaign to have flight times changed. The relevance of Article 8 was proved in a case brought by residents living near Heathrow, although the government won on appeal (*Hatton v UK*, 2003). Sally and others in the area believe the “procedural” obligations of Article 8 were not met, however, which should have meant more consultation to allow them to protect their interests.
What difference will a bill of rights make?

by Roger Smith

Both major political parties may go into the election promising some form of ‘British’ bill of rights and responsibilities or duties. The Conservatives have pledged that their version will replace the Human Rights Act. Labour’s ideas seem less dramatic. Until we see the manifestos, and maybe even then, the practical implications are unclear.

Progress has been slow in creating a human rights culture. This is partly because European Convention rights incorporated into domestic law by the Human Rights Act are substantively rather weak in relation to public services. However, they have begun to make a difference. The right to family life has prevented the splitting of a couple where only one needed residential accommodation. Outside the courts, and as a good example of the non-judicial use of human rights, the Chief Inspector of Prisons has used a human rights structure to some effect in raising prison standards. Slowly, there has been the spread of a human rights culture of respect for the dignity of the individual. These developments have not been particularly controversial: they have represented an onslaught on complacency rather than anything else. The real political battles have been elsewhere – played out in a series of court cases involving issues such as media freedom of expression and the government’s counter-terrorism legislation.

Tony Blair, egged on by figures such as John Reid and David Blunkett, considered repealing the Human Rights Act but blinked. Labour’s changes, if any, are likely to be limited to the cosmetic. A preamble or separate document might be drafted with pious words about the duty of those in the UK to be good neighbours, respect the rights of others and comply with the duties imposed by statute elsewhere. This will have little effect on running a school, a social services department or a prison. Indeed, it won’t have much of an effect on anyone. As the government’s green paper pointed out, the Italians are subject to a series of declaratory constitutional duties, including one to pay taxes: this impacts regrettably little on the everyday conduct of a wide range of Italian citizens from their prime minister downwards. Under Labour, there must be some hope that the commitment to a human rights culture will, more of less, continue as now.

The Conservative approach is much less predictable. The Tories seem to have two particular targets. First, they don’t like the protection afforded by human rights to various unpopular minorities – such as prisoners, gypsies, and refugees. Second, David Cameron argues that he wants Parliament to reclaim power from the judiciary. Until recently, there has been a further argument – some civil liberties require additional

"Debate on a British bill reduces itself to what domestic obstacles may be placed in the way"
protection than is provided by the European Convention. Examples have been rather sparse but have included jury trial and legal aid. As power approaches, the backing gets vaguer. The reduction of both holds out the prospect of financial savings.

The potential effect of a Conservative bill of rights on public services is, thus, particularly obscure. This is not least because the UK will remain subject to the European Convention as a matter of international law in any event. To some extent, the debate on a British bill of rights reduces itself to what domestic obstacles may be placed in the way of an aggrieved member of the public seeking to use the Convention.

To be fair, there is no indication that Conservatives are hostile to the use of human rights standards as such to raise service provision. The issue is whether such standards may sustain collateral damage as the result of a change of rhetoric, language and emphasis directed elsewhere. Will the Chief Inspector of Prisons still be encouraged to use human rights standards as the basis for inspection? Will a British bill of rights repeat such European concepts as 'proportionality', authorising infringements of rights only to the minimum extent strictly necessary? If comparison with universally promulgated European standards is discouraged, then what will take their place?

Whatever its complexion, the next government will face political turmoil, as it seeks to cut public sector spending to pay for the indebtedness left by the once private banks. Maintaining standards will be a severe challenge. The row about a 'British' bill of rights ought to make no difference to the core standards of public service delivery: it will be a tragedy if it does. Whatever language is used and whatever constraints on funding, people have an overall right to dignity; a right to be dealt with as individuals; and specific rights, for example to privacy. The easiest - and most powerful - way of describing this is surely to say that people need respect for their human rights. However, we must wait to see precisely how the two main political parties make their case.

Roger Smith is director of JUSTICE
Case studies

The right to education, health and independence
by Daloni Carlisle

Case study 1 Education
John Porteous will speak for many comprehensive school headteachers when he bemoans an education system geared only towards exam results and league tables.

As head of Turton High School Media and Arts College in Bolton, attended by 1,700 11- to 19-year olds, he had begun to feel that it was all about outcomes.

“It was as if the children did not matter; they were almost products we were supposed to be refining,” he says. “I felt that in order to make Bolton a better place we needed to model a way of being that respected people for who they are rather than just measuring them on grades.”

So 18 months ago, the school signed up to Unicef UK’s Rights Respecting Schools Award which is based on getting the UN Convention on the Rights of the Child off the page and into schools.

It was developed by Unicef UK in 2002 and piloted in 2003. In 2007 the Department for Children, Schools and Families gave Unicef a grant to work with schools in five local authorities -- Hampshire, Dorset, Rochdale, Bracknell and Durham. The scheme is now running in more than 1,000 schools, from nurseries to secondaries and including special schools and pupil referral units.

Porteous says: “For the first time I had found a national initiative I could really believe in.”

The first step was an audit to see how well the school was doing in giving children their human rights – for example the right to an education, to choose a religion, choose your own friends, to hold an opinion and have it taken seriously by adults.

“We had some positive outcomes because we had already done a lot of work to stop people screaming and shouting at children and already had a very strong student voice,” says Porteous.

But children reported some experiences in their day to day lives that were clearly at odds with their rights, such as racism.

Porteous says: “Youngsters will tell you the truth about their day to day experiences if they are given the words and structures that make their views make sense. That was what we found very valuable about the articles.”

The school has attempted to tackle this by bringing the articles into every area of school life from assemblies through to teaching. The school now runs its own catering and moved to buying local and fair trade produce only, for example.

Meanwhile, a new code of conduct lays down the rights and responsibilities of everyone in the school, from teachers arriving prepared for lessons to students not disrupting their peer’s education.

The result is a calm school. “Visitors often comment on how calm and friendly we are and how people genuinely seem happy to be here,” says Porteous.

He has not seen exam results improve – yet. “I think ultimately it will improve achievement because they thrive when they feel encouraged.”

All of which proves a point made by Unicef UK’s head of education, Edward Waller. “The RRSA challenges the idea that there is a zero sum involved: that if you empower children your disempower adults.”

The experience with RRSA has been that empowered children not only understand their right
to an education but are able to understand and challenge children who disrupt classes.

Participating schools have reported improved behaviour, reductions in bullying and exclusions and improved attendance. Research by the University of Brighton is beginning to bear this out, showing improved relations in RRSA schools.

Unicef would like to see DSCF continue to support RRSA. Waller says: “This is not an extra initiative but a value framework that leaders say can enhance their leadership.”

**Case study 2 NHS**

Over the last few years there has been a steady stream of reports lambasting the NHS for failing to observe the human rights of people with learning disabilities, with tragic consequences.

One of the most damning, produced by Men- cap in 2008, was called Death by Indifference and detailed the deaths of six people with learning disabilities through inadequate care.

Jim Blair, a learning disabilities nurse working at Kingston University, was so shocked by it that he decided to act. He proposed a new role: a consultant nurse to act as a resource for people with learning disabilities and their carers when they become patients in hospital. He would advise hospital staff treating individuals and train staff generally to be more aware.

“I proposed the idea to managers at St George’s Hospital and they accepted it,” he says. As far as he knows, his is the only such appointment.

Since his appointment in late 2008 he has had 265 people referred to him, only 10 of whom did not have learning disabilities. About half were admitted with heart or lung disease, another third with epilepsy and the rest with a wide range of acute conditions.

His advice ranges from the simple to the highly technical.

For example, the woman who needed an operation but was afraid of the dark. “It was very easy to solve,” he says. “We gave her a bedside light that came on when the curtains closed so that she was never in the dark.”

He also has a right to halt a discharge from hospital even when a person is medically fit, working closely with community nurses and others to make sure that patients are ready to go home and have the support they need to do it safely.

He says: “In one case, there was a man who was medically well but the physio thought he was unsteady and likely to fall and end up back in hospital. Where you and I might understand that and get help, someone with learning disabilities does not. It then becomes a safety issue to keep them in hospital and give them the support and help they need.”

His approach is partly about getting people the care they need in the way they need it. But it is also about helping healthcare professionals to see that people with learning disabilities lead full and happy lives too.

He has introduced “health passports”, in which people with learning disabilities and their carers can write down critical information about their medical needs as well as their likes and dislikes.

“It is a human rights issue and this is a human rights approach,” says Blair. “It is about ensuring that together we get it right for people with learning disabilities. If you can get it right for them, you will almost certainly get it right for everybody.”

**Case study 3 Age Concern**

In the offices of Age Concern Slough and Berkshire East there is a quiet human rights revolution going on.

The team of nine professional and 30 volunteer advocates have taken to the Human Rights Act with a vengeance, using it variously to help people wrongly diagnosed with mental illness, help older people tackle antisocial behaviour, teach older people about their human rights and young people what it feels like to be old.

“We have always been very strong on advocacy and set up the first independent service for local people 10 years ago,” says chief executive Tracy Morgan. “When we picked up on the legislation, we could see immediately what a powerful tool it could be.”

So the group developed a training package
and started using it. They haven’t looked back.

Morgan says: “Our advocates are no longer fighting a cause and arguing ‘wouldn’t it be nice’ but citing the articles.”

Take the case of an alcoholic man living in Cyprus with his wife, who one day put him on a plane back to the UK where he ended up, as Morgan puts it, on the council’s doorstep.

“He’d lost his glasses and his teeth and had been misdiagnosed with a mental health problem,” she says. He was placed in a residential home where he was locked in a dementia ward and very, very angry by the time Age Concern’s advocates picked up his case.

It took them months of arguing. They cited, among other things, article 3 of the Human Rights Act, saying that forcing nicotine patches on the man and depriving him of privacy amounted to inhuman treatment.

“The home kept saying he lacked mental capacity and his anger was a sign of his mental illness. We thought he was angry because of the way he was being treated.”

Eventually, the home agreed to a visit from a consultant psychiatrist who confirmed that the man did not have a mental illness. He was rehoused in sheltered accommodation and given new teeth and glasses.

“He is now one of our volunteer advocates,” says Morgan.

Another case now being pursued is that of two households being harassed by local youths. “They have been complaining to the council for years about the noise and vandalism and broken windows,” says Jo Courtenay, director of social development.

“Now Slough borough council has given us some funds to work with them as mediators. We will use the same human rights approach.”

Other project work has involved going into local secondary schools and working with young people to help them empathise with old people, using article 14 which states that people have a right not to be discriminated against.

And late last year, the team received a grant from the British Institute for Human Rights Act to argue for better public services.

Morgan says: “These people never thought they could have a voice and were quite reticent to come forward. Now they can really see that they can say something, for example when the council wants to move a bus stop.”

She sees this human rights based approach as becoming more and more important in future. “We have never set out to be confrontational but to be mediators and our role is now becoming accepted,” she says. “We are increasingly working across agencies with the council, health and housing on complex cases that they cannot solve and we are making a difference to people’s lives.”

Daloni Carlisle is a freelance journalist.
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