Human Rights Inquiry

Executive Summary

Report of the Equality and Human Rights Commission
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Human Rights Inquiry

Executive Summary

Introduction

1. This report sets out the findings of a Human Rights Inquiry undertaken by the Equality and Human Rights Commission under its statutory powers. The Inquiry was announced on 6 March 2008 and was chaired by Dame Nuala O’Loan. The Lead Commissioner representing the Commission was Francesca Klug, who sat on the Inquiry Panel with fellow Commissioners Sir Bert Massie and Neil Wooding. It had two main terms of reference:

- To assess progress towards the effectiveness and enjoyment of a culture of respect for human rights in Great Britain.

- To consider how the current human rights framework 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.

Aim

2. The focus of the Inquiry was: 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; to identify models of good practice; and to identify opportunities which may be transferable from one sector or organisation to another. The Inquiry will also inform the Commission’s future strategy on promoting and protecting human rights in line with its statutory obligations under the Equality Act 2006.

Methodology

3. In total 2,855 people provided evidence to the inquiry between April and December 2008. The report is based on this evidence. The evidence came from individuals from all walks of life, from the voluntary and community sector, from central and local government, from the National Health Service and other public sector bodies, from advice agencies, from regulators, ombudsmen and inspectors.

4. The evidence was gathered in a number of ways: through research projects into the impact of a human rights culture on public sector organisations, the role of inspectorsates and regulatory bodies in promoting human rights standards, and an evaluation of the impact of selected legal cases; Inquiry Panels which took oral evidence from witnesses; Call for Evidence inviting written evidence and involving a number of group meetings; and polling and deliberative research.

Human rights: background

5. Human rights exist to protect everyone from abuse of power, disrespect or neglect, particularly where there are no other legal safeguards. The Human Rights Act 1998 incorporates into UK law most of the rights enshrined in the European Convention of Human Rights. The principles in the 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 of democracies throughout the world.

6. Public authorities in the UK are required to act compatibly with the rights in the Human Rights Act. The Act also imposes some ‘positive obligations’ on public bodies to take proactive steps to secure people’s human rights. The 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. Throughout the report we call this a human rights approach to public services.

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 people, those who are learning disabled or other vulnerable people (Articles 2 and 3)

- Lack of respect for privacy on a hospital ward (Article 8)

- Excessive surveillance of law-abiding people (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 allow people to attend a demonstration (Articles 10 and 11)
Public perception

7. Opinion polling commissioned for the Inquiry showed widespread positive support for the concept of human rights and for a law to protect people, with 84 per cent agreeing that it is “important to have a law that protects human rights in Britain”.

8. Set against this, however, 42 per cent of people agreed with the proposition that the “only people to benefit from human rights in the UK are criminals and terrorists”, while 40 per cent disagreed. Certain sections of the media have focussed on a number of high-profile situations, some of which have, in fact, no relationship to the Human Rights Act, and this was cited in the evidence as being a contributory factor in the negative perception that some people have of the Human Rights Act.

9. The Inquiry received evidence that such negative perceptions of human rights and the Human Rights Act could act in some cases as a barrier to the effective implementation of the Act, and to the promotion of human rights and a human rights culture:

“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 Session

Positive impact

10. Evidence received and examined by the Inquiry Panel shows that the Human Rights Act can have a very positive impact on individuals’ lives. A human rights approach can deliver real improvements and drive systemic change in public services.

11. A human rights approach provides a structure within which public bodies can plan and deliver public services, grounded in and underpinned by the values and law of human rights. It can provide a framework for improving the quality of decisions taken, and can be a way of instilling staff with core public service values and enabling them to deliver them – which can have a benefit of increasing morale and efficiency.

12. The Inquiry received evidence showing a positive effect in, among others, the following public sector areas: health; local authority services; policing; schools; and regulatory authorities.

Health and social care

13. The Human Rights in Healthcare initiative involved five primary care and NHS trusts in England. An independent evaluation of the initiative by Ipsos MORI stated that:

“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

14. Individual professionals also expressed their view of the benefits of a human rights approach, particularly in ensuring that patients received the necessary care and respect due to them:

“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 Trust

“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

15. The Mersey Care NHS Trust, one of the participants in the Human Rights in Healthcare initiative, decided that an integral part of a human rights approach was involving service users in decisions:

“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 80 per cent 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

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2 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 deals with human rights in Britain”; ‘Human Rights Insight Project’, Ministry of Justice, October 2007, p.27.

3 Public Perceptions Report, p.16.

4 Summarised in the Call for Evidence Report / North Wales Group Evidence Session, p.94 Human Rights Inquiry report.


6 Additional written evidence provided after the Inquiry Panel session with the North Wales NHS Trust on 10.09.08 – unpublished.
Local authority services

16. In terms of public authorities providing services to the public, a district council in England stated that the Act had made the council “more responsive to the public at an individual level.”

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

17. Examples cited included: positively influencing work around Gypsy and Traveller communities; enabling the right to family life to be balanced with the child’s rights in care proceedings; and balancing privacy rights when deciding to use surveillance to tackle anti-social behaviour:

“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.”

Welsh Local Government Association

18. A council in Wales transformed its approach to Travellers following a court case under the Human Rights Act:

“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 Session 8

19. Public sector staff can, and do, use the human rights framework in a number of ways, and their awareness of human rights is important in delivering the services that people need:

“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

Policing, probation and criminal justice

20. Witnesses suggested that the Human Rights Act had 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 Assistant Chief Constable of the Police Service of Northern Ireland 9 said that officers see the Human Rights Act as a “sword and a shield”: 10

“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

Schools

21. The Inquiry received evidence of the beneficial effects of a human rights approach within schools. Two particular schemes identified were UNICEF’s Rights Respecting Schools scheme and Hampshire County Council’s Rights, Respect and Responsibility. An independent evaluation of the Hampshire scheme reported positive outcomes, including pupils being more respectful, more helpful to others, improved academic achievement and significantly reduced school exclusions.

22. One student was quoted in an Ofsted report as saying that it provided “a guide to living” that will last throughout his life:

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

“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 us make us feel special.”

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

23. The John Hanson Community School in Andover, Hampshire, reported a notable decrease in bullying through their participation in the Hampshire County Council scheme, from 35.6 per cent of a particular group having suffered bullying in 2005 to 7.4 per cent of the same group two years later.

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

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8 Summarised in the Call for Evidence Report / North Wales Group Evidence Session.
9 Although the Inquiry was limited to England and Wales, it also received evidence of the effect of the Human Rights Act from the Police Service of Northern Ireland.
10 Mr. Duncan McCausland, Assistant Chief Constable of the Police Service of Northern Ireland – transcript 24.10.08.
Regulatory authorities

24. Regulators, inspectors and ombudsmen, as monitors of public authorities subject to the Human Rights Act, can play an important role in obtaining improvements in services through promoting human rights. In the evidence, regulators stated that a human rights focus is fundamental to their ethos:

“We use our enforcement activity to drive up standards in care services... 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

“[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

Improving life for individuals

23. A witness from the voluntary sector said that “sometimes the mere mention of human rights can be a force for change”.

26. The case of Diane Blood, who fought to use her husband’s sperm to start a family after his early death, and then had to fight to have her children’s paternity registered, is a well-known example of the use of human rights law.

M. Spokes gave evidence to the Inquiry that it was the right to a private and family life under the Human Rights Act that led to the change in the law which enabled her children to have their late father’s name on their birth certificates.

27. Hannah Spokes, 16, helps her parents care for her younger brother and sister, both of whom are disabled, and provides emotional support for her mother. She is an active member of a young carers group:

“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

“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

28. The Inquiry also heard evidence of how law centres are using the Human Rights Act to support people:

“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

Improving life for individuals: case studies

Eaves Housing / The POPPY Project

A domestic violence support organisation, uses the Human Rights Act to influence key Government policy in areas affecting its service users.

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”.

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

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.

Challenging restrictions on freedom

On behalf of E, a 14 year old boy, the human rights organisation 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.

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 (respect for the person) Liberty persuaded a specially established ethical panel to agree to his request.

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.

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.

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.

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.
Protecting a worker. C was dismissed 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.

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 arrest and detention were a disproportionate interference of a worker's right to protest.

Leadership

There was almost universal agreement in the evidence presented to the Inquiry that one of the major barriers to the full effectiveness of the human rights framework is lack of leadership from many of those in positions of power, including in public authorities (both locally and nationally), from central government, and from some politicians:

"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

The Inquiry heard evidence that a shift in thinking is required to understand that the need to treat people properly can derive from their human rights:

"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."

Individual

Lack of knowledge and understanding

The evidence to the Inquiry indicates that there is insufficient understanding that human rights can be a tool for improving people's lives. The Inquiry heard that it is essential that knowledge and understanding of human rights is improved amongst those delivering public services, and also among voluntary and community organisations and the public. A general lack of awareness was felt to be a contributory factor in the 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 Board

Lack of confidence and capacity

The Inquiry heard evidence that vulnerable and excluded groups within society were less likely to know about their rights and less likely to experience difficulties in asserting their rights: this leads to the suspicion that more people may experience barriers to using the Human Rights Act than are able to use it with ease.

The report recommends that a human rights approach needs to be mainstreamed more thoroughly into the decision making processes, strategy and policies of public authorities, and that specific training, information and guidance should be provided.

Organisational culture and structure

The Inquiry heard evidence that the organisational culture and structure of many public authorities could inhibit the creation of a culture of respect for human rights. The different inhibiting elements identified, included:

i. Fear of the unknown
ii. A disconnect between policy and delivery
iii. Lack of mainstreaming
iv. Lack of joined-up working between public authorities / departments within public authorities.

The Inquiry heard evidence that a shift in thinking is required to understand that the need to treat people properly can derive from their human rights:

\[\text{Call for Evidence Report, p.39.}\]

\[\text{Call for Evidence Report, p.20.}\]

\[\text{Chapter 4 of the full report, section 7: Lack of confidence and capacity p.99.}\]
“[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

Using the language of human rights

40. Evidence received, stated that whilst language about ‘dignity’, ‘respect’ and ‘personal choice’ was frequently used by public authorities, human rights specific language should be used, where appropriate, to emphasise the link to the principles and law of human rights and to identify the content of and application or non application of specific rights:

“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.”

Media reporting

41. The Inquiry heard evidence about the sometimes negative or sensational coverage of human rights issues in the media. Recommendations were received about how the media could ensure that they report on human rights stories accurately and fairly, and how the Commission should facilitate this:

“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 Sense

43. The report recommends that the Government should consult on this proposal.
What the Commission must do

44. The evidence received by the Inquiry overwhelmingly called for the Equality and Human Rights Commission to be an independent, authoritative body on human rights:

“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

“The EHRC 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 Commission

45. The evidence stated that the Commission should, through its views, advice and actions, develop and inform a culture of respect for human rights:

“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

46. In addition, there was a call for the Commission to engage more proactively with the media, and to provide accurate, timely and relevant information, both to the media and to the general public:

“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 Session

Conclusion

47. The evidence received by the Inquiry shows that the human rights framework, backed by the legal underpinning of the Human Rights Act, has had a positive impact in the delivery of public services. A human rights approach can provide an ethical framework for the actions of public authorities. Properly understood and applied, it can have a transformative function, transforming the organisation itself, the services delivered, and ultimately the lives of the people receiving these services.

48. The evidence clearly shows that a human rights approach has facilitated organisational effectiveness, enhanced staff morale and contributed to a better quality of life for many people:

“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

49. Although much has been achieved in the 11 years since the passing of the Human Rights Act, the evidence also shows that the effective implementation of the human rights framework in England and Wales depends on: political and organisational leadership; increased knowledge and understanding of what human rights are and are not; and the mainstreaming of human rights principles in strategic and business planning, where appropriate.

50. The report contains a series of recommendations for the Government, for the Commission, and for public authorities. If these recommendations are implemented they will facilitate significant improvements in the provision and delivery of services to individuals.

51. The report highlights the fact that it is time for a new understanding of what human rights are really about. It concludes that 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:

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

52. Human rights can be seen as the overarching ‘umbrella’, or the bedrock or foundation, of principles that apply to all:

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

53. A human rights approach goes beyond simple formal compliance: it requires a change in attitude and culture:

“[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.”
Ms. Ann Abraham, Parliamentary and Health Services Ombudsman – transcript 14.10.08

54. “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
Key findings and recommendations

1.0 Introduction

All findings are based on the evidence gathered throughout the Inquiry. Each key finding will therefore cross-reference to a numbered section in the full 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 per cent of people actually want human rights enshrined in the law for themselves and their families. 24
- There is overwhelming general acceptance in society of the value of human rights (81 per cent of people agree that human rights are important for creating a fairer society in the UK). 25 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. 26 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.

24 These are extracted from the full report, Chapter 6: Key findings and recommendations.
25 Except in two instances where we have referred to the evidence directly.
26 Chapter 3, section 2.0, Ibid.
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.27

- 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.28 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.29

- The effect of adopting a human rights approach has been to improve the circumstances of the lives of many people and their families.30

- 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).31

- 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.32

- A human rights approach encourages participation by service users in service planning and delivery, increasing their autonomy, enhancing self-respect and building better relationships.33

- 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 only34 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.35

- 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 reported 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.36

- 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.37

- Many witnesses attested to the importance of a mechanism to disseminate good practice examples across the public sector.38

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.

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27 Chapter 4, section 5.0, Ibid.
28 Chapter 3, section 3.1, Ibid.
29 Chapter 3, section 2.0; Chapter 3, section 3.1, Ibid.
30 Chapter 3, section 3.3.
31 Chapter 3, section 8.3, Ibid.
32 Chapter 3, section 8.3, Ibid.
33 Chapter 3, section 3.5, Ibid.
34 Chapter 4, section 6.0, Ibid.
35 Chapter 4, section 3.0, Ibid.
36 Mind, Call for Evidence response.
37 Chapter 5, section 8.0, Ibid.
38 Chapter 5, section 6.0, Ibid.
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.

- Strong and courageous leadership combined with training and development on human rights has resulted in positive outcomes for service users and staff morale.

- 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.

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

- The Commission will encourage the Government and other political leaders to provide positive and consistent leadership on human rights and the Human Rights Act.

- The Commission will assume a leadership role in raising public awareness of the importance of human rights and the Human Rights Act.

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.

- For instance, schools which have adopted a human rights approach have experienced a reduction in school exclusions and improved pupil behaviour.

- 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.

- 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.

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.

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39 Chapter 5, section 2.1-2.3, Ibid.
40 Chapter 5, section 5.0, Ibid.
41 Chapter 5, section 5.0, Ibid.
42 Chapter 5, section 2.1, Ibid.
43 Chapter 3, section 3.4, Ibid.
44 Chapter 3, section 6.2, Ibid.
45 Chapter 3, section 3.5, Ibid.
46 Chapter 5, section 5.0, Ibid.
48 Chapter 3, section 5.2, Ibid.
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.

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.

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.

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.

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.

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 Alzheimer’s and is blind, should be allowed to stay in a nursing home close to her husband and family.

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.

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.

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.

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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.

Most people receive their information on human rights from the media. Evidence shows that the media provide both accurate and inaccurate coverage of human rights issues.

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’. This story was false and was confirmed as such in the Government’s ‘Review of the Human Rights Act’ published in July 2006.

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. One suggested the Act prevented the Royal Navy from detaining Somali pirates in the Gulf of Aden. We looked at this claim and found it to be completely false.

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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.60

- 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.61

- 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.62

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.63

- 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.64

- 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.65

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.

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60 Chapter 5, section 11.0, Ibid.
61 Chapter 5, section 2.1, Ibid.
62 Chapter 5, section 8.0, Ibid.
63 Chapter 4, section 11.0, Ibid.
64 Chapter 4, section 10.0, Ibid.
65 Irish Traveller Movement, Call for Evidence response; Sheffield Law Centre, Call for Evidence response; East Midlands Group Evidence Session.
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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 11 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’. 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 improvements in public services. The potential benefits have been demonstrated to be invaluable 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.
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