Human Rights in Britain since the Human Rights Act 1998: a critical review

Alice Donald, Jenny Watson and Niamh McClean
Global Partners & Associates

Philip Leach and Jörn Eschment
Human Rights & Social Justice Research Institute at London Metropolitan University
Human Rights in Britain since the Human Rights Act 1998: a critical review

April 2008
CONTENTS

ACKNOWLEDGEMENTS i

EXECUTIVE SUMMARY ii
  1. Introduction ii
  2. Embedding human rights in Britain iii
  3. The benefits of a human rights approach vii
  4. Barriers to embedding human rights xi
  5. The role of inspection and regulation xiv
  6. Awareness and perceptions of human rights xvi
  7. Gaps in legislation and guidance xix
  8. Looking forward xx

CHAPTER 1: INTRODUCTION 1
  1. Context of the report 1
  2. Aims of the report 3
  3. Scope of the report 4
  4. Note on terminology 6
  5. Note on methodology 9
  6. Guide to the report 10

CHAPTER 2: EMBEDDING HUMAN RIGHTS IN BRITAIN 13
  Introduction 13
  1. The Human Rights Act: a ‘millennium blip’? 14
  2. The context in Scotland 23
  3. The context in Wales 27
  4. What is an organisational approach to human rights? 32
  5. Case studies 41
  6. Conclusions 49
3. General public 173
4. The influence of the media 178
5. Conclusions 183

CHAPTER 7: GAPS IN LEGISLATION AND GUIDANCE 184

Introduction 184
1. The ‘public authority’ loophole 185
2. The case for a statutory duty to promote human rights 193
3. Human rights and the Single Equality Bill 195
4. Conclusions 199

CHAPTER 8: LOOKING FORWARD 200

Introduction 200
1. The policy context 200
2. The organisational context 204
3. The legal context 207

ANNEX 1: Bibliography 209
ANNEX 2: Websites 224
ANNEX 3: List of participants 240
ANNEX 4: Interview and roundtable questions 244
ANNEX 5: Glossary 246
ANNEX 6: Duties and powers of the SCHR and EHRC in Scotland 249
ACKNOWLEDGEMENTS


The project was researched by Alice Donald and Niamh McClean (GPA) with a research contribution from Professor Philip Leach (HRSJ) and Jenny Watson (GPA) and research assistance from Jörn Eschment (HRSJ). The report was written by Alice Donald with contributions from Professor Philip Leach and Jenny Watson, co-authors and the project’s co-directors. Administrative and logistical support was provided by Ian Waller (HRSJ).

Special thanks are given to Camilla Parker and Professor Luke Clements who acted as consultants for the report.
EXECUTIVE SUMMARY, APRIL 2008

1. Introduction
On 6 March 2008, the Equality and Human Rights Commission announced the launch of an independent inquiry into human rights in Britain under Section 16 of the Equality Act. The inquiry was chaired by Dame Nuala O’Loan, the former Northern Ireland Police Ombudsman who led the investigation into the Omagh bombings. Francesca Klug, a professorial research fellow at the Centre for the Study of Human Rights at the London School of Economics, was the lead commissioner to represent the Commission, while Sir Bert Massie and Neil Wooding also joined the inquiry as commissioners.

The inquiry is the starting point for the Commission’s remit on human rights. Its goals are to:

• promote understanding of the importance of human rights
• encourage good practice in relation to human rights
• promote awareness, understanding and protection of human rights
• encourage public authorities to comply with the Human Rights Act (HRA)

The inquiry will initially be restricted to England and Wales. The Commission hopes to extend the inquiry to Scotland through the Scottish Human Rights Commission (SHRC).

This report is the result of an initial scoping project for the Commission’s inquiry. Its aim is to identify and review the evidence from evaluations of the implementation of the HRA in public services. The project has consisted of two phases:

• A comprehensive analytical review of literature relating to the implementation of the HRA in England, Scotland and Wales, especially in public authorities.
• Thirty semi-structured interviews and four Roundtables (in London, Cardiff and Glasgow) with senior figures who can effect change in their organisations and people making key contributions in the field.

2 http://scottishhumanrights.com
1.1 **Context of the human rights inquiry**

The HRA received royal assent in November 1998. The Act came into force across the UK in October 2000. The devolved administrations in Scotland, Wales and Northern Ireland were bound by the Act from their inception in 1999. The aim of the Act is to ‘give further effect’ in UK law to the fundamental rights and freedoms in the European Convention on Human Rights. The Act makes available in UK courts a remedy for breach of a Convention right, without the need to go to the European Court of Human Rights in Strasbourg. Section 6 of the Act makes it unlawful for a public authority to act in a way which is incompatible with a Convention right.

The Equality and Human Rights Commission opened in October 2007. The Commission brings together the work of the three previous equality commissions (the Equal Opportunities Commission, the Commission for Racial Equality and the Disability Rights Commission). It also takes on responsibility for the other aspects of equality: age, sexual orientation and religion or belief, and has a mandate to promote understanding of the HRA.

In March 2008, the Scottish Human Rights Commission (SHRC) began work. The general duty of the SHRC is to promote human rights in Scotland and, in particular, to encourage best practice in relation to human rights among Scottish public authorities. As a general principle, the SHRC will deal with matters devolved to the Scottish Parliament, while the Equality and Human Rights Commission will deal with reserved human rights matters.

2. **Embedding human rights in Britain**

The central finding of this report is that a culture of respect for human rights has largely failed to take root among public authorities in England, Scotland and Wales in the way that was anticipated a decade ago (Chapter 2). This has mainly been due, the literature suggests, to a lack of leadership at a UK Government level and the absence until recently of a commission to promote human rights in either England and Wales or Scotland. The parliamentary Joint Committee on Human Rights (JCHR) states that:

... the Government has done nowhere near enough over the past decade to use the Human Rights Act as a tool to improve the delivery of public services. This failure has contributed to the poor public image of the Act and ‘human rights’ in general.³

---

The Ministry of Justice has actively promoted the HRA and disseminated guidance and best practice through its Human Rights Programme. However, the evidence shows that efforts to embed human rights by other UK Government departments have been, at best, piecemeal. The JCHR laments that UK Government ministers are themselves ‘often responsible for creating misconceptions about the Act’ and have used it as ‘a convenient scapegoat for unpopular decisions’.4

According to our interviewees, Scotland and Wales have a more ‘benign environment’ for human rights than England, with no strident voices calling for the repeal of the HRA. In both nations, government is said to be more accessible and more inclined to work in partnership with civil society. Being smaller nations, our interviewees note, Scotland and Wales are better positioned to integrate public service delivery, which in turn might offer easier entry points for human rights approaches. The SHRC and ‘citizen-centred’ public service reform in Wales also increase the potential for human rights approaches to flourish.

However, aside from some pockets of best practice, the evidence suggests that this potential has yet to be been realised. The most recent surveys in England, Scotland and Wales show that well over half the number of public authorities could not demonstrate that they had taken proactive steps to comply with the HRA. The comment by one participant at the Cardiff Roundtable captures the tenor of our discussions in all three nations:

I think an organisation that has an embedded human rights culture and processes is something like a yeti – we know what it might look like and we’ve heard it might exist but we’ve certainly never seen one.5

2.1 Case studies
Against this discouraging backdrop, this project has engaged with a range of public authorities that have begun to embed human rights into their practice, typically involving service users systematically in the process.

For example, the high-security State Hospital in Carstairs, Scotland, used a human rights approach to move from what had been a ‘custodial, punitive’ regime to one in which, from the moment they are admitted, service users are treated as ‘human beings with rights’. The hospital’s approach is exemplified in this statement from its human rights newsletter:

5 Cardiff Roundtable, 28 February 2008
Our patients have rights, our staff have rights and the public we serve also have rights. We must never forget that, and [must] balance in a transparent and justifiable way, these competing rights.  

The former Mental Health Act Commission (MHAC) carried out a ground-breaking human rights project called Making It Real. Staff developed human rights training directly relevant to the MHAC’s work and engaged with service users and mental health service providers. The aim was to help MHAC ‘fully to incorporate the human rights framework within its work, so that it became a recognised part of regular activity across the organisation’.

The Parliamentary and Health Service Ombudsman (PHSO) and the Local Government Ombudsman, in their first joint investigation published in March 2008, used a human rights framework to conclude that the care given to a young man with severe learning disabilities amounted to maladministration causing injustice. The deputy PHSO at the time, Trish Longdon, told this project:

Talking about dignity and respect is sometimes not enough ... human rights principles legitimate a sense of outrage.

2.2 Key findings
These case studies, and others like them, offer an emergent model that other public authorities might replicate. Our analysis of the case studies shows that systematic implementation of human rights commonly involves:

• sustained engagement with service users
• conducting surveys of staff and service user experience
• staff training at all levels of the organisation which is integrated into core training programmes and related to everyday experience
• human rights champions or challengers at senior levels

6 Rights Minded (2004), the newsletter of the State Hospital Human Rights Working Group, Issue 1, p 1
8 ibid, p 4
10 Interview with Trish Longdon, Deputy Parliamentary and Health Service Ombudsman, 29 February 2008
• regular reviews of policies and procedures for human rights compliance
• integration of human rights into equality and diversity policy tools
• inclusion of human rights in best practice guides and codes of ethics

In addition to this practical experience, a body of analytical thinking is developing about what an organisational approach to human rights entails. This work is being developed by, among others: the British Institute of Human Rights (BIHR); the Human Rights in Healthcare initiative of the Department of Health with the BIHR; independent advisers on human rights policy, and, through the wealth of evidence generated by its inquiries, the JCHR.

The key findings that we have distilled from our case studies and from this emergent body of analytical thinking are:

• Human rights is too often seen as a matter of ‘tick box’ compliance, rather than an approach which needs to become embedded in institutional thinking. As one speaker at the recent Human Rights Summit in Cardiff put it, human rights need to become ‘not a rule to follow but a reflex action’ at every level of an organisation.11

• In order to realise the transformative potential of human rights, public authorities need to see them as a matter of aspiration and not mere compliance (specifically, this means recognising and acting upon the positive obligations that public authorities have not just to refrain from harm, but also to take proactive steps to prevent harm, no matter who or what is causing it). As Murray Hunt, Legal Adviser to the JCHR argues, ‘human rights law doesn’t just contain lines you can’t cross but aspirations you’ve got to strive to achieve’.12

• In every case, leadership is a prerequisite for sustaining a human rights approach. Also vital is a continuous cycle of reinforcement from the top to the bottom of an organisation. The previous Scottish Public Services Ombudsman, Professor Alice Brown, described this as ‘a feedback loop – you monitor, it’s part of your management information ... it’s part of the training package, it’s embedded in everything you do’.13

12 Interview with Murray Hunt, Legal Adviser, Joint Committee on Human Rights, 6 March 2008
13 Interview with Alice Brown, Scottish Public Services Ombudsman, 25 February 2008
• A human rights framework, championed at senior levels, acts as the internal challenge function in an organisation, ensuring that human rights are integrated into key areas of policy and practice – like a magnet pulling services in the direction that best supports the dignity, respect, equality and autonomy of those that use them.

• The case studies reveal a variety of drivers for change. In some cases, the driver is an external challenge such as litigation (as with the prison services in England and Wales and Scotland). Elsewhere, service user engagement is the driver (for example, Mersey Care NHS Trust). Other organisations have sought to deliver a programme of internal cultural change and have used a human rights framework as a means to do so (for example, the Mental Health Act Commission and the State Hospital in Carstairs).

• There is no fixed template for how to embed human rights in an organisation. The process is creative rather than prescriptive, though this seems not to be widely understood within public services.

3. **The benefits of a human rights approach**

In our view, the evidence does not currently support expansive claims for benefits accruing at a public service-wide level (Chapter 3). There is a pressing need to identify and share the evidence of beneficial outcomes of human rights for those who use and work in public services, and to develop new methodologies fit for this task. However, we have found evidence for three broad categories of benefit, which are discussed below:

• The **benefits of engaging service users to improve services**: systematic engagement of service users as part of a human rights approach can make a service more responsive to those who use it and can erode prejudicial attitudes and mistrust between service users and staff.

• The **benefits of organisational renewal**: a human rights approach can permit a reinvigoration of the public service ethos, and help both staff and service users to challenge entrenched poor practice. Human rights can also extend existing approaches to tackling inequality.

• The ‘**business case’ for human rights**: the human rights framework provides a sophisticated tool for managing risk, achieving transparency and finding objective, balanced and proportionate solutions to complex problems. The literature makes no explicit or comprehensive financial case for a human rights approach; however, a financial case can be made for certain targeted human rights interventions.
3.1 Engaging service users to improve services

Our interviewees argued that too often service users are treated as ‘commodities’ or as ‘units of trouble to be processed’. The evidence shows that the systematic involvement of service users and carers has the power to challenge entrenched and often prejudicial attitudes towards service users and to erode stigma and mistrust. It can also make services more responsive to the people who use them.

For example, at Mersey Care NHS Trust, service users have helped to recruit more than 1,500 staff – one third of the Trust’s workforce. Service users are also involved in the review of serious incidents like suicides. More than 90 per cent of senior managers and service users surveyed thought the Trust had made improvements as a direct result of service user involvement.

The Commission for Social Care Inspection (CSCI) formally adopted the HRA as ‘a driver for change’ and engaged service users to set the benchmarks for its inspections. Prior to being amalgamated into the Care Quality Commission in early 2009, CSCI was on target to involve service users – known as ‘experts by experience’ – in all its service inspections and had evaluated the scheme as having an ‘overwhelmingly positive’ impact.14

3.2 Organisational renewal

The evidence suggests that organisational human rights approaches can reinvigorate the public service ethos by reconnecting staff with their original motivation for taking up their profession. The State Hospital in Carstairs found that the HRA had ‘untapped potential and could be a vehicle for significant cultural change’.15

In addition, public sector staff and service users have used human rights to challenge entrenched poor practice, including blanket policies devised without regard to the individual. For example:

- The family of a woman who was routinely fed her breakfast while sitting on a commode said it was contrary to her human rights and the mistreatment stopped.16
- A man detained in a maximum security mental health hospital was placed in seclusion where he repeatedly soiled himself. Staff declined to clean or move

16 The Human Rights Act: the DCA and Home Office Reviews, p 25
him, saying intervention was pointless. The man’s advocate invoked human rights arguments to challenge this treatment, which breached the man’s right not to be treated in an inhuman and degrading way and his right to respect for private life. The next time the man soiled himself, he was cleaned and moved to a new room.

• A Mental Health Act Commissioner used human rights arguments to challenge a blanket ban in a house for people with learning disabilities on user relationships and a policy of locking away residents’ property without consultation.

The literature further shows the potential for human rights to strengthen existing approaches to tackling inequality and to render visible groups that fall outside the incomplete patchwork of anti-discrimination legislation – and to give them a voice and a channel for redress inside and outside the courtroom.

There is also some evidence that embedding human rights in public services can improve social relationships between staff and service users. For example, schools with a ‘whole school ethos’ based on human rights report that pupils achieve higher standards, are more respectful and are less aggressive. The teachers experience less ‘burnout’ and a reduced sense of emotional distance from their pupils.

### 3.3 The ‘business case’ for human rights

Public authorities have articulated the need for a ‘hardcore financial or business purpose’ for embedding human rights. The literature has not yet built such a substantial case, but we have found evidence, both implicit and explicit, that we consider should form the basis of it.

Managing risk: Public authorities are legally bound to comply with the HRA. If they do not do so, individuals can challenge and seek remedies, which may be costly in terms of money and reputation. In 2005–06, the Scottish Prison Service set aside £58 million to cover its possible liability for compensation and other costs arising from the practice of ‘slopping out’, which the courts said breached human rights. Public authorities have articulated the need for a ‘hardcore financial or business purpose’ for embedding human rights. The literature has not yet built such a substantial case, but we have found evidence, both implicit and explicit, that we consider should form the basis of it.

Managing risk: Public authorities are legally bound to comply with the HRA. If they do not do so, individuals can challenge and seek remedies, which may be costly in terms of money and reputation. In 2005–06, the Scottish Prison Service set aside £58 million to cover its possible liability for compensation and other costs arising from the practice of ‘slopping out’, which the courts said breached human rights.**

---

18 Making it Real: A human rights case study, p 25
authorities have also used a human rights framework to draw up guidance about how to balance risk and the duty of care (for example, in relation to the use of restraint).

**A practical framework for decision-making:** How well public services operate depends on decisions made every day by hundreds of thousands of often overstretched staff. Frequently, these decisions are based on little more than individual judgement. There is evidence that a human rights framework helps staff to reach objective, balanced and proportionate solutions to seemingly insoluble problems and to be more confident in their decision-making.

For example, the HRA has been used in prisons to develop policies on mandatory drug testing and the searching of visitors, treating prisoners and their families as individuals, rather than through ‘one size fits all’ measures. In another instance, human rights served as a ‘trigger’ for care workers to support a man with learning disabilities who became anxious about bathing after slipping. The care workers erected a screen to sit behind while he bathed, giving him reassurance while also protecting his dignity.

**Transparency:** Human rights provides a framework within which public authorities can demonstrate, as they are required to by law, that the decisions they take are lawful, have a legitimate aim, and are necessary and proportionate. The human rights requirement for transparency has been shown to result in better outcomes for service users, while also providing a clear ‘audit trail’ to protect public authorities from potential legal challenge.

For example, the director of the Mental Welfare Commission for Scotland, Donald Lyons, notes that fewer people have been subject to compulsory detentions since the Mental Health (Care and Treatment) (Scotland) Act of 2003, which incorporates the provisions of the HRA. Previously, the legislation ‘did not require a clear justification for depriving someone of their liberty or for placing them under a community order’ – now, it does. Donald Lyons indicated a causal link between the imperative to justify detention and the first fall in the number of detentions for many years.

**Resources and efficiency:** The literature suggests no *prima facie* case for assuming that public services designed and delivered according to human rights

---

23 The Human Rights Act: Changing Lives, p 7
24 Interview with Donald Lyons, Director, Mental Welfare Commission for Scotland, 20 February 2008
principles would cost either more or less than they do now. It offers some examples of cost calculations which could conceivably be ‘mapped’ onto a business case for human rights, even though their authors have not produced them expressly for this purpose. In relation to the prison service, a business case can be made for specific human rights interventions, for example to identify and support prisoners with learning difficulties or learning disabilities who might otherwise go on to reoffend.

Elsewhere, there are strong examples of interventions devised within a human rights framework that have improved services at negligible cost, such as using red trays to identify older people in hospital who need help with eating.25

Efficiency gains may also be identifiable at the level of, say, an individual NHS trust. As Lindsey Dyer of Mersey Care NHS Trust notes:

We spend less than half of one per cent on involving service users and their right to be involved in decisions that affect their lives ... to get the other 99.5 per cent right.26

However, any attempt to make a comprehensive business case for human rights is bedevilled by the ‘silos’ through which public services are delivered and will require new methodologies and approaches to render visible costs and savings across public services as a whole.

4. Barriers to embedding human rights

Human rights approaches to public services do not exist in a vacuum; there are organisational, cultural and systemic factors that may help or hinder efforts to embed them (Chapter 4). Our key findings are summarised here:

4.1 Human rights must ‘work with the grain’ of organisational cultures

There is some evidence that health-based settings, being generally more hierarchical, target-driven and prioritising ‘cure over care’, are less favourable to human rights than, say, the culture prevailing in social services departments.27

However, such differences should not be over-stated. Human rights approaches have been shown to flourish in a variety of contexts where the necessary leadership, understanding and commitment exists. Systematic engagement with service users in

25 http://www.ageconcern.org.uk/AgeConcern/htbh_whatwewant.asp
26 London Roundtable, 27 February 2008
any professional context is likely to strengthen and sustain efforts to embed a human rights approach.

4.2 **Staff autonomy and whistle-blowing**

Our interviewees noted that a lack of autonomy among staff was unfavourable to human rights approaches. Nony Ardill of Age Concern England observed that the role of care workers tends to be defined as a 'set of functional requirements', without sufficient regard to the attributes required to make more proactive judgements, inspired by human rights values, when caring for service users.\(^{28}\)

One important guarantor of staff autonomy is a mechanism for public service staff to ‘blow the whistle’ when they suspect abuse is taking place. The JCHR has recommended that the UK Government include a requirement in national care standards that hospitals and care homes should have a policy requiring all healthcare workers to report abuse or suspected abuse, with protection for whistle-blowing and confidentiality.\(^{29}\)

4.3 **Organisational inertia and ‘initiative-itis’**

A constant refrain in the literature is that of ‘initiative overload’ being the enemy of good practice. There is evidence that human rights approaches have struggled to make headway against a ‘relentless flow of highly prescriptive legislation’, causing public authorities to adopt a passive ‘wait and see’ attitude to human rights implementation.\(^{30}\) One interviewee in Wales noted that public authorities are too often:

hostage to the next big thing that comes along ... [for example] ‘We’ve done equalities and now it’s human rights’ ... But it’s not just adopting a theory, it’s about changing how we work ... And that’s very difficult for bureaucratic organisations because they’re inherently conservative and they exist by staying the same.\(^{31}\)

\(^{28}\) Interview with Nony Ardill, Legal Policy Adviser, Age Concern England, 6 March 2008

\(^{29}\) The Human Rights of Older People in Healthcare, Volume I, p 66


\(^{31}\) Cardiff Roundtable, 28 February 2008
Another problem identified by our interviewees is that of human rights being ‘stuck in the legal department’. A participant at the Glasgow Roundtable noted that many frontline staff had good instincts on human rights principles but, ... that ethos doesn’t go up the organisation ... and case law doesn’t come down ... the social worker won’t know what that case law is and so they will repeat the same mistakes again and again.32

4.4 Remedies and the need for independent advocacy
People who feel that their human rights have been infringed can potentially pursue a range of avenues of redress, from a complaint to their provider through to legal action. Lack of accessible public information about these options was noted by our interviewees to be a significant obstacle to finding effective redress by any means.

Effective independent advocacy is a key component of a system of remedies. Advocates can help service users to overcome barriers of fear and isolation and to navigate through the system. The JCHR has raised concerns about inadequate provision of independent advocates, especially for people with learning disabilities.

4.5 The ‘silos of state’: the need for cross-department working
The literature and our interviewees make repeated calls for top-down initiatives to be better coordinated and for public services to avoid working in isolation. This is viewed as a prerequisite for human rights approaches to gain any purchase on the design and delivery of public services.

Dame Denise Platt, Chair of the former CSCI, noted that successive government initiatives were like a ‘kaleidoscope’ which could be viewed from different angles. As she put it, if you are a chief executive in local government or health: the silos of state independently dump things on your desk and local bodies have to make the pattern.33

Our interviewees suggested that, in the absence of more ‘joined-up’ public services, human rights proponents need to work with the grain of the government imperatives of the day. However, while some government initiatives might seek to promote human rights:

32 Glasgow Roundtable, 5 March 2008
33 Interview with Dame Denise Platt, Chair, Commission for Social Care Inspection, 5 March 2008
Everything else is what the Treasury asks for and the Treasury doesn’t ask for human rights ... and that’s the key as to why these things are always marginalised even with the best of good intentions.\textsuperscript{34}

4.6 \textbf{The need for ‘intelligent’ commissioning}  

Our interviewees emphasised the need to build human rights considerations into the commissioning of public services and to develop more creative approaches which place individuals’ needs at the centre. Allan Bowman, Chair of the Social Care Institute for Excellence, advocated moving away from a sole focus on the lowest unit cost to taking account of human rights concerns through what he calls ‘intelligent’ commissioning.\textsuperscript{35} Mike Wardle, Chief Executive of the General Social Care Council, emphasised the need for guidance to commissioners on designing contracts in which service providers must demonstrate that they have addressed human rights considerations.\textsuperscript{36}

4.7 \textbf{The next generation of practitioners}  

Human rights principles are included inconsistently, and generally not explicitly, in the criteria for professional training or in codes of practice for health professionals or social care workers, although some do use the language of ‘dignity’ and ‘respect’. The JCHR has recommended addressing this issue by means of the Health and Social Care Bill, to require human rights to be included in the education and training of healthcare workers, mental health professionals and social care workers.\textsuperscript{37}

5. \textbf{The role of inspection and regulation}  

The organisations that inspect, regulate or monitor public authorities, or that handle complaints against them, have a vital role to play in promoting human rights in public services (Chapter 5).

In England, the creation of a new super-regulator for health and adult social care – the Care Quality Commission – and the implementation of the new Comprehensive Area Assessments may mean a period of instability in the regulatory regime. The Crerar Review in Scotland and the Beecham Report in Wales also herald a period of

\begin{flushleft}
\textsuperscript{34} London Roundtable, 27 February 2008  
\textsuperscript{35} Interview with Allan Bowman, Chair, Social Care Institute for Excellence, 28 February 2008  
\textsuperscript{36} Interview with Mike Wardle, Chief Executive, General Social Care Council, 20 February 2008  
\end{flushleft}
change. This instability may require increased vigilance to ensure no diminution of focus on human rights and no loss of commitment to the involvement of service users. However, these changes also provide an opportunity for regulatory bodies to share best practice in order to harmonise and strengthen human rights approaches across all three nations.

Our key findings in relation to these bodies are summarised here:

5.1 **The prevalence of human rights approaches among regulatory bodies**

The literature shows that some of the regulatory bodies have used the language of human rights values such as ‘dignity’, and ‘respect’ but have not, in the past, made explicit their commitment to human rights, and so have not demonstrated to public authorities the potential benefits of embedding human rights into institutional thinking. However, there is evidence that change is under way, with the adoption (in some cases very recently) of a more explicit human rights focus in the work of some regulatory bodies.

5.2 **The benefits of a human rights approach by regulatory bodies**

There is insufficient evidence in the literature to conclude with confidence that the adoption of an explicit human rights focus by regulatory bodies necessarily makes them more effective at identifying, challenging or ensuring the rectification of poor practice ‘on the ground’. This is partly because efforts to embed human rights are in many cases so recent and also because there is a general dearth of literature about the tangible outcomes of the inspection and regulatory function for service users and staff. However, there is some compelling evidence that those regulatory bodies that have adopted an explicit human rights approach have found that it has strengthened their work.

Evidence suggests that an explicit human rights focus can enable regulatory bodies to:

- Make their own work more inclusive of and accessible to all service users, especially those with multiple or complex needs that might otherwise be obscured, and encourage public authorities to do the same.
- Ensure that the regulatory function fully reflects the experiences and priorities of service users and encourage public authorities to place the needs of individual service users at the heart of service delivery.
- Provide guidance on best practice to public sector staff which supports them to make balanced and proportionate decisions in line with human rights principles, for example with regard to the use of restraint and other forms of deprivation of liberty.
• Inspect, regulate or handle complaints against public authorities according to a set of transparent, objective and internationally recognised standards and thereby help public authorities ensure that they are compliant with the HRA.
• Ensure that public authorities recognise and act upon their positive obligations not just to refrain from harm but to take proactive steps to protect and promote human rights.

5.3 The importance of engaging service users
There is strong evidence to suggest that regulatory bodies which involve service users systematically in their work have a deeper engagement with human rights. The integration of service users in inspection is itself an indication of a human rights approach, and helps ensure that this approach is sustained over time. The more that service users shape the principles and methodology of inspection, the more grounded inspections will be in their experience – and the more visible any evidence of changed outcomes will be.

5.4 Sharing of best practice
It is vital that regulatory bodies share information and best practice with regard to human rights and models for service user involvement. Several regulatory bodies have produced guidance or commentaries on issues of risk and the deprivation of liberty, and these are areas where there may be scope for greater cooperation. Collaboration on common challenges could improve the sophistication of regulatory bodies’ work and harness the ‘multiplier effect’ both within and between nations.

6. Awareness and perceptions of human rights
We have reviewed evidence which examines awareness and perceptions of human rights and the HRA among public service staff (frontline staff and managers), service users and the general public (Chapter 6).

Overall, the evidence points to a low awareness of human rights in all three groups. The JCHR laments the lack of awareness at every level of public services:

... we have been deeply disappointed in the course of this inquiry by the low level of awareness of human rights principles and of the Human Rights Act 1998 among not only adults with learning disabilities, their carers and supporters, but also among those who work in the field and at the heart of local and central Government.

38 Joint Committee on Human Rights (2008), A Life like Any Other? Human Rights of Adults with Learning Disabilities, Volume I, p 95
6.1 Public service staff

The evidence points to a low awareness among public service staff of the HRA and (with some exceptions) of how human rights principles relate to their day-to-day work. Where there is a higher level of awareness, it is commonly identified in the literature as ‘implicit’ rather than ‘explicit’. 39

There is a discrepancy between largely positive staff perceptions of the term ‘human rights’ and the values of dignity, respect and fairness, and largely negative perceptions of the HRA as a charter for miscreants or, as Paul Coen, former chief executive of the Local Government Association, puts it, as ‘something that’s remote, intimidatory and takes place in courts of law’. 40 The Chief Inspector of Prisons, Anne Owers, noted that, for prison service staff, human rights ‘carries a lot of baggage – not all positive’ and creates ‘a feeling of blame and association with lawyers’. 41

6.2 Service users

Surveys suggest it is uncommon for users of public services to treat either the HRA or its underlying principles as a safety net for use in their everyday life. The Human Rights Insight Project of the Ministry of Justice found that even those who had received poor treatment from public services had no notion that human rights were relevant to them. Indeed, if this was pointed out, the reaction was one of incredulity. 42

In addition, some specific groups of service users display mistrust of how they think the HRA is implemented to benefit what they perceive as undesirable or undeserving groups.

6.3 The general public

Measured public awareness of the HRA is low, including among voluntary and community groups. A MORI poll for the Ministry of Justice found that 61 per cent of respondents felt they knew either ‘nothing at all’ or ‘not very much’ about human rights. 43 Around four in 10 people surveyed for a GfK poll for the Equality and Human Rights Commission had either not heard the phrase human rights, were unable to

39 Human Rights Insight Project, p 64
40 Interview with Paul Coen, Chief Executive, Local Government Association, 27 February 2008
41 Interview with Anne Owers, Her Majesty’s Chief Inspector of Prisons, 5 March 2008
42 Human Rights Insight Project, p 18
43 ibid, p 27
name any protected rights or didn’t know whether or not they supported the legislation.\(^44\)

Surveys of general public opinion, like those of public service staff and service users, reveal a degree of hostility to the way in which the HRA is perceived to operate as a charter for people wanting to cheat the system.

However, the literature suggests that a majority of people: support the existence of human rights legislation, respond positively to human rights principles and believe that human rights make Britain a fairer society. There is also an apparent consensus around the idea that individual human rights go hand in hand with responsibilities to society as a whole.

The evidence suggests that attitudes towards human rights are mutable and that people generally grow more positive the more they know about the principles underlying the HRA. Age Concern notes that for older people:

When ‘human rights’ are presented as a restatement of treasured values like respect and fairness – and as offering opportunities for greater autonomy – then the barriers were not as insuperable as they first appeared.\(^45\)

The Human Rights Insight Project found that those who are more likely to feel negative are those aged over 55, those who are not working, tabloid newspaper readers and those with no formal qualifications.\(^46\)

### 6.4 The role of the media

There is a widely held view that popular mistrust and misperceptions about human rights and the HRA can be at least partly blamed on a ‘catalogue of mythology’ in the media, as the JCHR puts it. The Department for Constitutional Affairs (now the Ministry of Justice) notes that negative reporting blames human rights for a range of ills including: ‘giving undeserving people a means of jumping the queue and getting their interests placed ahead of those of decent hardworking folk’, ‘political correctness gone mad’ and being a catalyst for a ‘compensation culture’.\(^47\)


\(^{46}\) Human Rights Insight Project, p.46

Perhaps the key insight arising from this analysis is that creative, sophisticated and carefully-targeted means need to be found – using a variety of communications channels – to promote human rights values and the HRA to public service staff, service users and the wider public, rather than assuming that the values will speak for themselves.

7. Gaps in legislation and guidance

7.1 The ‘public function’ loophole

The biggest legislative frailty identified through this project is the loophole that, as a result of emerging case law, excludes public services provided by the voluntary and private sector from responsibility under the HRA (Chapter 7).

The Government has announced that it will amend the Health and Social Care Bill to make care homes providing publicly-arranged accommodation directly subject to duties under the HRA. However, the JCHR is seeking a more comprehensive solution via an interpretative statute to clarify the HRA itself, not least because it considers that the anomaly has the potential to affect other groups receiving services from ‘functional public authorities’.

7.2 The case for a statutory duty to promote human rights

The JCHR argues that a statutory duty to promote human rights would ‘kick-start’ the institutional change required to get public authorities to act upon their positive obligations. Our interviews did not suggest a clear consensus around prioritising the case for such a statutory duty. However, there is strong evidence pointing to the need for more systematic, timely and accessible guidance on the meaning of positive obligations and the implications of relevant case law – including that from Strasbourg.

7.3 Human rights and the Single Equality Bill

The government is committed to introducing a Single Equality Bill during the current parliament. Many responses to the consultation document call for a purpose clause to situate an extended anti-discrimination framework in the broader vision of equality associated with human rights. The Equality and Human Rights Commission has gone further, calling for a chapter setting out the fundamental principles of equality under the law that should shape the provisions of the Act.

48 The Human Rights of Older People in Healthcare, Volume I, p 47
8. **Looking forward**

We summarise here our conclusions from this project and what we see as the implications for future work by organisations that seek to protect and promote human rights (Chapter 8).

8.1 **The policy context**

**Public service design:** the evidence suggests that there is untapped potential to use human rights as a tool to design, as well as to deliver, public services. If this approach is to take root, organisations promoting human rights will need to work to promote the creative aspects of human rights thinking and correct any misconceptions of a human rights approach as rigid and prescriptive.

**Inspection and regulation:** with significant changes afoot to the inspection and regulatory function in England, Scotland and Wales, the time is ripe to make the case for a strengthening and harmonising of human rights approaches. There is further scope for regulatory bodies in England, Scotland and Wales to share experience and best practice.

**Developing ‘intelligent’ commissioning models:** this has emerged as a priority issue among our interviewees, who detect a willingness among commissioning bodies to include human rights in their contracting process, and a hunger for guidance and shared best practice.

**The next generation of practitioners:** human rights are not generally integrated into professional training curricula or codes of practice. This is a vital arena for the ‘aspirational’ aspects of human rights to be introduced and thereby to influence the next generation of public service practitioners.

8.2 **The organisational context**

**Identifying and disseminating the benefits of human rights:** one of the dominant themes of this project is that there is not currently a strong evidence base for the benefits of a human rights approach at an organisation- or service-wide level, and that the rich but fragmentary evidence that does exist is not widely shared or understood. Our interviewees have repeatedly emphasised the need to:

- capture and disseminate best practice
- identify the benefits that accrue when human rights are embedded
- develop new methodologies to identify human rights outcomes

**Making a ‘business case’:** more evidence is needed to demonstrate the value of low-cost interventions that support the human rights of service users, and to identify
business benefits at the level of, say, an individual NHS trust. More broadly, there is a need to develop new methodologies to show how spending in one area to protect or promote individuals’ human rights might potentially deliver savings in another – that is, to think and act across government silos.

**Communicating human rights to public service staff and users:** explicit human rights language can produce blank, negative or defensive reactions from those who use and work in public services. However, there is evidence that the values which underpin human rights can work with the grain of existing professional cultures and be a powerful tool to challenge poor practice. We conclude that there is a need for leadership at senior levels in Government and public authorities to champion the value of explicit human rights approaches within public services and to encourage creative approaches to ‘translating’ human rights principles and standards into different public service contexts.

**Positive obligations:** we make a case in this report for seeing human rights as a matter of aspiration rather than merely compliance. This implies two distinct areas of emphasis for future work to promote human rights:

- Providing timely and accessible guidance on the implications of case law to help the development of public service best practice.

### 8.3 The legal context

**The ‘public authority’ loophole:** the Equality and Human Rights Commission and the JCHR say that the Government’s intention to fix this anomaly for those in private care homes whose care is paid for by the state is not enough. There is a need to build a case for a comprehensive solution to cover self-funders and other groups who receive services from functional public authorities.

**Informing the public about remedies:** there is a need to inform the public about the range of legal and non-legal remedies available to them, and the extent to which these channels explicitly, and effectively, consider complaints based on human rights considerations.
CHAPTER 1: INTRODUCTION

1.1 Context of the report

The Equality and Human Rights Commission (the Commission) champions equality and human rights for all, working to eliminate discrimination, reduce inequality, protect human rights and to build good relations, ensuring that everyone has a fair chance to participate in society.49

On March 6 2008, the Commission announced the launch of an independent inquiry into human rights in Britain under Section 16 of the Equality Act.50 The inquiry, which the Commission expects to complete by December 2008, will be chaired by Dame Nuala O’Loan, the former Northern Ireland Police Ombudsman who led the investigation into the Omagh bombings. Francesca Klug, a professorial research fellow at the Centre for the Study of Human Rights at the London School of Economics, will be the lead commissioner to represent the Commission. Sir Bert Massie and Neil Wooding have also joined the inquiry as commissioners.

The inquiry represents the starting point for the Commission’s remit on human rights. Its goals are to:

• Promote understanding of the importance of human rights
• Encourage good practice in relation to human rights
• Promote awareness, understanding and protection of human rights, and
• Encourage public authorities to comply with the Human Rights Act (HRA) (section 9 of the Equality Act).

The inquiry will initially be restricted to England and Wales. Once the Scottish Commission for Human Rights is operational, the Commission hopes to extend the inquiry to Scotland.51

50 http://www.equalityhumanrights.com/en/projects/humanrightsinquiry/Pages/Human
rightsInquiry.aspx
51 Ibid.
The HRA received royal assent in November 1998. The Act came into force across the UK in October 2000. The devolved administrations in Scotland, Wales and Northern Ireland were bound by the Act from their inception in 1999. The aim of the Act is to ‘give further effect’ in UK law to the fundamental rights and freedoms in the European Convention on Human Rights. The Act makes available in UK courts a remedy for breach of a Convention right, without the need to go to the European Court of Human Rights in Strasbourg. Section 6 of the Act makes it unlawful for a public authority to act in a way which is incompatible with a Convention right.

The Equality and Human Rights Commission opened in October 2007. The Commission brings together the work of the three previous equality commissions (the Equal Opportunities Commission, the Commission for Racial Equality, and the Disability Rights Commission). It also takes on responsibility for the other aspects of equality: age, sexual orientation and religion or belief, and has a mandate to promote understanding of the HRA.

In March 2008, the new Scottish Commission for Human Rights (SCHR) opened its doors. The general duty of the SCHR is to promote human rights in Scotland and, in particular, to encourage best practice in relation to human rights among Scottish public authorities. As a general principle, the SCHR will deal with matters devolved to the Scottish Parliament, while the Equality and Human Rights Commission will deal with reserved human rights matters.52

The central finding of this report is that a culture of respect for human rights has largely failed to take root among public authorities in England, Scotland and Wales in the way that was anticipated a decade ago. This has mainly been due, the literature suggests, to a dearth of leadership at a UK Government level and the absence, until recently, of a human rights commission. The report finds fertile ground for the flourishing of human rights approaches in Scotland and Wales, though the evidence suggests that this potential has not yet been realised. More promisingly, this project has engaged with a range of public authorities (and bodies that regulate, monitor and inspect them) that have begun to embed human rights into their institutional thinking. Nevertheless, the comment by one participant at the Cardiff Roundtable captures the tenor of our discussions in all three nations:

I think an organisation that has an embedded human rights culture and processes is something like a yeti – we know what it might look like and we’ve heard it might exist but we’ve certainly never seen one.\textsuperscript{53}

Our findings also suggest that efforts to promote human rights must contend with blank, mixed or negative reactions to human rights from those that use and work in public services. Despite human rights featuring in British law for nearly a decade, a GfK NOP poll for the Commission in 2007 showed that 40 per cent of people have either not heard the phrase 'human rights', are unable to name any of the protected rights or don't know if they support the legislation.\textsuperscript{54} More positively, of the 60 per cent of respondents who understood the term, eight out of ten were supportive of human rights.\textsuperscript{55}

1.2 Aims of the report

This report is the result of an initial scoping project for the Commission's inquiry. Its overall aim is to review the available evidence related to the understanding of human rights and the implementation of the HRA in Britain since the Act came into force in most of the UK in 2000.

Specifically, the report aims to:

- Identify and review the existing evidence from evaluations of the implementation of the HRA, with a particular focus on its implementation in public services
- Identify and review evidence of:
  - What public authorities understand to be the improvement in their services that would result from a human rights approach
  - What public authorities understand about what has to change in order to deliver such improvements, and
  - The benefits accruing to service users as a result of taking a human rights approach

\textsuperscript{53} Cardiff Roundtable, February 28, 2008.

\textsuperscript{54} Equality and Human Rights Commission, Commission announces independent inquiry into human rights and British attitudes to them, March 6 2008; http://www.equalityhumanrights.com/en/newsandcomment/Pages/humanrightsinquiry.aspx

\textsuperscript{55} Ibid.
• Identify any evidence on the range of initiatives, activities and practices in relation to human rights on the ground

• Identify gaps in evidence or in the quality of evidence that might be further developed by the Inquiry.

1.3 Scope of the report

As noted above, this report is centrally concerned with the implementation of the HRA in public services in Britain. It is therefore beyond our scope to look in detail at the implementation of other human rights instruments, although we make reference to them where appropriate (for example, where they inform a public authority’s mandate or standards or where they are cited as a driver for a particular human rights initiative). However, we concur with the view expressed by many of our interviewees that the culture of respect for human rights that the Commission wishes to foster in Britain must be underpinned by the full set of interdependent rights, spanning civil, cultural, economic, political and social rights.

The terrain covered in this report primarily lies outside the courtroom, and it is therefore beyond our scope to examine in detail the jurisprudence of the HRA. However, we refer to specific cases where relevant and consider the impact of these on institutional practice – where there has been an impact. Indeed, the legal edifice and institutional practice cannot be wholly separated. As the parliamentary Joint Committee on Human Rights (JCHR) noted in its report on the human rights of older people in healthcare:

... the HRA requires public authorities to act preventatively to ensure that the right systems are in place rather than, as is the case under common law, seeking to take action after things have gone wrong. The Act therefore provides a framework to encourage high standards of healthcare practice but, because it has the force of law, it also acts as a backstop in helping to make sure that a positive approach to respecting human rights becomes the norm.56

Put another way, the stick of litigation always lurks behind the carrot of promoting best practice, providing a cutting edge to the ‘soft law’ approach which seeks to use the HRA as a driver of cultural change. As one of our interviewees put it, human

rights law marks a ‘line in the sand ... a means of avoiding a descent into the unacceptable’.\(^{57}\)

Legal commentators have long debated whether law can reframe social relationships or bring about a real and sustained change in the behaviour of organisations and the individuals that work within them. For some, changes in public opinion must always precede legislative action; for others, the law can be the prime mover in determining the way a society views a particular issue.\(^{58}\)

Some of the practitioners we have spoken to were adamant that human rights are nothing if not a set of enforceable standards. For some marginalised groups, such as Gypsies and Travellers, it was argued that:

> Nothing has been achieved for Travellers except when they've gone to court ... Unless you have that leverage, you won't have much force behind your “encouragement”.\(^{59}\)

However, it is by no means assured that victory in the courtroom automatically produces the desired institutional response. Luke Clements and Rachel Morris argue that judicial declarations of individual rights have frequently failed to provoke anything more than a negative ‘risk-proofing’ response from public authorities and have therefore produced only ‘pale imitations’ in institutional practice.\(^{60}\) Where legal action has contributed to changes in practice, it has not always been immediate. For example, it took more than one case to secure the entitlement of permanent residents to consultation from local authorities before they decide to close a care home.\(^{61}\)

Elsewhere, the impact of litigation on institutional culture and practice has been more visible and, indeed, transformative. We document in this report, for example, how

---

57 Interview with Kathleen Marshall, Scotland's Commissioner for Children and Young People, March 3 2008.

58 For a useful summary of this debate, see Finnegan P. and Clarke S. (2005) One Law for All? The impact of the Human Rights Act on People with Learning Difficulties, pp.7-11.


61 See especially R v Devon County Council ex parte Baker (1995) and Durham County Council ex parte Curtis and Others (1995), and Court of Appeal judgment R v North & East Devon Health Authority ex parte Coughlan (1999).
litigation challenging the practice of slopping out in Scottish prisons became, in the words of the Chief Inspector of Prisons for Scotland, ‘the paradigm for the way [the prison service] thinks about almost every issue’.  

We do not attempt to resolve this debate here, not least because different organisational cultures may respond in different ways to external legal challenge. We emphasise again that both the legal ‘stick’ and the ‘carrot’ of best practice are essential to building a culture of respect for human rights. For our present purpose, the territory that straddles the courtroom and everyday practice is one rich with insights about the drivers of good human rights practice, and in Chapter 2 we examine some case studies by way of practical example.

1.4 Note on terminology
The terms ‘human rights culture’ and ‘human rights-based approach’ are commonly used but rarely defined, raising the possibility that people might use the same term to mean different things. Evidence also suggests the potential for explicit human rights terminology to produce a negative reaction, especially where people are not confident that they understand what it means. For both these reasons then, it is preferable to be precise in our use of terms.

It may help to frame our discussion using two authoritative and multi-layered definitions of the most commonly used terms.

The JCHR defines a ‘culture of human rights’ within public authorities (or, as the Committee prefers it, ‘a culture of respect for human rights’) as having two dimensions – institutional and ethical:

... the former requires that human rights should shape the goals, structures and practices of our public authorities ... Achieving that requires public authorities to understand their obligations both to avoid violating the rights of those in their care, or whom they serve, and to have regard to their wider and more positive duty to “secure to everyone ... the rights and freedoms” which the Human Rights Act ... and the other [international human rights] instruments define ...  

________________________

62 Interview with Dr Andrew McLellan, HM Chief Inspector of Prisons for Scotland, March 4, 2008.

So far as the ethical dimension is concerned, individual men and women should understand that they enjoy certain rights as a matter of right, as an affirmation of their individual dignity and worth, and not as a contingent gift of the state. But this understanding should go with a sense of personal responsibility and of social obligation ... A culture of human rights is not one which is concerned only with rights... but rather one that balances rights and responsibilities...

The British Institute of Human Rights (BIHR) defines a ‘human rights-based approach’ as being founded on two basic premises:

First, as human beings we all hold a range of political, civil, economic, social and cultural human rights. These human rights represent the bottom line of what, in different ways, it means for us to be human, from basic living standards and the ability to form relationships and families, to a right to be free from discrimination and degrading treatment. Second, the state, including public authorities, has corresponding duties to respect, protect or fulfil these rights in order for us to flourish and participate as full members of society ... In essence a [human rights-based approach] is the process by which human rights principles and standards are made meaningful in people’s lives.

We note that the JCHR definition of a culture of respect for human rights places a greater emphasis on personal responsibility and the need to balance individual rights and the wider public interest. This might be because a ‘human rights-based approach’, as defined by the BIHR, is more concerned with duties of public authorities and therefore dwells less on the wider social obligations that individuals have to each other. This in turn might lie with the origins of the term ‘human rights-based approach’ in the international development sector, which typically draws a clear distinction between rights-holders and duty-bearers and works towards

64 Ibid, p.8.


strengthening the capacities of rights-holders to claim their entitlements and of duty-bearers to meet their obligations.\textsuperscript{67}

In any event, we did not detect in our discussions any tension around the twin notions of rights and responsibility. Rather, we found a general acceptance that a culture of respect for human rights necessarily entails a sense of mutual respect and obligation between citizens. Indeed, the potential to use the human rights framework as a fair and transparent means of balancing competing rights in society is an attribute of the framework that has arguably been neglected in the literature, and that could, if better understood, help to counter negative perceptions of human rights as selfish or individualistic.

What both definitions cited above share (in keeping with general usage in the literature) is a sense of human rights as universal and inalienable and as deriving from the full panoply of domestic and international human rights instruments. Both also share an emphasis on the positive obligations of the state not just to refrain from abusing human rights but also to take pro-active steps to ensure that individuals’ rights are protected, no matter who or what is causing the harm. Contained within this, is the implicit expectation that a human rights framework can be used to assess, balance, and in some cases restrict, competing rights.

We concur with this emphasis and in Chapter 2 we make the case for seeing a human rights approach not as an end point but, in the words of one of our interviewees, as a ‘magnet’ pulling public services in a certain direction. This also involves seeing a human rights framework as part of an organisation’s ‘internal challenge’ function to prompt constant improvements in practice.

We use the term ‘organisational human rights approach’ to capture this sense of human rights as:

\begin{itemize}
\item A \textit{reflex action} that drives both the organisation as a whole and the individuals working within it to aspire to support the dignity, respect, equality and autonomy of service users and to make balanced and proportionate interventions when balancing competing rights, and
\item A range of organisational responses which are not prescribed but which commonly involve \textbf{systematic engagement with service users} and
\item \textbf{systematic implementation} of human rights in the organisation’s policies and decision-making processes.
\end{itemize}

The term ‘service users’ is used throughout this report in preference to ‘customers’, ‘clients’ or ‘patients’. The term service user moves away from the idea of people who use public services as being passive recipients without an active stake in the service being provided. It should also be noted that we use the term service user throughout to include carers, even where this is not explicitly stated.

We do not regard the matter of definition to be static. What we have termed an ‘organisational approach to human rights’ is an emergent model, practised to any significant degree by only a handful of public authorities in Britain. There is considerable potential to develop our shared understanding of what it means to implement human rights in public services, not least in relation to the outcomes for service users, staff and public authorities. This understanding could, in turn, provide practical guidance and support to the many thousands of public servants who strive to improve their practice in a way which goes with the grain of human rights, even if they do not currently describe it as such.

1.5 Note on methodology
The scoping project has consisted of two phases and the results of both are integrated in this report.

• The first phase consisted of a comprehensive analytical review of the available literature from the past decade relating to the implementation of the HRA, with an emphasis on public authorities and public service delivery. Evidence has been drawn from: Government departments, parliamentary reports and inquiries, public authorities, civil society organisations, as well as other commentaries, academic material and ‘grey’ (unpublished) documentation.

• The second phase consisted of:
  − 30 semi-structured interviews with people identified as making a key contribution in the field as well as senior figures who can effect change in their organisations, and
  − Four Roundtables, held in London, Cardiff and Glasgow in February and March 2008 in which around 40 people in total debated a set of interim findings from the literature review. The purpose of these events was to test our findings and to ‘get under the skin’ of the literature. The Roundtables were held under the Chatham House Rule and so contributions have been kept anonymous except where permission for attribution has been obtained.
For simplicity, we refer to both sets of participants throughout as ‘interviewees’. We would like to express our gratitude to all those who participated and who gave so generously of their time and insights (see Annex 2).

1.6 Guide to the report

Chapter 2 examines the extent to which human rights principles and the HRA have been embedded in public authorities in Britain. Our key finding is that overall, organisational approaches to human rights have failed to take root in the way that was anticipated a decade ago when the HRA was enacted. The chapter provides separate sections on Scotland and Wales which describe the different context in these two nations, while concluding that our key finding is applicable to all three nations.

The chapter further analyses the emerging body of generic thinking about what an organisational approach to human rights should look like and makes a case for promoting human rights as a ‘reflex action’ and a matter of aspiration rather than negative compliance. The chapter also offers case studies of public authorities which have begun to embed human rights and draws some conclusions from them.

Chapter 3 examines the literature which seeks to identify or measure the benefits that accrue to service users, staff and to public authorities when public services adopt an organisational approach to human rights. It argues that the evidence does not yet exist to support expansive claims for benefits accruing at a public service-wide level. Rather, the evidence we have found presents a rich but still fragmentary array of beneficial impacts – most of them anecdotal, a few more systematically analysed. The chapter also notes that in much of the literature success appears to be measured more in terms of the process, rather than outcomes as such. It argues that there is a pressing need to identify, analyse and share the good practice that a human rights-based approach engenders – and this will, in turn, necessitate the development of new methodologies appropriate to this task.

As an initial contribution to this endeavour, the chapter draws together evidence from the literature and our interviews which demonstrate the beneficial impacts under three sections:

- The benefits of engaging service users to improve services
- The benefits of organisational renewal, and
- The ‘business case’ for human rights.
Chapter 4 examines the barriers to embedding human rights within public authorities. It argues that human rights proponents need to ‘work with the grain’ of existing organisational cultures, some of which may be more propitious to human rights approaches than others.

The chapter examines the factors that produce organisational inertia with regard to human rights including a problem aired by many of our interviewees – that of ‘initiative overload’. It also examines the evidence that human rights approaches find it hard to make headway in the face of competing policy and resource pressures emanating from different government departments. It highlights the commissioning of services and professional training and codes of conduct as areas in which human rights approaches have the potential to gain ground. The chapter looks, too, at the need for service users to be made more aware of the range of remedies available to them and at the importance of independent advocacy and qualified legal advice as a prerequisite for service users to be able to exercise their rights.

Chapter 5 examines the organisations in England, Scotland and Wales that monitor, audit, regulate and inspect public authorities and which handle complaints against them. It includes a review of selected bodies which, the evidence suggests, have the widest scope to influence outcomes for the most service users through an inspection regime which drives up standards or which offers the primary avenue for redress for those people whose treatment and conditions they inspect.

The chapter examines the extent to which each of these bodies has integrated human rights principles or standards into its work. It also examines how far each has involved service users systematically in its work. The chapter outlines the changes which are taking place in regulatory regimes in England, Scotland and Wales and examines both the threats and opportunities that these changes present for the embedding of human rights approaches.

Chapter 6 draws on literature which analyses knowledge and awareness of, and attitudes towards, human rights and the HRA among:

- Public service staff (frontline staff and managers)
- Service users, and
- The wider public (including voluntary sector and community groups).

It also examines the sources of influence on people’s attitudes, with a particular emphasis on the role of media coverage (labelled by the JCHR as a ‘catalogue of mythology’) and on Government pronouncements about human rights, which the
JCHR has partly blamed for the prevalence of misconceptions or mistrust about human rights in the popular imagination.

Chapter 7 analyses what the literature and our interviewees say about gaps in existing or proposed legislation to protect and promote human rights and about the steps that should be taken to plug the gap, either through legislation or improved guidance to public authorities about its implementation. The chapter focuses on three areas:

- The ‘public function’ loophole that effectively excludes public services provided by the voluntary and private sector from responsibility under the Human Rights Act
- A review of the arguments for a statutory duty to promote human rights and the need for more systematic and timely guidance for public authorities on the meaning of positive obligations and the implications of case law
- Proposals for a human rights perspective to underpin the Single Equality Bill.

Chapter 8 draws together some common threads from the report and suggests priorities for future work on the protection and promotion of human rights in public services.
CHAPTER 2: EMBEDDING HUMAN RIGHTS IN BRITAIN

Introduction

This chapter examines the extent to which human rights principles and the Human Rights Act (HRA) have been embedded in public authorities in Britain. Our key finding is that, overall, organisational approaches to human rights have failed to take root in the way that was anticipated a decade ago when the HRA was enacted.

This has been overwhelmingly, the literature suggests, to a dearth of leadership at a UK Government level and the absence until 2007 of a human rights commission (section 1). With the exception of the Ministry of Justice, efforts by UK Government departments to embed human rights have been, at best, piecemeal.

The chapter argues that Scotland (section 2) and Wales (section 3) offer fertile ground for human rights. In particular, the new Scottish Commission for Human Rights and ‘citizen-centred’ public service reform in Wales offer great potential for human rights approaches to flourish. However, aside from some pockets of best practice, this potential has not yet been realised. For example, the most recent surveys of local authorities in England, Scotland and Wales show that more than half could not demonstrate that they had taken steps to comply with the HRA.

The second part of this chapter (sections 4 to 6) analyses the emerging body of generic thinking about what an organisational approach to human rights should look like (section 4.1). We make a case for promoting human rights as a ‘reflex action’ (section 4.2) and a matter of aspiration rather than negative compliance (section 4.3).

In section 5, we provide five case studies of public authorities which have begun to embed human rights – still very much the exception than the norm. In section 6 we draw some conclusions from these examples about what it means in practice to embed human rights and what the ‘drivers’ are that lead public authorities to decide to integrate human rights into their work.
2.1 The Human Rights Act: a ‘millennium blip’?  

The enactment of the HRA 1998, as Luke Clements and Rachel Morris observe, underpinned a rare period of substantial constitutional adjustment in the UK from the late 1990s.

Government statements in 1998 on the Human Rights Bill, introduced the idea that the new law would bring a ‘human rights culture’ to the UK:

Remedies will be nearer home, and I believe that people will seek them ... The result will be the beginning of the strong development of a human rights culture in this country.

Subsequent statements downplayed the litigious aspect of the HRA, amid warnings that many public authorities were unprepared for a possible plethora of litigation once the Act came into force. As Frances Butler notes, Government pronouncements became more ‘ambiguous and ambitious’, vaunting the new law as a vehicle for both public service modernisation and a broader cultural and moral renewal.

The then Home Secretary Jack Straw captured both elements of this alternative rationale in a speech in 1999:

The Human Rights Act ... confirms an ethical bottom line for public authorities. It provides a fairness guarantee, if you like, for the citizen ... There’s a new system of ethical values here. It’s a system of values which everyone can sign up to. Unifying, inclusive and based on common humanity.

However, the HRA – a technical vehicle for incorporating the European Convention on Human Rights into domestic law - contained no mechanism to achieve this

_____________________


promised cultural renaissance. The Government early on shelved the idea of establishing a human rights commission; as one statement put it, ‘there needs to be greater consensus before we move on that’.73 Frances Butler observes that the absence of any culture-building provision on the face of the HRA meant that the Government’s stated intention - that the Act should encourage a cultural change and decrease the tendency towards litigation - ‘could hardly have been realised’.74

The twin consequences – which are still being felt today – were a corrosive tendency among public authorities and citizens at large to see the HRA in narrow legalistic terms and a failure for the broader rationale of the Act to take root among government departments and public authorities.

There was, to be sure, a flurry of activity at the centre: an extensive training programme for judges; substantial policy reviews within central government departments; the establishment of a specialised unit within the Home Office (subsequently, the Lord Chancellor’s Department, which in 2003 was subsumed into the newly-created Department for Constitutional Affairs, or DCA (now the Ministry of Justice)) to oversee implementation of the Act and disseminate information and guidance to public authorities, and, crucially, the establishment of a Joint Parliamentary Committee on Human Rights (JCHR).75

However, the role of promoting the Act and disseminating guidance and best practice effectively stayed within the DCA and did not extend to other government departments. As Sarah Spencer notes:

Whitehall proved to have neither the capacity, resources nor the political backing to drive through the change in culture that Jack Straw had envisaged.76

74 Building a Human Rights Culture, p.68.
She quotes the then Lord Chancellor, Lord Irvine, as telling the JCHR in 2002:

Really, there is a limit to what the centre can do to encourage such a [human rights] culture.\textsuperscript{77}

A survey of UK local authorities by Clements and Morris found that:

Now that the Act is in force, a significant proportion of the respondents regard it as being a non-event ... The post October 2000 sense of ‘let down’ or ‘let off’ – likened by a number of respondents to the millennium blip – has tended to obscure the important cultural content of the legislation ... The Act is at risk of being viewed as yesterday’s event (a ‘damp squib’).\textsuperscript{78}

What follows is a summary of some of the key findings of this and other surveys undertaken to assess the level of implementation of the HRA by local authorities and other public authorities from the date that the HRA came into force across the UK in October 2000.\textsuperscript{79} Taken as a whole, these studies paint a picture of patchy or non-existent implementation among public authorities.

• Clements and Morris (who surveyed 142 out of 466 UK local authorities between October 2001 and March 2002) found that more than half of local authorities had done either no training with staff or, at best, a negative ‘Strasbourg proofing’ training exercise.\textsuperscript{80}

• In May 2002, District Audit (now the Audit Commission) found that 56 per cent of local authorities and other public authorities it had surveyed had no clear corporate approach to human rights (for example, had not reviewed their policies and procedures or taken action to raise staff awareness). District Audit attributed this to ‘resource pressures, large-scale change agendas and competing priorities’.\textsuperscript{81}

• In January 2003, a report prepared for the JCHR found that: ‘The system of mainstreaming human rights has ceased to function for health and local government ... this means there is no meaningful communication between the centre and public authorities on human rights matters ... Virtually no examples of public authorities adopting a human rights culture or culture of

\textsuperscript{77} Ibid, p.35.


\textsuperscript{79} The devolved institutions in Wales and Scotland were effectively bound by the Act from July 1999.

\textsuperscript{80} Ibid, p.216.

respect for human rights in their work (other than in terms of legal compliance) have been identified. The report added that: ‘The political will to implement the HRA and human rights culture in every aspect of public life needs to be rekindled … Public authorities cannot embrace a human rights culture that they do not know about.’

• In October 2003, the Audit Commission found that 58 per cent of public authorities surveyed had not adopted a human rights strategy. In health, 73 per cent of trusts were not taking action. Lack of arrangements for ensuring that contractors and partners were taking reasonable steps to comply with the Act was also a concern: 61 per cent of public authorities had failed to act. Of 175 bodies surveyed, a single council had made general information about the Act available to the public.

Since the Audit Commission’s 2003 report, there have been, as far as we are aware, no UK-wide surveys of measures taken by local authorities or other public authorities to implement the HRA (see below for surveys of public authorities undertaken in Scotland and Wales). Thus it has not been possible to do a ‘like for like’ comparison of these findings using more recent data.

However, there is abundant evidence to show that the culture of human rights which the UK Government aspired to inculcate among its own departments and among public authorities by means of the HRA has not materialised.

The Local Government Association (LGA) provides a revealing vignette of the failure of human rights to ‘bite’ at the level of local authorities. Prior to the HRA coming into force in 2000, the LGA strongly promoted awareness of the Act, stating on its website that:

Authorities should now be preparing for implementation, and building the cultural and legal requirements of the Act into their policies and decisions.

83 Ibid, section 2.2.
85 Ibid, p.10.
However, when asked by this project whether he had seen any evidence that would convince him of the benefits of taking a human rights-based approach, the LGA’s current chief executive Paul Coen, said:

I’ve not looked for it, I certainly haven’t seen it ... I honestly cannot think of any time that people have raised with me, either in a council setting or [at the LGA] the importance ... or value of this legislation.  

The JCHR has repeatedly identified a failure of leadership in Whitehall as the principal obstacle to the development of a human rights culture in public services in the UK. The Committee’s pronouncements over the last five years deliver a consistent message:

- **October 2003:** ‘The development of a culture of respect for human rights is in danger of stalling, and there is an urgent need for the momentum to be revived and the project driven forward. Since the Government is committed to developing a culture of respect for human rights it also has a duty of leadership’.  

- **November 2006:** ‘The building of a human rights culture over time would depend not just on courts awarding remedies for violations of individuals’ rights, but on decision-makers in all public services internalising the requirements of human rights law ... and ensuring that the delivery of public services in all fields is fully informed by human rights considerations ... We emphasise the importance of consistent positive leadership by Ministers towards this objective.’  

- **February 2008:** ‘In our judgment, the Government has done nowhere near enough over the past decade to use the HRA as a tool to improve the delivery of public services. This failure has contributed to the poor public image of the Act and “human rights” in general.’

---

87 Interview with Paul Coen, Chief Executive, Local Government Association, February 27, 2008.


In July 2006, the DCA published a *Review of the Implementation of the Human Rights Act.*\(^9^1\) The Prime Minister had commissioned the review to 'look specifically at problems with the implementation of the Human Rights Act'.\(^9^2\)

Among the conclusions most relevant for this report was that:

> The Human Rights Act leads to better policy outcomes, by ensuring that the needs of all members of the UK’s increasingly diverse population are appropriately considered. It promotes greater personalisation and therefore better public services.\(^9^3\)

However, the DCA also found that:

> The Human Rights Act has been widely misunderstood by the public, and has sometimes been misapplied in a number of settings.\(^9^4\)

In response to the review, the Ministry of Justice (the Ministry, as the DCA had become by May 2007) led a ‘Human Rights Programme’ to implement its recommendations.\(^9^5\) The key aims of the programme were:

- To ensure correct understanding and application of the HRA by officials especially in wider public sector organisations; and
- To improve public confidence in HRA for the media and the wider public.

As part of the programme:

- The Ministry published and distributed almost 110,000 copies of new generic guidance on human rights to Government departments, their sponsored bodies and other public sector organisations

---


\(^9^2\) The DCA’s review was commissioned in the immediate aftermath of the Inquiry Report (by HM Chief Inspector of Probation) into the case of Anthony Rice, an offender released on license, which had suggested that human rights arguments, and the Human Rights Act, had been contributory factors in the events leading to the murder of Naomi Bryant. The JCHR subsequently refuted the arguments which the DCA review presented to support its interpretation that the HRA had been misapplied by officials in the Anthony Rice case. See The Human Rights Act: The DCA and Home Office Reviews, pp.12-16.


\(^9^4\) Ibid.

• Ministry of Justice ministers approved a **litigation strategy** to ensure a ‘pro-active, strategic and co-ordinated’ approach to human rights litigation

• Departments produced action plans for **training, guidance and legal advice** on human rights for departmental staff and sponsored bodies

• A **Scrutiny Panel** was set up to routinely monitor the way that human rights are applied across the criminal justice system

• A Press Officers’ Network was established to liaise regularly and to identify incorrect human rights stories in the media for **rapid rebuttal**

• Ministry of Justice ministers delivered a ‘**campaign**’ to raise the profile of the HRA via a mixture of speeches, interviews and articles and by meeting key stakeholders, and

• The Ministry is working with the British Institute of Human Rights (BIHR) to develop an **educational resource** for use at Key Stage 3 of the citizenship curriculum.  

In addition to these areas of activity, the Ministry notes that some departments have: identified departmental lawyers to form a Lawyers’ Human Rights network led by the Ministry; created intranet pages on human rights and included a human rights impact assessment into equality impact assessment procedures.

The Ministry has also developed a **Good Practices Guide** which offers both guidance on generic good practice and some examples from specific departments.  

The examples offered are:

• The Department of Health’s **Human Rights in Healthcare** project with BIHR involving five pilot Trusts 

• The Department of Work and Pensions’ human rights awareness quiz

• E-learning packages in use by the Home Office and the Crown Prosecution Service

---

96 This summary is based on the *Report on Action Plans*, pp.5-6 and Ministry of Justice (2008), *Distribution Update*, unpublished document provided to this project by the Ministry of Justice, p.1.


• A programme to ensure that staff in the Policy and Research Division of the Department for International Development (DFID) are aware of DFID’s obligations under the HRA and a training programme for new staff, and

• Her Majesty’s Revenue and Customs human rights compliance template for legislative change. 99

The Human Rights Programme has now formally concluded, and nominated ministers have been tasked with providing leadership within each of the 19 principally concerned departments to improve the implementation and effectiveness of the HRA within their department and the sector for which it is responsible. At the time of writing, it is unclear to what extent this includes departments beyond the Ministry of Justice giving public backing to the HRA and showcasing the benefits for work within their policy and delivery areas.

The Human Rights Division of the Ministry of Justice will continue to work with human rights champions across departments and intends to do more work with inspectorates and regulators. It has persistently championed the HRA and deserves much credit for this; however, it might be argued that one unit in one government department can hardly overcome what the JCHR reports identify as a broader sense of apathy and in some cases hostility from elsewhere in the Government machine.

Interestingly, and in contrast to the JCHR’s consistent interpretation quoted above, the DCA’s 2006 review did not explicitly identify inadequate leadership from the centre as a problem. Indeed, it stated that:

As this review has shown many of the difficulties do not lie within Government but in the wider public sector. 100

However, the JCHR evidently perceives no such differentiation of responsibility. Among the dominant themes relating to public services and public perceptions of the HRA that the Committee has pursued in recent reports are:

• A perceived lack of urgency in the Government’s response to the problem of the ‘public function’ loophole which, as a result of emerging case law, excludes public services provided by the voluntary and private sector from responsibility under the HRA (see Chapter 7) 101

• A failure by Government to **promote the HRA**, to dispel myths and to explain to public authorities and UK citizens the benefits it could bring to public services (see Chapter 6)\(^\text{102}\)

• A ‘piecemeal’ approach by the **Department of Health** to promoting human rights. The JCHR notes that '[n]one of the evidence that the Department of Health has provided to us ... gives us confidence that the Human Rights Act is in fact “an integral part of policy-making” within the Department.'\(^\text{103}\)

The JCHR noted that, in submissions to its inquiry on the human rights of older people in healthcare, calls for political leadership came both from the Non-governmental organisation (NGO) sector and from practitioners. For example, a representative from the Royal College of Nursing said:

> I think there needs to be a real push in terms of leadership. We need strong political leadership [and] we need very strong policy leadership.\(^\text{104}\)

In this context we should note the recent (March 27 2008) announcement by Ivan Lewis MP, Parliamentary Under Secretary of State for the Department of Health, of £2m of funding for a new three year research initiative between Comic Relief and the Department of Health to investigate the dignity and safety of older people being cared for in institutional settings.\(^\text{105}\) Mr Lewis said:

> ... we are launching the most exhaustive study ever to better understand the risk of abuse in care homes and the infringement of older people's dignity on NHS wards. This ... study will help to inform our national campaign to put respect for dignity at the heart of all care services for older people.\(^\text{106}\)

This initiative is to be welcomed as a means of providing robust data on the prevalence of abuse and neglect, and the experience of loss of dignity in institutional

\[\text{---------------------------------
}\]

  Government confirmed that it is considering ways to amend the Health and Social Care Bill to close the loophole for people placed in care homes by their local authority and to give people paying for their own care the right to appeal to an independent adjudicator.


104 Ibid, p.35.


106 The Department of Health’s Dignity in Care campaign was launched in November 2006; see http://www.dh.gov.uk/en/SocialCare/Socialcarereform/Dignityincare/index.htm
settings. It is to be hoped that human rights perspectives will inform the research and any recommendations which arise from it.

The announcement by Ivan Lewis is a reminder that, against a generally discouraging backdrop, significant positive developments have taken place. More broadly, these positive developments may be summarised as follows:

• A body of analytical and strategic thinking has been developed about what an organisational approach to human rights entails and what benefits it can bring to those who use and work in public services.

• Some public authorities have adopted an organisational approach to human rights, including approaches which systematically involve service users; these offer an emergent model which other bodies might replicate.

• A responsive climate has emerged for the promotion of human rights in Scotland and Wales, including the establishment of a Scottish Commission for Human Rights, which contains the potential to drive good practice.

It is to the Scottish and Welsh context that we turn next, before considering in the remainder of the chapter the literature relating to both the theory and practice of an organisational human rights approach.

2.2 The context in Scotland

The Scottish Government has been bound by the HRA since it was officially convened in July 1999, so it had something of a ‘head start’ on those parts of the UK where the Act was delayed in coming into force until October 2000. In addition, the HRA has more ‘bite’ in Scotland since under the Scotland Act 1998, the Scottish Government and Parliament have no power to do anything contrary to the European Convention on Human Rights (ECHR).

107 Existing data from O’Keeffe et al. (2007) The UK Study of the Abuse and Neglect of Older People showed that some 2.6 per cent of those responding had experienced mistreatment involving a family member, close friend or care worker during the previous year, equating to about 227,000 people aged 66 and over in the UK. The figure rose to 4 per cent (approximately 342,400 people) when the context of mistreatment was broadened to include incidents involving neighbours and acquaintances.

108 July 1 1999 marked the transfer of powers in devolved matters to what was then known as the Scottish Executive; these powers were previously exercised by the Secretary of State for Scotland and other UK Ministers.

109 Under the Scotland Act 1998, the Scottish Parliament and Scottish Executive have a duty to comply with the principles and individual rights laid down in the European
Overall, our interviewees agreed that Scotland offers fertile ground in which human rights approaches could take root, but that this potential has not yet been realised. They observed that being smaller, Scotland is well placed to integrate public service delivery, which in turn might offer easier entry points to embed human rights approaches and greater scope for sharing good practice. Our interviewees also noted that Scottish ministers are ‘far more accessible’ to non-government actors than their Westminster counterparts, and more inclined to work in partnership with civil society groups. Scotland’s rich and distinctive legal tradition was also said to be a contributing factor to this propitious environment.

The public discourse about human rights was said by one of our interviewees to have reached a ‘high tide’ around the time of devolution. However, it had been negatively affected by the attacks in the United States on September 11 2001.

Our interviewees agreed that the new Scottish Commission for Human Rights (SCHR, which officially started work in March 2008) would provide an important catalyst for a rejuvenation of human rights work. The Justice 1 Committee of the Scottish Parliament, in its Stage 1 report on the Scottish Commissioner for Human Rights Bill published in February 2006, noted that the majority of submissions it had received were ‘strongly in favour’ of such a commission. A MORI Scotland public opinion survey commissioned by the Committee found that 62 per cent of people agreed that Scotland ‘would benefit from a Government funded body to inform the public about human rights and which could investigate Scottish public authorities on devolved matters’ (though it was not possible to say whether support was driven by the informing role or the investigative one).

Convention on Human Rights. These rules were implemented in July 1999 for the Parliament and May 1999 for the Executive. Where a Scottish court or tribunal finds that legislation is incompatible with Convention rights, it is able to make an order removing or limiting any retrospective effect of that decision, or suspending the effect of the decision to enable the Scottish Parliament to remedy the defect.

110 Glasgow Roundtable, March 5, 2008.
113 Ibid, para 77.
However, the Justice 1 Committee was not initially convinced of the case for a Commission. It said there was no need for Scotland to be ‘defensive’ about its human rights record:

The evidence is that public authorities, in the main, successfully operate in a way which is compliant with Convention rights. This should be no surprise given that in doing so public authorities are merely acting in accordance with the law. It is simply what people would expect to be the case.\textsuperscript{114}

The Committee questioned what ‘added value’ the proposed Commission would bring:

In a country where breaches of human rights are extremely rare and in a country with open, independent and robust legislative and judicial systems, do we need to create a public authority charged with promoting best practice in human rights?\textsuperscript{115}

However, the literature and our interviewees caution against exaggerating the extent to which human rights have, in practice, been embedded in Scottish public authorities.

In May 2006, Amnesty International in Scotland conducted a review of 56 local authorities and other public authorities, including all police services in Scotland, asking for documentation about steps taken to comply with Section 6 of the HRA. The survey concluded that the overall impact of the HRA in Scotland had been ‘disappointing’.\textsuperscript{116} About a third of respondents confused their obligations under the HRA with their obligations under the Equal Opportunities Act. A further 34.5 per cent declared that they had no policy or other evidence of compliance with the HRA. Thus, some two-thirds of public authorities surveyed either did not understand the meaning of the Act or could not provide evidence of steps taken to ensure compliance.

Amnesty add that the closure of the Scottish Human Rights Centre in 2005 due to lack of funding, and the loss of its charitable wing as Human Rights Scotland in 2007, left Scotland without a domestic human rights campaign and watchdog and meant

\textsuperscript{114} Ibid, para 83.
\textsuperscript{115} Ibid, para 188.
that, while Scotland has many institutions offering equalities training, ‘human rights training is a rarity’.  

The Amnesty survey suggests that little identifiable progress has been made in terms of embedding human rights in public authorities since an earlier survey commissioned by the Scottish Executive in 2001. That survey covered 17 public authorities, predominantly local authorities, and assessed what steps they were taking to identify discrete areas of responsibility under the HRA and to raise awareness of human rights, and what guidance they had and were likely to need in future.

The survey found that four of the 17 bodies appeared to have covered the majority of compliance activities. The rest had made little or no progress either because they considered action unnecessary, or were hampered by a lack of ‘drive’ or resources or by a dearth of guidance.

Most of our interviewees agreed that our UK-wide finding that ‘a human rights culture has largely failed to take root among public authorities’ was applicable to Scotland, whatever the potential for improvement. One exception was the Chief Inspector of Prisons for Scotland, Dr Andrew McLellan, who considered the finding ‘too negative’ in tone in so far as it applied to Scotland. He noted a ‘transformation’ in the approach of the Scottish prison service to human rights, which he attributed mainly to successful legal challenges over the practice of slopping out which resulted in substantial compensation payments (see also Chapter 5).

Professor Alan Miller, now Chair of the SCHR, notes there are examples of exceptional practice in Scotland, notably the high security State Hospital in Carstairs which he has praised for its ‘international class best practice’ in embedding a human rights approach. The State Hospital is considered in more detail in section 5 below.

Overall then, our findings bear out the observation made by Professor Miller in a speech in 2005 that:

... if we were telling a story on governance and human rights in the public sector [in Scotland] we could only at this stage be writing an introduction where a tale could begin to be told about best practice being adopted in some pockets around the country and within certain sectors but no coherent development of a human rights culture.\textsuperscript{121}

2.3 The context in Wales

The Government of Wales Acts of 1998 and 2006 explicitly refer to the fact that the National Assembly for Wales and the Welsh Assembly Government must comply with the HRA. This includes service provision and policy, and also covers any legislation whether subordinate or primary.\textsuperscript{122} All public authorities in Wales, including Assembly Sponsored Public authorities (that is, non-departmental public authorities or ‘quangos’ directly funded by the Welsh Assembly Government) should also comply with the HRA.\textsuperscript{123}

Human rights is embedded through the ‘policy gateway’ which guides Government departments through the policy making process. Departments must demonstrate that a new or revised policy complies with statutory equality duties and, ‘overarching’ the various equality strands, with human rights requirements.\textsuperscript{124}

Our interviewees noted that Wales has a generally more ‘benign’ and ‘collaborative’ context for human rights than in England. Participants at the Cardiff Roundtable noted, for example, that there were no strident voices calling for the repeal of the HRA in Wales and that there was a high level of partnership and co-operation between the Welsh Assembly Government and other organisations in the public, private and voluntary sectors.\textsuperscript{125}

They emphasised that the ‘Making the Connections’ programme for public service reform in Wales, though not explicitly framed in human rights language, has a natural synergy with human rights approaches.

\textsuperscript{121} Ibib., p.6.
\textsuperscript{122} http://new.wales.gov.uk/about/constitutional/govwalesact2006/brieflegcomp?lang=en
\textsuperscript{125} Cardiff Roundtable, February 28, 2008.
The four principles of Making the Connections are:

1. **Citizens at the Centre**: services more responsive to users with people and communities involved in designing the way services are delivered

2. **Public Engagement**: every person to have the opportunity to contribute and connect with the hardest to reach

3. **Working together as the Welsh Public Service**: more co-ordination between providers to deliver sustainable, quality and responsive services

4. **Value for Money**: making the most of our resources.  

Interviewees noted that the citizen-based focus of public policy in Wales has a different tenor to the debate about citizenship in England which has emphasised issues of multi-culturalism and social cohesion. The citizen focus in Wales was also, our interviewees observed, distinct from what was perceived as a more ‘market oriented’, choice-based approach in England.

Rob Pickford, Chief Executive of the Care and Social Services Inspectorate Wales, noted that the emphasis of public policy reform was to forge a ‘citizen’s pathway’ through services, focusing on individual service users’ experiences of navigating the public sector:

The policy in Wales is “voice not choice” – that does take you to much more of a rights based model, but rights based on values not on a “supermarket” right of choice model.  

Interviewees also noted that the greater co-ordination promised under ‘Making the Connections’ aims to ‘break down silos’ between public authorities, which might make it easier for human rights approaches to become embedded. However, others noted that the fragmentation of local government in Wales, which has 22 local authorities, made it inherently more difficult to deliver a co-ordinated approach.

The Older People’s Commissioner for Wales – the first such commissioner in Britain - has a rights-based mandate (drawn from the UN Principles for Older Persons) set out in primary legislation  

126 See http://new.wales.gov.uk/about/strategy/makingtheconnections/?lang=en

127 Interview with Rob Pickford, Chief Executive, Care and Social Services Inspectorate Wales, February 28, 2008.

opportunity to evaluate the difference the human rights foundation might make to the effectiveness of the Commissioner’s role over time.\textsuperscript{129}

Wales was also the first nation in the UK to appoint a Children’s Commissioner, whose mandate is based on the UN Convention of the Rights of the Child (UNCRC).\textsuperscript{130} Keith Towler, the current Children’s Commissioner for Wales, noted that the Welsh Assembly Government had created a ‘supportive context’ for the promotion of children’s rights. The Government in Wales has adopted the UNCRC as the underpinning principle for all policy development affecting children and is increasingly incorporating it into legislation and guidance.\textsuperscript{131}

However, Keith Towler sounded a note of realism:

\begin{quote}
The pillars of support are in place, but there is a massive task of raising awareness about children’s rights and the UNCRC – we’re at first base on that. If you ask public authorities the supplementary question, “what does that mean for you?”, they can’t answer, they’re struggling with that application.\textsuperscript{132}
\end{quote}

This disjuncture between a growing edifice of bodies, legislation and governance principles drawn from human rights and the ‘struggle’ to embed human rights approaches within organisations in Wales emerges strongly elsewhere.

A participant at the Cardiff Roundtable noted that:

\begin{quote}
The direction the Assembly says they’re going in ... all says the right sorts of things. It’s just that they’re words not deeds ... “Person-centred care” isn’t human rights.\textsuperscript{133}
\end{quote}

\textsuperscript{129} Cardiff Roundtable, February 28 2008; the possible disjuncture between process and outcome was, however, expressed by one participant who noted wryly that the Assembly had ‘put up charges for older people, reduced the services so [my clients] literally don’t get a bath anymore and then they appoint a commissioner!’

\textsuperscript{130} See http://www.childcom.org.uk/index.php?lang=en


\textsuperscript{132} Interview with Keith Towler, Children’s Commissioner for Wales, March 10, 2008.

\textsuperscript{133} Cardiff Roundtable, February 28, 2008.
It might also be noted that the Welsh coalition government’s strategic plan from 2007 does not expressly mention human rights alongside its commitment to ‘social justice, sustainability and inclusivity’, although these principles are clearly compatible with human rights principles.¹³⁴

One participant interviewed in Cardiff, who wished to remain anonymous, noted that:

I can’t think of any one organisation that would stand out as having grabbed human rights by the horns and tried to inculcate it in the culture of the organisation ... [there is] tinkering around the edges, but [human rights are] not in the business planning process or the decision-making process.

This observation is borne out by a survey by Amnesty International in Wales in 2007 to gauge how public authorities were complying with the HRA – for example, whether the organisation had discussed human rights at a senior level, where they had policies which referred specifically to the HRA and how they ensured that service provision complied with the HRA.¹³⁵

Of the 33 bodies that responded, only 16 had considered how they complied with the Act in relation to service delivery. However, the survey did identify some examples of best practice:

• North Wales Police – human rights template which is used to record how human rights are considered in the drafting of policies and procedures.

• Gwent Healthcare NHS Trust – HRA guidance checklist which applies to all areas of the Trust’s operations and looks in particular at Article 2 of the European Convention on Human Rights (prohibiting inhuman or degrading treatment).

• The Welsh Assembly Government – guidance for public authorities relating to: service and financial frameworks; key actions required of local health boards and Trusts; NHS responsibilities for meeting continuing NHS health care needs and the healthcare standards for Wales, and procedures used when dealing with violent patients after removal from practices.


¹³⁵ Compliance with the Human Rights Act in Wales, p.2.
Neil Wooding, Director of PSM Wales, noted that there were moves to ‘raise the intellectual temperature’ on human rights and to establish a dialogue between public authorities on how to embed human rights at an organisational level. One tangible outcome was the holding of the first ‘Human Rights Summit’ in March 2008, sponsored by the Welsh Assembly Government, the Equality and Human Rights Commission, the Welsh Local Government Association and the BIHR.136

The evidence we have found suggests that this emergent dialogue about human rights in Wales will also need to tackle a range of endemic problems which make it harder for people in Wales to secure their human rights. Several of our interviewees pointed to the dearth of specialist legal advice in Wales, with very few specialist immigration lawyers and even fewer with knowledge of the HRA. As one participant at the Cardiff Roundtable put it:

I think you can count on the fingers of one hand those lawyers in Wales who can actually deliver that service.

Research by Ruth Costigan and Philip Thomas in a deprived South Wales valley community, noted a particular disparity in the amount of specialist legal advice away from urban centres.137 Cutbacks in legal aid at a UK level were also said to have had a disproportionate impact on Wales, leaving ‘three quarters of the country without effective access to legal aid’.138

Eleri Thomas of Save the Children Wales captured the tenor of our discussions in Wales when she noted that overall there is a ‘real ambition to succeed’ with no shortage of ‘statements of intent from the top’ on human rights. However, the key was to embed human rights in existing organisational cultures, legislation and guidance to avoid ‘initiative overload’ – and to capture and learn from best practice in Wales, England and internationally.139

139 Interview with Eleri Thomas, Assistant Programme Director, Save the Children Wales, March 7 2008.
2.4 What is an organisational approach to human rights?

2.4.1 Generic models

The literature provides several models or sets of indicators which, taken together, form an emergent body of generic thinking about what a human rights-based approach could look like at an organisational level. They do not have any formal standing in terms of their adoption by, for example, the JCHR or the Ministry of Justice, nor do we necessarily believe that any one of these approaches is the correct way forward; instead we offer them here as an indication of the thinking so far in this area.

Ceri Goddard of BIHR notes that there are five core principles of a human rights-based approach which are applicable to, for example, national governments, local authorities, healthcare and education services, and voluntary and community organisations. These are:

5. The express application of the principles and standards of human rights in legislation, policy and practice ... An analysis of which human rights are relevant, who they belong to, and how they will be affected needs to be placed at the heart of policy and decision-making processes.

6. Accountability. Once goals for respecting, protecting and fulfilling rights are set, clear mechanisms need to be created that allow people to hold to account those with responsibility for ensuring these goals are met.

7. Empowerment of rights holders [in the present context, service users and carers] and duty bearers [public service staff] to ensure human rights are respected, protected and fulfilled ...

8. Participation. People have a right to participate in decisions that affect their own lives. Moreover change will be more effective if all relevant stakeholders are engaged – especially those it is meant to benefit.

9. Non-discrimination and prioritisation of marginalised or vulnerable groups. Some people and groups in society, at different times and in different circumstances, face discrimination in the enjoyment of their human rights. Targeted action is needed to address these inequities.

In an interview for this report, BIHR’s director, Katie Ghose, underlined that in BIHR’s view, it was not possible to pick and choose between these principles:

> Being empowering, participative, accountable and non-discriminatory are all worthwhile but they do not amount to a human rights-based approach unless they are explicitly employed in the realisation of human rights values and legal standards.\(^ {141} \)

We should note that this set of indicators has both an ethical and an institutional dimension. It includes both the underlying **principles** of a human rights-based approach (elsewhere identified as the FREDA principles of fairness, respect, equality, dignity and autonomy) and the type of **activity** - made visible in structure and process - that needs to happen to make the principles ‘meaningful’.

The activity will, in practice, take different forms in different institutional settings and Katie Ghose noted that, at present, there is no ‘common language’ or methodology used by public authorities for the implementation of human rights.\(^ {142} \) The work of BIHR and other organisations with public authorities in the three areas of education, poverty and health and social care had revealed a ‘real appetite’, but was at an early stage with specific projects yet to be evaluated for their organisational impact.

Some ‘flesh on the bones’ of the five principles might emerge from the *Human Rights in Healthcare – A Framework for Local Action*, the joint project of the Department of Health and the BIHR involving five pilot NHS Trusts, of which an evaluation is due to be published in Autumn 2008. The framework document sets out how each principle can be turned into ‘good practice actions and indicators’.\(^ {143} \)

Interestingly, while the framework document states that ‘[u]sing a [human rights-based approach] can improve health outcomes and deliver better quality “person centred” healthcare’, the intended beneficial outcomes for staff and service users are not specified. (The tendency to emphasise process over outcomes arises elsewhere in the literature and is considered in more depth in Chapter 3).

Human rights consultant Frances Butler offers a model which does incorporate some assessment of outcomes – that is, how people’s experience of the service might

---

141 Interview with Katie Ghose, Director, British Institute of Human Rights, March 4 2008.

142 Ibid.

change for the better as a result of changes to structure and process. She begins by defining an organisational approach to human rights in the following terms:

The whole organisation has an approach to the provision of public services which explicitly recognises that users of services have rights as well as needs and it makes sure that the services are provided in a way that respects users' human rights. The human rights approach therefore has two components: recognition of rights and respect for rights. The first depends on institutional thinking and the second on systemic implementation.\(^{144}\) [emphasis in original]

She then offers four indicators of a human rights approach ‘in action’ at an organisation or service level (but notes that the list is not exhaustive):

- Active participation of users in planning how services will be delivered
- Services that meet the needs of individuals with no ‘one size fits all’ policies
- Services that are sufficiently responsive and provided without excessive delay so that people are not left in circumstances which affront their dignity
- Quality in providing the service (both in terms of the attitude of staff and, particularly in health and social care, the way care is actually provided).\(^{145}\)

This model, then, embraces: institutional thinking, systemic implementation and an indication of the beneficial outcomes for service users.

The JCHR, in its recent report on the human rights of adults with learning disabilities, notes that taking a human rights-based approach:

... means more than using the appropriate language in policy documents or in statements to parliamentary committees. A proactive and practical approach to the implementation of individual rights for people with learning disabilities is needed to replace the existing culture, which has allowed society to “dehumanise” people with learning disabilities for centuries.\(^{146}\)


\(^{145}\) Ibid, p.4.

The JCHR’s observation reinforces two points that have emerged strongly in our interviews:

- Embedding human rights requires human rights to become a ‘reflex action’ – a state of mind – at every level of an organisation, as well as being expressed in more tangible changes to policy and process.
- In order to realise the transformative potential of human rights, public authorities need to see them as a matter of aspiration and not mere compliance.

We consider these ideas in the next two sections, before offering some practical examples of how organisations have sought to embed a human rights approach.

2.4.2 Human rights as a ‘reflex action’

At a ‘Human Rights Summit’ in March 2008 to discuss key challenges in putting human rights at the heart of Welsh public services, Phil Fennel, Professor of Law at Cardiff University Law School, argued that public authorities should:

Make human rights not a rule to follow but a reflex action – we need to get to the point where the first thing we think of with a client with a learning disability (for example) is how can we give the service to the person in a way which enhances their human dignity and respects their individuality.147

[emphasis added]

We have found in the literature and heard from our interviewees a range of different expressions and anecdotal experience which we consider captures the same idea, and we present a selection of them below, with emphasis added:

The strength of human rights is also its weakness – it requires staff to continually challenge themselves.148

... the creation of a culture of human rights is not something that is achieved once and then endures without further attention. It requires continued monitoring, assessment, adjustment and reinvigoration.149


148 Glasgow Roundtable, March 5 2008.
The task now is to weave the human rights dimension into the fabric of the policies, procedures and practices of the hospital. Encouragingly, the logic of human rights thinking is now evident in discussions ... in that the terms legality, legitimacy, and proportionality are in fairly common usage ... We want to develop that reasoning capacity ... to develop a culture, a way of thinking and acting, which [places] human rights at the centre.¹⁵⁰

We need to ... think about services that embody human rights and don’t see them as an extra to be sprinkled on top ... It’s about story-telling and giving real life examples and then always coming back and asking “what that does imply for what we do?”¹⁵¹

Dame Denise Platt, Chair of the Commission for Social Care Inspection, offered the example of two contrasting care settings she had visited.¹⁵² One, a residential care home for people with dementia, most of whom were older women, had both an ironing board corner and a well placed dressing table where the contents were deliberately arranged to spill out so that people could iron or fold clothes all day if they wanted. One resident pushed another round continually in a wheelchair, and the staff observed, but didn’t stop her. The home, she observed:

... accepted risk and took bizarre behaviour as an element of the person .. [residents were not] shadowy figures in the background where the professionals did their job.

Yet at another care home, Dame Denise was greeted by a member of staff listing how many beds were privately-funded, and how many came under social services or health, to which she felt the only appropriate response was: ‘Do the beds live here?’ One of her insights gleaned through many visits to different social care settings is that, ‘warmth and imagination are characteristics of a human rights-based service’.

Such practice, of course, is most visible on an intimate scale, in the many thousands of individual interactions between public service staff, users and carers that occur


¹⁵⁰ Robertson, A. Using Human Rights as a Vehicle for Cultural Change at the State Hospital, Green’s Scottish Human Rights Journal, Volume 19 (cited from transcript of article made available to the project; page reference from original journal unavailable).

¹⁵¹ Interview with Alice Brown, Scottish Public Services Ombudsman, February 25 2008.

¹⁵² Interview with Dame Denise Platt, Chair, Commission for Social Care Inspection, March 5 2008.
every day. The Social Care Institute for Excellence has recently (February 2008) issued a practice guide on *Dignity in Care* (commissioned by the Department of Health) which bases its guidance on numerous comparable examples of where health and social care practice has been changed to support the dignity of service users. The guide has an explicit focus on human rights and the HRA. It notes that human rights and health and social care practice share an ethical basis of concern with the autonomy, privacy and dignity of people using services.

However, the introduction of the Human Rights Act ... puts the focus on the person using services and so is different from a paternalistic culture where assumptions are made by professionals about what is best for the people in their care.154

The practice guide discourages a defensive, legalistic interpretation of human rights, arguing that:

... organisations and individuals that deliver care and treatment need to understand human rights principles, accept challenges to the traditional way of doing things and adapt their practices in response. It is not only organisational policies or paperwork which must respond to positive participation in service delivery; everyday practices such as providing support with personal hygiene, eating and the discussion of confidential information with other people may be challenged by people using services and their advocates and will require responses from frontline workers.155

**2.4.3 Human rights as aspiration**

Our interviews have suggested that one of the key obstacles to embedding human rights in public authorities is the tendency to see human rights as a matter of negative compliance rather than of aspiration. This in turn has revealed a widespread lack of understanding among public authorities about their ‘positive obligations’ – not merely to refrain from interfering with individuals’ human rights but also to take proactive steps to ensure that individuals’ rights are protected, regardless of who or what is causing the harm (see Chapter 7 for a separate discussion about the arguments for a statutory duty to promote human rights).

155 Ibid, p.171.
The JCHR has placed repeated emphasis in its recent reports on the positive obligations that are required of public authorities as a result of the application of human rights standards. These positive obligations are not expressly stated in the HRA (or indeed in the European Convention on Human Rights). Instead, the obligation is imposed through the common law as a result of court judgments interpreting the requirement of Article 1 to the European Convention on Human Rights (which obliges a state to secure human rights for everyone under its jurisdiction) taken together with the other substantive Convention rights.

Murray Hunt, Legal Advisor to the JCHR, argues that ‘lack of understanding of positive obligations is at the root of the problem’ of the failure to embed human rights within public authorities. He argues that:

... first and foremost, what [people – including central government] mainly think about human rights is negative, minimum compliance – not positive obligations, not “what should we be doing?” This is a massively important missing dimension in the thinking and the training... the whole notion that human rights law doesn’t just contain lines you can’t cross but aspirations you’ve got to strive to achieve isn’t embedded into anyone’s thinking in a systematic way ... they don’t think of it as a magnet pulling policy in a certain direction – and [there is] no understanding at all that all rights have a positive dimension.156 [emphasis as stated]

Underlining again what it sees as a failure of leadership in Whitehall, the JCHR recently noted that:

... we have been far from convinced that the Government as a whole has taken its positive obligations under the ECHR seriously. The Act is too often regarded as another legal obligation that demands “tick box” compliance, rather than an instrument for challenging existing practices and attitudes at the delivery frontline.157

156 Interview with Murray Hunt, Legal Advisor, Joint Committee on Human Rights, March 6 2008.
For the sake of clarity, it may be useful here to offer some examples of how positive obligations apply in practice:

- A social worker from the domestic violence team at a local authority used human rights arguments to secure new accommodation for a woman and her family at risk of serious harm from a violent ex-partner. She had received training on the ‘positive obligations’ placed on the local authority to protect the right to life (under Article 2) and the right to be free from inhuman and degrading treatment (under Article 3).\(^{158}\)

- In a case concerning two sisters with profound physical and learning disabilities, the High Court commented that Article 8 of the ECHR encompasses: ‘... the positive obligation of the State to take appropriate measures designed to ensure to the greatest extent feasible that a disabled person is not “so circumscribed and so isolated so to be deprived of the possibility of developing his personality”’.\(^{159}\) The Court found that Article 8 required protection of the sisters’ dignity, and that this would require positive steps on the part of the State to enable the sisters to be lifted manually.\(^{160}\)

- HM Chief Inspector of Prisons, Anne Owers, noted that positive obligations have become particularly important for the prison service in relation to the right to life (under Article 2).\(^{161}\) She emphasised the impact of landmark judgments establishing that juries in inquests into deaths in custody are allowed to point to failings in the prison system which they believe might have contributed to an inmate's suicide. She added that ‘prisons would not argue with the fact that they have a [positive obligation] to keep people alive’.\(^{162}\) Anne Owers further noted that HMI Prisons has argued strongly for the prison service to fulfil its positive obligation in relation to healthcare, for example that pro-active steps should be taken to ensure that medication regimes are adhered to and missed appointments followed up.

---

160 Ibid, p.117.
161 Interview with Anne Owers, HM Chief Inspector of Prisons, March 5 2008.
162 Anne Owers mentioned specifically the landmark cases of Middleton R (On the application of Middleton) v HM Coroner for the Western District of Somerset (2004) and R v. Her Majesty's Coroner for the County of West Yorkshire (Appellant) ex parte Sacker (FC) (Respondent) (2004); see also http://www.guardian.co.uk/uk/2004/mar/12/lords.humanrights
Elsewhere in the literature, there is abundant evidence that public authorities generally do not have a comprehensive understanding of what positive obligations entail and in what circumstances they may come into play. The BIHR suggests that positive obligations are ‘poorly understood even within the legal departments of public authorities’. 163

Our interviewees repeatedly emphasised that staff in their organisation or sector, or in public authorities generally, had an insufficient grasp of their positive obligations. Two illustrative responses were:

Positive obligations are absolutely key ... but so under-recognised and underplayed, partly because it would make public authorities feel they are under a burden ... to do more than they are doing already. 164

I would say it’s patchy – that’s true across the country ... It hasn’t really developed. 165

Paul Coen, Chief Executive of the LGA, added that that in his experience:

Councils are good at understanding legislation ... so it’s not so much about whether they understand as whether the HRA per se makes a practical difference. And in most settings it’s one of a number of actual or quasi legislative requirements that have to be complied with. 166

This lack of understanding of the positive obligations of public authorities, or lack of priority accorded to them, arguably sets a ceiling on how far public authorities will be able to progress with efforts to embed human rights, especially in the absence of strong political leadership.

It also suggests the potential value of viewing the human rights framework as an organisation’s ‘internal challenge function’, a function recommended by several of our interviewees. The suggestion is that the framework itself, promoted internally by

165 Interview with Jon Harris, Strategic Director, Convention of Scottish Local Authorities, February 25 2008.
166 Interview with Paul Coen, Chief Executive, Local Government Association, February 27 2008.
human rights ‘challengers’ at a senior level, can ensure that policy and practice are continuously tested against human rights criteria.

Taken as a whole, these findings suggest strong grounds for basing the promotion of a human rights approach in public authorities firmly within the context of positive obligations, suitably ‘translated’ into the language of aspiration and made applicable to frontline staff in everyday settings. That is, to borrow Murray Hunt’s words, to promote human rights not as an approach which draws lines that can’t be crossed, but as one which offers a set of principles and standards and a framework for decision making with transformative potential. The reflex question for public services, in this understanding of a human rights approach, is not ‘what can’t we do?’ but ‘what should we be doing?’ to support the dignity, respect, equality and autonomy of service users.

2.5 Case studies

In this section, we present a series of case studies of organisations that have started to embed a human rights approach. The list is not exhaustive but reflects some of the best practice that we have found in our literature search and in conversations with interviewees.

In these case studies we highlight:

- **Changes to structure and process** that resulted from the decision to embed human rights
- The presence of the **aspirational** elements identified in section 4.3
- Where we know it, the **trigger or driver** that prompted the decision to adopt an organisational approach to human rights.

2.5.1 The State Hospital, Carstairs, Scotland

The State Hospital in Carstairs is one of four high security hospitals in the UK and provides a national service for both Scotland and Northern Ireland. With around 700 staff, assessment, treatment and care is provided in conditions of special security for individuals with a mental disorder who, because of their dangerous, violent or criminal propensities, cannot be cared for in any other setting. The majority of patients have a primary diagnosis of schizophrenia. Patients spend on average years in the State Hospital, ranging from around four weeks to up to 40 years.¹⁶⁷

¹⁶⁷ http://www.tsh.scot.nhs.uk/about.htm
In the late 1990s, the hospital had a ‘wake up call’ in the form of a Mental Welfare Commission report into the care and treatment of a patient, Noel Ruddle, whom the hospital had failed to provide with the psychological therapies he required. The hospital acknowledged that, up to this point, little had existed in the way of care, therapy and rehabilitation and ‘the use of padded cells and seclusion were everyday events’.

External changes in the legal landscape, not least the implementation of the HRA through the Scotland Act 1998, fuelled the efforts of the State Hospital to conduct a fundamental examination of human rights issues at the hospital. It found that:

The Human Rights Act had untapped potential and could be a vehicle for significant cultural change ... We did not want to conduct a narrow defensive audit to identify areas of vulnerability in order to avoid litigation ... the [HRA] has been viewed positively, not as a threat, and the quality of the debate that has surrounded the work only serves to reinforce this.

Steps taken included:

- Forming a multi-disciplinary Human Rights Working Group including staff and patient advocates (May 2002)
- Securing externally funded expert advice
- Initial training with staff, Board, patients and carers to raise awareness and understanding and ongoing staff training from top to bottom of the hospital to weave human rights into day-to-day work, with additional training for Human Rights Champions and the circulation of accessible guidance on case law (e.g. on the implications of *Napier v Scottish Ministers* 2005 SC 229 OH – the ‘slopping out’ case)
- Developing an audit mechanism to identify areas where potential breaches of the HRA might be occurring, using a ‘traffic light’ system to address deficiencies
- Developing a Human Rights Charter to enshrine a set of guiding principles and a best practice guide using everyday examples from the hospital

168 Using Human Rights as a Vehicle for Cultural Change at the State Hospital (page citation unavailable).
169 Ibid.
170 Ibid.
• More recently, the integration of human rights work into an equality, diversity and human rights approach (which has a dedicated working group, and shapes training and impact assessments)

• Patient involvement through the Patient Focus Public Involvement initiative which is ‘integral to the planning and delivery of healthcare’.¹⁷¹

Stephen Milloy, Nursing Director at the State Hospital, noted that ‘leadership – Board and senior staff buy-in – was absolutely crucial’ to the process of embedding a human rights approach, as was pulling in external expertise.¹⁷²

This commitment in the newsletter of the Human Rights Working Group, Rights Minded, exemplifies the approach taken at the State Hospital:

> Our patients have rights, our staff have rights and the public we serve also have rights. We must never forget that, and [must] balance in a transparent and justifiable way, these competing rights.¹⁷³

We are not aware that any evaluation of the State Hospital’s human rights work has been carried out, for example to ascertain from patients or staff how their experience has changed as a result. This would seem to be a necessary next step in order to assess the outcomes of the human rights approach for service users and staff.

### 2.5.2 Mental Health Act Commission

The remit of the Mental Health Act Commission (MHAC) is to keep under review the operation of the Mental Health Act 1983 as it relates to detained patients (see also Chapter 5, section 2.6).¹⁷⁴

In January-May 2006, the MHAC launched a ground-breaking human rights project, called *Making it Real*.¹⁷⁵ Its aim was to help MHAC ‘fully to incorporate the human

---

¹⁷¹ This summary has been collated from: *Using Human Rights as a Vehicle for Cultural Change at the State Hospital; Rights Minded*, the newsletter of the State Hospital Human Rights Working Group, Issue 1, February 2004 and Issue 2, September 2004; Glasgow Roundtable, March 5 2008; Interview with Stephen Milloy, Nursing Director, The State Hospital, Carstairs, March 7 2008.

¹⁷² Interview with Stephen Milloy, March 7 2008.


¹⁷⁴ See [http://www.mhac.org.uk/](http://www.mhac.org.uk/)

rights framework within its work, so that it became a recognised part of regular activity across the organisation.\textsuperscript{176}

Activities included:

- An all-staff questionnaire to gauge knowledge and awareness
- Focus groups with a group of staff from all levels of the organisation to help trainers devise material directly relevant to the MHAC’s work (and to allow focus group participants to enter the training having already ‘demystified’ human rights)
- Questionnaire and interviews with service users
- Opportunities for staff to put their training into practice, including during visits to mental health services
- Production of a DVD to share best practice to other health service institutions
- Further focus group visits to mental health services to see how the knowledge had been used in practice
- Development of an Equality and Human Rights strategy.\textsuperscript{177}

Commissioners identified as a follow-up to the project that human rights issues should be integrated into standard practice and procedure through an integrated Mental Health Act/Human Rights Act tool.\textsuperscript{178}

The key messages derived from the project as being useful to other organisations were that:

- Focusing on human rights can be a potentially powerful tool for broader organisational culture change
- ‘Leadership from the top’ will only be effective if accompanied by ‘bottom up’ ownership
- To be effective, a values-based approach to promoting human rights needs to be underpinned by a clearly understood analytical framework
- Training on human rights is most effective when tailored to the organisation and developed in partnership with staff, with immediate opportunities given to participants to put their learning into practice

\textsuperscript{176} Making it Real: a human rights case study, p.4.
\textsuperscript{177} This summary is based on: Making it Real: a human rights case study, pp.4-10; Mental Health Act Commission (2007) Strategy on Equality and Human Rights.
\textsuperscript{178} Making it Real: a human rights case study, p.32.
The link between equality and human rights is practical not just theoretical, and has meaning for both staff and service users.

Investment in obtaining the views of service users about human rights will pay dividends, but how to go about it effectively needs careful thought.\(^{179}\)

According to Lord Patel, then Chairman of the Mental Health Act Commission:

Promoting human rights is not a marginal activity, or an add-on extra, but needs to be at the heart of everything all of us do. Leadership has to come from the top to make this successful ... But it is not about giving a diktat ... because that does not engender ownership. People have to want to do this – not because it is legal requirement – though that is important, and not only because it is morally right – though that is also important, but because they fundamentally believe it will enhance day to day activity.\(^{180}\)

2.5.3 Southwark Health and Social Care

Southwark Health & Social Care (H&SC) is an integrated structure between Southwark Primary Care Trust and the Social Services department of the London Borough of Southwark. Employing around 2000 people, Southwark H&SC commissions and delivers healthcare services to one of the most ethnically, culturally and socially diverse populations in the country.\(^{181}\)

Like Mersey Care, Southwark H&SC is one of the pilot organisations in the Human Rights in Healthcare project. Southwark H&SC has begun to develop an equality performance framework that takes a human rights-based approach to commissioning, with an initial focus on the commissioning and delivery of fertility services.

As Harjinder Bahra, Equality and Human Rights Lawyer at Southwark Council, observes, fertility is a ‘challenging and controversial service area’ with ethical issues and competing individual human rights with regard to, for example, eligibility for NHS

\(^{179}\) Ibid, pp.7-8.


funded IVF cycles and waiting times for NHS-funded clients as compared with self-funded patients.¹⁸²

Activities include:

- Looking at real-life based case studies that will monitor whether human rights have been respected from initial referral to service outcome (irrespective of conception success or failure)
- Linking the project with existing equality and diversity strategies and legislation and National Institute for Clinical Excellence guidelines
- Human rights training for stakeholders (600 trained to date)
- Policy audit development including best-practice guide and risk-management strategy.¹⁸³

Harjinder Bahra notes that the key objectives for the pilot:

Are not only to develop a “human rights mindset” to the commissioning, service provision and delivery of fertility services, but also to take a “first step” towards ensuring that the protection of human rights becomes part of organisational thinking from the way we commission, deliver and monitor the quality of healthcare services across the whole of H&SC.¹⁸⁴

2.5.4 Parliamentary and Health Service Ombudsman

The Parliamentary and Health Service Ombudsman (PHSO) carries out investigations into complaints about unfair or improper actions or poor service by UK government departments and their agencies and the NHS in England (see also Chapter 5).¹⁸⁵

Equality and diversity was integrated into the PHSO’s strategy in 2005. In mid-2007, the office of the PHSO began what the deputy PHSO, Trish Longdon, calls an ‘organic’ process of embedding human rights principles in its work.¹⁸⁶ Trish Longdon

¹⁸³ Human Rights in Healthcare: A Framework for Local Action, p.55 and information provided in correspondence with BIHR.
¹⁸⁴ Ibid.
¹⁸⁵ See http://www.ombudsman.org.uk/index.html
¹⁸⁶ Interview with Trish Longdon, Deputy Parliamentary and Health Service Ombudsman, February 29 2008.
acknowledged that the PHSO was not ‘in the vanguard’ of promoting a human rights approach: the driver was the PHSO’s recognition that it should ‘reinforce the imperative’ set by the Government and the National Health Service, which had said that human rights approaches would improve service delivery.

PHSO staff who had previously been ‘frightened’ of human rights, viewing them as ‘something for the courts’, are being equipped to be able to identify the human rights dimensions of complaints and to ‘find the right language’ to express them.

Activities have included:

• Events in Whitehall to explain the PHSO’s more explicit adoption of a human rights approach
• An awareness and training programme for staff.\(^{187}\)

Trish Longdon expressed the PHSO’s appetite to share experience with other organisations which have embarked on a similar process, particularly to gain insights into how to ‘translate’ human rights language in a variety of settings, and how to present a human rights approach to other bodies. One approach, she noted, is to make human rights considerations explicit in cross-service complaints.

The PHSO has recently laid before Parliament her first joint report with the Local Government Ombudsman about the care provided to an adult with severe learning disabilities.\(^{188}\) The Ombudsmen conclude that Articles 3, 8 and 14 of the HRA were engaged in this case and that the Council and NHS Trust concerned had neglected to give those issues proper or timely consideration. Trish Longdon noted that the PHSO’s approach to this investigation was more explicitly human rights focused than in previous cases. She added that:

Talking about dignity and respect is sometimes not enough ... human rights principles legitimate a sense of outrage.\(^{189}\)

The PHSO’s work is ongoing and has the potential to help the development of a better understanding of human rights principles across public services where the PHSO deals with complaints.

\(^{187}\) Interview with Trish Longdon, February 29 2008.
\(^{189}\) Ibid.
2.5.5 Northern Ireland Policing Board

This case study, drawn from experience in Northern Ireland, lies outside the remit of the Equality and Human Rights Commission and is offered for its comparative insights. Although the Northern Ireland context is a very particular one, the approach of the Northern Ireland Policing Board (NIPB) to human rights compliance is valuable in offering replicable techniques to public authorities in other locations and in other sectors.

The NIPB is mandated by the Police (Northern Ireland) Act 2000 to monitor the performance of the Police Service of Northern Ireland (PSNI) in complying with the HRA. This statutory duty is supported by the Patten Recommendations, of which the central premise was that: ‘There should be no conflict between human rights and policing. Policing means protecting human rights’.190

The NIPB’s comprehensive methodology has been described as a ‘gold standard’ in the field of monitoring human rights compliance.191 Keir Starmer Q.C., who advises the NIPB, notes that ‘no such comprehensive scheme exists to measure human rights compliance anywhere in the UK’.192 The following are some examples of the monitoring activity:

• The PSNI adopted a Code of Ethics based on human rights instruments; this has been updated for 2008.193

• A human rights questionnaire was sent to all PSNI officers, including reserves, to gauge basic human rights knowledge; more than 2,700 were completed, making it ‘the most extensive attempt to measure human rights awareness in a public authority anywhere in the UK’, according to Keir Starmer.194

• The NIPB publishes annual human rights reports, aimed at commanding support on the basis of sound, evidence-based conclusions.195


192 Monitoring the Performance of the Police Service in Northern Ireland in complying with the Human Rights Act p.94.


194 Monitoring the Performance of the Police Service in Northern Ireland in complying with the Human Rights Act, p.110.

• The NIPB publishes thematic reports, most recently on the introduction of Taser as an alternative to baton rounds in conflict management.\textsuperscript{196}

• The 2007 human rights report gives a detailed account of the PSNI’s efforts to integrate human rights into existing training materials and courses, overseen by a specialist human rights trainer.\textsuperscript{197}

Keir Starmer told this project that it was important to have:

Completely realistic expectations of what a human rights culture is. You can’t expect police to know the latest case law, all you can expect is that they understand the basics ... and their decision-making is based on the right principles.\textsuperscript{198}

He stressed the importance of monitoring performance in both its good and failing aspects. The NIPB, he noted, did a significant amount of evidence gathering to capture good practice (such as the successful diffusion of firearms incidents) and circulated it to separate police districts which previously had no mechanism to share best practice. He also, in common with other organisations’ experience, recommended the integration of human rights into existing core training programmes where it had been shown to engender less scepticism.

2.6 Conclusions

The case studies and other examples reviewed in this chapter offer several insights which might directly assist other public authorities and which contribute to the emergent body of thinking about what an organisational approach to human rights involves.

The case studies reveal a variety of drivers which prompt an organisation to adopt an explicit human rights approach. In some cases, the driver is litigation (for example, the Scottish prison service) or another sort of negative external challenge (for example, the State Hospital). Elsewhere it is service user engagement which helps to sustain the human rights work (for example, Mersey Care). Other organisations sought to deliver a programme of internal cultural change and used a human rights

\textsuperscript{196} See: http://www.nipolicingboard.org.uk/index/publications/human-rights-publications.htm
\textsuperscript{197} Annual Report 2007: Monitoring the Compliance of the Police Service in Northern Ireland with the Human Rights Act 1988, pp.8-34.
\textsuperscript{198} Interview with Keir Starmer QC, former Advisor to the Northern Ireland Policing Board, March 5 2008.
framework as one of the tools by which to do so (for example, the Mental Health Act Commission).

In every case, leadership and sustained commitment from the senior levels of an organisation is a pre-requisite for sustaining a human rights approach. Also vital is a continuous cycle of reinforcement from the top to the bottom of an organisation. The Scottish Public Services Ombudsman, Professor Alice Brown, offers a description of a human rights approach in a local authority, which is arguably applicable to any public authority:

It’s hugely important for the leadership of any council to have their own understanding of human rights and then to deliver the message down the line ... I would like to see it embedded in practice - and that often requires resources and support for staff ... However, you’ll find people on the frontline who are the real masters of this because they’re dealing with it every day, and you’ll also find champions at different parts of the organisation but it’s crucial that the message is reinforced from the top ... There should be a feedback loop - you monitor, it’s part of your management information ... it’s part of the training package, it’s embedded into everything you do.199

A human rights approach involves both a particular kind of institutional thinking (that we have called human rights as ‘reflex action’ and aspiration) and systematic implementation. Changes to structure and process without a corresponding change in institutional thinking may, as some of our interviewees argued, ‘look good on paper’ without delivering better outcomes for service users or staff. Conversely, the presence of a ‘reflex action’ to support the dignity and respect of service users may generate good practice, but unless it is explicitly driven as part of an organisational human rights approach there is a risk that good practice will exist in pockets rather than becoming the normative standard for the organisation. There is also a risk that service users and carers will not be aware of their human rights and may therefore not use human rights principles to achieve better outcomes.

There are certain types of activity common to all organisations that have adopted an organisational approach to human rights, amongst which are:

- Systematic engagement of service users
- Conducting surveys of staff and service user experience

199 Interview with Alice Brown, February 25 2008.
• Staff training at all levels of the organisation which is integrated into core training programmes and related to everyday experience

• Human rights champions or challengers at senior levels

• Regular reviews of policies and procedures for human rights compliance

• Integration of human rights into equality and diversity approaches

• Inclusion of human rights principles in best practice guides and codes of ethics.

However, there is no fixed template for how to embed human rights thinking and practice into an organisation. The process is a creative rather than prescriptive one – indeed, if we view human rights as a 'magnet pulling policy in a certain direction', as Murray Hunt puts it, then we must acknowledge that the process demands creativity and imagination. The care home described by Dame Denise Platt where residents with dementia were encouraged to express what to others might seem bizarre behaviour, exemplifies this approach.

It follows from the point above that a human rights approach is not a fixed point at the end of a journey but, as Lindsey Dyer of Mersey Care NHS Trust put it, the journey itself. Organisational endeavours to embed human rights must therefore be understood in a dynamic way. It may be helpful to visualise the 'journey' as a spectrum of possible institutional responses. These may co-exist within different parts of the same organisation at any one time and they do not inevitably follow on one from another. However, the spectrum captures the direction of travel of an organisation and may provide a useful tool for planning or evaluating an organisational human rights approach.

The most unexplored territory in the literature and among our case studies is the **outcomes** that an organisational approach to human rights brings about for service users or staff. There have not been enough evaluations of organisational efforts to engage service users or embed human rights thinking to be able to model what these outcomes might be at a systemic level. Chapter 3 takes this as its starting point, and analyses what we know about the benefits that accrue to service users and staff when human rights become rooted in an organisation.
CHAPTER 3: THE BENEFITS OF AN ORGANISATIONAL HUMAN RIGHTS APPROACH

Introduction

The literature which seeks to identify the benefits that accrue to service users, staff and public authorities when public services adopt an organisational approach to human rights presents a disjunction. On the one hand there are statements which confidently identify benefits accruing automatically across public services. For example, the Audit Commission says that:

Research has shown that the application of human rights principles, for example, dignity and respect, can help to improve a patient’s experience and quality of care and will inevitably lead to improved outcomes.201 (emphasis added)

The Department of Health similarly asserts that:

Trusts that respect, protect and fulfil human rights will support better health outcomes ... Trusts that do not can actually add to or worsen poor health outcomes.202

These statements may feel intuitively right, yet arguably the available evidence does not, in fact, support such expansive claims for the benefits of a human rights approach on this scale. Rather, the evidence we have found presents a rich but still fragmentary array of experience demonstrating a range of beneficial impacts – most of them anecdotal, a few more systematically analysed. This evidence does indeed suggest the potential to deliver scaleable benefits; however, more work needs to be done to compile this evidence and make the case beyond doubt.

In addition, we have found that in some of the literature success appears to be measured more in terms of the process, rather than outcomes as such. For example, the uniquely rigorous methodology of the Northern Ireland Policing Board (NIPB) measures the success of its interventions in terms of whether the Police Service of Northern Ireland has adopted more human rights compliant policies and procedures,

rather than in terms of specific beneficial outcomes for the police service or the public. Keir Starmer, who advised the NIPB, said it was difficult to know how such benefits could be measured, though he observed that the police had become more confident in their decision-making as a result of the monitoring process and that this in itself was a ‘massive benefit’.

The British Institute of Human Rights (BIHR) has been at the forefront of efforts to synthesise and codify the benefits of an organisational approach to human rights. Its Changing Lives report offers 15 case studies which show how people ‘are using not only the letter of the law, but also the language and ideas of human rights to challenge poor treatment and negotiate improvements to services provided by public authorities’.

It distils the following learning from the case studies:

- The language and ideas of human rights have a dynamic beyond the courtroom.
- Human rights are an important practical tool for people facing disadvantage, discrimination or exclusion.
- Human rights offer a more ambitious vision of equality beyond anti-discrimination and can help people in situations where everyone is being treated equally badly.
- Human rights principles can help decision makers and others see apparently intractable problems in a new light.

---


204 Interview with Keir Starmer QC, advisor to the Northern Ireland Policing Board, March 5 2008. The PSNI exemplifies the complexity of any methodology to assess the beneficial impact of human rights compliant policies and procedures. One objective measure for a beneficial outcome might be a decrease in public complaints against the PSNI. Equally, it could be argued that an increase in complaints might also be seen as beneficial, if complaints are viewed as a welcome means of evaluating public satisfaction and developing best practice. In addition, a transparent and responsive complaints system shaped by human rights principles might encourage the public to view complaining as a worthwhile course of action and to complain more – again, a beneficial outcome. The NIPB’s 2007 annual report on human rights compliance notes that complaints increased by 3 per cent compared to 2005–06. However, there was a decrease in the percentage of allegations relating to ‘oppressive behaviour’, continuing a downward trend in the seriousness of the type of allegations.

• The language and ideas of human rights can be used to secure changes to policies, procedures and individual decisions.
• Awareness-raising about human rights empowers people to take action.

*Changing Lives* offers the case studies as a ‘glimpse of how a culture of respect for human rights, supported by the Human Rights Act (HRA), might begin to take root’. It makes the important point that many of the case studies involve individuals or those advocating on their behalf *challenging* public authorities to achieve an outcome which respected human rights in their particular situation.

What is more elusive is evidence of the benefits that accrue (or might potentially accrue) when public authorities make human rights an integral part of the design and delivery of policy, legislation and public services. This chapter, then, draws together evidence which seeks to bridge the gap between the claims for organisation or sector-wide benefits of a human rights approach and the rich tapestry of ‘case study’ or anecdotal experience.

We have identified evidence for three broad categories of benefit, analysed in the following sections:

• section 1 – the **benefits of engaging service users to improve services**: systematic engagement of service users as part of a human rights approach can make a service more responsive to those that use it and can erode prejudicial attitudes and mistrust between service users and staff.

• section 2 – the **benefits of organisational renewal**: a human rights approach can permit a reinvigoration of the public service ethos, and help both staff and service users to challenge entrenched poor practice. Human rights can also extend existing approaches to tackling inequality.

• section 3 – the **‘business case’ for human rights**: the human rights framework provides a sophisticated tool for managing risk, achieving transparency and finding objective, balanced and proportionate solutions to complex problems. The literature makes no explicit or comprehensive financial case for a human rights approach, which would require new methodologies. However, a financial case can be made for certain targeted human rights interventions.

206 Ibid.
3.1 Engaging service users to improve services

There is strong evidence to suggest that those public authorities which involve service users (and their families and carers) systematically in their work have a deeper engagement with human rights. The integration of service users in designing and evaluating services is itself an indication of an organisational human rights approach (see Chapter 2) and helps ensure that such an approach is embedded throughout the organisation and sustained over time.

The literature suggests that service user involvement:

- Has the power to challenge entrenched and often prejudicial attitudes to public service users as passive recipients of care or services, rather than as active participants in shaping and evaluating those services
- Makes services more responsive to the people that use them
- Improves relationships between service users and staff and makes them partners in finding shared solutions to problems, and
- Erodes stigma and mistrust between service users and professionals.

A survey of frontline staff and managers of health and social services for the Ministry of Justice Human Rights Insight Project suggests that engaging service users does not, as some might fear, lead to unreasonable demands on public services by those that use them. On the contrary:

User “unreasonableness” was diffused when users were consulted and involved more in the design of their care ... far from being over-demanding – users were realistic in their suggestions and did not propose budget-busting initiatives. Furthermore, amongst Social Services providers there were fewer reports of tension and conflict on the “front line” ... Thus, behaviour on the part of Social Services staff that was more conducive to the protection of human rights appeared to result in more satisfied users and in less tension and conflict between providers and users.208

208 Ministry of Justice (2008) Human Rights Insight Project, pp.66-7. Our interviews added weight to this argument. For example, Save the Children Wales noted that ‘engaging children can lead them to find creative solutions to problems ... children are generally very realistic and understand the complexities once they are engaged’; Interview with Eleri Thomas, Assistant Programme Director, Save the Children Wales, March 7 2008.
Below, we explore the beneficial impact of service user involvement through three illustrative case studies.

### 3.1.1 Case study one: Mersey Care NHS Trust

Mersey Care NHS Trust provides specialist mental health and learning disability services for the people of Liverpool, Sefton and Kirkby. It has a wider role offering medium secure services for Merseyside and Cheshire, and high secure services covering England and Wales. The Trust employs around 4,700 staff. Mersey Care Trust is one of the five pilot Trusts within the Department of Health’s *Human Rights in Healthcare* project with the BIHR.

Mersey Care has pioneered a model of service user and carer involvement. One of Mersey Care’s strategic objectives is:

> To promote and develop the active participation of service users and carers in their own care, the monitoring of service delivery and the planning of service improvement.\(^{210}\)

The Trust has had a Service User and Carer Forum since April 2003 and service users and carers are involved in, amongst other activities:

- **recruitment and induction of staff**: some 150 service users and carers have been trained in recruitment and selection by other service users and carers and have been involved in the appointment of more than 1500 staff – about a third of the Trust’s workforce.

- **research, audit and evaluation**: a Service User Research and Evaluation Group take on research projects of its choosing, including an audit of in-patient wards in adult mental health services and a review of the in-patient detoxification unit in the drugs service

- **communication**: the development of the Trust’s website and the development of an information strategy to enable service users and carers to make informed decisions

- **serious incident reviews**: the Trust notes that ‘[r]esponding to what service users and carers wanted to be involved in soon took the Trust out of its

---

\(^{209}\) [http://www.merseycare.nhs.uk/](http://www.merseycare.nhs.uk/)

\(^{210}\) Mersey Care NHS Trust (undated) *Involving Service Users and Carers – The Mersey Care Way*, undated, p.4; [http://www.merseycare.nhs.uk/su_c_involving/Find_More_Information_in_this_Section.aspx](http://www.merseycare.nhs.uk/su_c_involving/Find_More_Information_in_this_Section.aspx)
comfort zone. The Joint Forum, a Liverpool-based service user group had long advocated that service users should be involved in the review of serious incidents like suicides. This happens routinely now in Mersey Care but it required a new culture of openness to scrutinise when things go wrong.\(^{211}\)

A survey of **senior managers** at Mersey Care showed that:

- 92 per cent of respondents thought Mersey Care had benefited from involving service users and carers, and
- 81 per cent thought the Trust had made changes or improvements as a direct result of service user and carer involvement.\(^{212}\)

Senior managers noted a range of benefits from engaging service users:

- Puts service users and carers at the centre of what we all do; improves practice at all levels of the Trust; challenges attitudes, custom and practice ways of doing things; provides conscience prick for all of us.
- ... has made decision-making much more democratic.
- Improved recruitment of the right staff with the right approach.
- Added richness and complexity to the work I do. Enhances determination to “get it right” for service users and carers.
- Improved management process. Greater openness. Involvement in service development. Greater questioning of actions proposed.
- No longer ‘us’ and ‘them’. It’s now ‘we’.\(^{213}\)

A survey of **service users and carers** at Mersey Care showed that:

- Almost 90 per cent of respondents thought the Trust had benefited from service user and carer involvement
- Around half of respondents felt that becoming involved in Trust activities made ‘a lot’ of difference to them as a person, and

\(^{211}\) Ibid, pp.4-5.
\(^{213}\) Ibid, pp.37-40.
For those who said it made a difference, the main reasons cited were ‘feel valued’; ‘meaningful things to do’; ‘learned new skills’ and ‘more confidence’.  

Service users and carers described some of the improvements to the service as a result of their involvement:

Service users demystify the stigma of mental health by working with the professionals.

I think that managers working with service users/carers have come to see that service users are just ordinary people and have a lot to offer. That care is geared more towards service users than the convenience of staff. That staff are becoming accountable and better records are being kept and procedures are appropriate.

Useful to have both service user and carer perspectives when allocating resources (both financial and human).

Lindsey Dyer, Director of Service Users and Carers at Mersey Care, notes that involving service users and their families had allowed the Trust to find innovative ways of improving their service; for example, when it was realised that young carers were scared to go onto mental health wards, the Trust set up a family room for parental visits to take place.

Lindsey Dyer added:

I’m old enough to remember the old psychiatric hospitals where staff used to wipe the chair down after the service user sat on it in case they caught something ... we differentiate ourselves in all kinds of ways from the people we serve.

Handing a measure of control over the direction and planning of services to the people using them, she said, was ‘about restoring citizenship to those who have had their citizenship taken away’.

214 Ibid, p.4.
216 London Roundtable, February 27 2008.
3.1.2 Case study two: Commission for Social Care Inspection

The Commission for Social Care Inspection (CSCI) involves people with experience of using care services in its inspections through its ‘Experts by Experience’ scheme. In 2007, CSCI evaluated the impact of the scheme on its inspections of care homes and domiciliary care. It found that for care home inspections:

There was an overwhelmingly positive reaction to the involvement of experts by experience in inspections. Most people agreed that it added value to the inspection process.\(^\text{217}\)

One inspector noted that:

This is one of the most positive things that CSCI have introduced in a long time. The insight that the experts have provided has been invaluable, and they have been extremely well received by care homes.\(^\text{218}\)

It was found that experts by experience were able to pick up on details that inspectors might otherwise have missed, such as care practices, accessibility within the home, interaction and non-verbal communication between staff and service users. Experts by experience were also ‘good role models for people who used the service’.

Inspectors integrated the comments from the experts by experience into the main report and this gave ‘added benefit to the inspector’s findings and made the report more substantial and balanced’.\(^\text{219}\)

3.1.3 Case study three: Funky Dragon

This section looks at the engagement of children and young people in Funky Dragon – the Children and Young People’s Assembly for Wales. Funky Dragon is a peer-led organisation which aims to give children and young people up to the age of 25 the opportunity to get their voices heard on issues that affect them.\(^\text{220}\)

\(^\text{217}\) Commission for Social Care Inspection (2007) Experts by Experience in Regulatory Inspections 2006–07 (Evaluation Report Summary), p.1. There was a more mixed reaction to the involvement of service users in domiciliary care inspections, partly due to practical constraints; however CSCI is committed to developing the scheme in all inspections up to 2009; see: http://www.csci.org.uk/professional/default.aspx?page=7226&csci=2139

\(^\text{218}\) Ibid.

\(^\text{219}\) Ibid, pp.1-2.

Its mission statement is grounded in human rights:

> The opportunity to participate and be listened to is a fundamental right under the United Nations Convention [on the] Rights of the Child. Funky Dragon will try to represent as wide a range as possible and work with decision-makers to achieve change.221

Funky Dragon has produced a guide called *Breathing Fire into Participation*222 which outlines some of the benefits to public authorities of children and young people’s participation. It says these:

- Are services and policies that are designed, delivered and evaluated on the basis of identified needs of children and young people
- Are services that are more effective
- Are services that are credible with young people and which safeguard us
- Meet government/assembly targets and expectations
- Contribute to the personal, social and political development of children and young people in Wales.

The guide offers some good practice examples, including that of young people in residential care in Swansea who worked with a Children’s Society advocacy project to design, distribute and analyse a questionnaire. They fed back the results to senior managers in children’s services and the local authority has since implemented some of the young people’s recommendations.

The Participation Unit, working as the ‘delivery arm’ of the multi-agency Participation Consortium in Wales, is building up an evidence base on the impacts and benefits of children and young people’s participation. This work may be expected to strengthen the evidence base for the more general benefits outlined above.223

221 Ibid.


223 Participation Consortium (2007), *Do We Meet Your Standards?: National Children and Young People’s Participation Self-Assessment Pack*; http://www.funkydragon.org/en/fe/page.asp?n1=1478&n2=1482 Interestingly for our present purpose, the National Youth Agency has developed a methodology called ‘What’s Changed?’ to record, measure and report the results of children and young people’s participation where a tangible change has taken place. See http://www.nya.org.uk/Templates/internal.asp?NodeID=95691&ParentNodeID=89141
The current Children’s Commissioner for Wales, Keith Towler, noted that Funky Dragon and related initiatives to engage children and young people amounted to ‘the beginnings of a culture of children’s participation’ in Wales. However, he cautioned that children’s rights and children’s participation are not synonymous: adults do not exercise children’s rights just by listening to them, but must also act upon what they say.

3.2 Organisational renewal

3.2.1 Reinvigorating the public service ethos

Peter Kinderman and Frances Butler note that human rights approaches strengthen the public service ethos, defined by the House of Commons Public Administration Select Committee as:

...a principled framework for action, something that describes the general character of an organisation, but which, and more importantly, should also motivate those who belong to it. As such, the right sort of public service ethos is clearly essential to any effective reform of the public services. We see the ethos essentially as a benchmark, against which public service workers and institutions should continuously strive to measure themselves.

This ethos, they observe, cuts across all public sector work and also finds comparable value systems in particular sectors, such as the ethos of caring in social work, the Hippocratic Oath for medical professionals and ethical standards in local government.

The evidence suggests that organisational human rights approaches can reinvigorate the public service ethos by reconnecting staff with their original motivation for taking up their profession – especially in services where the ethos has been perceived as ‘under attack’ from contracting out, contestability, or target-driven approaches.

The BIHR, reflecting on its training and other work with NHS staff, told the parliamentary Joint Committee on Human Rights (JCHR):

What we found was when we took a step back and said, “This is how human rights is relevant to you as a healthcare worker” ... gave them some

224 Interview with Keith Towler, Children’s Commissioner for Wales, March 10 2008.

information and gave them some practical training, they then said, “Hang on, this is what we came to the health service to do. These are the things we care about”. 226

Another witness, a human rights trainer, told the JCHR:

[R]ather than seeing human rights as yet another regulatory burden social workers on the ground are enormously excited once they start to see what it could mean. It very much resonates with the care professionals’ idea of what their job is all about. 227

The Ministry of Justice’s Human Rights Insight Project noted that:

Several of the staff included in the provider study suggested that opportunities to think about human rights – in the course of training or otherwise – would help to remind them of their original motivation for choosing to enter one of the caring professions. Statements from these and other staff illustrated the concern they felt on witnessing or hearing about treatment of service users that was not conducive to the protection of human rights, and/or the satisfaction they gleaned from looking after people properly. 228

The MHAC notes the transformational potential of adopting a human rights-based approach which, rather than merely returning to the cherished values of the past, offers a mechanism for organisational renewal:

... the universal nature of human rights values and their potential relevance across different functions and procedures, [means that] human rights can be a powerful vehicle for wider organisational and culture change, as long as the viewpoint of all within the organisation is ascertained and taken account of. 229

The State Hospital in Carstairs, Scotland, found that when it adopted a human rights approach, including an audit of all existing policies, the HRA proved to be a ‘vehicle for significant cultural change’.

227 Ibid.
228 Human Rights Insight Project, p.13.
229 Making it Real: a human rights case study, p.7.
An added benefit has been the facilitation of good practice, whether [or not] a human right is specifically at issue. One of the interesting things about the audit is that it has served as a vehicle for staff and patients to query practices that were unclear and we have been able to provide guidance on these.\textsuperscript{230}

One participant at the Glasgow Roundtable noted the as yet untapped potential of Article 8 of the ECHR (the right to respect for private and family life) to concretise the idea of dignity and respect and set new normative standards for public services. Describing this as ‘the under-explored area of rights in the UK’, the participant noted:

The right to respect for private life has such a potential going into a person’s right for self-determination, autonomy, expression of their personality, socialising ... There’s a whole seam there in Article 8 that’s crying out to be better understood and given some flesh on the bones. That’s one of the things that’s been missing so far in the public sector.\textsuperscript{231}

\subsection*{3.2.2 Challenging entrenched practice}

Some of the most compelling evidence in the literature we have reviewed relates to the potential of human rights as a framework within which both service users and staff can challenge entrenched poor practice. The scale of such endemic practice is also strongly evident in the literature.

Values into Action spent three years visiting almost 50 self-advocacy groups around the UK for people who have learning difficulties. It found that one of the major reasons for the abuse of human rights were patterns of institutionalised service provision that had become routine:

We have found examples of significant individual abuse and neglect but, on the whole, what has come across strongly in this project is the daily denial of people’s human rights in a thousand small institutional ways. Added up, this makes a life for many people with learning difficulties that does not have

\begin{flushleft}
\textsuperscript{230} Robertson A. (2003) Using Human Rights as a Vehicle for Cultural Change at the State Hospital, text of an article for the Scottish Human Rights Journal, Volume 19 (cited from transcript of article made available to the project; page reference from original journal unavailable).
\textsuperscript{231} Glasgow Roundtable, March 5 2008.
\end{flushleft}
freedoms, possibilities and rights that other people in society take for granted.  

The NHS Confederation quotes a health worker giving her personal view of the endemic practices that would need to be confronted within an organisational human rights approach:

If we really had a human rights approach, we wouldn’t have reports of old people not being fed or people lying on dirty beds. Something happens both within people’s individual behaviour and at organisational level; we don’t on a day to day basis consistently deliver people’s human rights.

More positively, the literature yields numerous examples of human rights arguments being used successfully to challenge routine practices which infringe service users’ dignity:

- The adult children of a woman who was fed her breakfast while sitting on a commode said it was contrary to her human rights and the mistreatment stopped.

- A Mental Health Act Commissioner found a patient with learning disabilities who had been kept in seclusion for a year, slopping out and with no access to fresh air; the Commissioner noted that his previous focus on the issue of seclusion had kept ‘hitting a wall … the human rights emphasis helped – now we are looking at opportunities for her to access fresh air’.

- A man detained in a maximum security mental health hospital was placed in seclusion where he repeatedly soiled himself. Staff declined to clean or move him, saying intervention was pointless. The man’s advocate invoked human rights arguments to challenge this treatment, which breached the man’s right not to be treated in an inhuman and degrading way and his right to respect for private life. The next time the man soiled himself, he was cleaned and moved to a new room.

235 Making it Real: a human rights case study, p.25.
Blanket policies devised without regard to the situation of the individual are inimical to human rights principles and in these cases, too, human rights approaches have been deployed to challenge or reassess ‘one size fits all’ policies. These are some illustrative examples:

- A Mental Health Act Commissioner challenged poor practice at a house for people with learning disabilities when he discovered a blanket ban on user relationships and a policy of taking and locking away patients’ property without consultation: ‘prior to the [MHAC human rights] training, I wouldn’t have raised it with that authority – I wouldn’t have had the confidence ... The human rights framework helped me think things through and frame it.’

- A failed asylum seeker was living in accommodation provided by the National Asylum Support Service (NASS). NASS issued a ‘termination of support’ notice to her while she was giving birth in hospital. She was a single mother and this was her second child. The notice period expired whilst she was still in hospital and upon return she and her children faced eviction. After receiving BIHR training, a manager at a voluntary sector organisation suggested to NASS that evicting the family in these circumstances may amount to inhuman and degrading treatment. The manager suggested that they reconsider their decision before taking enforcement action. NASS decided to amend the status of the notice, giving the voluntary sector organisation time to apply for ‘hard case’ support for the family under section 4 of the Immigration and Asylum Act 1999. The application was successful and alternative accommodation for the family was secured.

The literature suggests that where an organisation engages with service users within the context of a human rights approach, service users take up the language and principles of human rights to challenge endemic practices:

One Mental Health Act Commissioner asked a group of older people in long stay care about their experiences in care and felt that the human rights questions had ‘opened the floodgates’. All interviewed had cited a slew of issues, including privacy and dignity, security of property, gender separation and dignity, the admissions process and unlocked bedrooms.

237 Making it Real: a human rights case study, p.25.
239 Making it Real: a human rights case study, p.3.3
BIHR Director Kate Ghose told the JCHR:

I can give you countless examples … in reports we have published, where people have directly used the fact that we do have our own domestic law which for the first time gives us positive entitlement to be protected from inhumane [sic] and degrading treatment which can be used in a very practical way…. you should see what happens when the argument is put and … an individual [can] hold an institution by the scruff of its neck and say, “This isn’t acceptable”.240

It should, however, be noted that service users’ ability to confront poor or abusive practice is far from assured. Paul Coen, chief executive of the Local Government Association, noted that in his experience:

An unsupported elderly person (is) not going to quote the HRA as part of the argument … It doesn’t seem to me to have much real applicability.241

The JCHR has found that the ‘power imbalance' between users and services, exacerbated by a dearth of accessible information, is a key causal factor in older people’s unwillingness to complain about poor practice.

Other factors include a lack of confidence in asserting their rights; a failure to identify themselves as people with (human) rights; a reluctance to “make a fuss” on their own behalf (not wishing to cause trouble, fear of recriminations); lack of security of tenure and fear of eviction; internalised ageism in the individual him or herself (i.e. lower expectations of what is fair) or lack of family support.242

As we have seen in the case studies in section 2, however, engaging service users in the design, delivery and evaluation of services offers a new model for the public sector with transformative potential. The adoption of an organisational approach to human rights would confront the barriers listed by the JCHR by:

• Informing service users and carers about their rights

241 Interview with Paul Coen, Chief Executive, Local Government Association, February 27 2008.
• Having transparent policies and a clear complaints procedure
• Confronting prejudicial attitudes towards service users, and
• Providing independent advocacy for service users who are unsupported.²⁴³

Race on the Agenda, in submission to the JCHR, argued that a ‘human rights culture’ creates a two-way process of ensuring that decisions are made with the individual’s best interests at heart:

It is what I call ‘the push and pull effect’ … where individuals are aware of their rights and they can demand their rights if they need to. But if the culture of human rights is present then they will not have to do that.²⁴⁴

3.2.3 Extending existing approaches to tackling inequality

There is abundant evidence in the literature and from our interviews to suggest that human rights thinking extends existing approaches to tackling inequality and discrimination. This debate is of relatively recent origin in Britain and goes to the heart of the integrated remit of the Equality and Human Rights Commission.²⁴⁵

The literature points to the potential for human rights to re-frame, even to transform, equality work and to render visible groups that fall outside the incomplete patchwork of anti-discrimination legislation – and to give them a voice and a channel for legal redress.

The Equalities Review recognised the limiting effect of this feature of equality law and drew on international human rights frameworks to enrich its ‘capabilities approach’ to equality. It acknowledged that:

The Human Rights Act provides a striking new platform in UK law for the establishment of basic rights that go beyond purely material measures of equality ... The human rights regime is increasingly used to set a threshold of

__________________________


treatment that will secure dignity and respect for those in vulnerable situations.\textsuperscript{246}

Sarah Spencer puts it another way:

Where everyone is treated equally badly, there is no discrimination. It is indeed not unknown, when the equality commissions are investigating practices within an institution, for those running the institution to give them the “bastard” defence: “we treat everyone like this”.\textsuperscript{247}

Voluntary and community groups within the National Council for Voluntary Organisations saw the potential for human rights to ‘bite’ in their work with diverse communities:

The holistic and joined up thinking behind human rights was welcomed as a way of tackling issues such as multi-layered discrimination. It was felt that human rights could offer a fresh approach to deep-seated and persistent areas of inequality or abuse where the VCS [voluntary and community sector] has been active for years and may feel at a ‘deadlock’ in terms of impact.\textsuperscript{248}

According to Professor Francesca Klug, groups that fall within the broad human rights canvas, but not necessarily within existing discrimination law, include gay partners, family carers, elderly people facing home closures, disabled people segregated in their own home, mothers in prison and destitute asylum seekers.\textsuperscript{249} Sarah Spencer adds to this list the estimated one in four women in the UK who experience domestic violence.\textsuperscript{250}

Professor Klug and Helen Wildbore argue that human rights can play a vital role in ‘plugging some of the protection gap’ in anti-discrimination law. In human rights thinking, they suggest, ‘freedom from discrimination is a necessary but far from sufficient means of achieving equality’ and:

\textsuperscript{247} Partners Rediscovered: Human Rights and Equality in the UK, p.37.
\textsuperscript{250} Partners Rediscovered: Human Rights and Equality in the UK, p.37.
The human rights vision of equality extends significantly beyond discrimination to encompass fairness of treatment, dignity, respect and access to the fundamental rights which enable participation in a democratic society.\textsuperscript{251}

BIHR’s \textit{Changing Lives} report reminds us that human rights arguments can ‘plug the protection gap’ outside, as well as inside, the courtroom. It offers the case study of a mental health hospital which had a practice of sectioning asylum seekers who spoke little or no English without the use of an interpreter which would mean troubled individuals being put under even more pressure because they would not understand what was happening to them, a situation that could not possibly help their recovery. After participating in a BIHR session, members of a user-led mental health befriending scheme used human rights language to successfully challenge this practice. They argued that it breached the asylum seekers’ right not to be discriminated against on the basis of language and their right to liberty.\textsuperscript{252}

BIHR notes that the human rights prohibition of discrimination extends way beyond the six equality ‘strands’ (sex, race, disability, age, religion or belief, and sexual orientation) and offers protection on grounds including language, property, marital status, illegitimacy, trade union membership, and imprisonment.\textsuperscript{253}

The literature offers several examples of how human rights approaches have been integrated with existing equality work at a strategic level within public authorities. In some cases, the benefits are already becoming evident; in others they await a fuller evaluation.

- The \textbf{Mental Health Act Commission} says that its \textit{Making it Real} project to embed human rights thinking throughout the organisation ‘will place [it] in a stronger position to cope with the complexity of individuals’ needs – it avoids the downside of single equality strategies which can risk attempting to pigeonhole individuals into categories such as “women”, “BME”, “older people”, “gender issues”. The complexity of real life means that individuals rarely fit into single categories.’\textsuperscript{254}


\textsuperscript{253} Indeed, both Article 14 of the ECHR and Article 1 of Protocol No. 12 to the ECHR are ‘open-ended’, in that they prohibit discrimination ‘on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status’.

• **Southwark Health and Social Care** has adopted a ‘human rights mindset’ for the commissioning and delivery of fertility services. Southwark considers its human rights work as one of the ‘key drivers’ to tackle health inequalities and ensure positive health outcomes for a diverse population speaking more than 100 languages.\(^{255}\)

• **Surrey & Borders Partnership NHS Trust** has made a deliberate attempt to move away from a singleton approach i.e. either looking at race or gender or sexuality one at a time. The human rights approach is attractive as it is inclusive and covers everyone and within those parameters you can prioritise in terms of funding.\(^{256}\)

• **Aberdeen City Council** has developed an integrated equality and human rights impact assessment.\(^{257}\) One participant at the Glasgow Roundtable, who had advised the council on human rights, noted that: ‘the usefulness for them is that the starting point for public service delivery is not the service itself, or who’s delivering it or their policies and good intentions, but the starting point is the individual – the rights, the vulnerabilities, the needs, the personality of the individual and that then shapes what the service is and how it’s delivered.’\(^{258}\)

• The **NHS Centre for Equality and Human Rights in Wales** notes that Equality Impact Assessments offer the ‘best available channel’ to embed a human rights approach across service delivery.\(^{259}\)

Several of our interviewees noted the benefit to organisations of integrating their equalities and human rights work in this way. There is a bureaucratic gain in that equality and human rights requirements are complementary: by integrating positive measures to promote human rights with the already well-established equality and diversity agenda (and specifically the public sector duties to promote equality) organisations can ensure compliance on all fronts.

Nony Ardill of Age Concern noted that it was ‘a mistake to think of [human rights and equality] as separate areas of work – human rights underpins equality’. She added


\(^{256}\) The Human Rights of Older People in Healthcare, Volume II, Ev 235.


\(^{258}\) Glasgow Roundtable, March 5 2008.

\(^{259}\) Cardiff Roundtable, February 28 2008.
that there was ‘huge scope for positive work’ in developing and modelling integrated equality, diversity and human rights strategies.\textsuperscript{260}

Jon Harris, Strategic Director of the Convention of Scottish Local Authorities, similarly noted that:

\begin{quote}
[human rights] is a way of taking a more proactive approach to equalities ... within one framework you’re delivering on a whole range of issues ... So either you’re going to continue working in silos, which is very resource intensive and doesn’t pick out the fact that people have multiple equalities issues [or you’re going to] see it as a positive and a benefit.\textsuperscript{261}
\end{quote}

Writing about the potential benefits of a human rights-based approach in the prison service, Jenny Watson says:

\begin{quote}
The attraction of a human rights approach is threefold. Firstly, all prisons already have a positive obligation to protect the human rights of all in their care. Secondly this approach prevents a hierarchy of “isms” and can ensure that all aspects of discrimination are addressed within the system ... Finally, human rights thinking is clear that tackling discrimination can sometimes call for \textbf{justifiable differential treatment} in order to overcome historic inequality. So for example it enables prison staff to think about how a prisoner with learning difficulties might need additional help or support to be able to have access to the same opportunities as their non-disabled cell mate during their time in detention.\textsuperscript{262} [emphasis in original]
\end{quote}

Finally, it should be noted that many commentators have expressed disappointment that the Discrimination Law Review has missed the opportunity to underpin proposed single equality legislation with a human rights framework. See Chapter 7 for a fuller discussion of this issue.

\textsuperscript{260} Interview with Nony Ardill, Legal Policy Adviser, Age Concern England, March 6 2008.
\textsuperscript{261} Interview with Jon Harris, Strategic Director, Convention of Scottish Local Authorities, February 25 2008.
3.2.4 Improving social relationships

There is some evidence that adopting a human rights approach to public services can tangibly improve social relationships between public service staff and users and has the potential to improve relationships in the wider community.

One illustrative example is the Rights, Respect and Responsibility (RRR) which, since 2006, has been used by schools under the Hampshire Education Authority for teaching and learning across the curriculum.263 The RRR initiative, based on the UN Convention of the Rights of the Child, involves a range of activities including:

- Explicit teaching of the UN Convention for all ages
- Writing human rights into codes of conduct, mission statements, playground, classroom and home charters, and
- Making RRR ‘a whole-school ethos, a way of being’, for example using RRR to provide context and coherence for work on relationships, bullying, drugs, race equality, moral dilemmas, participation, sustainability, emotional literacy and redesign of play space.264

A distinctive feature of this work is the evidence base it has generated to show a range of benefits to both staff and pupils, not all of them anticipated. An evaluation of 16 schools in 2007 compared those where RRR was fully embedded to those where it was less fully incorporated. In schools where RRR was fully embedded, the evaluators found a range of improvements in social relationships, behaviour and achievement among pupils of all ages.265

- Pupils were reported to be more respectful and helpful to others, and less aggressive and disruptive. There were fewer instances of anti-social behaviour such as bullying. At one school pupils were said to be showing greater respect for children with learning difficulties.266

263 http://www3.hants.gov.uk/education/hias/childrensrights.htm
264 Hampshire Inspection and Advisory Service (undated), Rights, Respect and Responsibility – guidance on effective practice; http://www3.hants.gov.uk/education/hias/childrensrights/rrr-whatsnew.htm
266 Ibid, p.5.
• Exclusions were significantly reduced or ended.267

• Pupils showed enhanced academic engagement and achievement, reflected in increased SATs (Standard Attainment Test) scores.268 They had changed, one head teacher said, from ‘passive thinkers’ to ‘active questioners’.269

• Pupils showed increased ‘self-regulatory capacity, accepting the responsibilities they have learned are the concomitants of their rights’.270

For their part, teachers in the ‘fully implemented’ schools:

• Experienced fewer feelings of exhaustion as a direct result of their work
• Felt more energized when dealing with students
• Felt less ‘depersonalisation’ (the tendency to view pupils from an emotional distance), and
• Reported an increase in a sense of personal achievement.271

As a note of caution, the evaluators quote some head teachers as being uncomfortable about attributing these positive changes only to RRR, citing other initiatives such as SEAL (the whole-school framework for promoting the social and emotional aspects of learning). Nonetheless, the report says, ‘there was unanimity in a belief that RRR was beneficial’.272 The evaluation also notes that even where initiative overload had caused teething problems, the RRR approach had become ‘self-perpetuating’ in the schools in which it was fully implemented.273

Ian Massey, Inspector for Intercultural Education in Hampshire, observes that the RRR project:

272 Ibid, p.5; the evaluation notes three grounds to support a direct causal link between RRR and the improvements cited: (i) in schools that have fully incorporated for longest, the pupil improvements in behaviour and academic achievement have been incremental and are the most pronounced; (ii) the same positive outcomes are being observed in schools with varying socio-demographic characteristics, and (iii) in the fully implemented schools there was a dramatic decrease over time in teacher ‘depersonalisation’ and a significant increase in pupil level of participation and positive changes in behaviour.
273 Ibid, p.17.
... is showing that a rights based whole school ethos can have a powerful effect on learning, standards, values and behaviour ... and it also offers the potential to increase community cohesion around a set of internationally agreed values.²⁷⁴

We have not found a significant body of thinking in the literature about the relationship between human rights and community or social cohesion. Sarah Spencer notes that one factor which has brought human rights and equality together in the realm of public services has been:

A new, scarcely yet articulated, interest in human rights as a contributor to the social cohesion agenda.²⁷⁵

Hannah Clayton of BIHR notes a number of ways that human rights relate to and can potentially strengthen community cohesion and integration.²⁷⁶ Aside from the role that human rights can play in tackling inequality, discussed above, she notes that human rights can also offer a framework for resolving conflicts and a foundation of shared values. She suggests that:

The human rights framework ... provides a useful tool for balancing competing interests and managing tensions between and within communities ... Human rights are for everyone and recognise that principles such as equality, participation and fairness are not exclusively British but reach across many societies and cultures.²⁷⁷

The Commission on Integration and Cohesion was set up to provide 'practical approaches to building communities' own capacity to reduce tensions and create opportunities for more integrated and cohesive societies.'²⁷⁸ Its final report, Our Shared Future, called for:

²⁷⁴ Correspondence between project team and Ian Massey, March 20 2008.
²⁷⁵ Partners Rediscovered: Human Rights and Equality in the UK, p.36.
²⁷⁷ Ibid.
A new national campaign that promotes our shared future based on a number of key principles – those of rights and responsibilities, visible social justice, and the somewhat old fashioned sounding ethics of hospitality.279

Its model of rights and responsibilities is:

One that makes clear both a sense of citizenship at national and local level, and the obligations that go along with membership of a community, both for individuals or groups.280

The case studies of good practice presented by the Commission on Integration and Cohesion involve various initiatives to inform particular communities (and especially migrant workers) of their rights and responsibilities through the provision of link workers, English-language tuition, interpreters and translation services and other information or guidance schemes, as well as, for example, to encourage responsible employment practices.281 However, the report offers no examples of a human rights framework being used explicitly as a tool to resolve conflicts between or within communities, and nor have we found such examples elsewhere in the literature.

Nevertheless, the evidence we have gathered of the potential of human rights approaches to improve social relationships, and to challenge entrenched stigma and prejudice, suggest that this may be fertile ground for further research.

3.3 The ‘business case’

Surrey and Borders Partnership NHS identified one of the key barriers it had encountered in seeking to embed organisational human rights thinking as the absence of a ‘business case’:

This is new territory and can easily be perceived as being a piece of legislation to comply with – a tick-box exercise. For senior people it can be perceived as a soft area without hard core financial or business purpose so the

280 ibid, p.8.
communication of its benefits must be prioritised. There isn’t any promotion across the NHS on human rights and healthcare and a strong national campaign would be a good starting point. The business benefits need to be articulated.\textsuperscript{282}

In this section, we examine the evidence for this ‘hard core financial or business purpose’. Some of the evidence is implicit rather than explicit, particularly in section 4.4 on efficiency and resources.

3.3.1 Managing risk

Public authorities are legally bound to comply with the HRA. If they do not do so, individuals can challenge and seek remedies for instances of poor practice. Such challenges, and remedies, can prove costly to organisations both in terms of money and reputation. The Ministry of Justice’s \textit{Human Rights Insight Project} argues that:

\begin{quote}

The fact that the Human Rights Act is law and that public authorities are legally bound to act in accordance with it will be the underlying bedrock for any business case for the promotion of human rights in public services.\textsuperscript{283}
\end{quote}

The Audit Commission outlines the financial risks associated with human rights challenges in the courts, which (as of 2003) had resulted in legal costs and penalties of up to £320,000:

\begin{quote}

The costs of defending a challenge, whether favourable or otherwise, will almost certainly be very many times greater than the damages awarded. Successful cases can have a universal and costly impact on the way that public authorities operate and can result in them committing valuable resources to rewriting policies and procedures or responding to copy cat claims. But even more important is the damage to an organisation’s reputation if it is found to be guilty of a breach of the Act.\textsuperscript{284}
\end{quote}

\textsuperscript{282} \textit{The Human Rights of Older People in Healthcare}, Volume II, Ev 235; based on an interview with Diane Baderin, Associate Director of Diversity and Inclusion, by the NHS Confederation.

\textsuperscript{283} Human Rights Insight Project, pp.12–13.

\textsuperscript{284} Human Rights: Improving Public Service Delivery p.4.
The Audit Commission alerts public authorities to other potential costs, such as the cost of repeating consultations which have been found by the courts not to have considered human rights implications.\textsuperscript{285}

In September 2006, the Auditor General for Scotland reported that the 2005/06 accounts of the Scottish Prison Service included a provision for £58 million being its estimate, in the light of a court judgment, of its possible liability for compensation and other related costs arising from cases similar to \textit{Robert Napier v the Scottish Ministers}. In the Napier case, the judgment described prison conditions in terms of the ‘triple vices’ of slopping-out, overcrowding and poor regime.\textsuperscript{286}

It is important not to limit risk management to a defensive, ‘risk-proofing’ of policies and procedures since there is also strong evidence to show that managing risk using a human rights-based approach can assist staff and improve outcomes for users of public services.

A participant at the Glasgow Roundtable noted that after the State Hospital in Carstairs embedded a human rights approach throughout its work, the number of complaints by patients went down after a period during which ‘the hospital had spent a lot of money defending cases brought by patients’. The participant added that:

\begin{quote}
A human rights framework helps you manage risk and reconcile complex claims and conflicts between competing rights holders. It’s a sense of proportionality and the balance between competing individual claims and the public interest. Human rights provides a means of ... finding solutions – it’s a much more sophisticated way of managing risk.\textsuperscript{287}
\end{quote}

The London Probation Service combines both ‘risk-proofing’ and more positive steps in what it identifies as the ‘operational drivers’ for its human rights strategy. It makes the commitment that:

\begin{itemize}
\item service delivery policies will be assessed for any possible infringement of Convention rights
\end{itemize}

\textsuperscript{285} Ibid, p.6; the Audit Commission cites the case of R (Madden) v Bury Metropolitan Council (2002), in which the local authority’s decision to close a care home had failed to take into account the Article 8 rights of the residents to respect for their homes.

\textsuperscript{286} \url{http://www.audit-scotland.gov.uk/docs/central/2006/s22_060904_sc_prison_service.pdf}

\textsuperscript{287} Glasgow Roundtable, March 5 2008.
• compliance with the HRA will prevent breaches being claimed against the service costing staff resources, damages and compensation, and
• staffs actions will be reasonable and proportionate in respect of offenders.\textsuperscript{288}

CSCI’s \textit{Rights, risks and restraints} report uses a human rights framework to offer guidance to care staff about how to balance older people’s rights, expressed as a wish whether in their own home or in a care home, to make choices about their lives and to take risks as against the responsibility of social care services to keep them safe from harm.\textsuperscript{289} CSCI argues that this is not just a matter for staff to resolve in their daily contact with people receiving care and support:

This is a human rights issue where government, regulators, commissioners and care providers have responsibilities to support staff and improve services to older people. The public, too, must be involved in the debate and have responsibilities to challenge practice where necessary.\textsuperscript{290}

The director of the Mental Welfare Commission for Scotland, Donald Lyons, similarly sees the benefits of organisational human rights thinking primarily in the context of guidance on issues relating to risk and the deprivation of liberty (amongst others, the use of seclusion, consent to treatment and covert medication).\textsuperscript{291} He notes the hunger for such guidance among staff working in mental health services in Scotland:

People are crying out for assistance and guidance on these issues ... people are thinking very carefully and seriously about human rights issues, and that’s people from the health service, the local authority, the voluntary organisations across mental health services in Scotland.

In conversation with our interviewees, it was emphasised that human rights can be infringed when public authorities are excessively \textit{risk averse} as well as when they fail to take account of or act to prevent risk. It was repeatedly stressed that a human rights framework is uniquely suited to achieving a balanced and proportionate decision in either circumstance.

\textsuperscript{288} London Probation Service (undated) \textit{London Probation Human Rights Strategy}, p.3.
\textsuperscript{290} Ibid, p.2.
\textsuperscript{291} Interview with Donald Lyons, Director, Mental Welfare Commission for Scotland, February 20 2008.
Scotland’s Commissioner for Children and Young People, Kathleen Marshall, offers an example of when risk-aversion has led to a breach of human rights. The Commissioner saw the need to respond to guidance issued by the Scottish Government on overnight stays for children and young people in public care after some of them complained that their friendships were being undermined by excessive regulation of overnight stays with friends, including police checks on the friends’ families before such stays were approved. Kathleen Marshall notes that this practice makes looked-after and accommodated children feel embarrassed, ashamed and stigmatised and inhibits the development of friendships:

It is essential that the Scottish Government guidance urges local authorities to engage in serious awareness-raising amongst front line staff and carers to ensure that the message gets across that requiring disproportionate checks is not the “safe” option, but represents a breach of young people’s rights.

3.3.2 A practical framework for decision-making

How well public services operate will depend on the many decisions made every day by hundreds of thousands of often over-stretched staff. Frequently these decisions are based on little more than individual judgements. A human rights framework can provide a compelling alternative.

Jenny Watson and Mitchell Woolf suggest that the point of a human rights framework:

... is not to turn us all into lawyers: it is to give us a better tool to use when making some of the difficult and competing judgement calls that those who run our public services make every day.

-------------------


293 Ibid, p.6; note that the Scottish Government guidance document to which the SCCYP was responding makes no reference to the Human Rights Act or the UN Convention on the Rights of the Child, and it is therefore safe to conclude that the sections in the guidance which the SCCYP identifies as disproportionate and overly risk averse do not arise from a misinterpretation or misapplication of human rights requirements but rather, as the SCCYP indicates, a failure to apply a human rights framework in order to find a balanced and proportionate approach.

The State Hospital in Carstairs notes that, as it set about transforming a ‘custodial and punitive’ regime to one in which staff ‘weave the human rights dimension into the fabric of daily decision-making’, human rights have provided:

... an immensely practical framework which with to consider the very difficult decisions to be made each day.295

Voluntary and community organisations in discussion with BIHR argue that:

By acting as an underpinning common framework, human rights were also seen as having real potential to resolve issues such as conflicts between different sectional interests and debates on a so-called ‘hierarchy of needs’.296

The literature and our interviewees offer strong evidence in support of these statements. They suggest that an organisational human rights framework can:

• Provide an **objective framework** within which to make decisions
• Make staff feel more **confident** in their decision-making
• Provide **balanced, proportionate solutions** to seemingly insoluble problems
• Help to diffuse highly-charged situations
• Render **visible** people whose rights and interests have been invisible or neglected, and
• **Prioritise** the needs of the most marginalised groups in a systematic way.

The following examples demonstrate how people working in the public sector have used human rights as a framework for decision-making and determining priorities. We should note that, as discussed in section 1, the literature does not always spell out what the improved outcome has been for service users or staff, and so the benefits should perhaps be seen as **potential** rather than demonstrated.

• In the Prison Service, policies have been developed in the areas of mandatory drug testing, blanket security measures and the searching of visitors, that treat prisoners as individuals rather than imposing blanket policies. This method of developing policy has arisen in part from an understanding of the HRA. According to the DCA ‘[t]he impact is to support a robust approach to decision-

295 Using Human Rights as a Vehicle for Cultural Change at the State Hospital, (cited from transcript of article made available to the project; page reference from original journal unavailable).

making which properly reflects individual rights, and is generally supported by
the Prison Service.’  

- Joanna Perry, from Values into Action, gave the JCHR the example of a man
with learning disabilities who liked to go out in his garden, but who also liked to
make a lot of noise. The neighbours complained and the response of his care
home staff was to keep him indoors, rather than to try to find a way where his
right to respect for private and family life could be balanced against that of the
local community: ‘We helped the staff use the framework of human rights,
which puts everyone’s rights on the same footing, to see how his rights were
equal to the neighbour’s rights … and to come to a compromise. The staff
[went from] thinking “Oh, human rights. That’s just another thing we are going
to have to deal with”, to seeing how it could be used to problem-solve some
very difficult situations, and it can used from day-to-day stuff like that to life and
death decisions.’

- A learning disabled man in a care home became very anxious about bathing
after slipping in the bath. Afterwards, in order to reassure him, a carer, usually
female, would sit in the room as he bathed. A discussion of the human rights
principle of dignity served as a ‘trigger’ for care workers to develop solutions
that would protect the man’s dignity, whilst also providing him with the support
he needed. One solution was to erect a screen to sit behind while he bathed.

3.3.3 Transparency

A human rights approach requires public authorities to ensure that the decisions they
take are lawful, have a legitimate aim, and are necessary and proportionate. This in
turn requires public authorities to have clear, transparent decision-making processes,
reinforced by accessible information about service users’ human rights and an open
complaints procedure, in order that decisions can be justified.

The Audit Commission found that:

Human rights legislation can help to improve the decision-making process in
particular by strengthening ... the detailed recording of the decision ... One
way to achieve this is through the use of checklists that require staff to
consider how their actions might impact on the rights of service users.

297 Department for Constitutional Affairs (2006) Review of the implementation of the Human


The following are practical examples of where the human rights requirement for transparency has resulted, or is likely to result, in better outcomes for service users, whilst also providing a clear ‘audit trail’ to protect public authorities from legal challenge:

• The director of the Mental Welfare Commission for Scotland, Donald Lyons, notes that fewer people have been subject to compulsory detentions since the Mental Health (Care and Treatment) (Scotland) Act of 2003 which, he notes, incorporates the provisions of the HRA.\(^{301}\) Previously, the legislation ‘did not require a clear justification for depriving someone of their liberty or for placing them under a community order’ – now, it does. Donald Lyons suggested a causal link between the imperative to justify detention and the first fall in the number of detentions for many years, noting that the Act ‘has made people think more carefully about whether it is right to deprive someone of their liberty’.

• The DCA recommends that schools that conduct searches of pupils for knives or other weapons should develop ‘a recording system possibly in the form of a log book – including reasons for search, implications for individuals, any notable pupil responses and how they are managed, outcomes and follow up actions. The result will therefore be a more balanced and robust response to the problem.’\(^{302}\) Again, the beneficial impact is not fully articulated but we might assume that these measures would create a climate of greater trust between young people and their teachers within which the safety of all is more likely to be guaranteed.

• The JCHR notes that older people living in residential care homes run by local authorities have secured much better protection against home closure decisions which involve risks to their life, health, dignity or psychological wellbeing, or which disproportionately interfere with their right to respect for their home. As a result of the HRA, not only must residents of such care homes for the elderly be properly consulted about proposed closures, but the authorities running such homes must conduct proper investigations into the likely impact of closure on the elderly people in the home and be able to demonstrate that they have carried out a proper balancing exercise between

\(^{301}\) Interview with Donald Lyons, Director, Mental Welfare Commission for Scotland, February 20 2008; the latest Annual Report of the Commission notes a fall of 8 per cent in the number of detentions in 2006–07 (that is, up to 400 people); see Mental Welfare Commission for Scotland, Our Annual Report 2006–2007, 2007, p.21; http://www.mwcscot.org.uk/web/FILES/Publications/MWC_AR2006_07.pdf

\(^{302}\) Review of the implementation of the Human Rights Act, p.22.
the human rights of the affected residents and the reasons relied on to justify closure.\textsuperscript{303}

### 3.3.4 Resources and efficiency

The ‘hard core financial or business purpose’ sought by Surrey and Borders Partnership NHS Trust is perhaps most elusive when it comes to the question of resources. Taken as a whole, the literature suggests no prima facie case for assuming that public services designed and delivered according to human rights principles would cost either more or less than they do now.

In evidence to the JCHR, the Royal College of Physicians of Edinburgh observed that ‘looking after older people well is a lot cheaper than looking after them badly.’ The JCHR noted that this observation ‘is reflected in the Human Rights Act’s purpose of acting preventatively rather than curatively’.\textsuperscript{304}

However, it is by no means uncontested that such a calculation should even be attempted.

Action on Elder Abuse, in a submission to the JCHR, lamented that:

\begin{quote}
… the primary debates in both the health and social care sector have ignored the Human Rights Act and have instead been focused upon costs, rather than quality of care provision. We are addressing a “mass production” approach toward older people, rather than a “quality approach”.\textsuperscript{305}
\end{quote}

In The McDonaldization of Social Work, Donna Dustin argues that:

\begin{quote}
… if human rights are the ultimate goal or ‘bottom line’ then issues of cost and cultural relativity are subsumed in the higher level standards of human rights. Human rights provide an unassailable position as the foundation of social work practice.\textsuperscript{306}
\end{quote}

Andrew Lee, Director of People First (Self-Advocacy), told the inquiry into the human rights of adults with learning disabilities:

\begin{quote}
If the Government is serious about stopping human rights abuses against people with learning difficulties, then it will simply cost money. If society
\end{quote}

\textsuperscript{303} The Human Rights Act: the DCA and Home Office Reviews, p.26.
\textsuperscript{304} The Human Rights of Older People in Healthcare, Volume I, p.32.
\textsuperscript{305} Ibid.
decides that ultimately it does not care enough about people with learning difficulties to spend money on us, then society exists as a society where people are left out, marginalised and abused in our midst.\textsuperscript{307}

In the absence of any literature which makes an explicit financial case for a human rights approach to public services, any such evidence must be inferred from analogous research. The literature offers some examples of cost calculations which could conceivably be ‘mapped’ onto a business case for human rights, even though they have not been produced expressly for this purpose.

In \textit{At What Cost? The economics of Gypsy and Traveller encampments}, Rachel Morris and Luke Clements survey the costs that local authorities in the UK incurred as a consequence of inadequate provision of accommodation for Gypsies and other Travellers.\textsuperscript{308} In the mid-1990s, the government used ‘cost’ (some £5 million per annum) as a reason for abandoning a long-standing duty on local authorities to provide Gypsy sites, despite having made no attempt to ascertain the cost implications of making no provision and of therefore having to manage unauthorised encampments.

Morris and Clements reject the suggestion that the resulting human misery and social exclusion were amenable to a simple cost-benefit analysis, observing that:

\begin{quote}
It may be that as a society we count the cost of that which we do not value. That by constantly recording the cost of accommodating Travelling People we are articulating a racist and rhetorical question – namely whether we can afford them; that the sum total of Travelling cultures can be expressed in negative financial terms.\textsuperscript{309}
\end{quote}

Acknowledging that their analysis ‘risks perpetuating the greatest danger of all; namely the maintenance of the costs debate itself’\textsuperscript{310}, Morris and Clements establish that:

\begin{quote}
It is probably safe to assume that the actual figure of £6 million derived from this research could be multiplied a number of times before the real annual cost
\end{quote}

\textsuperscript{307} A Life Like Any Other? Human Rights of Adults with Learning Difficulties, Volume I, p.41.
\textsuperscript{309} Ibid, p.2.
\textsuperscript{310} Ibid, p.1.
of managing unauthorised encampments is reached. More importantly, however, these costs make no account for the social or human costs associated with inadequate accommodation for Travelling People.\(^\text{311}\)

In this case, then, the cost of providing sites for Travelling people would have been many times lower than the cost of repeatedly evicting them with the attendant legal and policing expenditure, as well as the cost of poor health resulting from diminished quality of medical treatment, and problems for children in later life caused by inadequate schooling.

The financial and social cost of sending ever increasing numbers of people to prison is another area where financial and human rights considerations might be argued to intersect. The Prison Reform Trust (PRT) notes that:

- Each year the UK sends more than 132,000 people to prison and 70,000 children enter the youth justice system
- Each new prison place costs £119,000 and the annual average cost for each prisoner exceeds £40,000
- More than 150,000 children have a parent in prison and up to 18,000 children are separated from their mother with potentially serious effects on the rest of their lives, and
- 64.7 per cent of prisoners are reconvicted within two years of being released and for young men (18-20) the rate of recidivism is 75.3 per cent.\(^\text{312}\)

Elsewhere in the literature and our interviewees, we find a range of human rights concerns related to prisoners and their children. For example:

- HM Chief Inspector of Prisons, Anne Owers, in an interview for this project, identified population pressure as the most worrying human rights issue she faces;\(^\text{313}\) in HMI Prisons' latest annual report she predicts 'no end to overcrowding and the continued use of police cells. None of this will enhance safety, decency or the reduction of reoffending'.\(^\text{314}\)
- The PRT has found that some 20–30 per cent of prisoners have learning difficulties or learning disabilities that interfere with their ability to cope with

\(^{311}\) Ibid, p.50.


\(^{313}\) Interview with Anne Owers, HM Chief Inspector of Prisons, March 5 2008.

the criminal justice system. Furthermore, the majority of prison staff ‘were not confident that their prison had the skills and expertise to deal effectively with this group of prisoners’. This is particularly important in relation to courses to tackle offending behaviour to avoid reoffending on release.

- Scotland’s Commissioner for Children and Young People, Kathleen Marshall, has argued for the rights and interests of offenders’ children to be taken explicitly into account when sentencing options are considered. Currently, this rarely happens and mothers may be more liable to imprisonment than other adults because community service alternatives may be regarded as unsuitable where there are no associated childcare facilities. Kathleen Marshall adds: ‘When you imprison parents you breach children’s right to a family life, and that’s the starting point’.

Taken as a whole, this evidence might permit a ‘mapping’ of financial and human rights considerations that would show that a prison service organised according to human rights principles would also be a cheaper and more efficient service. A business case could also be made for specific human rights interventions, for example to identify and support prisoners with learning difficulties or learning disabilities who might otherwise go on to reoffend.

In addition, the literature yields many examples of interventions which have been devised within a human rights framework and which would improve public services at negligible cost.

One such is Age Concern’s ‘Hungry to be Heard’ campaign to prevent older people becoming malnourished while in hospital. Age Concern advocates the introduction of ‘protected mealtimes’ and the use of red trays to identify older people in hospital who need help with eating.

Fairfield General Hospital, run by Pennine Acute Trust, piloted ‘protected mealtimes’ in 2005. Pam Stansfield, head of catering for Pennine Acute Trust, says:


316 Ibid.


318 http://www.ageconcern.org.uk/AgeConcern/htbh_whatwewant.asp

87
A good diet ... is very important in helping patients recover. Protected mealtimes give patients the chance to make more of their meals, which in turn also helps cut waste – so it’s win-win for patients and the hospitals alike.  

Another example of a low-cost intervention with potentially significant gains for the dignity of service users is the ‘Behind Closed Doors’ campaign, led by the British Geriatrics Society, which promotes the principle that people should be able to use the toilet in private in all care settings.  

Research on the human rights of carers also suggests that good practice which may transform the lives of carers need not be expensive. The report for Carers UK, *Whose Rights are they Anyway?*, found evidence of imaginative good practice which helped to safeguard carers’ human rights. For example St Helens in Merseyside runs a 24-hour carers’ helpline which enables carers to be quickly identified in the case of an emergency, and additional support arrangements to be put in place. This means that carers can take up medical treatment in an emergency, safeguarding their Article 2 rights.  

The dividends of such low-cost and targeted interventions are self-evident. However, several of our interviewees noted that any attempt to make a comprehensive business case for a human rights approach will always be bedevilled by the ‘silos’ through which public services are delivered. That is, a cost in one department or service may yield a saving elsewhere which may never be identified. Research to demonstrate the business case for a human rights approach to public service design would probably need to take a lifetime approach, looking at costs and benefits occurred over the course of the individual’s life, and allocating these to different government departments or public services, rather than trying to carry out a cost benefit analysis within a single institution. Thus, a business case would require the use of new methodologies and approaches.  

But it is also true that some savings may more readily be identifiable at the level of, say, an individual NHS Trust. Lindsey Dyer of Mersey Care described what she sees as the efficiency benefits to the Trust of involving service users as part of the Trust’s human rights approach:

319 http://www.ageconcern.org.uk/AgeConcern/95FF082A2D1044B18F9C6A808AB8BC2F.asp  
320 http://www.bgs.org.uk/campaigns/dignity.htm  
322 Ibid, p.16.
We spend less than half of one per cent on involving service users and their right to be involved in decisions that affect their lives ... to get the other 99.5 per cent right. 323

This argument has not been comprehensively articulated by public service providers and it would be useful for their experience to be shared more widely, as a contribution to the future debate around the benefits of a human rights approach.

3.4 Conclusions

In this chapter, we have made a case for viewing the benefits of a human rights approach under three broad categories. Our analysis is based on an emerging body of evidence drawn from the experience of public authorities that have begun to embed human rights into their work.

We conclude that where public services involve service users systematically, they have been shown to become more responsive to the people that use them. Service user engagement has the power to erode stigma and mistrust between service users and staff and to challenge prejudicial attitudes to service users and carers.

In addition, a human rights approach can provide a mechanism for organisational renewal by helping staff to reconnect with the values and motivations that first led them to work in public service. Human rights can also be a powerful tool to challenge entrenched poor practice and to extend existing approaches to tackling inequality. There is also some evidence that human rights can improve social relationships.

We consider that the ‘business case’ for human rights is also robust in so far as the human rights framework provides a sophisticated tool for managing risk, achieving transparency and finding objective, balanced and proportionate solutions to complex problems. However, the literature makes no explicit or comprehensive financial case for a human rights approach.

In relation to all three categories, it is a measure of the failure of institutional leadership in government and in public authorities to date that the evidence has not been more thoroughly evaluated and ‘scaled up’ to analyse how human rights approaches might achieve better outcomes for both staff and service users. The independent evaluation of five pilot NHS Trusts that have adopted organisational human rights approaches (due Autumn 2008) may start to address this gap. 324

323 London Roundtable, February 27 2008.
324 A Life Like Any Other? Human Rights of Adults with Learning Difficulties, Volume I, p.103.
However, there will remain a pressing need to identify, analyse and share the good practice that a human rights approach engenders – and this will, in turn, necessitate the development of new methodologies appropriate to this task.

As one participant at the Glasgow Roundtable put it, good practice is all too often ‘compartmentalised’ within organisations or sectors: ‘The pockets of excellence are few, but they’re precious’. 325

325 Glasgow Roundtable, March 5 2008.
CHAPTER 4: BARRIERS TO EMBEDDING HUMAN RIGHTS

Introduction

It is self-evident that organisations or individuals who seek to promote or implement a human rights-based approach to public services do not do so in a vacuum. They work within an existing professional culture and organisational structure; they must comply with a range of other legislation and they are subject to competing policy and resource pressures emanating from different government departments. Increasingly, they operate within a complex chain of relationships involving commissioning bodies and private or voluntary service providers (whose status under the Human Rights Act (HRA) is under debate, as discussed in Chapter 7).

The importance of looking at the systemic level to identify barriers to the embedding of human rights approaches is underlined repeatedly in the literature. For example, the British Institute of Human Rights (BIHR) argues that:

> From the highest societal level downwards, the odds are stacked against efforts to use human rights to improve healthcare for older people. The barriers ... compound to form a pyramid of obstacles that renders isolated and exceptional those efforts by older people, staff and others to use human rights-based approaches to improve the healthcare experience of older people.\(^{326}\)


The Institute for Public Policy Research notes that:

> Implementation beyond paper compliance to actual delivery is always the mountain that needs to be shifted and it is likely to require systemic planning and fundamental systemic reform led from the top.\(^{327}\)

This chapter examines the nature of this ‘pyramid of obstacles’ as explored in the literature and by our interviewees. It is only by identifying these cultural, institutional and systemic barriers that we may come to understand why laudable policy pronouncements, ministerial commitments and, indeed, the best efforts of many individuals at all levels of public service have so far largely failed to embed human rights approaches.\textsuperscript{328}

We identify barriers that exist \textbf{within specific organisations} in relation to contrasting professional and organisational cultures (section 1); the trust and autonomy given to staff (section 2) and the problem of ‘initiative overload’ leading to inertia (section 3).

We also explore the barriers that exist \textbf{in the public sector as a whole}. These include: the lack of accessible information about legal and non-legal remedies and inadequate provision of independent advocacy (section 4); the ‘silos of state’ which inhibit cross-department or cross-sector working and which can exacerbate the problem of initiative overload (section 5); the commissioning process which tends to prioritise cost over human rights considerations (section 6) and the general lack of integration of human rights principles into professional training curricula and codes of practice (section 7).

\textbf{4.1 Organisational cultures and the need to ‘work with the grain’}

We have seen in Chapter 3 that one of the benefits identified when organisations start to embed a human rights approach is that staff reconnect with the values that first drew them to their profession, permitting a reinvigoration of what is loosely termed the ‘public service ethos’. However, the literature shows that there is no single ethos binding all public services, but rather a variety of organisational cultures (by which we mean here the predominating attitudes and behaviour that characterise the functioning of the organisation), each with its own ethos.

There is not scope here to permit a full exploration of these organisational cultures, which vary both between and within public services. Rather, we will focus on those aspects of organisational culture that are seen as being either particularly inimical to or welcoming of human rights approaches. The more this is understood, the more those who wish to embed a human rights approach can work with the grain of existing cultures.

\textsuperscript{328} Key players in this landscape are the organisations that monitor, audit, regulate and inspect public authorities and, in view of their significance, these are considered separately in Chapter 5.
A dominant theme that emerges from the literature is that health services present more difficult terrain for human rights approaches to take root than other public services.

The *Human Rights Insight Project* of the Ministry of Justice\(^\text{329}\) centres on the attitudes and behaviour of staff in what are identified as two contrasting types of organisational culture: the more ‘person-centred’ culture of social services departments and the more target-driven culture prevailing in health services. The research finds that social services staff displayed a greater degree of both explicit and implicit understanding of human rights principles than their health service counterparts, and their organisational ethos was found to be more conducive to human rights principles.

The study noted that NHS staff appeared to feel obliged to prioritise time and money considerations:

> ... it appeared harder for staff in the NHS than for staff in social services to preserve the relational and human rights aspects of services to users.\(^\text{330}\)

By contrast, among social services staff:

> … values such as dignity, respect and inclusion in decision-making are embedded in their customary way of thinking and working – even though many do not know that these values have anything to do with human rights.\(^\text{331}\)

The report explains the differences in perception as being due to the fact that the NHS has:

- A more treatment and symptom-oriented culture
- Shorter term relationships with service users
- A more scientific approach to solving problems, and
- A greater status differential between providers and service users.\(^\text{332}\)

---


\(^{330}\) *Human Rights Insight Project*, p.63.

\(^{331}\) Ibid.

\(^{332}\) Ibid.
This summary echoes thinking from the disability rights field in relation to the ‘medical model’ of disability, perhaps characterised by one interviewee, speaking off the record to us who described it as ‘doctor knows best’. This model tends to promote the view of a disabled person as dependent and leaves control over decision-making firmly with professionals; choices for the individual are limited to the options provided and approved by the expert.

The Human Rights Insight Project suggests that social services staff, by contrast, have a culture more conducive to notions of human rights, emphasising autonomy rather than dependency, having visible standards of ‘customer care’ and, for some, high-profile guidance which insists upon a person-centred, consultative way of working.\textsuperscript{333}

The substantive conclusion – described as the most important finding of the Human Rights Insight Project -- is that:

Customer care policies founded on human rights values assist in ensuring that key human rights principles are respected in the delivery of services and reduce the risk of breaches and challenges.\textsuperscript{334}

Elsewhere, a representative of the NHS Confederation, in submission to the Joint Committee on Human Rights (JCHR), noted the prevalence of a ‘cure over care’ culture which might be assumed to downgrade the importance of treating people with dignity and respect:

... the NHS has a massive problem ... [T]he biggest issue ... is the whole culture and attitude of what we believe the NHS is there for ... We spend our time talking about things in terms of “cure” ... yet 80 per cent of our care is spent on people with multi-system chronic disease. We really have our priorities back-to-front ... in terms of thinking about what the NHS is there for. We have reached the stage where we value care far less than we value cure.\textsuperscript{335}

\textsuperscript{333} Ibid, pp.63-4.

\textsuperscript{334} Ibid, p.iii; this distinction between customer-focused (social services) and non customer-focused (health) cultures is strongly drawn in the Human Rights Insight Project. However it could be argued that this finding is more robustly stated than the evidence presented in the report warrants. The report acknowledges that the sample of 76 frontline staff and managers on which the finding is based is ‘indicative rather than representative’ (p.10).

\textsuperscript{335} The Human Rights of Older People in Healthcare, Volume I, p.32.
A Healthcare Commission survey of NHS staff published during the life of this project showed that less than half of staff thought that the care of patients was their Trust’s top priority, with significant disparities between Trusts.336

Other studies have highlighted systemic attitudes and behaviour in relation to certain groups of health service users. Mencap’s report *Death by Indifference* points to the:

... widespread ignorance and indifference throughout our healthcare services towards people with a learning disability, and their families and carers ... We say this is institutional discrimination.337

Mencap observes that (among what it sees as other policy failings) no targets have been set to address the acknowledged health inequalities experienced by people with a learning disability, and nor has the Department of Health issued guidance on meeting the duty of care for people with a learning disability.338 Responding to the report, Ivan Lewis MP, the Parliamentary Under Secretary of State for Care Services, acknowledged that there was ‘systemic indifference’ in the NHS towards people with a learning disability.339

In relation to older people in the health system, the JCHR says:

We consider that the power imbalance between service providers and service users and the strong evidence that we have received of historic and embedded ageism within healthcare for older people are important factors in the failure to respect and protect the human rights of older people. These problems require more than simply action at the local level, but an entire culture change in the way that healthcare services for older people are run, as well as strong leadership from the top.340

336 Healthcare Commission (2008), *National NHS Staff Survey 2007*, p.15; 10 per cent of staff strongly agreed with the statement ‘Care of patients/service users is my trust’s top priority’ and 36 per cent agreed. Across all trusts, the number of staff who disagreed or strongly disagreed with this statement ranged from 65 per cent to 3 per cent. The survey did not ask staff what they thought Trusts’ alternative priorities were.


339 Ibid.

However, we should not overstate the disparities between organisational cultures. There is evidence that entrenched, often prejudicial attitudes towards service users are not unique to health service settings.

Dame Denise Platt, Chair of the Commission for Social Care Inspection (CSCI), noted that neither health nor social care had a history of rights based approaches and that in both areas people using services were liable to be viewed as ‘commodities’. 341

The Scottish Public Services Ombudsman, Professor Alice Brown, noted that arguments about dignity and respect have generally been taken on board more readily in the health sector than in local government:

They can sometimes be more rule-bound and law-bound and respond by saying that they haven’t broken the law. [I say] “yes, you’ve not broken the law, but you haven’t delivered the service from the perspective of the individual who’s received it”. 342

Equally important, we should not interpret the evidence presented in this section as a counsel of despair. Evidence elsewhere in the literature demonstrates the potential to embed human rights approaches in (for example) healthcare settings as well as in other public service contexts. Even where ignorance or mistrust about human rights present an initial obstacle, the evidence suggests that, once explicitly introduced, human rights can find fertile soil in which to grow. 343

For example, one of the pilot NHS Trusts within the Human Rights in Healthcare project 344, Birmingham Teaching PCT, identified as an obstacle the fact that:

... we are not currently looking at people as human beings first and foremost but by their label or group. 345

341 Interview with Dame Denise Platt, Chair, Commission for Social Care Inspection, March 5 2008.
342 Interview with Alice Brown, Scottish Public Services Ombudsman, February 25 2008.
Nevertheless, it went on to say that:

... many staff have good instincts about human rights issues and many know more than they realise.  

The experience at the State Hospital in Carstairs and Mersey Care NHS Trust (see Chapter 2) further suggests that human rights-based approaches can work with the grain of an existing organisational culture, however unpropitious it might at first appear.

It appears to be the case that human rights approaches have flourished in health settings precisely where health practitioners have consciously – and with the necessary leadership – sought to inculcate a more person-centred ethos identified by the Human Rights Insight Project as being prevalent among social services departments. It also seems to be the case, as we have seen in Chapter 3, that systematic engagement with service users in any professional context is likely to strengthen and sustain efforts to embed an organisational human rights approach.

4.2 Staff autonomy and ‘whistle blowing’

It is not just an organisation’s attitude to service users that matters but also the degree of trust and respect shown towards its staff, and, critically, the degree of autonomy that they are afforded to carry out their work. Several of our interviewees noted that a lack of autonomy among staff was inimical to human rights approaches.

For example, Nony Ardill of Age Concern England observed that the role of care workers tends to be defined as a ‘set of functional requirements’, without sufficient regard to the attributes required to make more pro-active judgements, inspired by human rights values, when caring for service users.  

Dame Denise Platt of CSCI suggested that a lack of trust in care workers, manifested by an obsession with the completion of time sheets or rigid rotas, will inevitably mean that staff are unable to be creative or imaginative in the support they provide for people using services: rather than being seen as individuals, people become a ‘unit’ to whom something must be done in a set period of time.

Several of our interviewees suggested that an organisational human rights approach might also need to tackle issues of bullying and harassment among the workforce,

346 Ibid.
348 Interview with Dame Denise Platt, March 5 2008.
since anecdotal experience suggested that it was hard to build a culture of respect for human rights if staff themselves did not feel that they were respected.  

These are areas which are underplayed in the literature on human rights implementation, with its understandable focus on the experience of service users. This suggests an avenue of further research to establish more clearly whether there is a link between greater autonomy and respect for staff and greater respect for the human rights of service users.

One important guarantor of staff autonomy is a mechanism for public service staff to ‘blow the whistle’ when they suspect abuse is taking place. The JCHR has recommended that the Government include a requirement in both the Care Standards for Better Health and the National Minimum Standards for Care Homes for Older People (or, preferably, in one set of integrated care standards) that hospitals and care homes should have a policy requiring all healthcare workers to report abuse or suspected abuse, with protection for whistle-blowing and confidentiality.

One recent case, in which a nurse was sacked by the NHS after speaking publicly against a service reorganisation, suggests (notwithstanding the rights and wrongs of this particular case) that such a mechanism is not accepted as either necessary or desirable by those that run the health service.

However, asked if he would support a statutory responsibility to report abuse, Ivan Lewis MP, Parliamentary Under Secretary of State for the Department of Health, told the JCHR:

I am not saying I would rule it out for ever. I am just saying I am not persuaded as of today as I appear before this Committee that it would be right to legislate on this issue.


350 We note that the Government has announced (March 27 2008) a research initiative between Comic Relief and the Department of Health investigating the dignity and safety of older people being cared for in institutional settings, which will also examine the pressures faced by those caring for older people in these contexts.


352 [http://www.guardian.co.uk/society/2008/mar/12/nhs.health](http://www.guardian.co.uk/society/2008/mar/12/nhs.health)

353 The Human Rights of Older People in Healthcare, Volume II, Ev70.
4.3 Organisational inertia and ‘initiative-itis’

A repeated theme in the literature is the difficulty encountered when people seek to change an existing organisation and its way of working. This is pertinent because, as explored in Chapter 2, embedding human rights is not merely about inserting the phrase into policy documents but also into institutional thinking. There is much general literature on models of cultural and organisational change which might inform human rights thinking to which this report cannot do justice. In this section, we provide insights from our interviewees and literature review about the factors which have, in practice, impeded the embedding of human rights approaches.

Luke Clements and Rachel Morris note from their survey of UK local authorities that a ‘passive non-implementation policy’ towards the HRA proved most attractive, in stark contrast to early predictions that the Act would produce significant cultural change. They identify some of the immediate factors which led to this prevalent ‘wait and see’ approach among local authorities:

- **Conserving officer time**
- Avoiding the *adverse publicity* which might come from ‘actively promoting policies on behalf of unpopular causes’ (in this case, Travelling people), and
- ‘Lack of interest and engagement’ among elected members which resulted in a lack of support for frontline staff and ‘inertia’ with regard to human rights.  

Clements and Morris analyse the impact that the (more or less simultaneous) introduction of the Best Value performance measurement regime had on local authorities’ implementation of the HRA soon after it came into force. Their conclusions, though specific to a particular time and auditing regime, offer generic insights, which may be summarised as follows:

- **Human rights lacked an ‘effective engine’**: Best Value, highly prescriptive and very public, proved ‘more compelling’ to local authorities than the ‘open textured’ HRA which lacked an engine such as a human rights commission.  

354 Ibid, p.222.


• **Human rights were not integrated into auditing regimes**: Best Value itself contained no human rights dimension (indeed, was ill-equipped to capture this aspect of performance) and only half of local authorities surveyed said they had taken steps to integrate the two.\(^{357}\)

• **Initiative overload**: Best Value had a ‘materially negative impact’ on HRA implementation by imposing a competing demand on officers’ attention, stifling their initiative and fixating them with the objective of meeting centrally generated targets.\(^{358}\)

This description of human rights approaches struggling to make headway against a ‘relentless flow of highly prescriptive legislation’\(^{359}\) is familiar from our interviews. One interviewee in Wales noted that public authorities are too often:

... hostage to the next big thing that comes along ... [for example] “we’ve done equalities and now it’s human rights” ... But it’s not just adopting a theory, it’s actually living it. It’s about changing how we work ... And that’s very difficult for bureaucratic organisations because they’re inherently conservative and they exist by staying the same.\(^{360}\)

Another interviewee in Wales observed that:

A lot of activity can be smoke and mirrors ... there’s a lot of motion, but it’s to mask the fact that everything is staying the same underneath.\(^{361}\)

Heart of Birmingham PCT, one of the pilot Trusts in the Department of Health’s *Human Rights in Healthcare* project, encountered ‘initiative overload’ when seeking to involve staff in its action plan on human rights. The NHS Confederation reported that:

The biggest barrier for them is probably telling staff yet again that there is a new approach – something else that they have to take into consideration. They hope to convince staff that this is a moral issue and get them onside

---


357 Ibid, p.224.
359 Ibid.
361 Ibid.
through training and demonstrating the positive impact through evaluation from patients. Internal communications will be incredibly important in order to avoid the tick-in-the-box approach.\textsuperscript{362}

Another constant refrain was that of human rights knowledge and understanding being ‘stuck in the legal department’ or at one level of an organisation. A senior social worker at the Glasgow Roundtable noted that in large public authorities many frontline staff had good instincts on human rights principles, partly drawn from their codes of ethics, but:

... that ethos doesn’t go up the organisation ... and case law doesn’t come down ... to me that's the biggest obstacle, that level of communication ... the social worker won’t know what that case law is and so they will repeat the same mistakes again and again.\textsuperscript{363}

The Mental Health Act Commission describes one instance in which a member of ward staff said that her organisation had no human rights policy:

... but when we looked we found a very comprehensive policy dated 2004 in the staff resource room – it clearly hadn’t got down to ward level.\textsuperscript{364}

The Audit Commission notes that different parts of the public sector perform to varying levels when it comes to monitoring and disseminating the implications of human rights case law:

The problem is exacerbated in health because it is difficult to identify an appropriate officer who has responsibility for overseeing and monitoring developments. This task can be shared by several people who neither have the time, expertise or resources to perform the function well ... In local government the quality of monitoring was varied, in particular lessons learnt from case law were not always being communicated to frontline managers by legal departments.\textsuperscript{365}

\textsuperscript{362} The Human Rights of Older People in Healthcare, Volume II, Ev236.  
\textsuperscript{363} Glasgow Roundtable, March 5 2008.  
Several interviewees identified the need for a ‘feedback loop’ within public authorities to ensure that practical experience is fed upwards and guidance is disseminated downwards. The evidence reviewed here suggests that inertia, generated in part by an overload of competing initiatives, can hinder this cycle of communication and so impede efforts to embed human rights.

4.4 Remedies and the need for independent advocacy

People who feel that their human rights have been infringed (or whose carers or advocates consider that they have) can potentially pursue a range of avenues of redress, from a complaint to their immediate provider through to legal action. Lack of accessible public information about these options was noted by our interviewees to be a significant obstacle to finding effective redress by any means, and in practice means that, for many people, the perceived alternatives are: ‘do nothing’ or ‘go to court’.

Murray Hunt, Legal Advisor to the JCHR, spoke of an urgent need for the public to be informed about the range of legal and non-legal remedies available to them, and the extent to which these channels explicitly, and effectively, consider complaints based upon human rights considerations.366 This could include early internal channels of complaint – for example within a PCT – as well as other means for obtaining redress for individuals such as the Parliamentary and Health Service Ombudsman, or of improving the pace of change through regulatory frameworks, for example the Healthcare Commission (see Chapter 5).

The legal route for obtaining redress is, the literature suggests, a ‘remote, inaccessible and stressful strategy’367 for service users to pursue, particularly those who require additional forms of support. Luke Clements and Janet Read have documented the physical, social and economic barriers within the judicial process and in wider society that have prevented disabled people from exercising their rights through the courts.368

In reality, of course, very few people want or are able to take their issue to court and it is much more desirable that change can happen without litigation. As the BIHR has

366 Interview with Murray Hunt, Legal Advisor, Joint Committee on Human Rights, March 6 2008.
found, sometimes raising the issue outside of a formal complaints process can deliver the change that is required. However, the literature suggests that in far too many instances, service users are fearful of articulating human rights-based complaints in the first place.

The Centre for Participation (C4P) notes that people with the learning difficulties and their families:

... may be reluctant to challenge authorities for fear of upsetting those that are providing care or concern that they will then be asked to provide the care ...

For example, whilst we recognise that restraint can be necessary, such restraint can be used excessively, inappropriately, and without a proper understanding of why the person has had to be restrained and ... those people who lack capacity to understand what is happening will not be in a position to challenge the actions of others.

The JCHR quotes the Healthcare Commission as saying that:

Our inspections [in hospitals] repeatedly highlighted reluctance by older people to complain due to fear that this would affect the treatment that they or their relatives received.

The JCHR adds that:

As for care homes, it is no wonder that older people in some homes are scared to express concerns. We were shocked by the number of witnesses who told us of people who had faced eviction from care homes because they or their relative or carer had complained.

369 The following example is from British Institute of Human Rights (2007) The Human Rights Act – Changing Lives, p.10. A young man with mental health problems was placed in residential care. During a visit, his parents noticed unexplained bruising on his body. They raised the issue with managers at the home but their concerns were dismissed and they were told that they were no longer permitted to visit their son. After participating in a BIHR training session the parents approached the care home again and invoked their son’s right not to be treated in an inhuman and degrading way and their right to respect for family life. As a result, the ban on their visits was revoked and an investigation was conducted into the bruising on their son’s body.


371 The Human Rights of Older People in Healthcare, Volume I, p.68.

372 Ibid.
The JCHR notes that Help the Aged spoke of:

... institutional and systemic barriers, including there being “no clear or accessible mechanism for raising issues of concern” including about violations of their Convention rights. They pointed out that care home residents have minimal contact with social workers and annual reviews “tend to be a cursory and bureaucratic exercise”. 373

Age Concern notes that in spite of the Government’s pledge to deliver a ‘patient-centred’ NHS complaints system:

Patients often have very limited awareness of the system and/or experience difficulties in navigating it ... complaints are often poorly handled, with complainants facing excessive delays, defensive attitudes and even removal from GPs’ lists. 374

The provision of effective independent advocacy is widely viewed as a key component of an effective system of remedies, to overcome the barriers of fear and isolation and help service users navigate through the options available to them. The JCHR notes that advocacy for ‘vulnerable’ individuals is required as part of the positive obligations of public authorities to ensure respect for human rights (see also Chapter 2). 375 Effective independent advocacy is needed first and foremost to assist people to make complaints (and to achieve redress) at the very earliest stages, in relation to informal complaints rather than the formal legal process.

Help the Aged notes that advocates ‘are beginning to marshal human rights arguments’ and have used these arguments successfully to ensure that:

- Consultation takes place
- Care assessment and planning takes account of psychological needs as well as physical ones

373 Ibid, p.69.


375 Ibid, p.70; in 2006, the JCHR notes, the Patients’ Association conducted a survey among 188 patient/health advocates asking for their views on such issues as the ability of patients to exercise their legal rights within the NHS and how a patients’ rights-based system could be managed and enforced. The survey generated one of the best response rates ever attained from a poll of patient/health advocacy groups in the UK, the JCHR adds, suggesting that the topic of patients’ rights is regarded as important by the patient advocacy community in England and Wales.
• An older woman with learning difficulties was not forced to leave her care home at 65
• Older people receive care in their own homes rather than being forced into institutions
• The right to meaningful contact between families when one is in a care home is upheld
• Couples are not separated
• Abuse investigations are procedurally thorough, and
• Older carers are not forced to continue to provide care in an abusive situation.376

However, our interviewees emphasised that effective independent advocacy and, crucially, access to qualified legal advice is also needed to ensure that legal action is a realistic option in those cases where other avenues have failed and where litigation – or the threat of litigation – is the only possible means of achieving a remedy for the individual (and possibly for others too). The legal route may be the one least travelled, they emphasised, but it is important to clear it of obstacles to those who might need it most.

The JCHR has welcomed the Government’s endorsement of the value of independent advocacy377. However, in its report on the human rights of adults with learning disabilities, the Committee raises several concerns about the adequacy of provision for this particular group of service users:

• *Valuing People Now* refers to the need for independent advocacy for parents with learning disabilities but proposes no action to ensure or increase its availability.378

• The need for independent advocacy is arguably greatest among people with profound and multiple disabilities, who do not use speech to communicate, but they are not well represented by self advocacy groups, on Partnership Boards, or on other national, regional and local fora of people with learning disabilities. One survey showed that only 11 per cent of advocacy schemes could support a person with profound and multiple learning disabilities.379

377 Ibid.
379 Ibid, p.84.
• The British Institute of Learning Disabilities said that: ‘Access to independent advocacy … is dependent on a postcode lottery … Funding for advocacy schemes tends to be very fragile and short term in nature’.  

• The Mental Capacity Act 2005 introduced independent mental capacity advocates (IMCAs) to support people who lack capacity to make important decisions. However, on resource grounds, the IMCA service is restricted to those individuals who do not have family or friends who could be consulted. The JCHR has endorsed calls for the IMCA service to be extended since ‘many people who have family and friends … will also require the help of a specialist independent advocate to safeguard their interests’.

The JCHR did not voice similar concerns about the availability of advocacy in its report on the human rights of older people in healthcare. However, several organisations who gave evidence to the inquiry did do so. For example, the NHS Confederation said that:

Advocacy is improving for those older people deemed to lack mental capacity (such as those with dementia), however there is no defined, routine access to advocacy for any older person who has no family or friends to support them. The numbers of isolated, elderly people is increasing annually, making them more vulnerable to abuse.

MIND noted that for older people in mental health and social care settings:

At present, advocacy services are not available for all and are not provided on the basis of need.

4.5 The ‘silos of state’: the need for cross-department working

The literature and our interviewees make repeated reference to the need for top-down initiatives to be better co-ordinated and for public services to avoid working in isolation. This is seen to be a pre-requisite for human rights approaches to gain any purchase on the design and delivery of public services.

382 The Human Rights of Older People in Healthcare, Volume II, Ev231.
383 Ibid, Ev137.
Dame Denise Platt noted that successive government initiatives were like a ‘kaleidoscope’ which could be viewed from different angles. As she put it, if you are a chief executive in local government or health:

The silos of state independently dump things on your desk and local bodies have to make the pattern.  

The JCHR has also emphasised the need for cross-department working in its report on the human rights of adults with learning disabilities:

On the one hand, the Minister for Care Services told us that the creation of the Office of Disability Issues and the Life Chances Ministerial Group meant that the disability agenda was “uniquely” being “driven across Government”. Yet, on the other, he told us that even within his own Department, he had found it a “struggle” to get the mainstream NHS to take the needs of adults with learning disabilities seriously ... we are concerned that there has been only limited evidence of constructive joint-working by Government on these issues so far.

Values into Action, in their submission to the JCHR, argued that:

The responsibility for improving the lives of people with learning difficulties needs to be taken by all Government Departments. If this joint work is reflected at the top it can be mirrored in local government ... At present because departments work in silos, people with learning difficulties fall through the net and locally these different departments only come together when it is too late.

One interviewee who wished to remain anonymous noted that ‘competing priorities and ministerial preferences’ meant that human rights were not a consistent driver of policy. The interviewee argued that:

384 Interview with Dame Denise Platt, March 5 2008.
Ministers and priorities come and go ... The dignity and respect agenda is particularly associated with particular ministers and although they are fundamentals that should run through ... it may well be that a new minister coming in ... wanted to do something else ... There would be a change of language, whereas I think there’s something much more constant about human rights ... something more fundamental ... about how we treat people and how we expect to be treated.

As discussed in Chapter 3, it is hard to make a ‘business case’ for human rights while the silos of state are intact. Eleri Thomas of Save the Children Wales argues that services should be viewed ‘holistically’ in order to identify where a cost in one service area yields a saving elsewhere that would otherwise not be captured.\(^{387}\) She notes that the ‘citizen-centred’ focus of public service reform in Wales creates the potential to move in this direction.

Our interviewees underlined that, in the absence for now of more ‘joined up’ public services, the key for those promoting a human rights approach is to work with the grain of the government imperatives of the day. However, while some government initiatives might seek to promote human rights, one interviewee noted:

> ... everything else is what the Treasury asks for and the Treasury doesn’t ask for human rights – and the rest of government services are based on what Treasury wants ... and that’s the key as to why these things are always marginalised even with the best of good intentions.\(^{388}\)

Key to this is the inability of central government to address people’s needs over their lifetime, rather than, as happens now, through the lens of different departmental silos. The consequent lack of pooled budgets (or pooled thinking) places inherent limits on the potential for new approaches to the design of public services. Spending in one area to protect or promote individuals’ human rights might potentially deliver significant savings in another area such as benefits or healthcare.\(^{389}\) However, at

\(^{387}\) Interview with Eleri Thomas, Assistant Programme Director, Save the Children Wales, March 7 2008.

\(^{388}\) London Roundtable, February 27 2008.

\(^{389}\) For example, personal budgets, with appropriate advocacy and support where necessary, are viewed by many as being more likely to fulfil the human rights of those receiving them than residential care settings. There is evidence that the cost of personal budgets in those local authorities that have adopted them is lower than that of providing traditional services (comparing before and after costs for the same individuals). See Leadbeater C., Bartlett J. and Gallagher N. (2008) Making it Personal, pp.85-9.
present there is little attention paid to how to capture these cross-departmental impacts or how to incorporate different approaches to the design and delivery of public services.\textsuperscript{390}

4.6 The need for ‘intelligent’ commissioning

Our interviewees placed great emphasis on the need to build human rights considerations into the commissioning of public services and to develop new, more creative approaches to commissioning which place individuals’ needs at the centre.

Allan Bowman, Chair of the Social Care Institute for Excellence, made a case for moving away from a focus on the lowest unit cost to taking account of human rights concerns through what he called ‘intelligent commissioning’:

Design now is driven by cost and by economies of scale, not by services to meet individual need or individual aspiration. So for example you go in and assess a frail older person and at the end say, you can have X, Y and Z, some of which is free, and some [of which] you may need to pay for. Instead it should be a very different assessment – sitting down with someone and asking where are you now, where do you want to be, then what do you need to help you get there, then what can we provide, and the person shapes what is delivered.\textsuperscript{391}

The JCHR has lamented the dearth of appropriate guidance for commissioners, citing as one recent example the Department of Health’s \textit{Good Practice Guidance for Commissioning Specialist Adult Learning Disability Health Services}\textsuperscript{392} which:

... fails entirely to mention “human rights” or a “human rights-based approach”, or to provide any practical guidance to commissioners on how to use

\textsuperscript{390} Defined by Sir Michael Lyons as a ‘wider, strategic role for local government ... the creative use of powers and influence to promote the general wellbeing of a community and its citizens’. See Lyons M. (2007) \textit{Lyons Inquiry into Local Government— Place Shaping: a shared ambition for the future of local government (Executive Summary)}, London: TSO, p.3.

\textsuperscript{391} Interview with Allan Bowman, February 28 2008.

commissioning agreements to secure respect for the rights of adults with learning disabilities.\textsuperscript{393}

Nony Ardill of Age Concern England emphasised the need to place procurement within a human rights framework in the light of the ‘public function’ loophole which effectively excludes public services provided by the voluntary and private sector from responsibility under the HRA (see Chapter 7):

With public authorities being put under increasing pressure to contract [services] out ... and particularly where there is uncertainty whether the Act applies or not, it’s very important to build human rights standards into contracts ... They might have to pay more for the contract to ensure those standards are maintained ... rather than just “the cheapest gets the bid”.\textsuperscript{394}

There is some evidence of commissioning bodies embracing new approaches. Heart of Birmingham Teaching PCT has devised an action plan for human rights across commissioning and service delivery. This includes an assessment of requirements for including human rights in service contracts. The Trust says that:

The commissioning angle is particularly interesting – using human rights as a key tool in commissioning services for the patient population and then monitoring the contracts against the protection of human rights. The Trust believes that as commissioning becomes a more powerful tool, putting human rights into the heart of the process is the best approach. It will stop human rights being simply reactive.\textsuperscript{395}

Nevertheless, such examples are few. Mike Wardle, Chief Executive of the General Social Care Council, echoed the concern that commissioning in health and social care is generally focused on ‘price, not quality’. He emphasised the need for guidance to commissioners on designing contracts in which full payment might depend upon service providers demonstrating that they had addressed human rights considerations.\textsuperscript{396}

\textsuperscript{393} A Life Like Any Other? Human Rights of Adults with Learning Disabilities Volume I, pp.93-4.

\textsuperscript{394} Interview with Nony Ardill, March 6 2008.

\textsuperscript{395} The Human Rights of Older People in Healthcare Volume II, Ev236.

\textsuperscript{396} Interview with Mike Wardle, Chief Executive, General Social Care Council, February 20 2008.
The Government has placed increasing emphasis on commissioning for ‘health and well-being’ by joining up health and social care assessment and commissioning. Overall, then, our interviewees suggest that the time is ripe to influence this crucial process via the established regional and national fora for commissioning bodies.

4.7 Professional training and codes of practice

It is axiomatic that human rights approaches will take root within public services more readily if human rights principles are built into their professional training, guidance and codes of practice.

Human rights principles are generally not included explicitly in the criteria for professional training or in codes of practice for health professionals or social care workers, although some do use the language of ‘dignity’ and ‘respect’. The JCHR cites as examples of codes and guidance where human rights principles are absent:

- The General Medical Council’s guidance for *Tomorrow’s Doctors* (2003)
- The General Medical Council’s *Good Medical Practice* (2006)
- The curriculum for trainees in geriatric medicine (2007)

397 The Human Rights of Older People in Healthcare, Volume I, p.60.


399 However, the guidance requires doctors to ‘show respect for human life’ and ‘treat patients as individuals and respect their dignity’ and to ‘offer assistance to children and young people if you have reason to think that their rights have been abused or denied’; see [http://www.gmc-uk.org/guidance/good_medical_practice/GMC_GMP.pdf](http://www.gmc-uk.org/guidance/good_medical_practice/GMC_GMP.pdf)

400 The Code is currently under consultation. It states that registered nurses, midwives or specialist community public health nurses ‘are personally accountable for ensuring that you promote and protect the interests and dignity of patients and clients, irrespective of gender, age, race, ability, sexuality, economic status, lifestyle, culture and religious or political beliefs’; see [http://www.nmc-uk.org/aFramedisplay.aspx?documentID=201](http://www.nmc-uk.org/aFramedisplay.aspx?documentID=201)

• The NHS Knowledge and Skills Framework (2004) which applies to all NHS staff except doctors.\footnote{402}

There is little evidence that human rights principles have been integrated into professional standards for teachers, at least in England. The Training and Development Agency for Schools’ \textit{Professional Standards for Teachers} (2007)\footnote{403} makes no reference to human rights. By contrast, the General Teaching Council for Scotland’s \textit{Standard for Full Registration} (2006) requires teachers to ‘fully respect the rights of all children and young people without discrimination as defined in the United Nations Convention on the Rights of the Child’ and other legislation\footnote{404} (see also Chapter 2 for the Rights, Respect and Responsibility project among schools in Hampshire).

On a more positive note the General Social Care Council’s \textit{Code of Practice for Social Care Workers} (September 2002)\footnote{405} contains more explicit references to the rights of service users and carers. It requires social care workers to, among other requirements:

\begin{itemize}
  \item Protect the rights and promote the interests of service users and carers
  \item Support service users’ rights to control their lives and make informed choices about the services they receive
  \item Respect and maintain the dignity and privacy of service users, and
  \item Recognise that service users have the right to take risks and help them to identify and manage potential and actual risks to themselves and others. \footnote{406}
\end{itemize}

There is no reference to rights in the equivalent code of practice for employers.\footnote{407}

\footnotesize
\begin{itemize}
  \item \footnote{402} http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4090843
  \item \footnote{403} http://www.tda.gov.uk/teachers/professionalstandards/downloads.aspx; see also Jennings T., \textit{Human Rights Education Standards for Teachers and Teacher Education}, in 17(4) Teaching Education 2006, pp.287-98, which proposes a set of human rights education standards for classroom teachers.
  \item \footnote{404} General Teaching Council for Scotland (2006) \textit{The Standard for Full Registration}, December 2006, p.16.
  \item \footnote{406} Ibid, pp.4-7.
  \item \footnote{407} General Social Care Council (2002) \textit{Code of Practice for Social Care Employers}.
\end{itemize}
The JCHR – in line with submissions from the representative bodies of nurses and doctors working with older people – has recommended that:

A basic understanding of how the Human Rights Act requires the protection of basic principles such as dignity, fairness, respect and equality be included in qualifications, accreditation and re-licensing for health professionals.\(^{408}\)

The Government replied that the regulatory bodies responsible for the basic education curricula and codes of professional ethics should consider how best to ensure an understanding of the healthcare professional’s responsibilities in this area, but, notes the JCHR, implicitly rejected taking a statutory approach.\(^ {409}\)

The JCHR has now recommended inserting references to this issue into the Health and Social Care Bill, to require human rights to be included in the education and training of healthcare workers, mental health professionals and social care workers.\(^{410}\)

There is not scope in this report to examine the full range of professional training curricula and codes of practice. However, the examples cited above suggest that there are inconsistencies in the way in which human rights principles have been integrated into them to date. This is surely a vital arena for the aspirational aspects of human rights practice, explored in Chapter 2, to be introduced and thereby to influence the next generation of public service practitioners.

### 4.8 Conclusions

Organisations that seek to embed a human rights approach in their work face significant barriers. Some of these barriers may be addressed at the level of the individual organisation. We have found evidence that even apparently unfavourable working cultures can provide fertile ground for human rights approaches once explicitly introduced and understood by staff.

However, barriers also exist at the systemic level – that is, across the public sector as a whole – which are harder for any single public authority to confront. The tendency for government to work in departmental silos is, we conclude, inimical to human rights principles which require services to be shaped from the perspective of

---

\(^{408}\) The Human Rights of Older People in Healthcare, Volume I, p.64.


\(^{410}\) Ibid, p.18.
the individual service user. Similarly, human rights approaches have not generally been integrated into the largely cost-driven commissioning process, though our interviewees suggest an appetite for the development of more flexible and ‘intelligent’ commissioning models.

Overcoming these barriers will require a sustained effort from those that champion human rights approaches at national level. In Chapter 8, we suggest some strategies by which this might be achieved.
CHAPTER 5: THE ROLE OF INSPECTION AND REGULATION

Introduction

There is a consensus in the literature and among our interviewees that the organisations that inspect, regulate or monitor public authorities, or that handle complaints against them, have a vital role to play in promoting human rights in public services.\(^{411}\) As well as monitoring the standards which service providers must reach and assessing public authorities against those standards, these bodies can also provide guidance, disseminate best practice, conduct sector-specific or thematic research, and, critically, involve service users in monitoring service delivery. Regulatory bodies are public authorities themselves and therefore need to ensure that they, too, comply with the Human Rights Act (HRA).

The parliamentary Joint Committee on Human Rights (JCHR), referring to the work of the Healthcare Commission and the Commission for Social Care Inspection (CSCI), observed that they are:

... influential in providing leadership, guidance and scrutiny of the public services under their jurisdiction ... In our opinion, they play an important role in the implementation of the Human Rights Act.\(^{412}\)

The JCHR noted that many of the submissions it received concerning the structure, function and powers of what is now the Equality and Human Rights Commission ‘emphasised that human rights and equality are often best promoted through existing regulators and inspectorates’.\(^{413}\) Professor Francesca Klug and Claire O’Brien similarly argued that promoting human rights through regulatory bodies is a way of ‘harnessing the multiplier effect’.\(^{414}\)

\(^{411}\) For simplicity, we use the term ‘regulatory bodies’ in this chapter to refer collectively to those bodies that inspect, regulate and monitor public authorities or that handle complaints against them, unless otherwise stated. However, we acknowledge that the roles carried out by these bodies are both distinct and wide-ranging; their specific functions and responsibilities are outlined in the detailed review of each regulatory body.


\(^{414}\) Ibid.
In the view of the significance accorded to the inspection and regulatory function, this chapter provides a detailed review of some of the main regulatory bodies in England, Scotland and Wales. We have selected those organisations which, the literature suggests, have the widest scope to influence outcomes for the most service users or which, because they inspect places of detention, offer the primary avenue for redress for those people whose treatment and conditions they monitor or inspect.

This review takes into account the changes that are about to take place in inspection and regulatory regimes in Britain. These changes may cause some instability which may in turn require increased vigilance to ensure no diminution of focus on human rights and no loss of commitment to the involvement of service users in planning, delivering and evaluating services. However, just as significantly, these developments provide an opportunity for a harmonisation and strengthening of human rights approaches.

In England, the Healthcare Commission, CSCI and the Mental Health Act Commission (MHAC) will merge to form the Care Quality Commission, a single ‘super-regulator’ for health and adult social care in England. At a local level in England, the Audit Commission will shortly be managing a new inspection framework, Comprehensive Area Assessment (CAA) which uses data from other regulators to present a more holistic view of services within a local area. These changes are considered in more detail in section 2 below.

In Scotland, the Crerar Review has set out proposals for ‘radical changes’ to the regime of audit, regulation and inspection, considered in section 3.

In Wales, the Beecham Report called for ‘more focused and proportionate’ inspection and regulation to help deliver more ‘citizen-centred’ public services, and its implications are considered in section 4.

5.1 Key findings

Before we review the evidence of organisational human rights approaches within the selected regulatory bodies, we provide our key findings which are further analysed and illustrated in the sections below when discussing the work of the individual bodies.

5.1.1 The prevalence of human rights approaches among regulatory bodies

The literature shows that some of the regulatory bodies have used the language of human rights values such as ‘dignity’, and ‘respect’ but have not, in the past, made explicit their commitment to human rights, and so have not demonstrated to public
authorities the potential benefits of embedding human rights into institutional thinking. However, there is evidence that change is under way, with the adoption (in some cases very recently) of a more explicit human rights focus in the work of some regulatory bodies.

As with all public authorities, ‘snapshots’ – one-off exercises to measure human rights awareness or compliance – are no substitute for more thorough-going institutional change. Those regulatory bodies which have adopted such an approach include: CSCI (2.4); the MHAC (2.6); HM Inspectorate of Prisons for England and Wales (2.7); the Parliamentary and Health Service Ombudsman (2.9); the Mental Welfare Commission for Scotland (3.5); HM Inspectorate of Prisons for Scotland (3.6) and the Scottish Public Services Ombudsman (3.8).

5.1.2 Capturing the evidence

There is insufficient evidence in the literature to conclude with confidence that the adoption of an explicit human rights focus by regulatory bodies necessarily makes them more effective at identifying, challenging or ensuring the rectification of poor practice ‘on the ground’. This is partly because efforts to embed human rights are in many cases so recent and also because there is a general dearth of literature about the tangible outcomes of the inspection and regulatory function for service users and staff. However, there is some compelling evidence that those regulatory bodies that have adopted an explicit human rights approach have found that it has strengthened their work.

Paper-based systems alone are unlikely to be a sufficient mechanism for monitoring human rights compliance and could lead to a ‘tick box’ approach. The integration of human rights into existing inspection regimes, coupled with the systematic

415 For example, the British Institute of Human Rights noted that: ‘Low visible commitment to human rights amongst healthcare providers in both the public and voluntary sectors is compounded by low emphasis placed on human rights by the inspectorates...’; see British Institute of Human Rights (2007) Joint Committee on Human Rights – the human rights of older persons in healthcare – call for evidence, p.4.

416 There is evidence that, at least in some cases, inspections have not effectively challenged poor practice on the ground. One advocacy group for people with learning difficulties quotes a nurse as saying that: ‘Inspections are not specific enough to target resources to the particular needs of individuals; I think quite frankly an awful lot of what they do is just paperwork and it has got nothing to do with real people ...’. However, the fragmentary nature of this evidence precludes any definitive conclusions about the general effectiveness of regulatory bodies. See Finnegan P. and Clarke S. (2005) One Law for All? The impact of the Human Rights Act on People with Learning Difficulties, p.53.
involvement of service users and a transparent and responsive complaints system, are more likely to capture the full range of evidence required.

5.1.3 The benefits of a human rights approach by regulatory bodies

There is evidence that an explicit human rights focus can enable regulatory bodies to:

• Make their own work more inclusive of and accessible to all service users, especially those with multiple or complex needs that might otherwise be obscured, and encourage public authorities to do the same. Examples include CSCI (2.4) and the Mental Welfare Commission for Scotland (3.5).

• Ensure that the regulatory function fully reflects the experiences and priorities of service users and encourage public authorities to place the needs of individual service users at the heart of service delivery. Examples include the Audit Commission (2.3); CSCI (2.4); the MHAC (2.6); http://www.audit-scotland.gov.uk/utilities/search_report.php?id=386 Scottish Commission for the Regulation of Care (3.3) and the Care and Social Services Inspectorate Wales (4.3).

• Provide guidance on best practice to public sector staff which supports them to make balanced and proportionate decisions in line with human rights principles, for example with regard to the use of restraint and other forms of deprivation of liberty. Examples include: CSCI (2.4) and the Mental Welfare Commission for Scotland (3.5).

• Inspect, regulate or handle complaints against public authorities according to a set of transparent, objective and internationally recognised standards and thereby help public authorities ensure that they are compliant with the HRA. Examples include: the Audit Commission (2.3); CSCI (2.4); HM Inspectorate of Prisons for England and Wales (2.7); Parliamentary and Health Service Ombudsman (2.9); HM Inspectorate of Prisons for Scotland (3.6); Scottish Public Services Ombudsman (3.8)

• Ensure that public authorities recognise and act upon their positive obligations not just to refrain from harm but to protect and promote human rights regardless of who or what is causing the harm, for example the Scottish Public Services Ombudsman (3.8).

5.1.4 The importance of engaging service users

There is strong evidence to suggest that regulatory bodies which involve service users systematically in their work have a deeper engagement with human rights. The integration of service users in inspection is itself an indication of a human rights-
based approach, and helps ensure that such an approach is embedded in the organisation and sustained over time. The MHAC’s Service User Reference Panel (see also Chapter 2) and CSCI’s Experts by Experience scheme are good examples of this approach. It bears repeating that service user engagement holds the key: the more that service users shape the principles and methodology of inspection, the more grounded inspections will be in service users’ experience – and the more visible any evidence of changed outcomes will be.

5.1.5 Sharing of best practice

It is vital that all regulatory bodies share information and best practice with regard to human rights and models for service user involvement – and some already do so. Several regulatory bodies reviewed below have produced guidance or commentaries on issues of risk and the deprivation of liberty, and these are areas where there may be scope for greater co-operation. Such collaboration on common challenges could improve the sophistication of regulatory bodies’ work and harness the ‘multiplier effect’ both within and between nations.

5.2 Regulatory bodies in England

5.2.1 The Care Quality Commission

As mentioned above, the Government intends to create – by means of the Health and Social Care Bill – a new regulator for health and adult social care in England, the Care Quality Commission. The new body will be established during 2008, subject to the passage of legislation, and will take on its full powers from April 2009.

There is not scope in this report to review the full range of responses to the creation of the new regulator; however, we summarise here some responses which relate to the promotion of human rights, service user involvement and complaints procedures.

417 The inspectorates have an existing statutory duty to cooperate with each other. One of the fruits of this cooperation in England is Living Well in Later Life, a joint review of progress on the National Service Framework for Older People by the Audit Commission, the Healthcare Commission and CSCI, which was published in 2006 and was the first such collaborative, in-depth review; http://www.healthcarecommission.org.uk/_db/_documents/Living_well_in_later_life_-_full_report.pdf

5.2.1.1 The case for a human rights approach

The JCHR has recommended that the merged inspectorate should adopt a human rights approach to underpin and inform its work.

The Government’s response to this recommendation, quoted by the JCHR, notes that the Department of Health ‘will expect compliance with the Human Rights Act to form an important part of [the new regulator’s] work’ – a response which the JCHR describes as ‘deeply disappointing’. The JCHR notes that:

... compliance with the Human Rights Act is a legal requirement, not simply something for the Government to “expect” to happen. Moreover, our concern is with ensuring that human rights influence the work of the new Commission across the board, and are not simply seen as a matter for “tick box” compliance.\textsuperscript{419}

The JCHR restates its recommendation that the framework created by the HRA should be seen as ‘overarching and fundamental’. It adds:

We regret that the Department of Health has failed to address this point and has resorted to restating the current position, whereby the Human Rights Act is seen as just another statute applicable to public authorities, demanding compliance rather than wholesale culture change.\textsuperscript{420}

CSCI has echoed this concern:

CSCI believes, in line with general government policy, that the new regulator should take a strong rights based approach towards the people who use social care and health services ... We want to ensure that this approach is reflected throughout the legislation but we are not convinced that this is currently the case.\textsuperscript{421}

A letter to \textit{The Guardian}, signed by 33 national voluntary sector providers of social care services to older and disabled people, similarly notes that:

\begin{flushleft}
\end{flushleft}


\textsuperscript{420} Ibid.

\textsuperscript{421} Commission for Social Care Inspection (2008) \textit{Health and Social Care Bill: Briefing Note by the Commission for Social Care Inspection for the House of Lords Second Reading Debate}, p.16.
The new commission must take full account of the particular perspectives of social care in this country, putting human rights values and the views and experiences of people who use these vital public services ... at the centre of its activities. Otherwise, as currently drafted, this bill runs the risk of moving the health and social care sector backwards by setting up a regulator that works to yesterday’s policy agenda.422

5.2.1.2 Service user involvement
CSCI has voiced concern that the involvement of service users in existing regulatory approaches – such as its own Experts by Experience programme – risks being sidelined in the new regulator. CSCI notes that:

... the Bill seeks to deal with this issue by way of an “advisory committee” which can conversely often be a way of inadvertently passing these issues out of the mainstream of an organisation.423

Mental Health Act Commissioners have echoed this concern. Kay Sheldon, a Commissioner and non-executive lead on service user involvement for the MHAC, notes that proposals for the Care Quality Commission put emphasis on self-assessment and local performance management, and that:

... user experiences usually fall below the radar of these initiatives – often deemed too time consuming; not representative or unreliable ... there needs to be a dedicated rights-based approach to monitoring, based on the experience of service users, which cannot be eroded within the structures and processes of the new inspectorate body.424

5.2.1.3 Complaints
The existing inspectorates have different complaints procedures. With the exception of severe abuse, which will be referred to the police, CSCI refers complainants back to their care home provider or possibly, if residents are publicly funded, back to the local authority. The Residents & Relatives Association told the JCHR that relatives and residents are reluctant to complain to the care home provider for fear of

422 http://www.guardian.co.uk/theguardian/2008/feb/18/3
423 Ibid, p.15.
424 Sheldon K. (undated) Service user experiences and the value of monitoring the use of mental health legislation, p.2; http://www.mhac.org.uk/?q=node/14
victimisation, leaving self-funded residents in particular without an immediate and accessible remedy for their complaint.425

By contrast, the Healthcare Commission has a duty to investigate individual complaints if the complainant is dissatisfied with the outcome of a complaint to the immediate service provider. The JCHR is alarmed that the government has not given a guarantee that when the complaints processes are merged, the approach of the Healthcare Commission will prevail:

We are convinced that complaints, including those raising human rights concerns, need to be investigated by an independent third party, rather than by the organisation against which the complaint is made and where the older person may continue to live. We therefore recommend that the newly merged inspectorate be empowered to investigate individual complaints, as the Healthcare Commission is currently able to do.426

5.2.2 Comprehensive Area Assessments

In 2009, a new arrangement known as Comprehensive Area Assessment (CAA) will take over from the current Comprehensive Performance Assessment (CPA) of local government. The CAA will be developed and delivered jointly by all the main inspectorate bodies, and the consultation document promises a new lighter touch, risk-triggered inspection and audit regime.427

The CAA will provide:

... the first holistic independent assessment of the prospects for local areas and the quality of life for people living there. It will put the experience of citizens, people who use services and local taxpayers at the centre of the new local assessment framework, with a particular focus on the needs of those whose circumstances make them vulnerable.428

426 Ibid, p.73.
There is only a single paragraph referring to ‘human rights’ in the consultation document, in the context of engaging with communities and protecting vulnerable people. It states:

Public authorities have a responsibility to act in a way that does not breach the human rights of individuals, including their right to dignity and fairness. They also have a responsibility to promote equality of opportunity, good relations and positive attitudes; and to eliminate harassment and unlawful discrimination. CAA will reflect this strong link between human rights and diversity.\[429\]

It might be noted that a reference to public authorities’ responsibility to refrain from breaching the rights of individuals is a rather limited, negative formulation and does not encompass the positive obligations of public authorities in relation to the HRA.

From 2009, the CAA will be an important arena within which inspectorates can collaborate to embed equality and human rights in an integrated way into their assessment processes. It is to be hoped that from these assessments a clearer picture will emerge of how far local authorities are adopting an organisational approach to ensuring human rights compliance, as well as to what extent they adopt a human rights framework when designing new services.

### 5.2.3 Audit Commission

The Audit Commission is an independent public authority responsible for ensuring that public money is spent economically, efficiently, and effectively in the areas of local government, housing, health, criminal justice and fire and rescue services. Its mission is to ‘promote good practice and help those responsible for public services to achieve better outcomes for citizens, with a focus on those people who need public services most’.\[430\]

The Institute for Public Policy Research (IPPR) report on *Improving Public Services* notes that the Audit Commission ‘initially regarded the impact of the HRA on public authorities from a risk-based compliance perspective’. However, on the basis of evidence of how a human rights framework could improve decision-making in public

---

authorities, the IPPR report says, it has come to regard the HRA as a ‘potential tool for positive change’.

In 2003 the Audit Commission published a landmark report on using human rights to improve public service delivery. Auditors gathered evidence of how many public authorities had adopted a strategy for human rights (58 per cent had failed to act, which included 73 per cent of health trusts). Auditors also collated evidence of arrangements to ensure that their contractors and partners were taking steps to comply with the HRA (61 per cent had failed to act). The report presented practical examples, lessons to be learnt from legal cases and guidance from other organisations.

This one-off exercise to track compliance with the HRA across a range of public authorities including health services has not been repeated, and the JCHR recommends that the merged health and social care inspectorate undertake a similar exercise within three years of its inception.

The Audit Commission’s approach since 2003 has been to embed equality, diversity and human rights into its corporate assessment and service inspection methodologies. Its diversity annual review notes that this integration process moved forward in significant ways in 2006–07.

Innovations include:

- A Knowing Your Communities toolkit, including an online human rights self assessment, accompanied by some best practice case studies.
- A Diversity, Equality, User Focus and Human Rights Knowledge Network, which shares information and commissions specific studies and projects to design improvement tools.

---


433 Ibid, pp.16-29.

434 The Human Rights of Older People in Healthcare, p.54.

435 See http://www.audit-commission.gov.uk/reports/NATIONAL-REPORT.asp?CategoryID=&ProdID=18CF5DE6-B49B-468c-8017-0B79E5C5294E&SectionID=sect6#

436 http://www.userfocus.audit-commission.gov.uk/KycSection.aspx

437 http://www.userfocus.audit-commission.gov.uk/KycNotablePractice.aspx
• The introduction, in June 2006, of cross-cutting key lines of enquiry (KLOEs) and self-assessment guidance on access to services (for example, auditors ask ‘does the delivery of access to services embrace equality, diversity and human rights and ensure that all users, or potential users, have fair and equal access?’)\textsuperscript{438}, and

• The introduction of similar KLOEs on diversity for cross-cutting inspections on community safety and regeneration and (in February 2007) a new KLOE for measuring diversity in the delivery of housing services.

Overall, the Audit Commission states that the principles of user focus, equality, diversity and human rights are now ‘at the heart of our service inspections’. Among other things, inspections should:

• Evaluate whether statutory requirements on equality, diversity and human rights are being addressed

• Challenge service providers to promote and outline their approach to equality, diversity and human rights

• Examine the access to and impact of services for all sections of the community, including minority and disadvantaged groups, and

• Take account of, and report on, the views of users and of particular communities, including those groups of users who are traditionally seen as hard to reach.\textsuperscript{439}

It is not possible at present to assess the degree to which the changes in inspection methodology are reflected in the day-to-day work of inspectors, in order to give life to these principles, nor is there yet any literature offering such an analysis. The Audit Commission’s development of the Comprehensive Area Assessment framework and in particular its forthcoming work with local residents and service users to inform the development of the methodology may offer more insights in the future.

5.2.4 Commission for Social Care Inspection

Established under the Care Standards Act 2000, what is now known as the Commission for Social Care Inspection (CSCI) is the single inspectorate and


\textsuperscript{439} See http://www.audit-commission.gov.uk/reports/NATIONAL-REPORT.asp?CategoryId=&ProdID=18CF5DE6-B49B-468c-8017-0B79E5C5294E&SectionID=sect6#
regulator for social care in England. Some 19,000 separate adult care homes, with almost 450,000 places, are regulated by CSCI.440

At its first meeting in 2004, CSCI formally adopted the HRA as a driver for change and decided that the views of service users would set the benchmark for its inspection work.441 Dame Denise Platt, the Chair of CSCI, confirmed that people who use services ‘keep coming back with words such as “dignity”, “respect” and “autonomy”, all of which are key human rights principles. Indications that CSCI has sought to embed human rights thinking in its work include the following:

• CSCI’s ‘Experts by Experience’ scheme involves people that use care services in its inspection work. The Commission says it is on target to involve experts by experience in 100 per cent of service inspections and up to 5 per cent of regulatory inspections. It has evaluated the scheme as having an ‘overwhelmingly positive’ impact on its inspection of care homes (see Chapter 3 for a fuller explanation of the scheme).442

• In its third annual report to Parliament on the state of social care, CSCI conducted a consultation with people using social care, including their views on human rights, equality and diversity.443 The report examines the issues of personalised care, dignity and respect explicitly in the context of human rights.

• The British Institute of Human Rights has worked with CSCI to make human rights more explicit in its work, including a presentation at CSCI’s Leadership Group in May 2007.

• CSCI told the JCHR that it had seconded someone into the Department of Health to help with the review of the national minimum standards for care homes. CSCI told the JCHR that the drafts ‘are much more explicit about human rights’.444

440 http://www.csci.org.uk/about_csci.aspx

441 Interview with Dame Denise Platt, Chair, Commission of Social Care Inspection, March 5 2008.

442 Commission for Social Care Inspection (2007) Experts by Experience in Regulatory Inspections 2006–07 (Evaluation Report Summary), p.1. There was a more mixed reaction to the involvement of service users in domiciliary care inspections, partly due to practical constraints; however CSCI is committed to developing the scheme in all inspections up to 2009; see http://www.csci.org.uk/professional/default.aspx?page=7226&csci=2139


444 The Human Rights of Older People in Healthcare, p.52; while the Healthcare Commission has developed two specific inspection standards that relate to human rights, there is no explicit reference to human rights in the national minimum standards
CSCI's 'key lines of regulatory assessment' (KLORA) are sets of guidelines to help inspectors make judgements about the quality of a care service, from which are derived quality ratings. The KLORA were updated in December 2007 to include issues of equality, diversity and human rights.

For example, under the new guidelines for daily life and social activities an ‘excellent’ service is one which:

... understands and actively promotes the importance of respecting the human rights of people using the service, with fairness, equality, dignity, respect and autonomy all being seen as central to the care and support being provided.

At the other end of the spectrum, a ‘poor’ service:

... has no, or a very limited, understanding of human rights and how this impacts on people using the service. There is a lack of commitment being shown in the areas of respect, dignity and fairness and there could be evidence that people’s human rights are not being respected.  

Again, it is not possible from the available literature to determine to what extent inspections 'on the ground' have changed as a result of the revised methodologies and processes.

The Residents & Relatives Association believes that 'inspectors have not, it appears, been trained in adopting this [human rights] approach’, and the JCHR also refers to ‘gaps in implementation’. However, these observations could not be expected to reflect any recent changes in practice.

It should finally be noted that CSCI has embraced human rights issues in its policy work. For example, Rights, risks and restraints explores the tension between balancing people’s rights to make their own decisions (as set out in the Mental Capacity Act) with the responsibilities of care services to ensure people do not come set by the Department of Health which are used by CSCI to inspect care homes for older people, and only a single reference in the equivalent standards for care homes for adults and domiciliary care. National minimum standards are available at: http://www.csci.org.uk/professional/care_providers/all_services/national_minimum_standards.aspx


446 The Human Rights of Older People in Healthcare, p.54.

127
to harm. The report views the issue firmly through a human rights lens, and indeed demonstrates very well the benefits that a human rights-based approach can bring to seemingly intractable problems facing care staff.

5.2.5 Healthcare Commission

The Commission for Healthcare Audit and Inspection (known as the Healthcare Commission) has the general function of encouraging improvement in the provision of healthcare by and for NHS bodies. The Commission is also the independent healthcare regulator for England and is responsible for assessing and reporting on the performance of NHS and independent healthcare organisations.

In its report on the rights of older people in healthcare, the JCHR noted with disappointment that:

The Healthcare Commission would not claim that, at present, the Human Rights Act is explicitly used as the principal frame of reference for its regulatory work with healthcare organisations. It is one of a large number of sets of regulations and national standards which the Commission is expected to take account of in its work.

The JCHR observed that lessons could be learned from the ‘more systematic approach’ pioneered by the Mental Health Act Commission (see below). However, there is some evidence of a more pro-active approach to human rights compliance in the Commission’s work.

Human rights language runs strongly through the Commission’s 2007 report, Caring for dignity. Its principal recommendation is that:

Dignity (including nutrition and privacy) is a human rights issue and should be the underlying principle for delivery of services. Trusts must ensure that older people are not subjected to inhumane [sic] and degrading treatment while in their care.

448 http://www.healthcarecommission.org.uk/homepage.cfm
449 The Human Rights of Older People in Healthcare, p.53.
The report adds:

We will ensure that dignity and human rights for all groups of people (particularly those who belong to vulnerable groups) are the underlying principles informing the work undertaken by the Commission.\(^{451}\)

Standards for all healthcare organisations providing NHS services are set out in the *Standards for Better Health* published by the Department of Health.\(^{452}\) A number of these explicitly refer to human rights or human rights principles. For example, healthcare organisations are required to:

- Challenge *discrimination*, promote *equality* and respect *human rights* (C7e)
- Have systems in place to ensure that staff treat patients, their relatives and carers with *dignity and respect* (C13a)
- Have systems in place to ensure that patients, their relatives and carers are not *discriminated* against when complaints are made (C14b)
- Provide healthcare services in environments that promote effective care and optimise health outcomes by being supportive of patient *privacy and confidentiality* (C20b) [emphasis added]\(^{453}\)

The accompanying document *National Standards, Local Action* states that healthcare providers must interpret and implement the standards in ways which, among other requirements:

- Challenge discrimination
- Promote equality of access and quality of services
- Support the provision of services appropriate to individual needs, preferences and choices, and
- Respect and protect human rights.\(^{454}\)

\(^{451}\) Ibid p.59.

\(^{452}\) Department of Health (2004) *Standards for Better Health*. The standards are divided into ‘core’ and ‘developmental’ standards. Core standards need to be met at all times and developmental standards signal the ‘direction of travel’ and provide a framework for NHS bodies to plan the delivery of services. Under their annual health check, NHS trusts must comply with 24 core standards.

\(^{453}\) Ibid, pp.12-16.

The Healthcare Commission’s criteria for assessing whether the core standards have been met contains several references to ensuring that systems are in place to comply with the HRA. However, there is no mention of the positive obligations of health providers under the HRA (that is, the requirement to take pro-active steps to protect human rights), nor of the need to inspect for pro-active measures such as human rights training for staff.

The Commission’s statement of intent on ‘promoting human rights and reducing inequalities in health and healthcare’ makes the following commitment:

The Healthcare Commission will assess the performance of healthcare organisations, together with local partners, in actively working to safeguard and promote the human rights of all patients, their relatives and carers, and of their own staff.

However, it should again be noted that ‘actively working to safeguard and promote’ human rights is not synonymous with a recognition of health providers’ positive obligations under the HRA.

The JCHR quotes the Healthcare Commission as saying that of the trusts which declared (under the self-assessment procedure) that they did not have assurance that they were ‘promoting respect for human rights’, the two most commonly cited reasons were:

- Lack of information (at board level) to determine that human rights are respected across their services, and
- Lack of training for staff on equality, diversity and human rights.

The JCHR adds:

We do not find this ignorance surprising since neither the Department of Health nor the Healthcare Commission has issued guidance to NHS trusts on what promoting human rights means in practice.

456 http://www.healthcarecommission.org.uk/aboutus/howdowework/equality.diversityandhumanrights.cfm
457 The Human Rights of Older People in Healthcare, p.51.
458 Ibid.
It notes that the Healthcare Commission conceded that what was needed was to get the ‘legislation to live’.

One avenue for achieving this aspiration could be more systematic involvement of service users. Currently from the evidence we have seen, involvement of service users in shaping inspection processes within the Healthcare Commission is less systematic than at other related inspectorates. However, the Commission’s head of strategy in an interview for this project said that a national study is planned this year on how to hold trusts to account in the area of service user engagement and the ‘system effect’ that should flow from that engagement.459 In addition, the Commission runs a patient survey programme covering some 1.4 million people. As an example, one recent survey asks patients whether they feel they have been treated with respect and dignity, though human rights are not explicitly mentioned.460

As noted above (section 2.1.2), it may be that service user involvement could provide a ‘bridge’ to achieving a set of common values and a shared language within the newly-merged Care Quality Commission.

5.2.6 Mental Health Act Commission

The Mental Health Act Commission’s remit is to keep under review the operation of the Mental Health Act 1983 as it relates to detained patients in England and Wales, and to meet and interview detained patients in private. The Commission also provides safeguards to patients (some 11,000 annually) who lack capacity or refuse consent to treatment, through the Second Opinion Appointed Doctor Service (SOADS).461

The MHAC systematically involves service users through its Service User Reference Panel (SURP), as well as through direct patient contact on wards. Service users play a role in the MHAC’s response to consultations, and influence the MHAC’s programmatic development work. SURP members have undertaken pilot joint visits with Mental Health Act Commissioners to determine what ‘added value’ service user input can bring. SURP members have also been central to improving communication

459 Interview, Jamie Rentoul, Head of Strategy, Healthcare Commission, February 27 2008.

460 Healthcare Commission (2007) Inpatient survey 2006 – Kings College Hospital NHS Foundation Trust, p.8. Other examples of engagement with service users include the involvement of ‘peer reviewers’ and patient groups in in-depth reviews; discussions with Local Involvement Networks (LINks, formerly Patient and Public Involvement Forums) in core standards follow-up visits and getting LINks commentaries on 100 per cent of Trust declarations in 2007.

461 See http://www.mhac.org.uk
with patients and carers, for example through the development of ‘easy read’ materials. The MHAC notes that the SURP and related activities represent:

... the first time that there has been a serious and successful attempt to engage in this way with people who are currently detained under the Mental Health Act. 462

The MHAC noted in September 2006 that after 18 months of systematic service user involvement ‘there has been a real change in culture and practice’. 463 Kay Sheldon, a Commissioner and non-executive lead for service user involvement, adds that ‘the commitment, reliability and the quality of the input from Panel members have been tremendous. They are definitely making an impact, often through questioning and challenging.’ 464

In addition, the MHAC has adopted an equality and human rights strategy which aims to ‘embed a human rights-based approach throughout the organisation in order to help safeguard and promote the human rights of all patients who are detained under the Mental Health Act and of all those who work for or on behalf of the Commission’. 465

The MHAC has won praise from the JCHR as a model from which the Healthcare Commission and CSCI could learn lessons. The JCHR said:

We are encouraged by the fact that the MHAC is to be merged with the Healthcare Commission and CSCI and urge that the highest common denominator should prevail. 466

See Chapter 2 for a detailed case study of the MHAC’s Making it Real project to embed human rights throughout the organisation.

5.2.7  Her Majesty’s Inspectorate of Prisons for England and Wales

Her Majesty’s Inspectorate of Prisons for England and Wales (HMI Prisons) provides independent scrutiny of the conditions for and treatment of prisoners and other

464 Sheldon K. (undated) Service user experiences and the value of monitoring the use of mental health legislation, p.2; available at http://www.mhac.org.uk/?q=node/14
466 The Human Rights of Older People in Healthcare, p.54.
detainees. It is an independent inspectorate which reports on conditions for, and
treatment of, those in prison, young offender institutions and immigration removal
centres and holding facilities.467

The Chief Inspector of Prisons, Anne Owers, states that HMI Prisons has ‘always
had a human rights approach’.468 Her vision for the role of human rights in prison
inspection was made clear in a lecture to the BIHR in 2003:

... my definition of human rights ... is wider than simply that which can be
litigated: the irreducible bottom line of a continent-wide human rights
obligation. It is about what, as a civilised and wealthy society, we ought to
provide, without being so ashamed that we do not want to know ... If human
rights law is the application of general principles to an individual case,
inspection is the process of painstakingly building up, from detailed qualitative
and quantitative evidence, an accurate picture of the humanity, safety,
purposeful activity and rehabilitation in an environment.469

Accordingly, HMI Prisons has adopted what it calls a ‘Healthy Prison’ concept, based
on the World Health Organisation’s four tests of what constitutes a healthy custodial
environment, which in turn are based on international human rights principles and
standards. The four tests are:

• **Safety**: prisoners, even the most vulnerable, are held safely.
• **Respect**: prisoners are treated with respect for their human dignity.
• **Purposeful activity**: prisoners are able, and expected, to engage in activity
  that is likely to benefit them.
• **Resettlement**: prisoners are prepared for release into the community, and
  helped to reduce the likelihood of reoffending.470

The Healthy Prison concept informs HMI Prisons’ detailed criteria for assessing
conditions in prisons and the treatment of prisoners, which are set out in a document

467 [http://inspectorates.homeoffice.gov.uk/hmiprisons/about-us/](http://inspectorates.homeoffice.gov.uk/hmiprisons/about-us/)
468 Interview with Anne Owers, HM Chief Inspector of Prisons, March 5 2008.

In 2006, HMI Prisons introduced a new section in *Expectations* on diversity, and it is the language of diversity and equality that permeates the document, rather than that of human rights. Human rights values are, however, strongly present in expectations such as:

> All prisoners are treated with humanity, and with respect for the inherent dignity of the person.\footnote{Ibid, p.31.}

Anne Owers explains that human rights are ‘implicit rather than explicit’ in HMI Prisons’ reports:

> I would always discourage inspectors from saying that such and such is or isn’t a breach of human rights or the HRA – that is not the job of the inspectorate, but the job of the courts.\footnote{Interview with Anne Owers, March 5 2008.}

HMI Prisons latest annual report contains only one express reference to ‘human rights’ (noting the human rights compliance of its criteria).\footnote{Her Majesty’s Inspectorate of Prisons (2008) *HM Chief Inspector of Prisons for England and Wales Annual Report 2006/07*, p.19.} There is a section on diversity, encompassing disability, religion, sexuality and race and reflecting statutory requirements and the development of best practice. Among its more disturbing findings were:

- Fewer than a third of Muslim prisoners believed staff treated them with respect
- A ‘dismal’ picture in relation to disability, with limited and patchy attempts to grapple with new statutory duties (in one prison there were insufficient wheelchairs for those who needed them), and
- ‘Patchy’ provision for older prisoners, with some prisons locking retired prisoners in their cells during the core day.\footnote{Ibid, pp.26-8.}

---

\footnote{Her Majesty’s Inspectorate of Prisons (2006) *Expectations: criteria for assessing the conditions in prisons and the treatment of prisoners*.}
\footnote{Ibid, p.2.}
\footnote{Ibid, p.1.}
\footnote{Ibid, p.31.}
\footnote{Interview with Anne Owers, March 5 2008.}
\footnote{Ibid, pp.26-8.}
A thematic report on older prisoners again omits any express reference to human rights, save for a mention that overall judgements were informed by the requirements of the HRA. A survey of older prisoners asked them whether they had been treated with respect (85 per cent said they had) but does not mention dignity.478

Anne Owers notes that the leading role played by HMI Prisons in the National Preventive Mechanism under OPCAT (the Optional Protocol to the UN Convention against Torture) has ‘greatly strengthened the clarity of our role’ and protected HMI Prisons from being subsumed into a ‘process-driven, utilitarian view of inspections’.479 For example, OPCAT requires a rolling programme of regular inspections which sets HMI Prisons apart from the prevailing trend towards ‘light-touch’ inspections.

Anne Owers suggests that there is an increasing understanding within the prison service of its positive obligations under the HRA, and an increasing focus on values such as dignity, respect and positive worth. However, she adds that explicit reference to human rights can be ‘counter-productive’ given its associations with litigation.

Even so, some organisations have questioned the Prison Service’s record in protecting the human rights of prisoners, particularly in relation to specific groups of prisoners such as those with learning difficulties or learning disabilities who, research shows, do not always know why they are in prison. In some cases, these organisations have suggested that a sharper understanding and more active use of a human rights framework within the Prison Service might help to change this.480 It may be that HMI Prisons could play a useful role in promoting human rights as an active framework of principles to be applied in day-to-day decision-making, policy formation or other areas of Prison Service work.


479 Interview with Anne Owers, March 5 2008.

480 See for example Talbot J. (2007) No one knows: identifying and supporting prisoners with learning difficulties and disabilities: the views of prison staff, which provides evidence that people with a learning disability in prison are not being identified and are bullied and cut out of rehabilitation courses. An unprecedented survey of prison staff as part of the No one knows project showed that they are not given the training or resources to deal with prisoners with learning difficulties or learning disabilities, with implications for prison service compliance with the HRA; http://www.prisonreformtrust.org.uk/temp/NospOnespKnowssppreliminariesreport2.pdf. See also an equivalent report from the No one knows project for Scotland; http://www.prisonreformtrust.org.uk/standard.asp?id=1118
5.2.8 **HM Inspectorate of Constabulary for England, Wales and Northern Ireland**

HM Inspectorate of Constabulary for England, Wales and Northern Ireland (HMIC) is charged with examining and improving the efficiency of the Police Service in England, Wales and Northern Ireland. Her Majesty's Inspectors of Constabulary report to Her Majesty's Chief Inspector of Constabulary (HMCIC), who is the Home Secretary's principal professional policing adviser. The HMCIC is independent both of the Home Office and the Police Service.\(^{481}\)

HM Inspectors of Constabulary use a methodology called Baseline Assessment which makes quantitative and qualitative information and judgements on several frameworks in order to make a comprehensive assessment of each force.

Human rights language, either implicit or explicit, is all but absent from the baseline assessment frameworks.\(^ {482}\) The term ‘human rights’ appears once (in relation to human resource policies e.g. data protection). One framework covers Citizen Focus and, within that category, ‘fairness and equality’ in service delivery. Another covers Race and Diversity, primarily in relation to the workforce.

Under the frameworks for Citizen Focus and Race and Diversity, inspectors are prompted to view ‘key policy documents on aspects of race and diversity’, disability action plans and other documents. They are also prompted (albeit in a rather ad hoc fashion) to carry out ‘reality checks’ alongside formal interviews, including meeting local Racial Equality Councils, and local community support networks e.g. Gay Switchboard, asylum seeker groups, gypsy or traveller networks, and to ‘consider meeting’ representatives of disability networks and LGBT groups.

There is no mention of human rights, equality or diversity in relation to: ‘neighbourhood policing and problem solving’; ‘customer service and accessibility’; ‘protecting vulnerable people’ or ‘training, development and organisational learning’.

It is a potentially significant development that, as of 14 March 2008, every police authority is now be required to monitor the performance of the police force maintained for its area in complying with the duties imposed on that force by the HRA.\(^ {483}\) This duty is additional to the general duty on every police authority to

\(^{481}\) http://inspectorates.homeoffice.gov.uk/hmic/about/
\(^{482}\) HM Inspectorate of Constabulary, Baseline Assessment 2006 Frameworks; http://inspectorates.homeoffice.gov.uk/hmic/docs/ba2006frmwk/ba2006fwks.pdf
\(^{483}\) The Police Authorities (Particular Functions and Transitional Provisions) Order 2008 (SI 2008/82), Article 3(a).
maintain an efficient and effective police force for its area. While the new duty is mandatory, each police authority can choose how it carries out monitoring in its particular police area.

Although outside the remit of the Equality and Human Rights Commission, the approach to monitoring the human rights compliance of the Police Service of Northern Ireland (PSNI) provides an instructive comparison. Its uniquely comprehensive methodology offers a range of replicable techniques to other police authorities and inspectorates, and indeed to public authorities in other sectors. The PSNI approach is described in detail in Chapter 2, and therefore is not considered separately here.

5.2.9 Parliamentary and Health Service Ombudsman

In a speech to the International Ombudsman Institute in 2006, Ann Abraham, the Parliamentary and Health Service Ombudsman (PHSO), set out the positive role she thought public sector ombudsmen played in shaping a human rights culture. She pointed to:

... an intriguing overlap between formal human rights adjudication by the courts, public sector ombudsman practice, and the gradual absorption into public service delivery of human rights principles, with ombudsmen uniquely placed to bridge the potential divide between legal enforcement and the more subtle process of cultural change. An ombudsman, she remarked, is not a substitute for the court but an alternative to it:

... whose jurisprudence is free to look beyond legal precedent and domestic positive law to something more ambitious and potentially more transformational ... the UK experience ... provides considerable encouragement for thinking that the increasingly self-conscious articulation in human rights terms of what ombudsmen are about is an attractive, indeed a necessary, way forward.

484 Police Act 1996, s.6(1).
486 Ibid.
The PHSO has published the *Principles of Good Administration* on which public administration should be based.\(^{487}\) The principles do not explicitly use the language of human rights, save for references to the need to treat people fairly and with respect. However, the principles display a great deal of synergy with human rights principles and would sit comfortably within a more explicitly articulated human rights framework.

For example:

- All public authorities must comply with the law and have due regard for the rights of those concerned.\(^{488}\)

- Public authorities should aim to ensure that customers are clear about their entitlements; about what they can and cannot expect from the public authority; and about their own responsibilities.\(^{489}\)

- Public authorities should treat people equally and impartially. They should understand and respect the diversity of their customers and ensure fair access to services and treatment regardless of background or circumstance.\(^{490}\)

- When taking decisions, and particularly when imposing penalties, public authorities should behave reasonably and ensure that the measures taken are proportionate to the objectives pursued, appropriate in the circumstances and fair to the individuals concerned.\(^{491}\)

An explicit human rights framework would concur with this clear understanding that public authorities should be non-discriminatory, sensitive to individuals' diverse circumstances and should inform people of their entitlements. Ensuring that decisions are proportionate and fair also enshrines the human rights principle that, when there are necessary and appropriate reasons for rights to be limited, as much of the essence of the right should be preserved as possible (that is, not using a sledgehammer to crack a nut).


\(^{488}\) Ibid, p.7.

\(^{489}\) Ibid, p.8.

\(^{490}\) Ibid, p.10.

\(^{491}\) Ibid.
The Ombudsman’s *Principles for Remedy* display a similar compatibility with human rights principles, with their emphasis on fairness, proportionality and transparency and accountability to complainants.492

See also Chapter 2 for a description of how the PHSO is embedding an organisational human rights approach in its work.

**5.2.10 Local Government Ombudsmen**

The Local Government Ombudsmen investigate complaints of injustice arising from maladministration by local authorities and certain other bodies. They investigate complaints about most council matters including housing, planning, education, social services, consumer protection, drainage and council tax.493

There is no evidence of a comprehensive human rights focus in the work of the Local Government Ombudsmen. The chief executive of the Local Government Association noted that he does not recall ‘human rights per se’ figuring in any of the Ombudsmen’s reports.494

The published guidance on good administrative practice appears not to have been updated since 1995, and therefore contains no reference to the HRA, though there are several references to the need for authorities to act fairly and in a non-discriminatory way.495 The language of diversity or equality is also absent. The single reference to ‘rights’ refers to the need to:

... maintain a proper balance between any adverse effects which a decision may have on the rights or interests of individuals and the purpose which the council is pursuing.496

The guidance on good practice in relation to remedies was re-published in 2005. Again, there is no explicit reference to human rights principles or the HRA.497

493 http://www.lgo.org.uk/
494 Interview with Paul Coen, Chief Executive, Local Government Association, February 27 2008.
496 Ibid.
However, a joint report by the Parliamentary and Health Service Ombudsman and the Local Government Ombudsmen published during the life of this project suggests that there has been more discussion and debate about human rights within the organisation than publicly available material suggests. Injustice in residential care, the first such collaboration between the two ombudsmen, sets out the findings of a joint investigation into a complaint against Buckinghamshire County Council and Oxfordshire and Buckinghamshire Mental Health Partnership NHS Trust in relation to their care of a young man with severe learning disabilities. The findings note that:

Article 3 … Article 8 … and Article 14 … [of the Human Rights Act] were engaged in Frank’s case … A proper consideration of human rights issues at any point would have led to improvements in Frank’s and his parents’ situation.496

5.2.11 National Institute for Health and Clinical Excellence

The National Institute for Health and Clinical Excellence (NICE) is the independent organisation responsible for providing national guidance in the areas of public health, health technologies and clinical practice.499 It is included in this review because of recent criticisms of its processes as not being fully human rights compliant.

The JCHR, in its report on older people in healthcare, said:

... we are not convinced that NICE are fully taking human rights into account in their decision-making.500

The JCHR notes that the first edition of the Social Value Judgements Guidelines (which describe how NICE incorporates social value judgements into the development of its guidance) make no mention of human rights.

In Rights for Real, Age Concern quotes NICE’s draft social value judgements guidelines as initially recommending that ‘where age is an indicator of benefit or risk, age discrimination is appropriate’. Age Concern says:

499 http://www.nice.org.uk/aboutnice/about_nice.jsp
500 The Human Rights of Older People in Healthcare, p.55.
This attempt to legitimise age discrimination was robustly challenged by older people’s organisations – and has now been amended in the final version of the guidelines. Significantly, NICE had considered healthcare provision to older people without any reference to the human rights implications.\textsuperscript{501}

In November 2007, NICE produced a draft second edition of its social value judgements for public consultation.\textsuperscript{502} In its response, Age Concern welcomes the fact that NICE has:

\ldots recognised its responsibility under the Human Rights Act \ldots and has made a further commitment to the active consideration of the implications for human rights of its guidance.\textsuperscript{503}

However, Age Concern criticises NICE for failing to promote age equality by persisting with ‘the suggestion that it is possible to identify the health status of patients by their age alone’. Age Concern calls on NICE to state clearly that:

There is no case for discrimination against people on the grounds of age.

Access to services should be provided on the basis of clinical need alone.\textsuperscript{504}

Age Concern further recommends that NICE ‘should develop a human rights framework to underpin all its decision-making’. It further recommends that all members of NICE’s appraisal committees should receive human rights training and that NICE’s Citizens Council should be supported in developing an understanding of human rights and their implications for NICE’s work.\textsuperscript{505}

\textbf{5.2.12 Ofsted}

The new Ofsted – the Office for Standards in Education, Children's Services and Skills – came into being on 1 April 2007. It inspects and regulates care for children and young people, and inspects education and training for learners of all ages.\textsuperscript{506}

\begin{flushleft}
\textsuperscript{502} National Institute for Health and Clinical Excellence (2007) \textit{Social Value Judgements: principles for the development of NICE guidance};
\textsuperscript{503} http://www.nice.org.uk/media/8B5/02/SVJSecondDraftConsultation.pdf
\textsuperscript{504} Hurst P. (2008) \textit{Consultation on the National Institute for Health and Clinical Excellence’s social value judgements}, p.5.
\textsuperscript{505} Ibid, p.3.
\textsuperscript{506} Ibid.
\end{flushleft}
To date there is little sign of Ofsted adopting an institutional approach to human rights or of encouraging children’s services to do the same.

Ofsted’s inspection regime is set out in *Every child matters – Framework for the inspection of schools in England from September 2005*. The language of human rights is largely absent from the document. Equality is referred to once: within the criteria for assessing the standard of leadership and management.

The general principles for inspection indicate a rather weak commitment to participation by children and carers (‘to ascertain and take into account the views of learners and, where appropriate, of registered parents and carers, and look to involve them in inspections in other ways’).

The Ofsted *Self-evaluation form for secondary schools* prompts schools to assess their compliance with the various equality duties and codes of practice, but not the HRA. The same formulation is contained in the self-assessment forms for other establishments, for example Pupil Referral Units and special schools.

The grade descriptors for inspections of children’s services offer another indication of how little a human rights framework has been integrated into Ofsted’s work. None of the descriptors refer explicitly to human rights principles or the HRA. Children’s services are graded according to how far they ‘take account of’ or ‘give attention to’ equality and diversity issues.

Ofsted has faced criticism for its failure to act on equality and integration issues. In its final strategic plan, the Commission for Racial Equality (CRE) recommended its successor body to ‘[h]old Ofsted to account on their reluctance to include within


508 Ibid, p.22.


511 Ofsted (2007) *Inspection of children’s services: grade descriptors*, April 2007; the grade descriptors were developed to support the overall judgement of councils’ children’s services, as well as the capacity to improve judgements and the judgements for the *Every Child Matters* outcomes: being healthy; staying safe; enjoying and achieving; making a positive contribution; achieving economic wellbeing and also service management.
inspections an assessment of how well schools are meeting their responsibilities under the duty to promote race equality.\textsuperscript{512}

The CRE’s 2005–07 Monitoring and Enforcement Plan report gave a final update on how well the public sector complied with requirements of the Race Relations Act. It noted that Ofsted:

\ldots has the poorest record of any inspection or regulatory body. It does not accept that it has a responsibility to monitor RED [racial equality duty] performance of public authorities within its arena of responsibility. It is arguably the most uncooperative public authority the Commission has had to deal with over the last two years.\textsuperscript{513}

5.3 Regulatory bodies in Scotland

5.3.1 The Crerar Review

In September 2007, Professor Lorne Crerar published his independent review of Scotland’s scrutiny sector.\textsuperscript{514} He proposed radical measures which would lead to, amongst other changes:

\begin{itemize}
  \item A substantial reduction in the burden experienced by providers
  \item A greater focus on the experience of the user and of the public, and
  \item A far greater responsibility on those who provide services to assess and report their own compliance, performance and capacity to improve.\textsuperscript{515}
\end{itemize}

The Crerar Review does not propose an explicit human rights focus for the work of what would ultimately, if its proposals were implemented, become a single national scrutiny body. Indeed, the term ‘rights’ is only mentioned once, in relation to existing approaches.

\textsuperscript{512} Commission for Racial Equality (2007) A lot done, a lot to do: our vision for an integrated Britain, p.15.


\textsuperscript{515} Ibid, p.iv.
The Review devotes a section to ‘public focus’ – one of its five guiding principles, along with independence, proportionality, transparency and accountability. It recommends ‘greater public involvement in external scrutiny processes’ and moves ‘to strengthen the user voice at all levels of public reporting’. However, service user involvement is not placed within a human rights framework.

Participants at the Glasgow Roundtable expressed concern about the Crerar Review, noting that the process appeared to be cost-driven and that there was ‘little sign of rights coming to the fore’.516

5.3.2 Audit Scotland

Audit Scotland helps Scotland’s Auditor General and the Accounts Commission ensure that organisations that spend public money in Scotland use it properly, efficiently and effectively. The bodies it inspects include Scottish Government; NHS bodies; councils; police, fire and other boards; further education colleges and Scottish Water.517

There is little evidence of an explicit human rights focus in the work of Audit Scotland, either in terms of its own policies and procedures or any activity to promote human rights compliance among public authorities.

Its Overview of the Local Authority Audits 2007 contains no reference to human rights. There is one passage on equality which notes that:

The Best Value audits indicate high-level commitment to equalities in most councils but there is limited evidence to show how these policy commitments are translated into improved outcomes for service users. The Best Value work also suggests the need for better and more consistent monitoring of equalities issues to inform service planning.518

516 Glasgow Roundtable, March 5 2008; Elsewhere, Alice Brown, the Scottish Public Services Ombudsman, has opposed the proposal to devolve ‘upper tier’ complaint handling to scrutiny bodies which ‘could compromise an important constitutional safeguard and principle of administrative justice: that complainants should have recourse to an independent body to seek redress for injustice caused by maladministration or service failure’ (emphasis in original); see Scottish Public Services Ombudsman, Better Complaint Handling, A response to: The Report of the Independent Review of regulation, audit, inspection and complaints handling of public services in Scotland (the ‘Crerar Report’), published September 2007, p.3; http://www.spso.org.uk/news/article.php?id=252

517 http://www.audit-scotland.gov.uk/about/

The report adds that Audit Scotland is currently undertaking a national study of how councils meet their race equality duties when planning services.

There is no reference to human rights, equality or diversity in either: the Overview of Scotland’s health and NHS performance in 2006–7 \(^{519}\); the Priorities and Risks Framework – a national planning tool for 2007–8 NHS Scotland audits\(^{520}\), or the corporate self-assessment tool for the NHS.\(^{521}\)

5.3.3 Scottish Commission for the Regulation of Care

The Scottish Commission for the Regulation of Care – known as the Care Commission – was set up in 2002 to regulate all adult, child and independent healthcare services in Scotland. Some 320,000 people use the 15,000 services which the Care Commission regulates to ensure that they meet the Scottish Executive’s National Care Standards.\(^{522}\)

The Care Commission does not appear to have adopted an explicit human rights focus in its work. There is no reference to human rights in any of its Inspection Focus Areas for 2008–09.\(^{523}\)

However, significantly, the Commission is changing the way it regulates services to focus more on people who use services and their carers. Among the strategic changes is ‘more involvement from people who use care services and their carers in assessing the quality of care’.

While the core National Care Standards will remain, from April 2008 service providers will be inspected and graded based on evidence of how well they consult with users and carers in the delivery of their care and how they involve service users and carers in assessing and improving all aspects of the quality of the service.\(^{524}\) There is an extensive Information Gathering Tool to assess service user and carer participation, and this uses some of the language of human rights principles even


\(^{522}\) http://www.carecommission.com/index.php?option=com_content&task=view&id=47&Itemid=76

\(^{523}\) http://www.carecommission.com/index.php?option=com_content&task=view&id=5823&Itemid=1

though it does not have an explicit human rights focus. For example, it asks whether staff ‘communicate, value, respect, protect and provide choice to service users’.\textsuperscript{525}

The Care Commission has developed its own framework for engaging with people who use care services and carers.\textsuperscript{526} Service user and carer involvement is reflected routinely within dedicated sections in each inspection report. The Commission also has a national Service User and Carer Reference Group, which is represented at Board level, and a Lay Assessor scheme. The framework document sets out plans to ‘mainstream’ service user and carer involvement in regulation, including participatory inspections and self-assessment. It sets no quantitative target for this involvement but lists a ‘marked increase’ in such involvement as one desired outcome.\textsuperscript{527} It also sets out steps to make the Commission more accessible to service users and carers, especially those at risk of exclusion.

There is some evidence of moves to integrate the Commission’s various equality schemes with a more holistic rights-based approach. For example the latest Disability Equality Annual Report notes that ‘as a result of the creation of the Equalities [sic] and Human Rights Commission and the imminent Single Equality Bill, it has been agreed that we will adopt a more integrated approach with a Single Equality and Diversity Policy’ to be submitted to the Board in May 2008.\textsuperscript{528}

### 5.3.4 NHS Quality Improvement Scotland

NHS Quality Improvement Scotland (NHS QIS) is part of NHS Scotland. It provides advice and guidance on clinical practice; sets clinical and non-clinical standards of care; monitors the performance of the NHS against those standards; supports NHS staff in improving services, and promotes patient safety and implementation of clinical governance.\textsuperscript{529}

The Equality and Diversity Manager of NHS QIS said that since 2006, the organisation has sought to mainstream equality and diversity in various ways.\textsuperscript{530} For example, it has made sure that equality and diversity issues are thought of and

planned for at the scoping stage of every project through the process of Equality Impact Assessment. The organisation has also made equality and diversity training mandatory for staff and more than 100 ‘Public Partners’ (volunteers working with us to offer a patient or public perspective on our work) have received the same training.

However, this service user engagement is not situated in a human rights context and human rights have not been integrated into training and other initiatives. The Equality and Diversity Manager noted that she would prefer to see human rights integrated over time ‘in a subtle way’ given her experience of some staff viewing equality and diversity initiatives as a ‘tick box’ exercise or a product of ‘political correctness’.

5.3.5 Mental Welfare Commission for Scotland

The Mental Welfare Commission for Scotland is an independent organisation working to safeguard the rights and welfare of everyone with a mental illness, learning disability or other mental disorder. Its duties are set out in mental health law. It also provides information, advice and guidance to help make sure people being treated under the law get effective care and treatment.

The Commission’s 2006–07 annual report states that:

Together with new mental health legislation, we have seen a significant shift towards a human rights-based approach to mental health and learning disability care.

The Commission has not pursued such an explicit human rights-based approach as the Mental Health Act Commission in England and Wales. It has not, for example, carried out human rights training with its staff, although such training is under consideration. Nevertheless, human rights values and pro-active steps to ensure compliance with the HRA are tightly woven into the fabric of the Commission’s work.

The Commission’s director, Donald Lyons, said:

------------------------

531 NHS QIS’s Fair for All policy: http://www.nhshealthquality.org/nhsqis/3764.html
532 The Mental Health (Care & Treatment) (Scotland) Act 2003 and the Adults with Incapacity (Scotland) Act 2003.
533 http://www.mwcscot.org.uk/home/home.asp
535 Interview with Donald Lyons, Director, Mental Welfare Commission for Scotland, February 20 2008.
Our culture is built around the Mental Health Act and the MHA incorporates the Human Rights Act … We do not in general focus specifically on the HRA as such. We focus on the human rights of the [service users] and that involves specifically monitoring that [the MHA] is operating … and in particular promoting the principles of the legislation.  

He added:

How much are things being done with the person rather than to the person? … That takes account of so many of the articles of the ECHR.

This principles-based approach is in evidence in the Commission’s statement that everyone with a mental health condition, learning disability or other mental disorder should:

- Be treated with dignity and respect
- Have the right to ethical and lawful treatment and to live free from abuse, neglect or discrimination
- Get the care and treatment that best suits his or her needs, and
- Be enabled to lead as fulfilling a life as possible.

The Commission’s good practice guides use a human rights-based framework to advise staff in mental health services on matters such as the use of seclusion and restraint, covert medication, consent to treatment, nutrition by artificial means, caring for residents with dementia and related disorders and other issues concerning the deprivation of liberty. The need to balance competing rights to arrive at a reasoned decision with a clear justification is a strong vein running through the guidance. Rights based approaches are presented positively as a useful framework for day-to-day decision-making.

_____________________

536 Ibid.
537 Ibid.
538 http://www.mwcscot.org.uk/aboutus/AboutUs.asp
539 For a full list of guidance documents see http://www.mwcscot.org.uk/GoodPractice/Publications/Guidance_documents.asp
The Commission has three service users and one carer among its 17 Commissioners. It also consults regularly with a network of service user and advocacy organisations.\textsuperscript{540}

\textbf{5.3.6 HM Inspectorate of Prisons for Scotland}

HM Inspectorate of Prisons for Scotland’s main statutory responsibility is to inspect and report on Scotland’s 16 prison and young offender institutions on matters such as physical conditions, quality of prisoner regimes, morale of staff and prisoners, facilities and amenities, questions of safety and decency, and the establishment’s contribution to preventing re-offending. It also undertakes thematic inspections.\textsuperscript{541}

The document setting out standards used in the inspection of prisons in Scotland – introduced in 2006 – contains multiple references to human rights, dignity, decency, humanity and respect both as the legal foundation of inspections and in the standards and outcomes expected of prisons. For example, one standard states that:

\begin{quote}
Staff are aware of their duty to observe the human rights of prisoners. They know what these rights are. They accept the legitimacy of that duty and meet their obligations under it promptly.\textsuperscript{542}
\end{quote}

HM Chief Inspector of Prisons for Scotland, Dr Andrew McLellan, notes that by basing the standards on international human rights instruments:

\begin{quote}
It has made it easier for me to be critical of some of the basic accommodation issues that prisoners have because there are some objective standards to which we can refer ... We have perhaps been less aggressive in the past about smelly halls, dirty underwear, that level of physicality.\textsuperscript{543}
\end{quote}

The inspectorate’s reports and pre-inspection meetings are structured around nine human rights-based outcomes. The most recent prison inspection reports from 2007 include a section entitled ‘respect’, with a sub-section on equality and diversity.

\textsuperscript{540} Interview Donald Lyons, February 20 2008.

\textsuperscript{541} http://www.scotland.gov.uk/Topics/Justice/Prisons/17208/7790


\textsuperscript{543} Interview with Dr Andrew McLellan, HM Chief Inspector of Prisons for Scotland, March 4 2008.
Dr McLellan adds that the human rights focus is accentuated by the inspectorate’s engagement with prisoners since ‘it’s impossible to talk to a prisoner without prisoners talking about human rights’.

Human rights concerns in Scottish prisons have centred largely on the practice of ‘slopping out’. The latest annual report of HMI Prisons Scotland notes that one prison, Peterhead, still uses a form of slopping out:

When slopping out ends in a prison the prison automatically, immediately and perceptibly becomes a more decent place: if Peterhead is to remain open it desperately needs to become a more decent place.544

Asked about the attitude of Scottish prison service to human rights issues, Dr McLellan spoke of a ‘transformation’ in the past five years (prompted largely by legal challenges over slopping out). He added:

I have not picked up from the Board of the Scottish Prison Service ... any hint that people resent this ... I think the general atmosphere is “this is the way things are and we have to wake up to it”.

5.3.7 Her Majesty’s Inspectorate of Constabulary for Scotland

Her Majesty’s Inspectorate of Constabulary for Scotland (HMICS) operates independently of the Police Forces, Police Authorities and the Scottish Government and exists to monitor and improve the police services in Scotland. Its main responsibilities are to: inspect police forces and the organisations which make up the Scottish Police Services Authority; carry out thematic inspections and provide advice to Scottish Ministers.545

In 2007, HMICS changed its inspection methodology, replacing the five year cycle of primary and review inspections with a system of annual self-assessment based on a lighter touch, risk-based scrutiny model. Previously there was no single, publicly-accessible set of service standards for policing in Scotland.546

It has not been possible to view the self-assessment form. However, in an interview for this report, the Chief Inspector of Constabulary for Scotland, Paddy Tomkins QPM, notes that a human rights approach is ‘mainstreamed’ in the self-assessment

___________________________

545 http://www.scotland.gov.uk/Topics/Justice/Policing/15403
546 http://www.scotland.gov.uk/Topics/Justice/Policing/15403/June07/Q/EditMode/on/ForceUpdate/on#Servicestandards
process and in HMICS’s thematic reports and promotion systems, which now require competency and understanding of human rights.\(^{547}\) He added that:

> [Human rights] isn’t something else you do, it’s what you do ... it’s the lens through which we shine the light that delivers our particular service.\(^ {548}\)

However, the *Scottish Policing Performance Framework* for 2007–08 contains no reference to human rights, equality or diversity.\(^ {549}\) It is described as being ‘the first step towards a much more comprehensive suite of indicators, being developed for 2008/09 and beyond’.\(^ {550}\) The first national performance report is expected in autumn 2008. The latest annual report of HM Chief Inspector of Constabulary for Scotland contains no reference to human rights.

### 5.3.8 Scottish Public Services Ombudsman

The office of the Scottish Public Services Ombudsman (SPSO), established in 2002, provides a ‘one-stop-shop’ for individuals making complaints about organisations providing public services in Scotland. The ombudsman deals with complaints about councils, housing associations, the National Health Service, the Scottish Government and its agencies and departments, colleges and universities and most Scottish public authorities.\(^ {551}\)

Professor Alice Brown, the current ombudsman, in written evidence to the Scottish Parliament Justice Committee 2005 inquiry into the establishment of the Scottish Commission for Human Rights, said:

> Human rights are fundamental to the concept of good public administration. Although the legislation governing the SPSO’s remit makes no direct reference to human rights, some of the complaints we deal with are in fact issues of breaches of human rights ... Further, maladministration may involve

---

\(^{547}\) Interview with Paddy Tomkins QPM, HM Chief Inspector of Constabulary for Scotland, March 6 2008.

\(^{548}\) Ibid.


\(^{550}\) Ibid, p.3.

\(^{551}\) http://www.spso.org.uk/
more general inconsistencies with human rights concepts, for example when a public authority fails to give adequate information regarding rights of objection or appeal.  

Professor Brown says that when she became ombudsman in 2002, her own staff expressed the view that ‘we don’t deal with human rights – they’re for the courts’. This approach has changed as awareness of human rights has grown. Further, through specific human rights training, SPSO staff are now equipped to see the possible human rights dimensions of complaints.

One such case dealt with by the SPSO concerned complaints by the parents of two severely disabled young men about the transport of their sons to and from school. The young men had to wear nappies while travelling, were strapped down and got so distressed that they stopped using the bus and missed school for 10 months. The SPSO notes:

I believe that the role of my office includes the promotion of respect for human dignity, particularly where vulnerable people and their families are concerned. My expectation is that public authorities are not only technically compliant with the law, and with their own policies and procedures, but that they make decisions and take actions that further an approach that integrates human rights into their work.

Professor Brown noted that such cases – and the defensive reaction of some local authorities when challenged – was a result of:

... not viewing services through the lens of human rights... We need to start using these as examples for how you start to think about services that embody human rights, and don’t see them as an extra to be sprinkled on the top.

552 http://www.scottish.parliament.uk/business/committees/justice1/inquiries/hrb/21-hrb-SPSO.htm

553 Interview with Professor Alice Brown, Scottish Public Services Ombudsman, February 25 2008.


555 Interview with Alice Brown, February 25 2008.
Elsewhere, the SPSO has expressed a concern about citizens’ lack of awareness about their rights. In her written submission to the Health Committee’s Care Enquiry in 2006, she expressed a ‘desire for greater public awareness of rights in the provision of personal, nursing and other care’, noting that often people do not have a clear understanding of what they can reasonably expect from public authorities or are reluctant to complain for fear of being penalised.\textsuperscript{556}

\textbf{5.3.9 HM Inspectorate of Education, Scotland}

HM Inspectorate of Education (HMIE) inspects and reports on the quality of education in pre-school centres, primary schools, secondary schools, special schools, community learning and development services, colleges, and residential educational provision. It also inspects the education functions of local authorities and carries out joint inspections of services for children.\textsuperscript{557}

There is little evidence of a human rights focus in HMIE’s work. For example, neither human rights nor the HRA are referred to in HMIE’s \textit{Framework Document}, annual report or \textit{Journey to Excellence} website.

In the self-evaluation document for early years education, \textit{The Child at the Centre}, one indicator of poor performance is that staff ‘sometimes neglect to take account of children’s rights, confidentiality, dignity and privacy’.\textsuperscript{558} However, what is meant by children’s rights and dignity is not spelled out.

\textsuperscript{556} http://www.scottish.parliament.uk/business/committees/health/inquiries/care/ci-27-SPSO.htm

\textsuperscript{557} http://www.hmie.gov.uk/AboutUs/AboutHMIE/

5.4 Regulatory bodies in Wales

5.4.1 The Beecham Report

In July 2006, Beyond Boundaries: Citizen-Centred Local Services for Wales, a review of local service delivery by Sir Jeremy Beecham, called for ‘more focused and proportionate inspection, regulation and performance management’ to minimise administrative burdens and create a consistent approach across sectors.

The Beecham report concluded that inspection and audit in Wales was ‘compartmentalised’ and ‘seems to mirror and reinforce departmental boundaries, and to militate against an integrated, citizen-centred approach’.

The Care and Social Services Inspectorate Wales, formed by merging the former care standards and social services inspectorates, was created in 2007 to ‘[fit] the model of a citizen-centred regulation and inspection service’.

The Beecham review noted that steps were being taken to improve co-ordination between inspection agencies, including the creation of a senior forum to review the overall impact of the process across sectors. The Review recommended that the impact of the senior forum be assessed within three years.

5.4.2 Wales Audit Office

Set up in April 2005, the Wales Audit Office (WAO) is an independent organisation led by the Auditor General for Wales which undertakes audit and inspection work on Welsh public authorities. The Auditor General is responsible for arranging the audit of the National Assembly for Wales, its sponsored and related bodies, local government bodies, including police and probation and NHS organisations.

For clarity, the inspectorates considered in this chapter which have a remit to cover both England and Wales are: the Mental Health Act Commission, HMI Prisons and HMI Constabulary. The Healthcare Commission has different functions in Wales to those in England. Its annual report on the state of healthcare and its improvement reviews cover both nations; it ensures that cross border issues are managed effectively and that the distinctive features of Wales and its system of health care, as well as the Welsh language, are recognised in its policies and programmes of work.

561 Ibid, p.25.
563 Beyond Boundaries: Citizen-Centred Local Services for Wales, p.61.
564 http://www.wao.gov.uk/assets/WAO_brochure_english.pdf
The Auditor General for Wales is conducting a major review that crosses the entire Welsh public sector. The review will establish the extent to which public services are meeting the challenges of the Welsh Assembly’s framework for transforming public services, Making the Connections. This framework lists five areas for action by March 2008, one of which is ‘putting citizens first’. 565

The Wales Audit Office is not carrying out any work explicitly on human rights. But in an interview for this project, Jeremy Colman, Auditor General for Wales noted that his office would welcome the opportunity to become a partner in such activity with the Equality and Human Rights Commission in Wales given the huge demand in the public sector in Wales for the sharing of good practice, and particularly:

... a huge demand for eye opening experiences. People say “that showed me something to which I could aspire, I didn’t know that was possible”. 566

5.4.3 Care and Social Services Inspectorate Wales

The Care and Social Services Inspectorate Wales (CSSIW) provides what it calls a ‘citizen-centred approach’ which supports the improvement of care, early years and social services in Wales. It does this by raising standards; improving the quality of services; promoting best practice and through regulation, inspection and development. CSSIW regulates more than 6,000 social care and early years services across Wales. 567

The CSSIW has a three year strategic plan up to 2009 to ‘[d]eliver a service user led and proportionate approach to regulation’ and ‘[e]nsure that service users’ experiences are the key focus of inspection’. 568 Since April 2006, the CSSIW’s inspection process has used what it calls ‘innovative, user-focused inspection methods’, including case tracking which follows a service user’s experience from

--------------------------------------------------------------------------------


566 Interview with Jeremy Colman, Auditor General for Wales, March 5 2008. The need to share best practice was underlined in a 2007 report by the Commission for Racial Equality (CRE) on the implementation of race equality schemes in Welsh local government. However, the CRE report notes that the quality of work to promote race equality ‘has featured only to a limited extent in WAO reports’. See Commission for Racial Equality in Wales (2007) Race Equality Schemes for Local Government in Wales: Putting Priorities into Focus, p.8.

567 http://new.wales.gov.uk/cssiwsubsite/cssiw/Aboutus/servicereg/?lang=en

568 http://new.wales.gov.uk/cssiwsubsite/cssiw/Aboutus/servicereg/Newapproach/?lang=en
initial assessment by the service through to delivery of care. The process promises service users ‘more input into the quality assurance of care’.

The national minimum standards against which the CSSIW inspects contain several references to the rights and dignity of service users. For example:

- One of the standards for care homes for older people requires that: ‘Service users feel that they are treated with respect and that their right to privacy is upheld’.

- The supplementary guidance for older people with dementia states that: ‘The service user’s rights under the Human Rights Act must be taken into account in decision making’ in relation to consent for treatment.

- The standards for care homes for younger adults make several references to service users’ rights in relation to decision-making, policies and procedures, access to public facilities and daily routines.

- The standards for domiciliary care agencies require services to ‘[respect] the rights, privacy and dignity of the individual’ at all times.

However, it is not clear how these rights-based standards feed through into the inspection work of CSSIW. For example, the chief inspector’s latest overview of care and social services in Wales makes no mention of human rights or the HRA, though it contains several references to ‘dignity’, ‘respect’ and ‘citizen control’ of services. The 2006-07 annual report also contains multiple references to ‘dignity’, though refers to ‘rights’ only in relation to children’s services.


574 Care and Social Services Inspectorate Wales (2008) *Chief Inspector’s Overview, Care and Social Services in Wales 2006–7*.

Rob Pickford, Chief Inspector of the CSSIW, notes that the inspectorate’s service user focus is not framed in a human rights context, though human rights values are implicitly present and in some instances the HRA has been explicitly used, for example in looking at individual planning for children. Inspectors do not undergo training on the HRA, he added, but ‘most [staff] would probably say we are doing it anyway’.

Rob Pickford added that:

There have been sustained improvements in care services in Wales and I believe that one of the factors that’s driven that has been a more coherent and focused regulatory framework with a set of explicit standards.

5.4.4 Healthcare Inspectorate Wales

Healthcare Inspectorate Wales (HIW), a department of the National Assembly for Wales, is responsible for inspecting and investigating the provision of healthcare by, and for, Welsh NHS bodies. Since 1 April 2005, HIW has also been responsible for the regulation of the private and voluntary healthcare sector in Wales, having taken over this role from the Care Standards Inspectorate for Wales.

The language of ‘patient focus’, equality and diversity is prominent in HIW’s vision and values but there is no explicit reference to human rights or the HRA. There appears to be no strategy in place for systematic service user involvement. Methodologies for each area of inspection note that inspection teams would ‘normally’ include a lay/user representative. NHS bodies are also required to show how they ‘gain user/public opinion when planning services’. The HIW website notes that inspection methodologies are being updated but gives no timescale.

The Healthcare Standards for Wales contain no explicit reference to human rights or the HRA, but one standard requires healthcare organisations to ensure that ‘staff

576 Interview with Rob Pickford, Chief Inspector, Care and Social Services Inspectorate Wales, February 28 2008.
577 Ibid.
578 http://www.hiw.org.uk/page.cfm?orgld=477&pid=13328; the Healthcare Commission additionally produces an annual report on the state of healthcare covering both England and Wales and carries out cross-border improvement reviews.
579 http://www.hiw.org.uk/page.cfm?orgid=477&pid=13329
treat patients, service users, their relatives and carers with dignity’. The HIW’s detailed criteria for this standard require NHS bodies to ‘demonstrate compliance with national guidance relating to issues of dignity and respect ... (e.g. Human Rights Act...)’. The criteria also require evidence that staff are trained to treat patients with dignity and respect and that there are proper arrangements for obtaining informed consent.

Another standard requires healthcare organisations to ‘ensure that people accessing healthcare are not unfairly discriminated against on the grounds of age, gender, disability, ethnicity, race, religion, or sexual orientation’. HIW’s detailed criteria for this standard require evidence that strategies and policies are in place to ensure that ‘statutory requirements relating to Human Rights, age, gender, disability, ethnicity, race, religion or sexual orientation are met', including staff training.

HIW’s latest review of progress against the standards contains no reference to human rights, but notes that ageing premises with mixed sex bays and wards fail to meet patients’ ‘rightful expectations for privacy and dignity’. HIW also expresses concern about the lack of dedicated adolescent inpatient facilities and ‘isolated incidents’ of keeping patients in bed for the convenience of staff. However, HIW also cites examples of good practice in matters of respect and dignity linked to culture, such as consultation by one NHS body with the local Muslim community to ensure that standards of dress are maintained for patients undergoing medical procedures.

The review of progress makes no mention of equality or diversity, and no mention of steps to tackle discrimination save for noting that Disability Discrimination Act audits have been undertaken across NHS premises in Wales.

583 Healthcare Standards for Wales, p.9.
5.4.5 Public Services Ombudsman for Wales

The office of the Public Services Ombudsman for Wales came into force in April 2006, replacing the previous offices of the ombudsmen for local government, health, administration and social housing. The Ombudsman investigates public complaints and promotes good administration by investigating allegations that local authority members have breached their code of conduct.587

It appears to be the preferred route for complaints. One participant at the Cardiff Roundtable noted that the route for the disempowered in Wales is not to lawyers but to the ombudsman. The participant also expressed concern that the ombudsman’s targets for turning cases around quickly – in principle a good thing – meant that case officers did not always visit complainants and so might lead to the perception that complainants had been denied a ‘proper hearing’.

There is no evidence from published materials of an explicit human rights focus in the work of the Ombudsman. However, as we have seen with the work of the Ombudsman’s counterparts in England and Scotland, the guidance issued (such as that for local authorities on complaints handling) would sit without contradiction within a more explicitly articulated human rights framework.

5.4.6 Estyn

Estyn is the office of Her Majesty's Chief Inspector of Education and Training in Wales. Its aim is to raise standards and quality of education and training in Wales through inspection and advice, in support of the vision and strategic direction set out by the Welsh Assembly Government.588

The Common Inspection Framework for Education and Training in Wales, in general use since 2004, does not expressly mention human rights, but notes that learners should have an induction programme to help them ‘understand their rights and responsibilities’. 589

However, there are indications of the recent adoption of a more explicit human rights approach. Estyn’s guidance on the inspection of primary and nursery schools and the inspection of secondary schools to be used from September 2008 asks whether

587 http://www.ombudsman-wales.org.uk/content.php?nID=1;lang=1
588 http://www.estyn.gov.uk/home.asp
schools promote education for sustainable development and global citizenship.\textsuperscript{590} The guidance notes that this includes education about ‘the needs and rights of present and future generations’ and ‘the relationships between power, resources and human rights’. Inspectors are also prompted to explore whether the school is ‘taking account of’ the UN Convention on the Rights of the Child.

5.5 Conclusions

This chapter has demonstrated that regulatory bodies have a crucial role to play in promoting the value and importance of human rights to public authorities. Some regulatory bodies have begun to adopt an explicit human rights focus and to engage service users systematically in their work. Evidence suggests that a human rights approach can strengthen the work of regulatory bodies, for example in relation to the provision of guidance and the drawing up of transparent, objective and internationally-recognised standards.

However, more research is required to demonstrate the impact of a human rights approach on inspections or monitoring activity ‘on the ground’ – that is, to determine how staff and service users benefit from the embedding of human rights in the work of regulatory bodies.

This evidence base should help to build the case for human rights and service user engagement to be integral to the inspection and regulatory regimes that are coming into being as a result of reforms in England, Scotland and Wales. These reforms present both a threat and opportunity for efforts to embed human rights thinking among regulatory bodies and public authorities more broadly. Our interviewees have argued that there is a risk of human rights and commitment to service user engagement being squeezed out in the process of reform. However, there is also an opportunity to harmonise and strengthen human rights approaches both within and between nations. What is certainly true is that the time is ripe for proponents of a human rights approach to influence the future shape of regulation and inspection in Britain.

CHAPTER 6: AWARENESS AND PERCEPTIONS OF HUMAN RIGHTS

Introduction

This chapter draws on evidence, both qualitative and quantitative, which examines awareness and perceptions of human rights and the Human Rights Act (HRA) among:

• Section 1 – public service staff (frontline staff and managers)
• Section 2 – service users, and
• Section 3 – the wider public (including voluntary sector groups).

Clearly, these three groups overlap. However, we have analysed the literature relating to each group separately given the evident stake of staff and service users in public service delivery. In addition, levels of awareness and perceptions of human rights among public sector staff matter because a failure to understand and act upon the standards required by the HRA can materially affect the quality of service provided, with potentially damaging consequences for service users.

Our key findings in relation to awareness and perceptions of human rights are:

• The evidence points to a low awareness among public service staff of the HRA and how human rights principles apply to their everyday work
• Public service staff tend to have a largely positive perception of the term ‘human rights’ and the associated values of dignity, respect and fairness; however, they have a largely negative perception of the HRA as a charter for miscreants, as ‘something for the lawyers’ and as unnecessary and burdensome
• Surveys suggest it is uncommon for users of public services to treat either the HRA or its underlying principles as a safety net for use in their everyday life; some specific groups of service users display mistrust of how they think the HRA is implemented to benefit what they perceive as undesirable or undeserving groups
• Measured public awareness of the HRA is low, including among voluntary and community groups; surveys of the general public suggest that between 40 and 60 per cent of people are largely ignorant about human rights
• Surveys of general public opinion, like those of public service staff and service users, reveal a degree of hostility to the way in which the HRA is perceived to operate as a charter for people wanting to ‘cheat the system’; however, the literature also suggests that a majority of people in Britain support the existence of human rights legislation and respond positively to human rights principles.

• The evidence suggests that attitudes towards human rights are mutable and that people generally grow more positive the more they know about the principles underlying the HRA; there also appears to be a consensus around the idea of human rights as allied to social responsibility.

In section 4 of this chapter, we analyse the impact of media coverage, which is widely seen as having had a strong and corrosive effect on perceptions of human rights generally and the HRA in particular. This section also examines the critique of ministers by the parliamentary Joint Committee on Human Rights (JCHR) for compounding the media’s negative portrayal of human rights by repeating misinformation or by failing to rebut erroneous coverage.

The literature does not yield evidence of any significant national differences between England, Scotland and Wales with regard to awareness and perceptions of human rights that cannot be ascribed to demographic factors.

6.1 Public service staff

6.1.1 Levels of awareness among staff

Overall, the evidence points to a low awareness among public service staff of the HRA and (with some exceptions) of how human rights principles relate to their day-to-day work. Where there is a higher level of awareness, it is commonly identified in the literature as ‘implicit’ rather than ‘explicit’. 591

The Human Rights Insight Project of the Ministry of Justice carried out qualitative fieldwork with 76 frontline staff and managers of health and social services in 2006. 592

---

591 Ministry of Justice (2008) Human Rights Insight Project, p.64; the Human Rights Insight Project notes that ‘explicit’ knowledge refers to those who understand and behave according to the principles and also know that they are human rights principles; ‘implicit’ knowledge refers to those who understand and behave according to the principles, but do not know that they have anything to do with human rights.

592 Human Rights Insight Project, pp.61-2.
Among the staff interviewed, researchers found explicit knowledge to be relatively low, with some exceptions among social services staff, notably those that had had human rights training. Implicit understanding was also low among health service respondents but quite high among the social services contingent, who more readily used language such as ‘dignity’, ‘respect’ and ‘treating users as you would want to be treated yourself’. The explanation offered for these variations are discussed in the section below on contrasting organisational cultures.

In 2006, the *Making it Real* project of the Mental Health Act Commission (MHAC) surveyed staff, Commissioners and Second Opinion Appointed Doctors through focus groups and a questionnaire to everyone in the organisation (see Chapter 2 for a full description of the project). The questionnaire showed a significant age differential, with younger respondents (disproportionately concentrated in the staff group) far less likely to feel either knowledgeable or positive about human rights. Repeat questionnaires after a period of staff training showed ‘a significant rise in knowledge about human rights across the organisation’.

The *Making it Real* project also involved visits by MHAC staff to mental health in-patient units, providing an opportunity to gauge awareness and perceptions of human rights among service providers. The participants found that:

> Staff in many units were not knowledgeable about the subject of human rights but receptive and willing to discuss it, in others staff were unaware of human rights, or conscious of it only vaguely or as a piece of paper that had not impacted on ward life.

Illustrative findings from these visits to service providers include:

> ... staff knew about the HRA but only in a generalistic way ...
> ... staff didn’t see the HRA as much to do with them ...
> ... very patchy awareness of human rights on the unit ...

593 Ibid.
595 Ibid, p.11; the report notes that this finding may reflect a range of issues such as differing levels of experience, seniority, remuneration, job satisfaction and access to training and development.
596 Ibid, p.22; the second questionnaire showed that 87 per cent of MHAC staff felt knowledgeable or very knowledgeable compared to 57 per cent in the first questionnaire.
597 Ibid, p.29.
In its recent report on the human rights of adults with learning disabilities, the JCHR laments the lack of awareness at every level of public services:

... we have been deeply disappointed in the course of this inquiry by the low level of awareness of human rights principles and of the Human Rights Act 1998 among not only adults with learning disabilities, their carers and supporters, but also among those who work in the field and at the heart of local and central Government. 599

Echoing this finding about levels of awareness in Whitehall, Age Concern’s report Rights for Real reported that:

One senior official responsible for developing policy for older people offered the view that there is “complete ignorance” about the application of human rights principles within certain departments. 600

Giving evidence to the inquiry, a representative of Values into Action noted:

I think it is fair to say that in the 50 [self-advocacy] groups that we visited there was very little awareness of the Human Rights Act among people with learning difficulties themselves and professionals. 601

The potentially catastrophic consequences of this lack of awareness among public service staff is made plain in evidence to the JCHR inquiry. Speaking of the abuse of service users with learning disabilities by Sutton and Merton Primary Care Trust, Andrew Lee from People First (Self-Advocacy) noted that:

One of the most tragic things about the recent abuses in Sutton and Merton was that staff did not even know they were doing anything wrong. 602

______________________________


601 Ibid, p.81.

602 Ibid, p.46; in 2007, the Healthcare Commission investigated the service provided to people with learning disabilities by Sutton and Merton Primary Care Trust. It concluded that: ‘Institutional abuse occurs when the rituals and routines of a service result in the lifestyles and needs of individuals being sacrificed in favour of the needs of the institution. This abuse was found to be prevalent in most parts of the learning disability service ... It was mainly due to lack of awareness, lack of specialist knowledge, lack of training and lack of insight.’ See Healthcare Commission (2007) Investigation into the service provided for people with learning disabilities by Sutton and Merton Primary Care
6.1.2 Staff attitudes to human rights and the HRA

Several studies note a discrepancy between largely positive staff perceptions of the term ‘human rights’ and the associated values (dignity, respect, fairness) compared to their largely negative perceptions of the HRA.

This finding is borne out by our interviews with a range of practitioners from different public sectors. For example, Paul Coen, chief executive of the Local Government Association, said that in his view local authority staff saw human rights legislation as ‘something that’s remote, intimidatory and takes place in courts of law’.

Eleri Thomas of Save the Children Wales noted that even for teachers and head teachers who are often ‘champions for children’:

... as soon as you mention the term “children’s rights”, for some a brick wall will go up ... one [factor] seems to be a fear of sharing and losing power and the other is linked to what I think they see as the litigation culture and is not related to the promotion of human rights.

The Chief Inspector of Prisons, Anne Owers, noted that for prison service staff, human rights ‘carries a lot of baggage – not all positive’ and creates ‘a feeling of blame and association with lawyers’. Other interviewees identified explicit human rights language as an ‘obstacle’ and ‘off-putting’ and as requiring ‘translation’ in order to strike a chord with public service staff and in order not be viewed as ‘something to avoid, something that could go wrong’.

The MHAC’s Making it Real project ran focus groups among staff at all levels of the organisation in January 2006. It found that ‘human rights’ was associated with values such as equality/discrimination and freedom. In contrast, the HRA was associated with ‘terms dominated by Europe, the law and its machinery, with very few specific rights and value words cited’.

Trust, p.6; http://www.healthcarecommission.org.uk/_db/_documents/Sutton_and_Merton_inv_Main_Tag.pdf

603 Interview with Paul Coen, Chief Executive, Local Government Association, February 27 2008.

604 Interview with Eleri Thomas, Assistant Programme Director, Save the Children Wales, March 7 2008.

605 Interview with Anne Owers, Her Majesty’s Chief Inspector of Prisons, March 5 2008.

606 Making it Real: a human rights case study, p.11.
Only two out of 67 focus group participants thought the MHAC’s core client group, mental health users, were benefiting from the HRA. The report notes that:

Those identified as current beneficiaries were dominated by lawyers, asylum seekers and immigrants, and those alleged to have committed, or been convicted of, crimes. (emphasis in original).

Mention of the litigious aspects of human rights appears to produce generally negative and defensive responses in staff surveys. *Making it Real* noted in one instance that:

The RMO/Clinical Manager was concerned about the project … concerned at case law dictating things – not doctors.

The Audit Commission’s 2003 study surveyed what public service managers said about the obstacles to promoting human rights and concluded:

Human rights is still seen as the domain of lawyers and implications of the Act are not being fed back to frontline managers … The Human Rights Act continues to be viewed negatively by sceptics who argue that sufficient legislation and guidance already exists to enable frontline managers to secure good standards of service.

The parliamentary Joint Committee on Human Rights (JCHR), in its 2007 report on older people in healthcare, noted that:

More than one witness spoke of the prevailing idea within healthcare that human rights was something to be confined to the legal department, or concerned simply with damage limitation to avoid the service provider facing a legal challenge. In our view, this focus only on the litigious aspects of human rights risks losing the real benefit that human rights can bring to improving healthcare across the board.

---

608 Ibid, p.12.
Similarly, some staff responses suggest a fear that if human rights principles become common currency, this might open the floodgates to claims and litigation.

The Audit Commission survey of 2003 found that:

Organisations were reluctant to promote human rights with citizens and their communities because they feared an increase in the number of complaints raising human rights issues. Most failed to see the benefits of using human rights as a vehicle for service improvement by making the principles of dignity and respect central to their policy agenda, which would place service users at the heart of what they do.  

612

The *Human Rights in Healthcare* initiative identifies lack of suitable guidance as an exacerbating factor in this narrow and legalistic perception of human rights. It found ‘a glaring gap’ in practical human rights guidance for Trusts.

What guidance there is tends to be legal or compliance-centred – focusing on what should be achieved, but not why it is relevant to health or how to make it a reality.  

613

Managers quoted by the Audit Commission similarly noted that:

There is a lack of connection between practices and legislation, in particular the link with equalities.  

614

In addition to seeing the HRA as remote from their everyday concerns, there is evidence that staff may see the Act as unnecessary and burdensome. Some staff surveys reveal a degree of apparent complacency about human rights implementation, coupled with a belief that existing practices are an adequate protection without the need for a human rights-based approach.

The JCHR inquiry into the rights of older people in healthcare quotes a representative of Action on Elder Abuse as saying that:

... one of the arguments you would hear from the care providers services – and I have heard this – is, “Why introduce another layer of terminology of human


rights when actually you are asking me to do what I am already being asked to do under the Care Standards Act?615

Similarly, Birmingham Teaching PCT listed among the obstacles faced when seeking to produce an action plan for creating a human rights-based culture across the organisation:

There is a danger of human rights being seen as another ‘add on’ to existing work. Staff may be too busy delivering care to take this on and will ask why should we do things differently? In much of our existing practices and procedures we are implicitly or indirectly supporting/tackling human rights issues but are not explicitly stating this or seeing things in human rights terms.616

This insight points to the need for strategies to promote human rights which tackle the misunderstanding of the HRA as an additional burden, and rather use as their approach ‘going with the grain’, showing that the framework is another tool which will assist staff as a framework for decision-making and deploying resources, and as a means of balancing competing rights – including their own.

6.2 Service users

6.2.1 Levels of awareness among service users

The Human Rights Insight Project applied a range of methodologies to construct an evidence base about service users’ awareness of human rights and the HRA in relation to their experience of public services.617 Based on evidence from extant literature, the report states that:

... the public lacks awareness both of the Human Rights Act and of human rights more generally ... it was very uncommon for consumers of public services to treat either the HRA or its underlying principles as a safety net for use in everyday life. No evidence was found of consumers using the HRA or

615 The Human Rights of Older People in Healthcare, Volume I, p.29.
617 It should be noted that surveys of service users and surveys of the general public overlap for the obvious reason that virtually all members of the public are actual or potential users of public services. This section deals with evidence explicitly relating to service users, but should be read in conjunction with the following section on general public awareness and attitudes.
its underlying principles to improve their interactions with public service providers.\textsuperscript{618}

A survey of existing evidence on the awareness of certain groups of consumers – young people, older people, disabled people and black and minority ethnic groups – found that:

The awareness of all these groups appeared to be at least as low as that of the population at large. Some evidence suggested that awareness among black and minority ethnic groups might be lower than that of the wider population and that this could be directly related to experiences of unsatisfactory public service delivery.\textsuperscript{619}

Qualitative research of both ‘representative’ consumers (who had used key public services between two and 12 times in the preceding year) and ‘frequent users’ (who had had 12 or more contacts in the past year with key public services) found:

\begin{itemize}
  \item Virtually no awareness of the fact that the HRA had come into force in British law
  \item People did not know accurately what their human rights are and had no idea of their relevance to public service settings, and
  \item Even those who might have had a reason to think that their human rights had been in some way affected (i.e. those who had received poor treatment from public services) had no notion that human rights were relevant to them. Indeed, even if this was pointed out, the reaction was one of incredulity.\textsuperscript{620}
\end{itemize}

The MHAC’s \textit{Making it Real} project notes that staff who had interviewed detained patients agreed that:

... the visits had shown the need to raise other patients’ and users’ awareness about human rights ... and the need to support them to make these rights real. One Commissioner noted that the most aware patients in terms of knowledge about human rights were those higher up the forensic tariff, with legal representation, and that it was these patients who tended to generate human

\begin{footnotes}
618 \textit{Human Rights Insight Project}, p.16.
619 Ibid, p.17.
620 Ibid, p.18.
\end{footnotes}
rights cases. This skewed the nature of the issues associated with human rights.\textsuperscript{621}

This finding suggests that service users who do not commonly come into contact with lawyers are less likely to view their experience through the lens of human rights.

This is particularly in evidence among certain groups of service users, such as those with learning disabilities and learning difficulties. Giving evidence to the JCHR inquiry into the human rights of adults with learning disabilities, Philippa Russell, then Disability Rights Commissioner and Disability Policy Adviser to the National Children’s Bureau stated:

People with learning disabilities may use the language of ‘rights’, but may have an inexact view on what rights are and how to achieve them without access to appropriate information and an understanding of how ‘human rights’ inter-relate with rights and entitlements under other legislation.\textsuperscript{622}

\subsection*{6.2.2 Service user attitudes to human rights and the HRA}

The surveys which have been carried out to assess attitudes to human rights among service users display a mistrust of the Human Right Act and the way it is perceived to benefit perpetrators or unpopular groups, and in some specific instances, a lack of connection with human rights language and principles as well. However, the literature suggests that such attitudes are mutable and grow more positive the more people understand about the principles underlying the Act.

The \textit{Human Rights Insight Project} conducted a qualitative survey of a small number of ‘consumers’\textsuperscript{623}, covering awareness, attitudes and experience of human rights. It suggested that they view human rights positively only as they applied to individuals suffering under repressive regimes abroad. In the UK context, human rights took on negative connotations as a charter for individuals to exploit the system.

\begin{flushleft}
\begin{minipage}{\textwidth}
\end{minipage}
\end{flushleft}

\begin{flushleft}
621 \textit{Making it Real: a human rights case study}, p.34.

622 \textit{A Life Like Any Other? The Human Rights of Adults with Learning Disabilities}, Volume I, p.133.

623 The \textit{Human Rights Insight Project} divides ‘consumers’ into two groups, ‘representative’ consumers who had used public services at least twice but not more than 12 times in the preceding year and ‘frequent users’ who had had 12 or more contacts in the past year with key public services.
\end{flushleft}
Those seen as taking recourse to human rights law in this way were:

- Immigrants and asylum seekers
- Disruptive children in schools
- Criminals trying to escape conviction ‘through a legal loophole’
- Travellers
- Celebrities, and
- People ‘hijacking’ a politically correct agenda for their own ends.  

The research identified that:

Overall, there is a tendency to imagine that Human Rights could facilitate a negative phenomenon in our society whereby individuals can selfishly exercise too much power against the system and find justification for antisocial behaviour in terms of their ‘rights’ … On the face of it, then, Human Rights are seen to have no relevance to a Public Service setting: indeed, there are concerns that a Human Rights initiative would burden providers and encourage unscrupulous individuals to seek unjustified compensation. (emphasis in original).

The qualitative research with consumers also found wide agreement of a ‘moral vacuum’ in society, an absence of respect among the young, a tendency to blame problems on immigrants and asylum seekers and a mistrust of the ‘compensation culture’.

Desk research for the Human Rights Insight Project about consumer attitudes reinforced these same findings. It used extant literature to conclude that:

... misleading media coverage and inaccurate political campaigns had spawned misinformation and hostility in relation to the Human Rights Act and sometimes to human rights in general.

---

624 Human Rights Insight Project, p.19.
625 Ibid.
626 Ibid, pp.21-2.
627 Ibid. p.17.
The evidence further suggested that:

... few people immediately associate human rights with their everyday encounters with public services, and that considerable confusion exists round the origin and source of the HRA.\textsuperscript{628}

However, once respondents separated the notion of human rights principles from that of human rights law, and once the principles were clearly understood, ‘there was a positive – even inspired – response’. The \textit{Human Rights Insight Project} suggests that while the term ‘human rights’ does not immediately resonate with consumers, their own terminology – such as ‘I am treated as an individual, not a number’ – permits a positive connection with the HRA’s underlying principles and a means of filling the perceived moral vacuum.\textsuperscript{629}

Other sources highlight obstacles associated with the language and principles of human rights, especially among particular groups of service users.

The JCHR quotes the Alzheimer’s Society as saying that for older people accessing services, human rights are seen as alien and legal:

\begin{quote}
Human rights principles do not come easily to older people who often view the Human Rights Act as a legal tool that is used and abused [...] Beyond the populist reaction, human rights also seem alien to people unless particularly violent forms of abuse such as physical or sexual abuse take place.\textsuperscript{630}
\end{quote}

The JCHR report adds that:

\begin{quote}
Typically the Alzheimer’s Society seeks to inform and encourage people to make use of their ‘rights’, rather than ‘human rights’. The term ‘rights’ seems to have more immediate meaning for people with dementia and their families.\textsuperscript{631}
\end{quote}

\textsuperscript{628} Ibid.
\textsuperscript{629} Ibid, pp.22-3.
\textsuperscript{630} \textit{The Human Rights of Older People in Healthcare}, p.75.
\textsuperscript{631} Ibid.
This indicates that for particular groups of service users, human rights principles, which resonate positively among the public as a whole (see below), may be too abstract, opaque or unfamiliar to be assured of universal recognition, less still positive recognition, among those who most need protection.

6.3 General public

6.3.1 Levels of awareness among the general public

In her 2005 report on *Improving Public Services*, Frances Butler notes the ‘very low level of public awareness’ about the practical application of the HRA to public services:

> There is a failure to appreciate that the rights provided for by the Act are guaranteed to everyone, that they represent a baseline standard for the way in which public services are designed and delivered providing protection for those adversely affected by poor services and that they do not need to be established in court. There is little understanding of the potential for citizens to use human rights language in everyday life outside the courtroom ... Within wider civil society, the purpose and value of “human rights” are contested rather than assumed.\(^{632}\)

These findings echo similarly low levels of awareness within the voluntary sector which are analysed in Frances Butler’s 2004 report, *Human Rights: who needs them?* The report quotes the British Institute of Human Rights as saying, in relation to its work with some 300 voluntary and community groups in London and the South East:

> We come across an incredible lack of awareness of what human rights are about. People have not got the first idea at all. As part of our training sessions we ask people what human rights mean to them and the typical response is: disappearances and torture overseas or protecting the rights of terrorists or people like Myra Hindley. It seems that they have never had anyone raise human rights in any other contexts.\(^{633}\)

\(^{632}\) *Human Rights: Improving Public Service Delivery*, p.10.

The *Human Rights Insight Project* commissioned quantitative research from MORI on the general public’s awareness and understanding of human rights and of the HRA, with broadly similar results to those noted above.

The MORI poll found that 61 per cent of respondents felt they knew either ‘nothing at all’ or ‘not very much’ about human rights. When asked how much they felt they know about the HRA, the figure rose to 77 per cent. Only 3 per cent or fewer said they knew ‘a great deal’ about human rights or the HRA.\(^{634}\) Similarly low awareness was measured for awareness of human rights and the HRA among ‘vulnerable’ groups of service users.\(^{635}\)

A GfK NOP poll commissioned by the Equality and Human Rights Commission in England, Scotland and Wales, and quoted in its news release on the human rights inquiry, found that four out of 10 people had either not heard the phrase human rights, were unable to name any protected rights or didn’t know whether or not they supported the legislation.\(^{636}\)

6.3.2 Public attitudes towards human rights and the HRA

In keeping with the attitudes discerned among groups of service users, the evidence suggests that while the majority of people support the existence of human rights legislation, there is significant public hostility to the way in which the HRA is (often erroneously) perceived to operate in protecting undesirable or undeserving groups.

The evidence also suggests that attitudes towards human rights are mutable, and that the more people know about human rights, the more positive they are.

The GfK NOP poll for the Commission found that:

- 56 per cent agree that ‘people only talk about their human rights when they're trying to get something they're not entitled to’
- 68 per cent agree that the government is 'more concerned about the human rights of minority groups than those of the average person', and
- 81 per cent agree 'there are some problems with human rights in Britain'.\(^{637}\)

---

\(^{634}\) Human Rights Insight Project, p.27.

\(^{635}\) Ibid, p.37; the *Human Rights Insight Project* uses the term ‘vulnerable’ groups to mean: older people aged 65+; people with physical disabilities; young people aged 16+ who have been or still are in local authority residential or foster care; people with communication difficulties and people who have been mental health inpatients (since 2000).

\(^{636}\) http://www.equalityhumanrights.com/en/newsandcomment/Pages/humanrightsinquiry.aspx

\(^{637}\) Ibid.
More positively, among those who were familiar with the term 'human rights' and who understood what at least one of their rights would be, the majority were supportive.\(^{638}\) This finding suggests that negative attitudes to human rights are not necessarily deeply entrenched and must – as we have seen above in the context of service user attitudes – be viewed within the context of low levels of knowledge about human rights law and principles.

It is instructive to compare the GfK NOP poll with the (broadly similar) findings of the MORI poll for the *Human Rights Insight Project* about general public attitudes to human rights and the HRA, which may be summarised as follows:

- The term ‘human rights’ is associated much more with positives such as freedom of speech/expression and the right to liberty and security than it is with negatives such as terrorism, ‘compensation culture’ or ‘nanny state’.\(^{639}\)
- 84 per cent of the general public feel we need to have a law dealing with human rights in Britain.\(^ {640}\)
- More than half of people think ‘human rights’ are essential when dealing with public service staff, but only 34 per cent consider the HRA essential.\(^ {641}\)
- About 40 per cent feel the HRA as currently implemented causes more problems than it solves (falling to 32 per cent among the separately sampled ‘vulnerable’ groups).\(^ {642}\)
- The majority of the population feel that too many people take advantage of the HRA (57 per cent of the general public and 50 per cent of ‘vulnerable’ groups). Among this group, those who are most felt to take advantage are asylum seekers and refugees, other ‘foreigners’ and immigrants and people seeking financial reward. Lawyers, celebrities and criminals are also perceived as ‘cashing in’.\(^ {643}\)
- 94 per cent of the general public feel that we have to treat each other with more respect and 56 per cent feel there isn’t a shared sense of rights and responsibilities in Britain.\(^ {644}\)

\(^{638}\) Ibid.
\(^{639}\) *Human Rights Insight Project*, p.42.
\(^{640}\) Ibid, p.45.
\(^{641}\) Ibid, p.44.
\(^{642}\) Ibid.
\(^{643}\) Ibid.
\(^{644}\) Ibid, p.46.
Age Concern’s *Rights for Real* project, which samples attitudes to human rights among older people, offers another useful comparator. It identifies several obstacles to take-up of the HRA by older people and their families, including significant attitudinal barriers, which may be summarised as follows:

- **The HRA is about political correctness, not older people’s treatment:** Human rights was seen as: a mechanism through which minority groups get ‘unfair’ access to services and avoid having to fit into British culture, a symbol of European dominance, and an illegitimate restraint on parents’ and teachers’ ability to use corporal punishment, and attitudes to crime. (‘It means you can get away with murder, literally, it means the victims don’t get a say’).

- **Human rights are in issue in dictatorships, not Britain:** ‘For many older people, “human rights” are seen essentially as democratic rights – the right to freedom of speech, the right to choose the government, and so on. These are seen primarily in an international context and are not felt to be relevant to people’s lives in Britain.’ ([Human rights are] for people in Zimbabwe and places like that; It’s why they got rid of Saddam).

- **People shouldn’t have to use legal rights to get action:** ‘Many participants expressed a deep sense of regret that laws are needed to define their rights; they felt that in the past these rights were simply assumed and that it was a sign of deterioration that we now need to codify rights. On this perspective, using human rights legislation would demonstrate complicity with the degenerative forces that are feared to be transforming society.’ However, this view was less widespread than the first two and seldom appeared when people were talking about exercising rights on behalf of others.

- **Lack of faith that using the act will make any difference:** ‘Even where participants saw the HRA as offering rights that would be useful, they sometimes felt that it was not worth taking steps to use the powers because events and the system will conspire to prevent them securing the result they want.’

- **Lack of information and lack of system navigation skills:** This is identified as more of a practical than an attitudinal barrier. ‘Unaware of their rights and

646 Ibid, p.64.
647 Ibid, p.65.
often isolated in their homes, they [older people] felt that they did not know how to start any process that would allow them to insist upon exercise of their HRA rights.\textsuperscript{649}

The Age Concern report notes ‘a chasm between people’s unprompted understanding of human rights and the HRA’ and what focus group members thought after being given more information about their relevance and application. The report states that:

When ‘human rights’ are presented as a restatement of treasured values like respect and fairness – and as offering opportunities for greater autonomy – then the barriers were not as insuperable as they first appeared.\textsuperscript{650}

Indeed, the Age Concern reports notes that the values held dear by older people ‘were entirely consistent with, and often supported, the concept of human rights’.\textsuperscript{651} In particular:

“respect” – seen to be at the heart of a decent society – was endorsed by all respondents in the groups and had far more resonance than language around “dignity”.\textsuperscript{652}

These insights suggest a number of strategies which could be deployed to counter negative perceptions of human rights and the HRA. The Age Concern report points to the need to:

... disassociate human rights from the ‘compensation culture’ narrative e.g. by positioning action by individuals under the HRA as advocacy on behalf of their peer-group rather than a self-interested act and by emphasising recourse to law as a last resort.\textsuperscript{653}

This observation could be argued to lend weight to the argument for the Equality and Human Rights Commission and the Scottish Commission for Human Rights to have a free standing power to take human rights cases (which they currently lack), if such test case litigation could be argued not only to lead to better public services but also enhanced public trust in the HRA.

\textsuperscript{649} Ibid, p.68.
\textsuperscript{650} Ibid, p.48.
\textsuperscript{651} Ibid, p.59.
\textsuperscript{652} Ibid, p.60.
\textsuperscript{653} Ibid, p.66.
The Age Concern report also suggests that older people need to be given:

... a sense of ownership over their rights rather than see them as a “politically correct invention”, or a “handout”, or simply a matter for other countries. It is this sense of ownership that ultimately diffuses these ... barriers.\textsuperscript{654}

Age is only one of several factors which appear to correlate with a more negative perception of human rights. The \textit{Human Rights Insight Project} found that among the general population, those who are more likely to feel negative are those aged over 55 (52 per cent), those who are not working (45 per cent), tabloid newspaper readers (46 per cent) and those with no formal qualifications (49 per cent).\textsuperscript{655}

These differentiations are important to note, as are the differences in attitudes measured among what are viewed as ‘vulnerable’ groups compared to ‘representative’ consumers in the \textit{Human Rights Insight Project}. They remind us that people’s attitudes to human rights and the HRA vary according to their life experience and that no single communications strategy will necessarily be effective in promoting human rights in the popular imagination.

\subsection*{6.4 The influence of the media}

This section examines the impact of media coverage on attitudes to human rights among the general public. The 2006 review of the implementation of the HRA by the Department for Constitutional Affairs (DCA, now Ministry of Justice) dwells on the impact of negative or misconceived media reporting of human rights which is seen to have had ‘an accumulative and corrosive effect upon public confidence both in the HRA and in the European Convention on Human Rights itself’.\textsuperscript{656}

The DCA identifies three types of myth:

- Those deriving from the (often partial) reporting of the launch of cases but not their ultimate outcomes, such as Dennis Nilsen’s challenge under the HRA to a decision to deny him access to gay pornography, which was refused by the judge at the permission stage (that is, without going to a full hearing)
- Pure ‘urban myths’, such as the belief that the HRA would prevent teachers putting plasters on children who had cut themselves, and

\textsuperscript{654} Ibid.
\textsuperscript{655} \textit{Human Rights Insight Project}, p.46.
• Rumours and impressions, such as claims by local authorities and local media that the HRA is to blame when planning decisions go against them in cases involving Gypsies and Travellers.657

The report notes that negative reporting blames human rights for a range of ills including: ‘giving undeserving people a means of jumping the queue and getting their interests placed ahead of those of decent hardworking folk’; ‘political correctness gone mad’ and being a catalyst for a ‘compensation culture’.658

The DCA sees such reporting as partly attributable to ‘deliberate political campaigns’ for example by those who urge withdrawal from the European Union. To this extent, the DCA notes, ‘many of the attacks on the Human Rights Act use it as a proxy for other issues and do not address it on its own terms’.659

The DCA connects erroneous or hostile reporting of human rights to (potential) problems with its implementation by public service staff, concluding that:

... such myths are ... extremely damaging, for they not only corrode public confidence in the importance of human rights, but could also contribute to the critical mistakes which continue to occur in the misinterpretation and misapplication of the Act.660

The Department of Health similarly alludes to the problem of misconceived media reporting in its Human Rights in Healthcare document. It says that:

... media debates on human rights, where many NHS staff and stakeholders get their only information on this issue, have dealt with human rights in a very narrow, and sometimes misinformed way. This tends to miss the link between core human rights principles, such as fairness, dignity and respect, and good quality and efficient healthcare.661

The DCA committed the government to leading a drive to ‘debunk’ the media myths and initiated a campaign – Common Values, Common Sense – to tackle far-fetched

660 Ibid.
stories about the HRA. However, the JCHR notes with regret that the campaign appears to have been ‘quietly abandoned’.

The JCHR echoes the DCA report in deploiring misconceived media coverage, which it labels a ‘catalogue of mythology’. The JCHR identifies a number of misunderstandings prevalent in public discourse:

- That the HRA introduces new rights that did not exist before
- That the rights contained in the European Convention on Human Rights are a foreign import, foisted on our legal system from without, and even that the HRA is a product of the European Union
- That the HRA gives the courts the power to strike down Acts of Parliament, and
- That the HRA protects only the undeserving.

However, the Committee departs from the DCA’s analysis by accusing ministers (and indeed the DCA itself) of compounding the negative portrayal of human rights, particularly in relation to high-profile cases such as that of Anthony Rice, an offender released on licence who went on to kill Naomi Bryant. The Committee notes that:

... there was no evidence that Naomi Bryant had been killed as a result of officials misinterpreting the Human Rights Act. Despite our clear finding, however, both the Government and the media have continued to repeat the unfounded assertion that the Human Rights Act caused the death of an innocent woman.

The JCHR notes that both the DCA’s review of the implementation of the HRA, and the report of the Rice case by the Chief Inspector of Probation, Andrew Bridges, contained the unsubstantiated allegation that the people managing his case had allowed public protection considerations to be undermined by human rights considerations. There can be no question that the system failed in this case but, as

______________________________

the JCHR notes, the HRA was a ‘convenient scapegoat for unrelated administrative failings’.666

The JCHR points to multiple possible causes for the persistence of misinformation about human rights:

Views differ as to whether responsibility for this perception rests with certain sections of the media, for inciting hostility to a statute to which they are opposed for reasons of self-interest; with our politicians for failing to provide the leadership necessary to demonstrate the benefits or potential benefits of the Human Rights Act to everyone; with lawyers and judges for appearing to suppose that the meaning and content of human rights are for exclusively legal rather than political decision; or with public authorities for failing to embrace the change of culture which the Act intended.667

There is little else in the literature which seeks to analyse media reporting of human rights and its impact upon public perceptions but it appears that where there are negative reports about groups or cohorts of people within British society, there is also negative coverage of the Act.

One source worth noting is the RAM Report on media coverage of refugees and asylum seekers – one of the groups which, as we have seen, is viewed erroneously by the public as benefiting disproportionately from the HRA.668 This report offers analysis, based on a six year project, of how the media reports refugee and asylum issues, and points to some systemic problems which might inform an analysis of media reporting of the treatment of other marginalised groups, or groups to whom the broader population can be hostile.

Anecdotal evidence cited in the report suggested that local radio phone-in programmes were:

... bringing forward significant levels of unchallenged prejudice, inaccurate information and unchecked racial hostility, while on local television articulate

______________________________

666 The Human Rights Act: The DCA and Home Office Reviews, p.16.
protestors against new arrivals were gaining far more coverage than asylum seekers keen to avoid attention, or those who would defend them.\textsuperscript{669}

Other systemic problems that led to hostile media coverage included:

- A ‘disappointing’ attitude by the Press Complaints Commission towards the worst examples of the media coverage
- The difficulty for journalists of getting at ‘human interest stories’ from refugees and asylum seekers and their organisations, and
- The fact that asylum seekers and refugees were either ‘reluctant and wary’ of talking to the media or simply inexperienced.\textsuperscript{670}

In addition, several interviewees for this project made reference to inflammatory media coverage in relation to unpopular groups seen, wrongly, as benefiting disproportionately from human rights legislation. For example, participants in the Glasgow Roundtable noted that young people had been described as ‘vermin’. Donald Lyons, Director of the Mental Welfare Commission for Scotland, observed that in relation to mental health patients, the vast majority of whom do not commit crime or harm others, the media message was that:

> People who’ve committed terrible crimes aren’t actually human and don’t have any human rights.\textsuperscript{671}

Interestingly, the \textit{Human Rights Insight Project} found that while the majority of the public gleaned what human rights knowledge they had from the media (67 per cent), a sizeable proportion also reported learning about the HRA through personal experience, friends, family, school and work (45 per cent).\textsuperscript{672} This finding points to the potential effectiveness of non-media channels as a conduit for information and debate about human rights.

\textsuperscript{669} Ibid, p.16.
\textsuperscript{670} Ibid, p.64.
\textsuperscript{671} Interview with Donald Lyons, Director, Mental Welfare Commission for Scotland, February 20 2008.
\textsuperscript{672} \textit{Human Rights Insight Project}, p.27.
6.5 Conclusions

In this chapter we have analysed a range of qualitative and quantitative surveys which suggest that awareness of human rights and the HRA among public service staff, service users and the wider public is generally low.

Neither staff nor service users appear to be aware of the potential of the human rights framework to improve services. In addition, staff, service users and the wider public tend to view the HRA as being implemented in such a way as to benefit undeserving groups disproportionately. However, public service staff tend to have a largely positive perception of the term ‘human rights’ and the associated values of dignity, respect and fairness. The literature also suggests that a majority of people in Britain support the existence of human rights legislation and respond positively to human rights principles.

The evidence suggests that negative attitudes towards human rights are generally not entrenched or immutable. There is also evidence that people tend to grow more positive the more they know about the principles underlying the HRA, suggesting that low levels of awareness and understanding may be contributing to negative perceptions. There is a consensus among the surveys we have reviewed about the level of public support for the idea of mutual respect and obligation between citizens. This suggests a basis for positioning human rights in the public mind as being allied to, not in contradiction with, social responsibility.

Taken as whole, the extant literature offers some useful analysis and case studies of the impact of media reporting on popular attitudes to human rights. However, it is not clear from the literature that this provides anything more than a necessary, rather than a sufficient, explanation for the largely negative public perceptions of the way the HRA is perceived to be implemented. Perhaps the key insight arising from this analysis is that creative, sophisticated and carefully-targeted means need to be found – using a variety of communications channels - to promote human rights values and the HRA to public service staff, service users and the wider public, rather than assuming that the values will speak for themselves. Some strategies for doing this are considered in Chapter 8.
CHAPTER 7: GAPS IN LEGISLATION AND GUIDANCE

Introduction
This chapter analyses what the literature and our interviewees say about gaps in existing or proposed legislation to protect and promote human rights and about the steps that should be taken to plug the gap, either through legislation or improved guidance to public authorities about its implementation.

The issue raised most strongly by our interviewees is the ‘public authority’ loophole that effectively excludes public services provided by the voluntary and private sector from responsibility under the Human Rights Act (HRA). In section 1, we consider: the effects of the loophole on service users, the inadequacy of existing guidance on contracting out services; proposed solutions to the anomaly, including fresh developments announced during the life of this project, and debates about the potential impact of legislative change on private providers.

In section 2 of this chapter we review the arguments for a statutory duty to promote human rights. This is an issue which has been raised consistently by the parliamentary Joint Committee on Human Rights and others – though it did not emerge strongly in our interviews for this project. In this section, we argue that the case has not yet been made for the introduction of a statutory duty to promote human rights, but that there is – as our interviewees emphasised – an urgent need for more systematic guidance to public authority staff on the meaning of positive obligations and human rights case law.

In section 3 we review some responses to the Green Paper entitled A Framework for Fairness – proposals for a single equality bill for Britain.673 We limit our review to the responses – largely negative – which pertain directly to the potential impact of the proposals which relate to the promotion of human rights. The call for human rights principles to underpin the proposed single equality legislation is particularly relevant to the integrated remit of the Equality and Human Rights Commission.

7.1 The ‘public authority’ loophole

The biggest legislative frailty identified in the literature and by our interviewees is the loophole that excludes public services provided by the voluntary and private sector from responsibility under the HRA. During the passage of the Human Rights Bill it was clear that Parliament intended that the requirement that public authorities act compatibly with Convention rights should cover private-sector providers of publicly-funded services as well.

However, emerging case law as to what can be defined as a public authority under the HRA has effectively narrowed the scope of the Act.

- Following the decision of the Court of Appeal in R (Heather) v Leonard Cheshire in 2002, most private organisations that contract with public authorities to provide services do not constitute public authorities for the purposes of the HRA.

- In the case of YL (by her litigation friend the Official Solicitor) v Birmingham City Council and others, the Lords confirmed by a majority of 3 to 2 that the provision of residential care by a private provider, even where paid for out of public funds, was a private law matter and therefore outside the scope of the HRA.

- The Court of Appeal dismissed a similar appeal in 2007 in the case of R (on the application of Johnson and others) v London Borough of Havering, a case in which the government had intervened – unsuccessfully as it turned out – to try to ensure that the meaning of ‘public authority’ was interpreted so as to cover elderly and vulnerable people receiving care from a private provider.

7.1.1 The effects of the loophole

The effect of this anomaly is to leave many of the most vulnerable service users without effective redress if their human rights are infringed. This includes older people and people with learning difficulties who are users of residential or domiciliary care, as well as a range of other groups such as looked-after children, tenants in some housing association properties, residents of social housing and children with special needs in private schools.


675 For a summary of critical reaction to the judgment see: http://www.guardian.co.uk/society/2007/jun/20/longtermcare.uknews
The courts have made it clear that individuals might be able to take legal action against the public authority that entered into the contract, rather than the provider, for failing to protect their human rights. However, the Audit Commission said in 2003:

The biggest risk to public authorities is their lack of arrangements for ensuring that their contractors and partners are taking reasonable steps to comply with the Act. Sixty-one per cent of public authorities have failed to act ... The complexity and difficulty experienced by public authorities in ensuring that contractors comply with the Act cannot be underestimated.\(^\text{676}\)

Many age, disability and human rights groups have voiced alarm about the effects of the loophole and called for a solution consistent with Parliament’s original intent that outsourced residential care would be covered by the HRA.\(^\text{677}\)

### 7.1.2 Guidance on contracting

In an effort to close the loophole through non-legislative means, the Office of the Deputy Prime Minister (ODPM, now the Department for Communities and Local Government) issued guidance to public authorities in 2005 requiring human rights specifications to be inserted into contracts with private and voluntary service providers.\(^\text{678}\)

However, Age Concern’s *Rights for Real* report says that:

... the disadvantage of this convoluted mechanism is that it does not give users easy redress against the statutory authority ... Redress for many vulnerable older people in care homes will be unachievable in practice.\(^\text{679}\)

The JCHR’s criticism of the ODPM’s guidance could hardly have been more damning. Andrew Dismore MP, who chairs the committee, stated that:

... in reality it has proved utterly useless. It dissuaded procurement officers from taking a positive approach. No model process was recommended, nor were standard contract terms. The guidance was badly written, difficult to follow and unpublicised … There were no mechanisms to monitor the impact

---


\(^{677}\) [http://www.bihr.org/policy/reports.html](http://www.bihr.org/policy/reports.html)


on procurement. In general, local authorities were not even aware that the guidance existed. Guidance can never be a substitute for the direct application of the Human Rights Act to service providers.\textsuperscript{680}

In unpublished research obtained for this report, Help the Aged in Wales investigated the extent to which local authorities use contractual clauses to protect the human rights of the 15,000 older people in private care homes in Wales. It found that:

... while the majority of authorities did not specifically mention or seek to protect human rights in the contracts in use during 2007, there are clear signs that the issue is being considered ... All of the [11 out of 19 responding] authorities that stated they would be reviewing their contracts acknowledged that guidance on human rights and the recent court decisions [the YL case] would be considered as part of their review.\textsuperscript{681}

Help the Aged in Wales points out that although, encouragingly, some authorities are seeking to provide better protection to (in this case) older people in private care homes, ‘a contractual term requiring a care home to act as though bound by the Human Rights Act ... is no substitute for potential liability under the Human Rights Act’.\textsuperscript{682}

It is worth noting that neither the Convention of Scottish Local Authorities (COSLA) nor the Local Government Association has issued any guidance to local authorities on this matter.\textsuperscript{683} COSLA’s strategic director noted that the ODPM guidance was ‘written for an English audience’ and was not always useful in Scotland.

\textbf{7.1.3 Closing the loophole}

In 2007, the JCHR published a report on the meaning of public authority – a follow-up to one published by the committee’s predecessor in 2004. The 2007 report calls for ‘urgent action’ to revise the existing guidance on contracting for public services. Significantly, it also goes further than the 2004 report in making a ‘strong case for a

\textsuperscript{680} http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm071218/debtext/71218-0006.htm#0712185500009

\textsuperscript{681} Help the Aged in Wales (2008) \textit{The Human Rights of Older People in Care Homes: Local Authority Arrangements} (unpublished).

\textsuperscript{682} Ibid.

\textsuperscript{683} Interviews with Paul Coen, Chief Executive, Local Government Association, February 27 2008 and Jon Harris, Strategic Director, Convention of Scottish Local Authorities, February 25 2008.
separate, supplementary and interpretative statute’, specifically directed to clarifying the interpretation of ‘functions of a public nature’ in the HRA.  

In January 2008, the JCHR lamented the fact that the Government appeared to have deferred action and was proposing only to consult on the issue in its Green Paper on a British Bill of Rights and Responsibilities.

The JCHR noted that although it preferred a general solution to clarify the meaning of ‘public function’ in the HRA, it now saw the need for an interim solution by means of an amendment to the Health and Social Care Bill.

Apparently convinced of this argument, on March 27 2008, Ivan Lewis MP, Parliamentary Under-Secretary of State for the Department of Health announced that:

We are considering how to amend the Health and Social Care Bill currently going through parliament to reverse the consequences of a recent court decision and make care homes providing publicly-arranged accommodation directly subject to duties under the Human Rights Act.

He added that people paying for their own care, who will not be covered by the amendment ‘will for the first time have the right to refer complaints to an independent adjudicator’, of which details will be confirmed later this year.

It could be argued that the commitment to provide an independent adjudicator is in itself an acknowledgment that self-funders lack sufficient protection for their human rights and the debate seems unlikely to end with the announcement by Mr Lewis.


685 Joint Committee on Human Rights (2008) Legislative Scrutiny: Health and Social Care Bill, Eighth Report of Session 2007–08, p.3. In an indication that different branches of government might take a different approach to the matter of definition, the Department for Communities and Local Government, in its proposal for a Single Equality Bill for Great Britain, states that: ‘Although existing discrimination legislation has used similar wording to the Human Rights Act to define public authorities for the purposes of the gender and disability equality duties and the public function provisions, the Single Equality Act is not tied to this approach and could adopt a different approach if considered appropriate.’ See DCLG, Discrimination Law Review: A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain, a consultation paper, June 2007, p.93.

The issue of self-funders had earlier been raised via a proposed amendment to the Health and Social Care Bill moved in Committee to make all providers of health and social care public authorities for the purposes of the HRA (that is, to cover people paying for their own care as well as those being funded by their local authority). The JCHR noted that while it was sympathetic in principle to this proposal:

… this may go beyond what Parliament intended in the HRA and in the Committee’s view should be debated in the context of amendment or clarification of the HRA itself.687

Andrew Dismore MP explained in Parliament on February 18 2008 that extending the protection of the HRA to self-funders:

… would go well beyond what Parliament intended when it passed the Human Rights Act. It would raise wider questions about rights – something that has become known as “horizontality” in human rights jargon. We believe that such an issue – the question of whether private individuals can enforce their human rights against other private individuals or companies that are not public authorities – should be considered as part of the wider debate on the Bill of Rights … There is a strong case for horizontality, but the original Human Rights Act did not provide for that. We are simply trying to restore the position to what it was before the Leonard Cheshire and YL cases.688

We suggest that the extent of the horizontal application of the HRA would repay further consideration by the Equality and Human Rights Commission, not least in response to the JCHR’s signal that this will be a live issue within the debate about a Bill of Rights. Indeed, there is a case to be made that the courts have already applied ECHR provisions as between private entities, by way of example, in the cases of Ghaidan v Mendoza689 and Campbell v MGN Ltd.690

687 Legislative Scrutiny: Health and Social Care Bill, p.3.
688 http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm080218/debtext/80218-0008.htm
689 http://www.publications.parliament.uk/pa/ld200304/ldjudgmt/jd040621/ghaidan.htm. In Ghaidan v Mendoza [2004] UKHL 30, the Lords ruled that Mr Ghaidan, a homosexual man whose partner had died, should succeed to the tenancy of their shared flat because the relevant provision of the Rent Act relating to the surviving ‘spouse’ fell within the ambit of Mr Ghaidan’s Article 8 right to respect for his home and therefore also engaged his Article 14 right against discrimination. According to the Lords, it was possible under section 3 of the Human Rights Act to read the statute compatibly with Convention rights
Separately, Andrew Dismore MP has introduced a private members bill to clarify the meaning of ‘public function’ in section 6 of the HRA. The Bill is due for its second reading on May 16 2008.\(^{691}\) However, the strong likelihood that the Bill will not succeed suggests the need for a robust case to be built for a comprehensive legislative solution to this anomaly.

7.1.4 Potential impact on providers

In its 2006 review of the implementation of the HRA, the DCA warned of the risk that, were the loophole to be closed, private landlords ‘might fall within the scope of the HRA and might be discouraged, by the risk of claims, from providing accommodation to homeless people’.\(^{692}\) The DCA review did not provide any evidence for this concern.

The JCHR notes that the Lord Chancellor, giving evidence to its inquiry into the meaning of public authority ‘told us that widening the definition of public authority might drive a whole range of private providers out of a particular market, for example, residential care, so making it harder to provide residential care for people’, but that he, too, did not offer any evidence in support of this reservation.\(^{693}\)

The Department of Communities and Local Government reiterated the concern that providers might leave the market if they were ‘public authorities’ for the purpose of the HRA.\(^ {694}\)

Reacting to the YL judgment, Sheila Scott, executive of the National Care Homes Association, said:

and to depart from the previous interpretation of the Rent Act so as to include survivors of homosexual couples.

\(^{690}\) [http://www.publications.parliament.uk/pa/ld200304/ldjudgmt/jd040506/campbe-1.htm](http://www.publications.parliament.uk/pa/ld200304/ldjudgmt/jd040506/campbe-1.htm). In *Campbell v MGN Ltd* [2004] 2 A.C. 457, the House of Lords held that the *Daily Mirror* had breached Naomi Campbell’s confidentiality rights by publishing reports of her attendance at Narcotics Anonymous meetings. Although their lordships were divided 3-2 as to the result of the appeal, there was broad agreement that, in confidentiality cases involving issues of privacy, the focus shifted from the nature of the relationship between claimant and defendant to (a) an examination of the nature of the information itself and (b) a balancing exercise between the claimant’s rights under Article 8 and the defendant’s competing rights (for example, under Article 10, to free speech).


\(^{693}\) *The Meaning of Public Authority under the Human Rights Act* p.15.

\(^{694}\) Ibid, Ev55.
Common sense has prevailed. More than 70 per cent of care homes in the UK are owned by small private businesses. Attempts to treat them like government bodies would have placed their future in jeopardy. 695

However, the JCHR has concluded that:

... it has not seen any convincing evidence that providers would leave the public services market if they were subject to the duty to act compatibly with Convention rights, and expresses its deep concern that the Government continues to encourage trepidation about the application of the HRA amongst private providers by expressing premature and unsupported concerns about market flight. 696

The JCHR considered that the introduction of these reservations represented a ‘serious dilution’ of the government’s position hitherto, adding that:

We find the Government’s position on this question to be seriously at odds with its avowed intention elsewhere in the DCA Review and in the Lord Chancellor’s evidence to make a positive case for the Human Rights Act: the more public services are outsourced, the less will people be able to enforce their human rights directly against those providing care or other services for them. 697

Clearly, the views of private providers will have to be addressed in the debate over solving the public function anomaly. One interviewee who wished to remain anonymous noted that it was important for provider organisations not to be made to feel like a target: ‘they shouldn’t feel it’s something being done to them’.

Embracing a human rights-based approach, where the service user or resident is placed at the centre of the services provided, and a package of support designed around their needs, could be a market opportunity for private sector providers who market to self-funders. However, it appears that this more positive view of what human rights might entail has not so far been communicated to private providers by their trade associations.

695 http://www.communitycare.co.uk/Articles/2007/08/02/105319/should-human-rights-act-apply-to-care-homes.html

696 The Meaning of Public Authority under the Human Rights Act, p.4.

7.1.5 Impact on other sectors

Katie Ghose, Director of the British Institute of Human Rights (BIHR), writing in support of the amendment to close the loophole via the Health and Social Care Bill, notes that:

Importantly this amendment would confine the changes to health and social care, eliminating the need for cross-governmental agreement on other areas where services are increasingly farmed out, such as housing and education.  

When interviewed for this report, Katie Ghose did not consider that this meant ‘pulling up the drawbridge’ behind other sectors since it would leave the door open for the HRA to ‘bite’ in other areas of public service (such as housing and education) in the future.  

For its part, the JCHR has emphasised that the issue of the scope of the HRA can affect provision of public services by private or voluntary organisations across a wide range of Government activity – not just health and social care.

Although much of the literature on this issue emanates from organisations concerned with health and social care, an analysis of the organisations which submitted evidence to the JCHR inquiry into the meaning of public authority in 2007 gives a snapshot of other groups and sectors which are taking an active position on the issue.

699 Interview with Katie Ghose, Director, British Institute of Human Rights, March 4 2008.
700 Ibid.
701 Three faith-based organisations – the Archbishops’ Council, the Salvation Army and the Evangelical Alliance – opposed a legislative solution to the loophole, preferring a contract-based approach; two secular/humanist organisations argued for legislation primarily in order to bring faith-based organisations fully under the HRA; the MHA Care Group, a charitable care home provider, opposed legislative change; two health and social care related bodies – Help the Aged and the Commission for Social Care Inspection – argued for legislative change; others, including the Mayor of London, the Disability Rights Commission, the Commission for Racial Equality, the Northern Ireland Human Rights Commission and the BIHR argue for legislative change on a variety of grounds, citing not just the effect of the loophole on health and social care provision but also on, for example, academies, private security firms, private prisons, privately-run detention centres for asylum seekers, registered social landlords providing housing for Gypsies and Irish Travellers, and expanded private sector provision in the context of law and order and anti social behaviour functions. Liberty shared this broad definition of functional public authority, but argued against legislative change since ‘ultimately ... the question will have to be determined by the courts on a case by case basis’.
Reinforcing this point, the JCHR states that it shares the government’s view that private providers of services in the criminal justice field are functional public authorities for the purposes of the HRA. The JCHR adds:

... the fact that this has not been tested in court is in the Committee’s view another strong argument for the Government to bring forward an interpretative statute dealing with section 6 of the HRA.\footnote{702 Legislative Scrutiny: Health and Social Care Bill, p.3}

7.2 **The case for a statutory duty to promote human rights**

Some organisations have called for a statutory duty to promote human rights as the most effective way to get public authorities to recognise and act upon their positive obligations to protect and promote human rights, no matter who or what is causing the harm. As we have seen in Chapter 2, there is substantial ignorance among public authorities about their positive obligations.

In 2004, the JCHR concluded that:

... there is a need for greater focus by public authorities on their positive obligations to protect human rights. We are now persuaded by the evidence that imposing a ‘positive’ or ‘general’ duty on public authorities to promote human rights will be an effective way of advancing this.\footnote{703 Joint Committee on Human Rights (2004) Commission for Equality and Human Rights: Structure, Function and Powers, Eleventh Report of Session 2003-04, pp.15-16}

The JCHR had been convinced both by the evidence of the limited extent to which public authorities had proactively engaged with human rights in their decision-making processes and of the apparent success of the positive duty to promote race equality in improving the quality of decision-making and service delivery.

The JCHR explained what a positive duty to promote human rights would mean in practice, stating that:

Requiring public authorities to assess all of their functions and policies for relevance to human rights and equality, and in the light of that assessment to draw up a strategy for placing human rights and equality at the heart of policy making, decision making and service delivery, would be an effective way of
achieving the mainstreaming of human rights and equality which will be one of the [Equality and Human Rights Commission’s] principal purposes. 704

The JCHR’s statement underlines again the importance of viewing positive obligations not merely as a matter of legal compliance but as a broader driver of policy, practice and service delivery (see Chapter 2).

In its 2007 report on the rights of older people in healthcare, the JCHR repeated its call for a statutory duty to promote human rights as being a means of ensuring that public authorities consider and comply with the positive obligations which may arise in each context. It states:

In our opinion, measures reinforcing the positive obligations doctrine under the ECHR [European Convention on Human Rights] would kick-start the institutional changes that are needed within public authorities. Unless an obligation encapsulating these positive requirements is provided for, we are not confident that public authorities will implement them. 705

For its part, the DCA’s 2006 review of the implementation of the HRA does not identify the absence of a statutory duty to promote human rights as a problem. The notion of positive obligations is raised in the document solely in the context of the imperative for public authorities to balance individuals’ rights with their positive duty under the HRA to protect public safety (for example in relation to decisions about the release of offenders on licence). 706

Our interviews did not suggest a clear consensus around prioritising the case for a statutory duty to promote human rights. Human rights consultant Frances Butler, echoing the language of the JCHR, said that ‘without [a statutory duty] you can’t kick-start institutional change’, adding that the issue was ‘ripe territory for the [Equality and Human Rights Commission] – an idea they can run with’. 707 Age Concern’s legal policy advisor said merely that a statutory duty to promote human rights ‘should be considered’, and noted that it was still open to debate whether such a duty would be crafted so as to fit exactly with existing jurisprudence on positive obligations or would be designed to be ‘more powerful’. 708

704 Ibid, p.16.
705 The Human Rights of Older People in Healthcare, p.47.
707 Interview with Frances Butler, February 26 2008.
708 Interview with Nony Ardill, Legal Policy Officer, Age Concern England, March 6 2008.
It should also be noted that in some of the literature, the terms ‘positive obligation’ and ‘positive duty’ (that is, a statutory duty to promote human rights) are used interchangeably when, in fact, they are not synonymous. This has not added to the clarity of the arguments for a statutory duty to promote human rights.

In our view, the literature does not suggest a firm evidence base for assuming that a statutory duty to promote human rights would necessarily lead public authorities to recognise and act upon their positive obligations in a way that they are currently failing to do. However, there is a strong evidence base pointing to the urgent need for more systematic and timely guidance for public authorities on the meaning of positive obligations and on the implications of relevant case law – including that from Strasbourg. This need is particularly acute in the context of the multiple layers of obligations on public authorities, which were raised repeatedly in our interviews as a source of confusion and frustration for public sector staff.

The evidence also suggests the imperative for such guidance to be presented and distributed in a manner accessible to non-legal public service staff, and especially those on the frontline of service delivery, using practical examples relevant to their day-to-day work.

7.3 Human rights and the Single Equality Bill

In June 2007, the government published a Green Paper entitled A Framework for Fairness – proposals for a single equality bill for Britain, with the aim of creating discrimination laws ‘fit for the twenty-first century’. The proposals were developed as a result of the Discrimination Law Review (DLR), launched in February 2005 to consider the opportunities for creating a clearer and more streamlined discrimination legislative framework.

The Government is committed in its manifesto to introducing a Single Equality Bill during the current parliament and in September 2007 concluded a consultation on the proposals. This research cannot do justice to the detail of the responses elicited by this consultation. Summarised here are responses – largely negative – which pertain directly to the potential impact of the current proposals which relate to the promotion of human rights.

7.3.1 Need for an integrated equality and human rights perspective

The Equality and Human Rights Commission argues that the consultation paper ‘falls far short of ministers’ stated ambitions when the DLR was established’.710

The BIHR adds that the paper has ‘missed a chance to cement and progress new joined up thinking about equality and human rights, and that this has contributed in part to its low ambitions for a Single Equality Bill’.711 The BIHR notes that a human rights perspective:

...would have cautioned strongly against the proposal to maintain different levels of protection across the six equality ‘strands’ (race, sex, disability, religion and belief, age, and sexual orientation), and would have promoted instead the importance of parity as a matter of fundamental principle.712

The consultation paper, says the BIHR, fails to acknowledge the importance of the HRA in prohibiting discrimination against older people, carers and ‘many other groups who fall through the cracks of our anti-discrimination statutes and who will not achieve parity of protection’ under the proposed Bill.713 This extends to the issue of multiple or inter-sectional discrimination to which a human rights approach is ideally suited since it offers a more holistic perspective.714 This concern is echoed by, among others, Scope,715 Age Concern716 and the Equality and Human Rights Commission.717

It should be noted in this context that the Government has still not ratified Protocol 12 to the European Convention on Human Rights – the free-standing right to non-discrimination – and has opted instead to see how case law develops in


712 Ibid, p.3.

713 Ibid, p.4.

714 Ibid, p.5.

715 See http://www.scope.org.uk/cgi-bin/np/viewnews.cgi?id=1184680304


Strasbourg.\textsuperscript{718} The JCHR has urged ratification, describing the government’s decision not to ratify as an act of ‘unwarranted caution’.\textsuperscript{719}

7.3.2 Purpose clause or a statement of the basic principles of equality

Several respondents call for a purpose clause prefacing the whole Act to situate an extended anti-discrimination framework in the broader vision of equality associated with human rights values such as dignity, respect and participation.\textsuperscript{720}

Karon Monaghan notes a strong consensus in favour of a purpose clause since, as was recognised early on in the life of race discrimination legislation, the law has a normative purpose which:

... recognise[s] that our anti-discrimination laws are important as much for their declaratory status, and effect therefore on cultural change, as their remedial impact.\textsuperscript{721}

Age Concern suggests that:

...a purpose clause should expressly recognise the link between human rights and equality, including the close relationship between equality duties and positive human rights obligations.\textsuperscript{722}

The Equality and Human Rights Commission goes further than these organisations – and further than its three predecessor bodies – and breaks new ground by calling for a chapter setting out the fundamental principles of equality under the law against which the Act should be understood, applied and interpreted. It says:

The Commission believes that there is an urgent need for widespread debate among all relevant stakeholders on the essential principles on which the provisions of the new Equality Act should be based. Such debate must,


\textsuperscript{719} http://www.publications.parliament.uk/pa/jt200405/jtselect/jtrights/99/9906.htm, para.34.

\textsuperscript{720} See for example this joint response from a range of London voluntary sector organisations: http://www.rota.org.uk/downloads/DLR%20response%20final.pdf


\textsuperscript{722} Summary: Age Concern’s response to a Framework for Fairness p.3.
necessarily, precede any final decisions on the detailed content of the new Act. This process should be reflected in the legislation itself, with a first chapter stating the basic principles of equality under the law that should shape the provisions of the Act.\textsuperscript{723}

Alternatively, the Commission suggests, the set of principles might form the basis of an equality guarantee in the bill of rights proposed by the government in their 'Governance of Britain' paper.\textsuperscript{724}

### 7.3.3 Proposal for an integrated public sector duty

The BIHR states that the green paper ‘missed an important opportunity to address the need for a public duty in relation to human rights’, as recommended by the JCHR (see Section 2 above).\textsuperscript{725}

Age Concern adds that:

> ... the three public sector equality duties should be replaced by an integrated duty – extended to age, sexual orientation, religion and belief.\textsuperscript{726}

Such an integrated duty would be simpler to implement and its performance could be more easily monitored by the Commission, Age Concern says, as well as helping to tackle multiple or inter-sectional disadvantage. Concern on this front was also expressed by the Commission’s three predecessor bodies.\textsuperscript{727}

The Commission criticises the proposal to leave it to public authorities to adopt their own ‘equality principles’ and to decide for themselves how to meet the equality duty in respect of their various functions. The concern is that, under the Government’s proposals, public authorities could pick and choose their priority equality objectives without a firm evidence base, which could allow hidden pockets of discrimination to go unchecked. The Commission says:

> This has the potential to shunt the concept of equality from the core business of public authorities to the margins.\textsuperscript{728}

\textsuperscript{723} \textit{Response to the Discrimination Law Review, pp. 5-7.}
\textsuperscript{724} Ibid, p.6.
\textsuperscript{725} BIHR response to the Discrimination Law Review, p.6.
\textsuperscript{726} Summary: Age Concern’s response to a Framework for Fairness, p.3.
\textsuperscript{727} \texttt{http://www.guardian.co.uk/humanrights/story/0,,2127205,00.html?gusrc=rss&feed=11}
This concern is reiterated in a joint response by the Local Government Association, the Improvement and Development Agency and Local Government Employers:

We are very concerned that in practice, the proposals would allow those authorities that are less committed to equality issues to ignore certain functions or groups.\textsuperscript{729}

7.4 Conclusions
This chapter has reviewed three areas where the evidence suggests that frailties in existing or proposed legislation and guidance restrict (or might potentially restrict) the protection and promotion of human rights.

We repeat that the public authority loophole is the issue that has been raised most strongly and consistently in the literature and by our interviewees. The Government’s proposal to amend the Health and Social Care Bill so as to fix the loophole for those whose care is paid for by the state does not, the evidence suggests, go far enough. Our interviewees suggest the imperative for a strong case to be built for a comprehensive legislative solution to this anomaly to cover self-funders and groups of service users who receive services from functional public authorities outside the health and social care fields.

\textsuperscript{729} Letter to the Discrimination law Review team with the final joint response of the Local Government Association, the Improvement and Development Agency and Local Government Employers to the consultation paper on the proposals for a single equality bill for Great Britain, September 19 2007.
CHAPTER 8: LOOKING FORWARD

Introduction
In this chapter, we explain the conclusions we have reached based on our interviews and literature review and set out what we consider to be the implications for future work by organisations that seek to promote understanding, awareness and protection of human rights. We have given priority to those issues where we detect the greatest potential for positive change.

For clarity, we have grouped our discussion into three sections:

• Section 1 – the policy context examines how human rights perspectives might inform the future shape of: public service design and delivery; inspection and regulatory regimes; commissioning processes and professional training and codes of practice.

• Section 2 – the organisational context sets out the priorities for: identifying and disseminating the benefits of a human rights approach; making a ‘business case’ for human rights and communicating human rights to public service staff and users.

• Section 3 – the legal context identifies two priority areas: a comprehensive solution to the public authority loophole and the provision of accessible information about the range of legal and non-legal remedies available to individuals who feel their rights have been infringed.

8.1 The policy context

8.1.1 Public service design and delivery
Our interviewees offered insights into what public services would look like if they were designed and delivered from a human rights perspective and how they might be experienced by those who use and work in them. We present a range of responses here, which emphasise engagement with service users, personalisation of services and transparency:
You wouldn’t be able to say [in advance] what a service would look like if designed from a human rights perspective because you would have to ask.\(^\text{730}\)

You would be treated like a human being.\(^\text{731}\)

It’s the difference between Henry Ford production line techniques and the concept of mass customisation. Before you start building the car the customer can specify exactly what they want and the car rolls off the production line and goes straight to that customer, rather than saying, “if you want a car, here’s what we offer”.\(^\text{732}\)

One of the key recruitment specs for staff would be their attitudes. Too often staff treat people as units of trouble to be processed, and that’s so wrong.\(^\text{733}\)

Decisions would be more transparent and clearly justified – the reasons for acting or not acting would be clearly recorded and made public.\(^\text{734}\)

Boards and steering groups would have membership [made up of] close to half service users – having your say is crucial.\(^\text{735}\)

We conclude that there is significant untapped potential to develop ways of using human rights as a tool to design, as well as to deliver, public services. If this approach is to take root, organisations promoting human rights will need to work to promote the creative aspects of human rights thinking and correct any misperceptions of a human rights approach as rigid and prescriptive (Chapter 2).

---

\(^\text{730}\) Interview with Dame Denise Platt, Chair, Commission for Social Care Inspection, March 5 2008.

\(^\text{731}\) Interview with Trish Longdon, Deputy Parliamentary and Health Service Ombudsman, February 29 2008; Trish Longdon gave as an example an NHS Trust that had, as a result of PHSO intervention informed by patient workshops, ‘redesigned the pathway’ for individual service users in a way that accorded with human rights principles. The Trust had changed its procedures so as to give each individual a more personalised assessment of the risks that a proposed medical intervention might pose, thereby allowing each individual to make a more informed choice about consent.

\(^\text{732}\) Interview with Mike Wardle, Chief Executive, General Social Care Council, February 20 2008.

\(^\text{733}\) London Roundtable, February 27 2008.

\(^\text{734}\) Interview with Kathleen Marshall, Scotland’s Commissioner for Children and Young People, March 3 2008.

\(^\text{735}\) Interview with Rob Williams, Chief Executive, Children’s Commissioner for England, February 29 2008.
This suggests scope for the development of new methodologies and approaches to achieve this, for example indicators of what human rights outcomes might look like and auditing tools to capture them, as well as models of engaging service users to design and evaluate public services, and ways of using a human rights framework to reach across the traditional barriers or silos that currently prevent public services delivering in a more sophisticated and personalised way.

The ‘citizen-centred’ direction of public service reform in Wales could provide interesting potential in this regard (Chapter 2), as could debates about localism and the nature of ‘place shaping’ in England where human rights thinking has been entirely absent. Several of our interviewees noted that human rights principles have a role in this debate as a means of ensuring that local services respond to local people’s priorities and that any competing interests are balanced in a transparent and justifiable way.

8.1.2 Inspection and regulation

As explained in Chapter 5, with significant changes afoot to the inspection and regulatory function in England, Scotland and Wales, the time is ripe to make the case for a strengthening and harmonising of human rights approaches. Our interviewees emphasised repeatedly the importance of inspection and regulation and the work of the ombudsmen as a means of embedding human rights approaches in public services. Some spoke with a note of urgency with regard to the changes on the immediate horizon in England – that is, the creation of a new ‘super-regulator’, the Care Quality Commission, and the introduction of Comprehensive Area Assessments. This was one illustrative comment from the London Roundtable:

Human rights are being crowded out ... So thinking about how you engage inspectorates is going to be quite critical ... to [winning] the argument for having human rights in those inspection programmes ... If you want to get in there, you’ve get to get in now and start influencing and lobbying.736

Our interviewees also stressed that there is scope for regulatory bodies in England, Scotland and Wales to share experience and best practice. It was made clear from our interviews in all three nations that there are shared issues and challenges and untapped potential for collaborative solutions to be found using human rights principles as a framework.

For example, the implications of the ‘Bournewood gap’\textsuperscript{737} were raised by one interviewee as presenting a challenge to all inspectorates. It was argued that inspectors ‘on the ground’ are best placed to challenge those running care homes or hospital wards where doors are locked or secured with keypads and where the requisite legal authorisation has not been obtained.\textsuperscript{738} However, our interviewee argued, this is often difficult to achieve in practice because of the strong ‘organisational imperatives’ to keep doors locked and not to ‘blow the whistle’.

The Commission for Social Care Inspection and the Mental Welfare Commission for Scotland have both issued guidance on issues concerning the deprivation of liberty, to help frontline workers to resolve the tensions between people’s rights to make choices and take risks and ensuring their safety and wellbeing.\textsuperscript{739} This is one area, then, where there is evident scope to engage with inspection and regulation bodies to strengthen and harmonise good practice.

Another area that was raised by interviewees was how to ensure that service users’ experience is properly reflected in day-to-day inspection work. As Dame Denise Platt of CSCI observed, as organisations develop an understanding of the inspection process, their systems may ‘score better’ but do not always lead to demonstrable changes in the experience of people who use services.\textsuperscript{740} Another interviewee, who wished to remain anonymous, argued that more work was needed to help regulatory bodies understand ‘what ... good engagement [with service users] looks like and how you hold [NHS] Trusts to account on that’. The suggestion from these interviewees is that there is considerable scope for shared learning about the systems information that an inspectorate might expect a board to have in place to give it assurance that human rights are being protected and promoted.

\textsuperscript{737} The ‘Bournewood gap’ relates to the Strasbourg judgment in \textit{HL v UK} (2004) and arises when people who lack capacity to consent need to receive treatment in circumstances that amount to a deprivation of liberty, such as people with significant learning difficulties or well-advanced dementia. Where deprivation of liberty occurs in respect of such people, the ECHR requires that there must be (a) a procedure prescribed by law for their detention and (b) an entitlement to access a court to challenge the lawfulness of detention. The Mental Health Act 2007 has amended the Mental Capacity Act to introduce the deprivation of liberty safeguards. See also Department of Health (2006), \textit{The Bournewood safeguards: draft illustrative guidance}.

\textsuperscript{738} Cardiff Roundtable, February 28 2008.


\textsuperscript{740} Interview with Dame Denise Platt, March 5 2008.
8.1.3 Commissioning of services

This has emerged as a priority issue among our interviewees, who detect a willingness among commissioning bodies to include human rights in their contracting process, but also a hunger for guidance and shared best practice (Chapter 4).

There is a need to develop the still relatively new debate about the design of public services, focusing on the need to work across departmental and institutional silos to pool budgets and thinking in a way that enables service providers to keep their primary focus on the expressed needs and priorities of service users. This lends itself readily to a human rights focus. Yet our interviewees have argued that at present commissioning bodies are driven in the main by cost effectiveness, which tends to prioritise cheaper methods of delivering services that are similar to those which currently exist, rather than encouraging a redesign of services from the perspective of those that use them. Alternatively, commissioning bodies work hard to pool budgets or aspects of the commissioning chain, but these process changes fail to lead to any change in the way in which services are actually provided, or in the outcomes experienced by service users.

There is, then, considerable scope to develop ‘intelligent’ commissioning models which factor in human rights considerations, working through the established forums for commissioning bodies that exist at national and regional level.

8.1.4 The next generation of practitioners

From the evidence we have seen, human rights principles are included inconsistently, and generally not explicitly, in the criteria for professional training and in codes of practice for health professionals, social care workers and teachers (Chapter 4). As the parliamentary Joint Committee on Human Rights (JCHR) has emphasised, there is a need to promote human rights as an essential component of professional training and codes of practice. This is a vital arena for the ‘aspirational’ aspects of human rights practice to be introduced (Chapter 2) and thereby to influence the next generation of public service practitioners.

8.2 The organisational context

8.2.1 Identifying and disseminating the benefits of human rights approaches

One of the dominant themes of this project is that there is not currently a strong evidence base for the benefits of a human rights approach at an organisation – or service-wide level, and that the rich but fragmentary evidence that does exist is not widely shared or understood (Chapter 3). Our interviewees have emphasised the imperative to:
• Capture and disseminate best practice (and find new ways to achieve this through, for example, practitioner forums)

• Identify and – where possible – measure the benefits that accrue to service users, staff and public authorities when human rights are embedded

• Develop new methodologies to identify and measure human rights outcomes, and

• Elicit the views and experiences of public service staff as well as service users to develop the evidence base.

8.2.2 Making a ‘business case’

Human rights cannot and should not be reduced to a cost-benefit analysis (Chapter 3). However, there is useful work to be done to demonstrate the value of low-cost interventions that support the human rights of service users, and to identify business benefits at the level of, say, an individual NHS Trust. The Department of Health’s Human Rights in Healthcare project with the British Institute of Human Rights might provide useful experience in this regard.

More broadly, there is a need to develop new methodologies and approaches to show how spending in one area to protect or promote individuals’ human rights might potentially deliver significant savings in another area, such as welfare benefits or healthcare – that is, to think and act across the ‘silos’ of government.

We have found little evidence that such thinking is happening with any degree of leadership or co-ordination. The development of a business case would be of huge benefit to any government that wants to provide services that meet the needs of individuals throughout their lives rather than expecting people to navigate their way around systems that have not been designed from the perspective of the individual.

8.2.3 Communicating human rights to public service staff and users

There is evidence that the explicit language of human rights often produces blank, negative or defensive reactions from those that use and work in public services (Chapter 6). However, there is also evidence that, once explicitly introduced and understood, human rights and the values that underpin them can:

• Resonate positively with both staff and service users (especially if human rights are presented as being allied to, and not in contradiction with, the notion of social responsibility – Chapter 6)

• Be empowering for both staff and service users, for example as a means of challenging entrenched poor practice (Chapter 3)
• Work with the grain of existing professional cultures (Chapter 4)
• Improve relationships between staff and service users and erode stigma and mistrust (Chapter 3), and
• Help public service staff to reconnect with their motivation for taking up their profession (Chapter 3).

We have detected an appetite from some people working in public authorities for opportunities to explore how best to ‘translate’ human rights language in order to engender these more positive responses. For example, the Parliamentary and Health Service Ombudsman in England has held joint discussions with counterparts from around the UK about how to handle the human rights dimensions of complaints about public authorities. The deputy PHSO, Trish Longdon, noted that her organisation was conscious of the potential for negative or defensive reactions among providers. She added:

It’s a challenge to convey it in a way that doesn’t make people feel remote ... You have to have people’s hearts with you. 741

Our interviewees emphasised that different approaches work in different contexts and that it is not always necessary or desirable to speak explicitly about ‘human rights’ to achieve outcomes which, in practice, support the human rights of service users. Other language commonly suggested was that of the human rights principles of ‘dignity’ and ‘respect’, doing what is ‘decent’ and ‘doing as you would be done by’. However, our interviewees consistently emphasised the value of promoting the human rights framework to public service staff as a way of making difficult decisions.

Overall, the evidence suggests that in order for human rights principles to become embedded within an organisation, it is necessary for human rights language and a human rights framework to be used explicitly and consistently at a senior level. This is not, we suggest, merely a matter of semantics. As we have seen in Chapter 3, a human rights approach offers public authorities a sophisticated and practical framework for engaging with service users, enriching equalities work, making decisions, balancing competing interests, managing risk and ensuring transparency. The principles of ‘dignity’ and ‘respect’ are an intrinsic part of a human rights approach, but the strength of the human rights framework will inevitably be depleted if it is reduced purely to those terms.

741 Interview with Trish Longdon, Deputy Parliamentary and Health Service Ombudsman, February 29 2008.
We conclude that there is a need for leadership at senior levels in Government and public authorities to champion the value of explicit human rights approaches within public services and to encourage creative approaches to ‘translating’ human rights principles and standards (and the benefits they can bring) into different public service contexts.

8.2.4 Positive obligations
We have made a case in this report for seeing human rights as a matter of aspiration rather than merely compliance (Chapter 2). This implies two distinct areas of emphasis for future work to promote human rights:

Making the ‘aspirational’ element of human rights an integral part of communication and messaging about human rights, and

Providing timely and accessible guidance on the implications of case law (in the UK and at Strasbourg) to help the development of public service best practice.

8.3 The legal context

8.3.1 The ‘public authority’ loophole
Influential voices including the Equality and Human Rights Commission and the JCHR have stated that the Government’s intention to fix the public authority loophole for those in private care homes whose care is paid for by the state does not go far enough.742

This suggests the need to develop a strong case for a comprehensive solution to this anomaly which would cover self-funders and other groups of service users who receive services from functional public authorities. It will also be important for organisations that promote human rights to provide an authoritative perspective on the extent of the horizontal application of the legislation (Chapter 7).

8.3.2 Informing the public about remedies
Our interviewees have suggested the potential for work to inform the public about the range of legal and non-legal remedies available to them, and the extent to which these channels explicitly, and effectively, consider complaints based upon human

rights considerations (Chapter 4). Future work might consider how best this information might be provided accessibly, as well as how to encourage public authorities to inform service users and carers about their human rights and about avenues for redress at the earliest possible stage of a complaint.
ANNEX 1: BIBLIOGRAPHY


Office for Standards in Education, Children's Services and Skills (undated) *Self-evaluation form for secondary schools (with and without sixth forms)*. London: OFSTED


Participation Consortium (2007), *Do We Meet Your Standards?: National Children and Young People’s Participation Self-Assessment Pack*. Cardiff: Participation Consortium


Scottish Commission for the Regulation of Care (2008) *Grading is Coming: guidance for care service providers*. Dundee: Communications


ANNEX 2: WEBSITES

Age Concern
http://www.ageconcern.org.uk/AgeConcern/default.asp

*What we want*
http://www.ageconcern.org.uk/AgeConcern/htbh_whatwewant.asp

*Protected Mealtimes*
http://www.ageconcern.org.uk/AgeConcern/95FF082A2D1044B18F9C6A808A
B8BC2F.asp

Audit Commission
http://www.audit-commission.gov.uk/aboutus/

*Access to services - Key Lines of Enquiry and descriptors for a cross-cutting inspection*
http://www.audit-commission.gov.uk/kloe/crosscuttingkloe.asp

*Diversity Annual Review 2006/07*
http://www.audit-commission.gov.uk/reports/NATIONAL-
REPORT.asp?CategoryID=&ProdID=18CF5DE6-B49B-468c-8017-
0B79E5C5294E&SectionID=sect6#

*User Focus and Diversity Improvement Tool*
http://www.userfocus.audit-commission.gov.uk/KycLogin.aspx

*Relevant Notable Practice*
http://www.userfocus.audit-commission.gov.uk/KycNotablePractice.aspx

Audit Scotland
http://www.audit-scotland.gov.uk/about/
Overview of Scotland’s health and NHS performance in 2006/07

Priorities and Risk Frameworks

Managing People in the NHS in Scotland

British Geriatric Society
http://www.bgs.org.uk/index.htm

Dignity Behind Closed Doors (2006)
http://www.bgs.org.uk/campaigns/dignity.htm

British Institute of Human Rights (BIHR)
http://www.bihr.org/index.html

Policy briefings and research reports
http://www.bihr.org/policy/reports.html

Lunchtime Lectures
http://www.bihr.org/events/lunchtime.html

http://www.bihr.org/downloads/NCVO.pdf

Summer Newsletter 2007

Care Commission
http://www.carecommission.com/
Improving Care in Scotland
http://www.carecommission.com/index.php?option=com_content&task=view&id=47&Itemid=76

Inspection Focus Areas 2008/09
http://www.carecommission.com/index.php?option=com_content&task=view&id=5823&Itemid=1

Care and Social Services Inspectorate Wales
http://new.wales.gov.uk/cssiwsubsite/cssiw/?lang=en

Service Regulation and Inspection
http://new.wales.gov.uk/cssiwsubsite/cssiw/Aboutus/serviceregs/?lang=en

A new approach to regulation
http://new.wales.gov.uk/cssiwsubsite/cssiw/Aboutus/serviceregs/Newapproach/?lang=en

CSIW is changing the way it inspects those who provide care

Children’s Commissioner for Wales

Commission for Social Care Inspection
http://www.csci.org.uk/about_csci.aspx

Experts by experience make inspections better
http://www.csci.org.uk/professional/default.aspx?page=7226&csci=2139

National Minimum Standards for Care Homes for Adults and Domiciliary Care
http://www.csci.org.uk/professional/care_providers/all_services/national_minimum_standards.aspx
Commission on Integration and Cohesion
http://www.integrationandcohesion.org.uk/

*Our Shared Future: Final Report (2007)*

*Integration and Cohesion Case Studies (2007)*

Communities and Local Government
http://www.communities.gov.uk/corporate/

*Ministers kick off work on lighter touch inspection regime*

Constitution Unit Annual Lecture: Church House, 27 October 1999, The Rt Hon Jack Straw MP
http://www.nationalarchives.gov.uk/ERORecords/HO/415/1/hract/cuspeech.htm

Department of Health

*The NHS Knowledge and Skills Framework (NHS KSF) and the Development Review Process (2004)*

*Commissioning Specialist Adult Learning Disability Health Services – Good Practice Guidance (2007)*

Press Release 27 March 2008
Dignity in Care Campaign

Equality and Human Rights Commission
http://www.equalityhumanrights.com/en/Pages/default.aspx

*Press Release: Commission announces independent enquiry into human rights and British attitudes to it*

*Terms of Reference - Consultation*

*Human Rights Inquiry*
http://www.equalityhumanrights.com/en/changeanddevelopments/humanrightsinquiry/Pages/HumanrightsInquiry.aspx#Purpose%20of%20the%20inquiry

*Statement: extension of human rights protection to private care homes*

Estyn
http://www.estyn.gov.uk/home.asp

*Guidance on the Inspection of Primary and Nursery Schools*

*Guidance on the Inspection of Secondary Schools*

Funky Dragon
http://www.funkydragon.org/index.asp
Breathing Fire into Participation

General Medical Council
http://www.gmc-uk.org/index.asp

Review of Tomorrows Doctors

Guidance for Doctors
http://www.gmc-uk.org/guidance/good_medical_practice/GMC_GMP.pdf

General Social Care Council
http://www.gscc.org.uk/Home/

Code of Practice for Social Care Workers (2002)


The Guardian/Dyer C. (2004) Inquest juries can blame suicides on jails, law lords rule,
The Guardian: webpage,
http://www.guardian.co.uk/uk/2004/mar/12/lords.humanrights

http://www.guardian.co.uk/humanrights/story/0,,2127205,00.html?gusrc=rss&feed=11


Hampshire County Council

*Rights, respect and responsibility: Children’s rights education in Hampshire*
[http://www3.hants.gov.uk/education/hias/childrensrights.htm](http://www3.hants.gov.uk/education/hias/childrensrights.htm)


Healthcare Commission
[http://www.healthcarecommission.org.uk/homepage.cfm](http://www.healthcarecommission.org.uk/homepage.cfm)

*Equality, diversity and human rights*

Healthcare Inspectorate Wales

*Our Role*
[http://www.hiw.org.uk/page.cfm?orgId=477&pid=13328](http://www.hiw.org.uk/page.cfm?orgId=477&pid=13328)
Vision and Values
http://www.hiw.org.uk/page.cfm?orgid=477&pid=13329

How Do We Inspect?
http://www.hiw.org.uk/page.cfm?orgid=477&pid=13345

Self Assessment Questions

Her Majesty’s Inspectorate of Education
http://www.hmie.gov.uk/AboutUs/AboutHMIE/

Her Majesty’s Inspectorate of Constabulary
http://inspectorates.homeoffice.gov.uk/hmic/about/

Her Majesty’s Inspectorate of Prisons for England and Wales
http://inspectorates.homeoffice.gov.uk/hmiprisons/about-us/

Expectations
http://inspectorates.homeoffice.gov.uk/hmiprisons/our-work/


Incorporated Council of Law Reporting for England & Wales
http://www.lawreports.co.uk/index.htm

Joint Royal Colleges of Physicians Training Board
http://www.jrcptb.org.uk/Pages/default.aspx
Specialty Training Curriculum for Geriatric Medicine (2007)


Local Government Ombudsman
http://www.lgo.org.uk/

Good administrative practice: guidance on good practice
http://www.lgo.org.uk/pdf/good_practice_2.pdf


Mental Health Act Commission
http://www.mhac.org.uk/

Sheldon K. (undated) Service user experience and the value of monitoring the use of mental health legislation.
http://www.mhac.org.uk/?q=node/14

Mental Welfare Commission for Scotland
http://www.mwcscot.org.uk/home/home.asp

About Us
http://www.mwcscot.org.uk/aboutus/AboutUs.asp
**Our Annual Report 2006-2007**

**Guidance documents**
http://www.mwcscot.org.uk/GoodPractice/Publications/Guidance_documents.asp

Mersey Care NHS Trust
http://www.merseycare.nhs.uk/

**Annual Report 2006-07**
http://www.merseycare.nhs.uk/Library/Services/Corporate_Services/Communications/Mersey%20Care%20Annual%20report.pdf

**Being the best at what we do**


National Institute for Health and Clinical Excellence
http://www.nice.org.uk/aboutnice/about_nice.jsp

National Youth Agency
http://www.nya.org.uk/

**What’s changed – participation outcomes**
NHS Quality Improvement Scotland
http://www.nhshealthquality.org/nhsqis/37.140.141.html

*Fair For All*
http://www.nhshealthquality.org/nhsqis/3764.html

Northern Ireland Policing Board
http://www.nipolicingboard.org.uk/index

Publications > Human Rights

*Code of Ethics*

Nursing and Midwifery Council
http://www.nmc-uk.org/

*The NMC Code of professional conduct: standards for conduct, performance and ethics*

Office of Public Sector Information
http://www.opsi.gov.uk/

*Commissioner for Older People (Wales) Act 2006*
http://www.opsi.gov.uk/ACTS/acts2006/ukpga_20060030_en_1

Office for Standards in Education, Children’s Services and Skills
http://www.ofsted.gov.uk/portal/site/Internet/menuitem.455968b0530071c4828a0d8308c08a0c/?vqnextoid=e99c8587fd24a010VgnVCM1000008192a8c0RCRD
http://www.hurilink.org/tools/FAQon HRBA to Development--OHCHR.pdf

Parliamentary and Health Service Ombudsman
http://www.ombudsman.org.uk/index.html

*Principles of Good Administration*
http://www.ombudsman.org.uk/pdfs/pga.pdf

*Principles for Remedy*
http://www.ombudsman.org.uk/pdfs/principles_remedy.pdf

*The implementation of human rights and the role of Ombudspersons – ‘from a negative position’*
www.ombudsman.org.uk/about_us/FOI/whats_available/documents/speeches/human_rights.html

Public Services Ombudsman for Wales
http://www.ombudsman-wales.org.uk/content.php?nID=1;lang=1

Scope
http://www.scope.org.uk/index.shtml

Scope responds to the Government’s proposals to reform the Single Equality Act
http://www.scope.org.uk/cgi-bin/np/viewnews.cgi?id=1184680304

Scotland’s Commissioner for Children and Young People
http://www.sccyp.org.uk

*Guidance on Overnight Stays for Looked After and Accommodated Children - comments by Kathleen Marshall (2007)*
Scottish Government
http://www.scotland.gov.uk/About/

HM Inspectorate of Prisons for Scotland (Functioning and Staff)
http://www.scotland.gov.uk/Topics/Justice/Prisons/17208/7790

HM Inspectorate of Prisons for Scotland (Annual Report 2006-2007)

HM Inspectorate of Constabulary for Scotland
http://www.scotland.gov.uk/Topics/Justice/Police/15403

HM Inspectorate of Constabulary for Scotland (Service Standards)
http://www.scotland.gov.uk/Topics/Justice/Police/15403/June07/Q/EditMode/on/ForceUpdate/on#Servicestandards

Scottish Parliament
http://www.scottish.parliament.uk/home.htm

Justice 1 Committee Scottish Commissioner For Human Rights Bill Evidence

Health Committee Care Inquiry

Scottish Public Services Ombudsman
http://www.spso.org.uk/

SPSO Response to Crerar Report
Social Care Institute for Excellence (2008) *Dignity in Care*

The General Teaching Council for Scotland
http://www.gtcs.org.uk/Home/home.asp

*The Standard for Full Registration (2006)*
http://www.gtcs.org.uk/nmsruntime/saveasdialog.asp?lID=2027&sID=2980

The Patten Report on Policing
http://cain.ulst.ac.uk/issues/police/patten/recommend.htm

The State Hospital Board Part of the NHS in Scotland
http://www.tsh.scot.nhs.uk/about.htm

Training and Development Agency for Schools
http://www.tda.gov.uk/

*Professional Standards for Teachers (2007)*

United Kingdom Parliament
http://www.parliament.uk/index.cfm

*Human Rights Act 1998 (Meaning of Public Function)*
http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm071218/debtext/71218-0006.htm#07121855000009

*Human Rights Act 1998 (Meaning of Public Function) – Progress of Bill*
Human Rights of Adults with Learning Disabilities
http://www.publications.parliament.uk/pa/jt200708/jtselect/jtrights/uc73-i/uc7302.htm

http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm080218/debtext/80218-0009.htm

http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm080218/debtext/80218-0008.htm

http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm080218/debtext/80218-0010.htm

Mike O’Brien MP, Parliamentary Under-Secretary of State for the Home Department
http://www.publications.parliament.uk/pa/cm199798/cmhansrd/vo981021/debtext/81021-35.htm

Appendix 3 - Government Response to the Committee’s Seventeenth Report of Session 2004-05, on The Review of International Human Rights Instruments
http://www.publications.parliament.uk/pa/jt200506/jtselect/jtrights/104/10408.htm

Instruments and Protocols not yet ratified

Valuing People
http://valuingpeople.gov.uk/index.jsp

Wales Audit Office
http://www.wao.gov.uk/whatwedo/whatwedo.asp

Making Public Money Count
http://www.wao.gov.uk/assets/WAO_brochure_english.pdf
New merged inspectorate in Wales streamlines regulation of care and early years provision

Inclusive Policy Making
http://wales.gov.uk/topics/equality/publications/inclusivepolicy/?lang=en

Making the Connections
http://new.wales.gov.uk/about/strategy/makingtheconnections/?lang=en

A Brief Guide to the Legislative Competence of the Assembly

Children and Young People: Rights to Action
http://www.assemblywales.org/N00000000000000000000000000016990.pdf

National Minimum Standards for Care Homes for Younger Adults
http://new.wales.gov.uk/docrepos/40382/403823121/1401493/1412220/1417087/CareHomeYoungAdults?lang=en
ANNEX 3: PARTICIPANT LIST

(Listed alphabetically by surname)

Bruce Adamson, Legal & Parliamentary Officer, Scotland's Commissioner for Children and Young People

Nony Ardill, Legal Policy Advisor, Age Concern England

Julie Bishop, Director, Law Centres Federation

Allan Bowman, Chair, Social Care Institute for Excellence

Mark Brookes, Values into Action

Alice Brown, Scottish Public Services Ombudsman

Frances Butler, Independent human rights consultant

Sue Christoforou, Policy Officer, Mind

Michael Clancy, Director - Law Reform, The Law Society of Scotland

Luke Clements, Professor of Law, Cardiff University

Paul Coen, Chief Executive, Local Government Association

Bronwen Cohen, Director, Children in Scotland

Jeremy Colman, Auditor General, Wales Audit Office

David Congdon, Head of Campaigns and Policy, Mencap

Francesca Cooney, Head of Advice & Information Service, Prison Reform Trust

Claire Crawley, Department of Health

Sarah Cutler, Director of Policy, Refugee Council

Rhian Davies, Director, Disability Wales

Anna Dent, Policy Officer - Neighbourhoods, National Housing Federation

Lindsey Dyer, Director for Service Users and Carers, Mersey Care NHS Trust
Jenny Earle, Discrimination and Human Rights Law & Policy Adviser, Human Rights Commission, Australia

Beth Evans, Information and Communications Officer, Carers Wales

Ade Fashade, Senior Equality & Diversity Officer, Shelter

Gillian Fawcett, Senior Fellow - Organisational Development, Office for Public Management (OPM)

Katie Ghose, Director, British Institute of Human Rights

Ceri Goddard, Head of Development & Training, British Institute of Human Rights

Tracey Good, Equality Manager, NHS Centre for Equality and Human Rights, Wales

Jon Harris, Strategic Director, Convention of Scottish Local Authorities

Jamie Hepburn, Convener of cross-party group on human rights, The Scottish Parliament

Murray Hunt, Legal Adviser, Joint Committee on Human Rights

Nico Juetten, Policy Manager, Lesbian, Gay, Bisexual and Transgender Youth Scotland

Jeniffer Kibagendi, Quality and Diversity Manager, NHS Quality Improvement Scotland

Craig Lane, Services Manager, Citizens Advice Bureau Cymru

Mike Lewis, Chief Executive, Welsh Refugee Council

Trish Longdon, Deputy Parliamentary and Health Service Ombudsman

Donald Lyons, Director, Mental Welfare Commission for Scotland

Voirrey Manson, Equality Manager, Public Services Management Wales

Ruth Marks, Director, Royal National Institute of Blind People Cymru

Kathleen Marshall, Commissioner, Scotland's Commissioner for Children and Young People

Michelle Matheron, Policy and Information Officer, Age Concern Cymru

Andrew McLellan, Chief Inspector, HM Chief Inspector of Prisons for Scotland

Alan Miller, Chair, Scottish Commission for Human Rights
Stephen Milloy, Nursing Director, State Hospitals Board for Scotland

Adnan Miyasar, Networking & Information Officer, Black and Ethnic Minority Communities in Scotland

Cathy Owens, Programme Director, Amnesty International Wales

Anne Owers, Chief Inspector, HM Inspectorate of Prisons

Ana Palazo'n, Director, Help the Aged Wales

Camilla Parker, Mental Health & Human Rights Consultant

David Phillips, South East Wales Race Equality Council

Rob Pickford, Chief Inspector, Care and Social Services Inspectorate Wales

Dame Denise Platt, Chair, Commission for Social Care Inspection

Habib Rahman, Chief Executive, Joint Council for the Welfare of Immigrants

Imelda Redmond, Chief Executive, Carers UK

Jamie Rentoul, Healthcare Commission

Frieda Schicker, London Gypsy and Traveller Unit

Ruth Stark, Convenor, British Association of Social Workers Scotland

Keir Starmer QC, former human rights advisor to the Northern Ireland Policing Board

Patrick Stoakes, Director, Equality Network

Madeleine Tease, Policy and change director, Children's Rights Alliance for England

Eleri Thomas, Interim Programme Director, Save the Children Wales

Lorna Thomas-Emms, Senior Policy Officer, Help the Aged

Paddy Tomkins, Chief Inspector, HM Inspectorate of Constabulary

Keith Towler, Commissioner, Children's Commissioner for Wales

Mike Wardle, Chief Executive, General Social Care Council

Eleanor Williams, Member, Wales Committee of the Equality and Human Rights Commission
Lynn Williams, Careers Scotland

Rob Williams, Chief Executive, Children's Commissioner for England

Neil Wooding, Director, Public Service Management Wales
ANNEX 4: INTERVIEW AND ROUNDTABLE QUESTIONS

Questions for semi-structured interviews

Do the attached ‘headline’ findings appear to you an accurate reflection of the current state of human rights implementation in public services? If not, where would you depart from them?

Is your organisation doing any current work on human rights, or is any such work planned, that would inform these findings?

  e.g. does your organisation (or any part of it) have a ‘corporate’ or strategic approach to human rights (such as an integrated equality, diversity and human rights strategy); and/or is a human rights framework part of your decision-making process?

  e.g. has your organisation integrated a human rights perspective into staff training?

  e.g. how does your organisation involve – or plan to involve – service users?

What would a ‘human rights culture’ look like in your organisation – and if you feel it doesn’t exist now, what do you think are some of the necessary steps to get there?

And what do you think are the obstacles to getting there?

What do you think are the benefits of a human rights-based approach within public services? Can you give any examples of benefits from your own experience (we are particularly interested in ‘macro’ benefits – across an organisation or sector – as well as individual case studies, and for any insights into measurable or costed benefits)

Put another way – if you were trying to convince, say, a sceptical chief executive of an organisation to adopt a strategic human rights-based approach, what arguments would you deploy? And what arguments would you deploy for a harassed frontline worker with a low awareness of human rights and the HRA?
If public services had been designed within a human rights framework, how different would they look to the way they are now?

From this conversation does anything occur to you that you would want to suggest to the Equality and Human Rights Commission that it might consider as part of its inquiry?

**Discussion questions for roundtables**

Do the attached ‘headline’ findings appear to you an accurate reflection of the current state of human rights implementation in public services? If not, where would you depart from them?

What do you think are the benefits of a human rights-based approach within public services? Can you give any examples of benefits from your own experience (we are particularly interested in ‘macro’ benefits – across an organisation or sector – as well as individual case studies, and for any insights into measurable benefits)

Put another way – if you were trying to convince, say, a sceptical chief executive of an organisation to adopt a strategic human rights-based approach, what arguments would you deploy? And what arguments would you deploy for a harassed frontline worker with a low awareness of human rights and the HRA?

If public services had been designed within a human rights framework, how different would they look to the way they are now?

From this conversation does anything occur to you that you would want to suggest to the Equality and Human Rights Commission that it might consider as part of its inquiry?
ANNEX 5: GLOSSARY OF ACRONYMS AND ABBREVIATIONS

BIHR  British Institute of Human Rights
C4P   Centre for Participation
CAA   Comprehensive Area Assessment
Care Commission Scottish Commission for the Regulation of Care
COSLA Convention of Scottish Local Authorities
CPA   Comprehensive Performance Assessment
CRE   Commission for Racial Equality
CSCI  Commission for Social Care Inspection
CSSIW Care and Social Services Inspectorate Wales
DCA   Department for Constitutional Affairs
       (now Ministry of Justice)
DCLG  Department of Communities and Local Government
DLR   Discrimination Law Review
ECHR  European Convention on Human Rights
FREDA principles Fairness, respect, equality, dignity, autonomy
GfK   Growth for Knowledge
Healthcare Commission Commission for Healthcare Audit and Inspection
HIW   Healthcare Inspectorate Wales
HMCIC Her Majesty's Chief Inspector of Constabulary
HMIC  HM Inspectorate of Constabulary for England, Wales and Northern Ireland
HMICS Her Majesty’s Inspectorate of Constabulary for Scotland
HMIE  HM Inspectorate of Education, Scotland
<table>
<thead>
<tr>
<th>Acronym</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>HMI Prisons</td>
<td>Her Majesty’s Inspectorate of Prisons for England and Wales</td>
</tr>
<tr>
<td>HRA</td>
<td>Human Rights Act</td>
</tr>
<tr>
<td>IMCA</td>
<td>Independent mental capacity advocate</td>
</tr>
<tr>
<td>IPPR</td>
<td>Institute for Public Policy Research</td>
</tr>
<tr>
<td>JCHR</td>
<td>Parliamentary Joint Committee on Human Rights</td>
</tr>
<tr>
<td>KLOE</td>
<td>Key lines of enquiry (of the Audit Commission)</td>
</tr>
<tr>
<td>KLORA</td>
<td>Key lines of regulatory assessment (of the Commission for Social Care Inspection)</td>
</tr>
<tr>
<td>LGA</td>
<td>Local Government Association</td>
</tr>
<tr>
<td>LGO</td>
<td>Local Government Ombudsmen</td>
</tr>
<tr>
<td>MHA</td>
<td>Mental Health Act</td>
</tr>
<tr>
<td>MHAC</td>
<td>Mental Health Act Commission</td>
</tr>
<tr>
<td>NASS</td>
<td>National Asylum Support Service</td>
</tr>
<tr>
<td>NHS</td>
<td>National Health Service</td>
</tr>
<tr>
<td>NHS QIS</td>
<td>NHS Quality Improvement Scotland</td>
</tr>
<tr>
<td>NICE</td>
<td>National Institute for Health and Clinical Excellence</td>
</tr>
<tr>
<td>NIPB</td>
<td>Northern Ireland Policing Board</td>
</tr>
<tr>
<td>NYA</td>
<td>National Youth Agency</td>
</tr>
<tr>
<td>ODPM</td>
<td>Office of the Deputy Prime Minister (now Department of Communities and Local Government)</td>
</tr>
<tr>
<td>Ofsted</td>
<td>Office for Standards in Education, Children's Services and Skills</td>
</tr>
<tr>
<td>OPCAT</td>
<td>Optional Protocol to the UN Convention against Torture</td>
</tr>
<tr>
<td>PHSO</td>
<td>Parliamentary and Health Service Ombudsman</td>
</tr>
<tr>
<td>PRT</td>
<td>Prison Reform Trust</td>
</tr>
<tr>
<td>PSM Wales</td>
<td>Public Service Management Wales</td>
</tr>
<tr>
<td>PSNI</td>
<td>Police Service of Northern Ireland</td>
</tr>
<tr>
<td>Acronym</td>
<td>Description</td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
</tr>
<tr>
<td>RAM</td>
<td>Refugees, Asylum-seekers and the Media Project</td>
</tr>
<tr>
<td>RRR</td>
<td>Rights, Respect and Responsibility</td>
</tr>
<tr>
<td>SCCYP</td>
<td>Scotland’s Commissioner for Children and Young People</td>
</tr>
<tr>
<td>SCHR</td>
<td>Scottish Commission for Human Rights</td>
</tr>
<tr>
<td>SOADS</td>
<td>Second Opinion Appointed Doctor Service</td>
</tr>
<tr>
<td>Southwark H&amp;SC</td>
<td>Southwark Health and Social Care</td>
</tr>
<tr>
<td>SPSO</td>
<td>Scottish Public Services Ombudsman</td>
</tr>
<tr>
<td>SURP</td>
<td>Service User Reference Panel (of the Mental Health Act Commission)</td>
</tr>
<tr>
<td>UNCRC</td>
<td>UN Convention on the Rights of the Child</td>
</tr>
<tr>
<td>WAO</td>
<td>Wales Audit Office</td>
</tr>
</tbody>
</table>
ANNEX 6: THE RELATIONSHIP BETWEEN THE
SCOTTISH COMMISSION FOR HUMAN RIGHTS (SCHR) AND THE
EQUALITY AND HUMAN RIGHTS COMMISSION (EHRC)

1. Relationship between the Scottish Commission for Human Rights and the Equality and Human Rights Commission

- The Scottish Commission for Human Rights was established by the Scottish Commission for Human Rights Act 2006. The Equality and Human Rights Commission was established by the Equality Act 2006.
- The general principle is that the EHRC is to deal with reserved human rights matters while the SCHR will deal with matters devolved to the Scottish Parliament (as defined by the Scotland Act 1998).
- Section 7 of the Equality Act 2006 provides that the EHRC shall not take human rights action in relation to matters where the Scottish Parliament has legislative competence.
- Further, the EHRC shall not, in the course of fulfilling any of its equality and diversity duties, consider whether a person’s human rights have been contravened if the matter falls within the legislative competence of the Scottish Parliament.
- However, this does not prevent the EHRC from taking action, in an area where the Scottish Parliament has legislative competence, with the general or specific consent of the SCHR.
- In addition, this does not prevent the Commission from acting jointly or cooperating with (but not assisting) the SCHR for a purpose relating to human rights and connected with Scotland.
- Therefore, due regard has to be given to the general duties, functions and powers that the Scottish Parliament has granted the SCHR.

2. General duty of the SCHR (section 2 of the SCHR Act 2006)

- The general duty of the SCHR is to promote human rights in Scotland and, in particular, to encourage best practice in relation to human rights among Scottish public authorities. ‘Human rights’ means both the rights defined by the Human Rights Act and human rights contained in any international convention, treaty or other international instrument ratified by the UK.
3. Functions of the SCHR (sections 3–6 of the SCHR Act 2006)

• The functions of the SCHR include:
  - Publishing information about human rights
  - Providing advice and guidance
  - Conducting research
  - Providing education or training
  - Monitoring and recommending changes to the law
  - Monitoring and recommending changes to the policies and practices of public authorities.

• The SCHR has no power to assist in claims or legal proceedings.

4. Powers of the SCHR (section 8–14 of the SCHR Act 2006)

• The Commission has the following powers:
  - To conduct inquiries into Scottish public authorities in connection with general human rights matters
  - To compel members of public authorities to give evidence or produce documents in relation to an inquiry
  - To enter places of detention in connection with an inquiry
  - To apply to intervene in civil cases in the Scottish courts, and to intervene in any other court or tribunal where the rules of that court or tribunal allow.
Contact us

You can find out more or get in touch with us via our website at:

**www.equalityhumanrights.com**

or by contacting one of our helplines below:

**Helpline - England**
Telephone: 0845 604 6610
Textphone: 0845 604 6620
Fax: 0845 604 6630

**Helpline - Scotland**
Telephone: 0845 604 5510
Textphone: 0845 604 5520
Fax: 0845 604 5530

**Helpline - Wales**
Telephone: 0845 604 8810
Textphone: 0845 604 8820
Fax: 0845 604 8830

9am–5pm Monday to Friday except Wednesday 9am–8pm.

Calls from BT landlines are charged at local rates, but calls from mobiles and other providers may vary.

Calls may be monitored for training and quality purposes.

Interpreting service available through Language Line, when you call our helplines.

This report is available for downloading from our website.
If you require it in an alternative format and/or language please contact the relevant helpline to discuss your needs.