

The impact of a human rights culture on public sector organisations

Lessons from practice

© Equality and Human Rights Commission 2009

First published June 2009

ISBN 978-1-84206-148-0

EQUALITY AND HUMAN RIGHTS COMMISSION RESEARCH REPORT SERIES

The Equality and Human Rights Commission Research Report Series publishes research carried out for the Equality and Human Rights Commission (the Commission) by commissioned researchers.

The views expressed in this report are those of the authors and do not necessarily represent the views of the Commission. The Commission is publishing the report as a contribution to discussion and debate.

Please contact the Research Team for further information about other Equality and Human Rights Commission's research reports, or visit our website:

Research Team
Equality and Human Rights Commission
Arndale House
The Arndale Centre
Manchester
M4 3AQ

Email: research@equalityhumanrights.com

Telephone: 0161 829 8500

Website: www.equalityhumanrights.com

You can download a copy of this report as a PDF from our website:
<http://www.equalityhumanrights.com/researchreports>

CONTENTS

ACKNOWLEDGEMENTS.....5

1. EXECUTIVE SUMMARY.....6

 Background6

 Key findings.....7

 Learning points for public service organisations.....8

 Ways in which external stakeholders can support human rights 10

2. INTRODUCTION..... 14

 Background to and purpose of this research..... 14

 Methodology..... 15

 About this report..... 18

3. ABOUT THE CASE STUDIES: RATIONALE FOR SELECTION AND SUMMARY OF PROGRESS..... 19

 The Welsh Assembly Government..... 19

 Southwark Council 22

 Mersey Care NHS Trust..... 24

 Age Concern Cymru and Age Concern England..... 25

4. EMBEDDING HUMAN RIGHTS – DRIVERS, VISION AND POLICIES, GOVERNANCE AND RESOURCING 28

 Drivers for engaging with human rights 28

 Interpretation and fit with other corporate agendas 33

 Vision and integration into policies and strategies..... 36

 Governance and senior level decision-making 42

 Staffing and resourcing human rights..... 45

5. EMBEDDING HUMAN RIGHTS – RAISING AWARENESS AND BUILDING CAPACITY, INTEGRATING INTO SERVICE PLANNING AND REVIEW AND FRONT-LINE DECISION MAKING 48

 Raising awareness and building capacity..... 48

 Monitoring developments in the law 52

 Integration into service planning and review 55

 Integration into front line decision-making 58

 Tracking progress and measuring outcomes 64

6. EMBEDDING HUMAN RIGHTS – ENGAGING WITH USERS AND COMMUNITIES, PARTNERS AND SUPPLIERS.....	67
Community engagement, involvement, and advocacy	67
Influencing others and working in partnership	75
Commissioning and procurement.....	80
7. THE BENEFITS OF ENGAGING WITH HUMAN RIGHTS.....	84
8. SUMMING UP AND MOVING FORWARD	88
Headline messages.....	88
Learning points for public service organisations.....	89
Ways in which external stakeholders can support human rights	92
APPENDIX 1 – INTERVIEW GUIDE	96
APPENDIX 2 – ABOUT THE HUMAN RIGHTS ACT	99

ACKNOWLEDGEMENTS

The Office for Public Management would like to thank colleagues at the following organisations who kindly shared their experiences with us and contributed to this research: Mersey Care NHS Trust; the Welsh Assembly Government; Age Concern England and Age Concern Cymru; the National Policing Improvement Agency and Southwark Council.

1. EXECUTIVE SUMMARY

Background

On 6 March 2008, the Equality and Human Rights Commission announced an Inquiry to find out how public authorities are responding to the Human Rights Act (HRA), ten years after the Act received royal assent¹.

The aims of the Inquiry, which will report in mid 2009, 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 HRA.

The Inquiry comprises several strands of evidence-gathering work including three new research studies, a series of Inquiry Panels and an open call-for-evidence.

This report sets out the findings of the second research project commissioned as part of the Inquiry. The purpose of the study was to:

- Identify good practice in the public and voluntary sectors in relation to embedding a human rights culture
- Identify the steps taken on the journey to embed a human rights culture
- Assess the positive impact and benefits of using human rights approaches on organisations, service delivery, customers and staff
- Identify key lessons for other organisations in developing a human rights culture

The research on which this report is based was conducted between late May and August 2008. It draws on findings from case studies in five different organisations. The five case study sites were selected because they each have a reputation for having made some progress in embedding human rights into their work. However, it

1 The HRA received royal assent in November 1998 and 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 HRA is to 'give further effect' in UK law to the rights and freedoms set out 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 six of the HRA makes it unlawful for a public authority to act in a way that is incompatible with a Convention right.

is important to note that none of these organisations would claim to have ‘cracked it all’ – they are all on a journey and, in some cases, still at the initial stages. The research is intended to illustrate the variety of ways in which human rights have begun to be embedded in organisations with different roles and remits, the challenges these organisations have encountered and the learning for others.

The five case study organisations were:

- The Welsh Assembly Government – the Assembly Government was selected because of its status as a devolved administration with a broad range of responsibilities and a role in establishing the legal and policy environment in Wales in which human rights are understood and embedded.
- The National Policing Improvement Agency (NPIA) – the NPIA was selected because of its reputation for having integrated human rights into policies and guidance which support policing and into training programmes which support workforce development in the police.
- Southwark Council – Southwark was selected because of its reputation for some early work on human rights and to explore the wider implications of Southwark Health and Social Care’s participation in the Department of Health’s (DH) Human Rights in Healthcare project.
- Mersey Care Trust – was selected because of its reputation for adopting a rights-based approach to user and carer involvement, its participation in the DH’s Human Rights in Healthcare project, and its evolving corporate approach to human rights.
- Age Concern Cymru and Age Concern England – Age Concern was selected for inclusion in the study because of its critical role in advocating on behalf of and promoting the rights of older people.

Key findings

It is important to note that this research project explored the experiences of a small number of organisations that are all different to each other. In addition, this research has been limited to interviews with a small number of staff. For these reasons, generalisation of the messages set out in this report needs to be treated with care. Nevertheless, some useful lessons have emerged.

Case study organisations have interpreted the significance of human rights in different ways, reflecting the different purpose and functions of their organisation, the legal and policy contexts in which they operate, and their organisation’s particular values and corporate culture. For some case study organisations, engagement with human rights has flowed from a political or campaigning commitment to build a fairer,

more inclusive society. For others it has grown out of a commitment to improve services for those that are most disadvantaged or vulnerable.

Though a concern to avoid the risks associated with legal challenge under the HRA has undoubtedly been a factor in encouraging a focus on human rights, interviewees across the case studies have emphasised that their organisations have been primarily driven by a desire to improve services. In several cases, the HRA itself does not seem to have been the most important driver for change; other pieces of legislation or guiding documents have been as, if not more, important in encouraging a focus on the FREDA (Fairness, Respect, Equality, Dignity and Autonomy) principles which underpin the Act. However, in all of the case studies a stronger focus on the Act is regarded as an important priority going forward.

In each of the five case study organisations some interesting initiatives are underway to promote human rights and embed them into different aspects of organisational practice. Some positive benefits are beginning to flow from this work. However much of it is still at an early stage and further robust monitoring will be required to determine what tangible difference this makes for users and communities over the longer term.

While interviewees have identified some common success factors for developing a strong corporate approach to human rights (the key elements are set out below), it may be too early to say with any degree of precision what an organisation with a 'human rights culture' looks like or how it might operate. In our view, further work is required of both public service organisations and the bodies that support them to articulate this, drawing on the lessons set out in below.

Learning points for public service organisations

Engagement with human rights has clear benefits

Interviewees in our case study organisations are clear that engagement with human rights is beginning to result in benefits. While most organisations are not currently capturing these benefits in very systematic ways (and in some cases initiatives are not yet seen to be at a stage where 'measurable' benefits can be discerned), there is a growing body of activity which is perceived to be benefiting users, carers and communities, staff, and public sector organisations. Key benefits include: establishing some non-negotiable service standards that apply to everyone; providing a framework for making better decisions; strengthening advocacy; helping to re-energise staff and re-connect them with core public service values; managing organisational risk; and enhancing organisational reputation and distinctiveness.

Leadership is critical

Senior level commitment to human rights has been a critical success factor in all case studies. Visible support for human rights from politicians, Chief Executives, Board members and senior staff has been fundamentally important in beginning the journey to embed human rights. In addition, the creation of a supportive network of committed champions who can advocate for human rights among staff across the organisation, stimulate interest, and create pressure for change, has been invaluable.

The case studies suggest that one of the most important leadership actions is to demonstrate to staff and stakeholders how human rights fit with and reinforce other corporate agendas. This act of linking with other corporate priorities and values appears to have been important in ensuring that organisations move beyond narrow compliance to establish an active and embracing human rights culture. In future, we suggest that organisational leaders and champions need to give more thought to articulating what their organisation might look like and how it might operate if human rights were embedded into every aspect of their work.

A focus on winning hearts and minds and building human resource capacity is the best approach

All case study interviewees recognised the importance of the legal framework in which human rights operate, and the importance of integrating human rights into organisational policies and procedures and this research has identified some strong practice in this respect. However, it seems clear that what has made a real difference in embedding human rights and creating energy for change has been a focus on winning hearts and minds and creating human rights 'champions' within organisations. Good quality training has played a critical role in raising awareness of the benefits of focusing on human rights, helping to overcome misconceptions, and generating enthusiasm among staff.

The most effective training seems to be that which is conducted with the active buy-in of senior managers; is tailored to the specific needs of each service or department; and includes an element of action planning, allowing staff to identify concrete ways in which they can embed lessons learnt into their working practice. A strong focus on human rights in recruitment and induction also appears to be important in instilling human rights principles and values from the start.

Engagement with communities and other stakeholders can be a good platform for embedding and promoting human rights

Evidence from this study suggests that a strong culture of commitment to public and service user involvement and effective mechanisms to take account of people's views can be a valuable foundation for embedding human rights. Engagement helps

public bodies to anticipate the rights claims that might arise as a result of their work and to develop appropriate and proportionate solutions to address these claims if and when they arise.

For organisations that do not deliver services directly to the public, but seek to influence the work of others, a culture of openness and effective mechanisms for engaging with front line organisations are critical in promoting human rights and gaining an understanding of the challenges that front line organisations face in embedding human rights into their practice.

Informing people about their rights and having robust arrangements in place for advocacy are critical

In addition to ‘pressure from above’ in the form of committed leadership, evidence from case study organisations has highlighted the importance of building pressure for change ‘from below’. Organisations involved in direct service delivery need to inform users and their carers about their rights in language that is easy to understand. They also need to support the creation and strengthening of advocacy arrangements which help service users to articulate their needs and concerns – in particular those users who may be most vulnerable and least able to challenge service providers themselves.

Human rights need to be integrated into decision-making processes

One of the most significant blocks in embedding human rights for many of our case studies has been the challenge of making this agenda ‘real’ and ‘meaningful’ for staff. Training has been a critical first step in translating principles into practice. This research also demonstrates the importance of integrating human rights into processes for making decisions, both at a corporate level and within services and departments. Rather than creating a host of new, separate, human rights tools and decision-making frameworks, it seems that integration into existing tools and frameworks that staff are familiar with might be more successful.

Ways in which external stakeholders can support human rights

Improved support for human rights capacity building

Many of those consulted as part of this study highlighted the benefits that they had gained from external training provision, at least in the early stages of their human rights journey. High quality external training was particularly valuable in providing detailed knowledge of case law and in helping staff to understand how to interpret this in the context of their everyday work. In addition, many of our interviewees reported that ongoing support from a knowledgeable external advisor has been critical in helping them develop their approach to human rights.

Some interviewees suggested there might be a role for a human rights capacity building 'gate-keeping' function, bringing together, promoting and validating the different sources of training, advice and support that are available to public sector organisations. This seems to us to be an idea worth exploring further.

Further sponsorship for pilot projects demonstrating how human rights can be integrated into everyday work

The case studies clearly demonstrate how discrete pieces of work to explore how human rights can be integrated into day-to-day work have been extremely helpful. Internally led and nationally sponsored projects such as the Department of Health's Human Rights in Healthcare initiative have deepened understanding and helped to identify concrete ways in which human rights principles can be put into practice. In moving forward, we consider there is a strong case for sponsoring further pieces of work of this kind.

Further, there may be value in organising a series of human rights 'thematic reviews'. These reviews might involve a range of activities designed to raise awareness of human rights and explore tangible, practical, ways in which human rights can be integrated into different service or thematic areas. Thematic reviews might provide the opportunity to begin to articulate with more clarity and precision what a service that had truly embedded human rights might look like. The case studies have highlighted the particular contribution that human rights can play in improving the effectiveness and efficiency of 'Cinderella' services – those smaller services which are not subject to external inspection and may lack strong incentives to improve. These services might be sensible early targets for thematic reviews of this kind.

Opportunities to network and share good practice

Reflecting the findings from many other research studies, interviewees told us that more opportunities to network and share experiences with colleagues engaged in similar activities would be one of the most effective ways of strengthening their approach to human rights. Networking and learning activities might include: a series of action learning sets exploring the human rights implications of particular issues or themes, perhaps resulting in a new tool or guidance; conferences and other awareness-raising events; and peer reviews of progress in embedding human rights, where teams might visit similar organisations to share practice and act as a 'critical friend'. There is some good emerging practice in the Welsh Assembly Government to improve networking and learning which might be worth exploring further.

While some would value further guidance and new decision-making tools and frameworks (see below on the links between equality and diversity and human rights), for the most part interviewees warned against reinventing the wheel. This study identified plenty of tools and frameworks which are already available and in

development. What would seem to be most helpful is if these tools could be drawn together and shared more widely so that organisations across the public sector can make the best use of them.

Guidance on how to integrate human rights with equality and diversity

The research suggests that one area in which new guidance and support would be particularly appreciated is in integrating human rights with equality and diversity. While most interviewees appeared to have clear conceptualisations of the links between these agenda (with human rights as the overarching ‘umbrella’, or the bedrock or foundation, of principles that apply to all), a few were unclear and felt that further guidance would be helpful on how to draw these issues together and develop an integrated corporate response.

Assistance in communicating human rights to users, carers, and communities

There is already some positive practice underway in informing users and the public about their rights; for example the work of Funky Dragon, the Children’s Assembly in Wales. Case studies have also highlighted some interesting ideas for the future such as Mersey Care Trust’s plans to train a pool of users and carers to act as co-facilitators of human rights training and ‘consultants’ to service areas on these issues. However, it is clear that more work is required in this area. It will be useful to track those initiatives that have been highlighted in this report and others to draw out and share the learning – in particular about how engagement around rights can be conducted in such a way that builds trust and positive relationships between users and communities and public bodies.

Advice on tracking progress and developing appropriate indicators of success

In the original brief for this work, the Commission stated its interest in carrying out a cost/benefit analysis for embedding human rights within public sector organisations. However, research conducted as part of this study indicates that achieving this aspiration is still some way off, and is likely to prove challenging. In most instances case study sites are not collecting detailed information on the costs of their human rights activity nor are they collecting information about benefits in a systematic way. At the present time, indicators being used to track progress tend to be concerned with processes or activities – such as the numbers of policies that have integrated human rights or the numbers of staff who have received human rights training – rather than outcomes.

Our view is that further work is now required to help organisations in the public sector to establish what a performance management regime that embedded human rights might look like. This needs to build on emerging lessons from current initiatives, such as the Department of Health’s Human Rights in Healthcare project.

Further promotion of human rights by key stakeholders

This project was based on a very small number of case study sites, only some of which were involved in delivering services direct to the public. Nevertheless, some interviewees in these organisations suggested that it could be helpful if more explicit reference was made to the Human Rights Act and human rights principles in external inspection and audit. Though keen to ensure that the complexities of embedding human rights were recognised, some interviewees felt that a greater degree of external challenge might help to raise the bar in relation to service quality and ensure that people are treated with dignity and respect.

Further promotion of human rights by other key stakeholders including government departments, sector development agencies, improvement bodies and partnerships, and national training providers would also seem to be helpful. There may be scope for sector development agencies, for example, to use human rights more explicitly as a 'lens' through which to explore and tackle topical issues such as partnership working, personalisation, commissioning and so forth.

There may also be scope for agencies providing, sponsoring and funding management and leadership development programmes to do more to ensure that human rights are integrated into training offers, alongside equality and diversity issues.

2. INTRODUCTION

Background to and purpose of this research

The Equality and Human Rights Commission (the Commission) is a non-departmental public body that came into effect on 1st October 2007. It brought together, and built on, the work of its predecessor organisations: the Equal Opportunities Commission; the Disability Rights Commission; and, the Commission for Racial Equality. The Commission works to ‘eliminate discrimination, reduce inequality, protect human rights and to build good relations, ensuring that everyone has a fair chance to participate in society’². It is also mandated to promote understanding of the Human Rights Act (HRA), 1998.

On 6 March 2008, the Commission announced an Inquiry to find out how public authorities are responding to the HRA, ten years after the Act received royal assent³. The objectives of the Inquiry, which will report in early 2009, 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 HRA.

The Inquiry comprises several strands of evidence-gathering work including three new research studies, a series of Inquiry Panels and an open call-for-evidence.

This report sets out the findings of the second research project commissioned as part of the Inquiry. The purpose of the study was to:

- Identify good practice in the public and voluntary sectors in relation to embedding a human rights culture
- Identify the steps taken on the journey to embed a human rights culture

2 Equality and Human Rights Commission (2007).

3 The HRA received royal assent in November 1998 and 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 HRA is to ‘give further effect’ in UK law to the rights and freedoms set out 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 six of the HRA makes it unlawful for a public authority to act in a way that is incompatible with a Convention right. (See Appendix 2 for more details).

- Assess the positive impact and benefits of using human rights approaches on organisations, service delivery, customers and staff
- Identify key lessons in developing a human rights culture for other organisations.

The other two research studies commissioned as part of the Inquiry focus on the impact of landmark legal cases and the role of inspectorates in protecting and promoting human rights.

Methodology

Overview of research approach and activities

The research on which this report is based was conducted between late May and August 2008. It draws on findings from case studies in five different sites:

- The Welsh Assembly Government
- The National Policing Improvement Agency (NPIA)
- Southwark Council (including Southwark Health and Social Care)
- Mersey Care Trust
- Age Concern Cymru and Age Concern England.

OPM worked closely with the Commission to identify which organisations to research as part of this study. After reviewing existing research literature, OPM and the Commission compiled a long list of potential case studies, which all had a reputation for some progressive practice in relation to integrating human rights into their work. Invitations to participate in the research were sent to each of the organisations on the long list. In selecting the final list of case studies, OPM sought a mix of organisations in both England and Wales that had different functions and remits, but all of whom had critical roles to play in public service design and delivery. More information about each of our case studies and a brief overview of their human rights journeys can be found in the next chapter.

In each of the case study sites OPM conducted a scoping interview to ensure that the site would yield some interesting practice and to identify key people to interview. Having conducted this initial interview, OPM produced a brief plan for each case study and a list of specific question areas to pursue. These questions were explored alongside a standard bank of questions which were drawn from our research framework (see Appendix 1), ensuring that we could capture both common themes and specific developments across different case study sites.

In each case study site, OPM carried out a further 6–8 semi-structured telephone or face-to-face interviews. In each organisation we sought to capture the views of a cross-section of individuals with different roles and responsibilities, including those with particular responsibilities for human rights. As each of our selected organisations has a different purpose, function, and structure, and each case study had a different focus, the types of interviewees consulted varied across case studies. However, most case studies included interviews with:

- Chief Executives, Board members, and representatives of the senior leadership team
- Corporate leads for equality and diversity and human rights, user and carer involvement, legal services, and human resources
- Heads of service/departmental or divisional senior managers
- Front line staff members involved in designing and delivering particular initiatives to promote and embed human rights

In addition to these interviews a brief review of relevant documentation was carried out. Again, the documents reviewed varied across organisations, but included the following:

- Corporate strategies and plans and key improvement documents
- Relevant policies covering human resources, equality and diversity and human rights (where available)
- Background information on particular initiatives or activities relevant to each study.

Emerging findings and initial analysis were reported to the Commission at the end of July 2008. Further, more detailed, analysis was conducted in late August, following completion of the evidence gathering activities.

Research limitations

Previous research has revealed the difficulty of articulating with any great precision what an organisation that had fully embedded human rights might look like. For example, the literature review produced in the early stages of the Human Rights Inquiry quotes one participant at a round table discussion as saying:

*I think an organisation that has 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.*⁴

4 Human Rights in Britain Since the Human Rights Act 1998: A Critical Review, April 2008.

There is other work underway to begin to define the elements of a strong organisational approach to human rights and identify the types of indicators required to measure progress⁵. However, much of this work is still at an early stage. For this reason, OPM did not enter this research with any preconceived notion of what constituted a strong human rights approach or with the intention to test out any particular framework. Rather, the research questions were designed to illicit participants' own views and experiences, probing around those issues which previous research suggested may be most relevant (see Appendix 1 for a list of the research questions). Because of these challenges, the research team did not feel it was appropriate to frame this project in terms of 'good practice' and, in conversation with the Commission, the project was re-framed as an investigation into 'lessons from the field'.

The five case study sites were selected because they each have a reputation for having made some progress in embedding human rights into their work. However, none of these organisations would claim to have 'cracked it all' – they are all on a journey and, in some cases, still at the initial stages.

It is important to note that this was not a systematic, comprehensive audit or evaluation of organisational performance in relation to human rights. In each of the sites the research team conducted a broad survey of activity and progress as well as investigating a number of specific initiatives. Many of the thematic areas we have touched on in this report – for example procurement and commissioning – might warrant a separate research study in their own right to investigate these issues in more depth.

It is also important to note that in each site the research team interviewed only a small number of people. With one or two exceptions we did not speak to users of our case study organisations' services. Given the size and complexity of all of the organisations involved in this study, findings from such a limited data source therefore need to be treated with caution.

Finally, given the small number of organisations researched as part of this study, findings cannot be considered to be in any way representative of organisations

5 As part of the Human Rights in Healthcare project, the Department of Health and the British Institute of Human Rights, together with five NHS Trusts, have developed what they call a Human Rights Based Approach, which has five key principles at its heart: putting human rights principles and standards at the heart of policy and planning; ensuring accountability; empowerment; participation and involvement; and non-discrimination and attention to vulnerable groups. See Human Rights in Healthcare Evaluation: Final Evaluation Report, Department of Health, July 2008.

operating within the same sector or with a similar role or function. Rather, findings are designed to illustrate some of the challenges and lessons in embedding human rights and the different kinds of benefits that are beginning to flow from this work.

About this report

The next chapter of this report sets out some contextual information about each case study organisation, explains the rationale for their selection, and briefly summarises the progress they have made and key steps they have taken on their different journeys to embed human rights.

Chapters 4, 5 and 6 provide more substantive information about what these organisations have been doing to respond to human rights, highlighting some of the blocks and barriers they have experienced, and identifying some of the most important factors which have helped them to make progress. Chapter 4 explores the ways in which human rights have been interpreted by staff in each organisation, how it has been integrated into policies and senior level decision making processes, and how it has been staffed and resourced. Chapter 5 outlines ways in which case study organisations have raised awareness and developed an understanding of human rights and how human rights have been integrated into everyday practice within organisations. Chapter 6 illustrates how case study organisations have been using human rights in their work and in their relationships with service users and communities, partners and suppliers.

Chapter 7 briefly summarises some of the different types of benefits that interviewees across case study organisations report are beginning to result from their efforts.

Chapter 8 summarises the key messages from this research for those public sector organisations that want to build a stronger corporate approach to human rights, and identifies some important ways in which positive practice can be promoted and supported from the outside.

3. ABOUT THE CASE STUDIES: RATIONALE FOR SELECTION AND SUMMARY OF PROGRESS

This chapter provides background information about each of the five case studies, explains the rationale for their inclusion in the research and briefly summarises the progress they have made to date in their journey to embed human rights. It is not intended to provide a comprehensive account of each organisation's experience; further information about the activities case organisations have undertaken and the lessons they have learnt is set out in the next three chapters.

The Welsh Assembly Government

The Welsh Assembly Government was established by the Government of Wales Act 1998. It was first an executive body of the National Assembly for Wales, consisting of a First Minister and Cabinet (1999–2007). In May 2007 separation between the legislature (National Assembly for Wales) and the executive (the Welsh Assembly Government) took effect under the Government of Wales Act 2006. This means that the Welsh Assembly governs Wales while the National Assembly for Wales makes laws.

The Welsh Assembly Government is primarily responsible for most of the issues of day-to-day concern to the people of Wales, including the economy, health, education, and local government and works with public, private and third sector partners to deliver key policies. The role of the Welsh Assembly Government is to exercise functions devolved to it in order to: make decisions on matters which affect people's daily lives; develop and implement policy; make subordinate legislation (e.g. regulations and statutory guidance) and propose Assembly Measures (Welsh laws).

The Welsh Assembly Government consists of:

- The First Minister
- The Welsh Ministers (as described in the Government of Wales Act 2006)
- The Counsel General
- The Deputy Welsh Ministers.

The provisions of the Government of Wales Act 2006 allows up to 12 Welsh Ministers and Deputy Ministers. This means that the maximum size of the Assembly Government will be 14, including the First Minister and Counsel General. It has a Cabinet and 14 government departments.

The Welsh Assembly Government was selected as a case study because of its status as a devolved administration with a broad range of responsibilities and a role

in establishing the legal and policy environment in Wales in which human rights are understood and embedded⁶.

The Welsh Assembly Government – summary of human rights journey to date

The Welsh Assembly Government has made progress in integrating human rights into its policies and decision-making processes with the aim of both improving the quality of services and ensuring the people of Wales get the best deal. It has aimed high and is known for imposing a positive duty on itself. The Assembly Government has made particular progress in the following areas:

- Integrating human rights into the work of the Children, Education, Lifelong Learning and Skills Department – including integration into policy and activities to engage with children and young people about their rights
- Integrating human rights into policy making processes across other departments – notably health and social care
- Raising awareness about how the Human Rights Act and human rights principles can influence public service delivery and building capacity through the work of Public Services Management Wales (PSMW).

Interviewees have identified strong political leadership as perhaps the most important driving factor in embedding human rights across the Welsh Assembly Government. The Assembly Government's devolved status and strong links with other public service organisations have also been critical in promoting and embedding human right.

However, the Welsh Assembly Government's journey with human rights has by no means been straightforward and interviewees recognise that it still has some way to go to embed fully human rights and ensure that strong policies are being consistently implemented across Wales. Priorities for the immediate future include: collecting and sharing up to date examples of notable practice across the Welsh public service context; and education and training on human rights, both dedicated support and integrating human rights into existing training programmes – for example those relating to equality and diversity.

6 For more information about the Welsh Assembly Government see <http://new.wales.gov.uk/splash>. The findings in this report are a reflection of activities in some departments of the Welsh Assembly Government; inferences cannot be drawn about the practice of the whole of the Welsh Assembly Government.

The National Policing Improvement Agency

The National Policing Improvement Agency (NPIA) is a non-departmental public body sponsored and funded by the Home Office, with its executive leadership drawn from the police service. It acts as a central resource to the Association of Chief Police Officers (ACPO) and police forces, working with authorities and the Home Office to help improve the way policing works. The NPIA has three principal aims:

- Driving improvement and leading-edge practice, fostering self-improvement and helping to shape the future of policing
- Delivering and developing critical essential services and infrastructure to support policing
- Providing accessible, responsive and joined-up solutions, enabling police services to put more time into front line police work.

The NPIA is a new organisation (established in April 2007), bringing together elements from previously existing organisations, including Centrex (the Central Police Training and Development Authority, formerly National Policing Training) and PITO (The Police Information Technology Organisation). It is police owned and led, and governed through the NPIA board. This comprises representatives of the ACPO, the Association of Police Authorities (APA), and the Home Office, together with the Chair, the Chief Executive and three independent members.

There are five Chief Officers, responsible for strategic management of the NPIA's five directorates: Policing Policy and Practice; People and Development; Information Technology; Communications and Science; Support to Policing Operations; and Resources. The NPIA headquarters are in central London, with ten other sites around the country.

The NPIA was selected as a case study for a range of reasons, mainly because of its reputation for having integrated human rights into policies and guidance which support policing and into its many different training programmes, which support workforce development in the police⁷.

7 For more information about NPIA see <http://www.npia.police.uk>

The National Policing Improvement Agency (NPIA) – summary of human rights journey to date

Staff at the NPIA are clear that the Agency has an important role to model good practice in relation to equality and diversity and human rights given their role in driving improvement in the police service. The Chief Executive has been a leading champion of human rights in the policing environment and is strongly committed to this agenda.

The Human Rights Act and human rights principles are regarded as critically important for the Agency's externally facing work and they have been integrated into many different work streams – including the design of training programmes and the production of the NPIA doctrine.

Internally, the NPIA is still a young organisation and to date has focused more on embedding the six equality strands, rather than on human rights. However, all materials produced for internal and external audiences go through a legal and diversity and human rights validation process to ensure they comply with the law and reflect good practice. It is hoped that the current review of the equalities strategy will help to provide stronger links between equality and human rights in all aspects of the Agency's work. Ensuring that staff involved in legal and equality and human rights validation are involved in policy and practice developments at an early stage is another priority.

Southwark Council

Southwark Council serves a diverse population of approximately 260,000 people in South London. Approximately two thirds of the Southwark population are classified as 'white', and one fifth belong to a black ethnic group (65 % and 21 % respectively, ONS, 2006). In-ward migration into Southwark in recent years means that there are now many new, emerging, communities, some of which face considerable disadvantage.

Southwark is divided into 21 wards, and represented by 63 councillors: 29 Labour Party members; 27 Liberal Democratic Party members; six Conservative Party members; and one Green Party member. The council has a joint Liberal Democrat and Conservative administration as no party has overall control. The council's Executive is headed by the Leader and made up of ten councillors, each holding a special 'portfolio' of responsibility. The Council Assembly, which is the 'sovereign body' of the council, is chaired by the Mayor of Southwark and is responsible for

approving the budget, developing policies, making constitutional decisions and deciding on local legislation.

The council is organised into eight strategic departments: Children’s Services; Health and Social Care (in partnership with Southwark Primary Care Trust); Environment and Housing; Regeneration and Neighbourhoods; Legal and Democratic Services; Deputy Chief Executive; Major Projects; and Financial Management Services. The council has a large and diverse workforce of approximately 5500 staff. In 2006 to 2007, 45.5 per cent of the council’s workforce identified themselves as black or from an ethnic minority group.

In February 2008, Southwark Council was judged by the Audit Commission to be a three star local authority that is improving well. This reflects performance improvement from a weak rating in the initial CPA judgement in December 2002.

The organisation was selected as a case study for a range of reasons, including: its role in providing services in a very diverse Borough; its reputation for having conducted some early work on human rights, and Southwark Health and Social Care’s current participation in the Department of Health’s Human Rights in Healthcare project⁸.

Southwark Council – summary of human rights journey to date
<p>Southwark's journey with human rights began around 2001 when the council agreed to participate in some Audit Commission research to develop an audit/performance toolkit on the Human Rights Act. By participating in this research, Southwark benefited from an independent assessment of how well they were implementing the HRA and a series of detailed recommendations to take forward. These recommendations formed the basis of an early human rights action plan, which was used to begin to embed human rights across the council.</p> <p>In addition to conducting some initial human rights audits, the main focus of Southwark’s work to date has been on piloting and rolling out a programme of tailored training for departments, in partnership with the British Institute of Human Rights. More recently, it has begun to embed human rights into corporate policies and procedures and impact assessment processes and has created some useful tools to help front line staff use human rights principles in their every-day work. At the same time, Southwark Health and Social Care’s participation in the Department</p>

8 For more information about Southwark Council see <http://www.southwark.gov.uk/Public/Home.aspx> For more information about Southwark Health and Social Care see http://www.southwarkpct.nhs.uk/about_us

of Health's Human Rights in Healthcare project is helping to deepen understanding of human rights and demonstrate how they can be used to improve commissioning arrangements in a health care setting.

Senior level support and a strong, pre-existing, commitment to equality and diversity and user and community engagement have been important factors in building a corporate approach to human rights. Dedicated pieces of focused work, tailored, practical training and support from a knowledgeable external advisor have also been critical.

Moving forward, Southwark's priorities are to: ensure that new processes for integrating human rights into impact assessment processes are working effectively; training programmes continue to develop to tackle some of the more thorny, complicated, delivery issues; there are robust processes in place to ensure that issues raised in the 'action learning' elements of the council's training programme are taken forward; and new decision making tools which incorporate human rights are being used appropriately.

Mersey Care NHS Trust

Mersey Care NHS Trust was established on 1 April 2001 and is one of only three trusts of its kind in the country providing the entire range of specialist mental health services. The Trust provides community and secondary care for a population of approximately one million people in the Liverpool, Sefton and Kirkby area. It also provides medium secure services for Merseyside and Cheshire and high secure services for the North of England and Wales. Trust services include: adult mental health; older people; learning disabilities; and drugs and alcohol services.

Mersey Care Trust employs around 4700 staff, working out of 61 different sites, both its own premises and those rented from others. It has 700 in-patient beds and has contact with around 284,000 people, as service users or carers.

In 2005-6 the Health Care Commission rated Mersey Care Trust as weak on quality of services and fair on use of resources. By 2006-7, the quality of services had improved and was rated as good (with use of resources unchanged), reflecting a strengthening of governance arrangements and improved accountability to service users and carers for the quality of services provided.

The organisation was selected as a case study for several reasons, including: the Trust's role in providing services for particularly vulnerable groups; its reputation for adopting a rights-based approach to user and carer involvement; its recent

participation in DH’s Human Rights in Healthcare project; and its evolving corporate approach to Human Rights⁹.

Mersey Care NHS Trust – summary of human rights journey to date

Mersey Care NHS Trust’s human rights journey is a story in three parts. Since 2001, the Trust has established a strong, corporately embedded, rights-based approach to user and carer involvement. In the last 18 months, the Trust’s participation in the Department of Health’s Human Rights in Healthcare project has helped to deepen understanding of human rights principles and demonstrate how they can be embedded into working practices in one of the Trust’s service areas. Senior staff at the Trust are now using this pilot project to create momentum for change in other areas. Since January this year, the Trust has begun to develop a more holistic, corporate, approach to human rights, with the development of a new human rights strategy, and associated action plan.

The Trust’s corporate approach to human rights is still developing, with further work to do to ensure that human rights are mainstreamed into all aspects of the Trust’s work. However, a number of factors are relevant in explaining the progress that has already been achieved, including: senior level commitment; a network of energetic ‘champions’ across departments; a well-established rights-based approach to user and carer involvement; opportunities to recruit some new staff who share the values of the organisation; and participation in some dedicated pieces of work on this topic.

Age Concern Cymru and Age Concern England

Age Concern is the UK’s largest charitable movement working with and for older people. Age Concern Cymru (ACC) and Age Concern England (ACE) (along with Age Concern Northern Ireland and Age Concern Scotland) are independent organisations. In England, Age Concern is a federation of around 370 independent charities that includes ACE and local Age Concerns. There are 27 Age Concern organisations in Wales, including Age Concern Cymru.

Age Concern directly supports over three million older people each year and provides a diverse range of community based care services including: information and advice; day care; home visits; and other support services. Other activities include: programmes to promote healthier lifestyles; opportunities for older people to volunteer and give their experience back to their communities; and work designed to help older people to remain independent in their own homes.

9 For more information about Mersey Care Trust see <http://www.merseycare.nhs.uk>

Age Concern Cymru and Age Concern England were selected given their critical role in advocating on behalf of, and promoting the rights of, an important group of people who may suffer from human rights abuses¹⁰.

Age Concern Cymru and Age Concern England – summary of human rights journey to date

As reported in Age Concern’s submission to the Human Rights Inquiry, the importance of human rights for older people is widely recognised across the organisation. Promoting the rights of older people is regarded as a cornerstone of the organisation’s work.

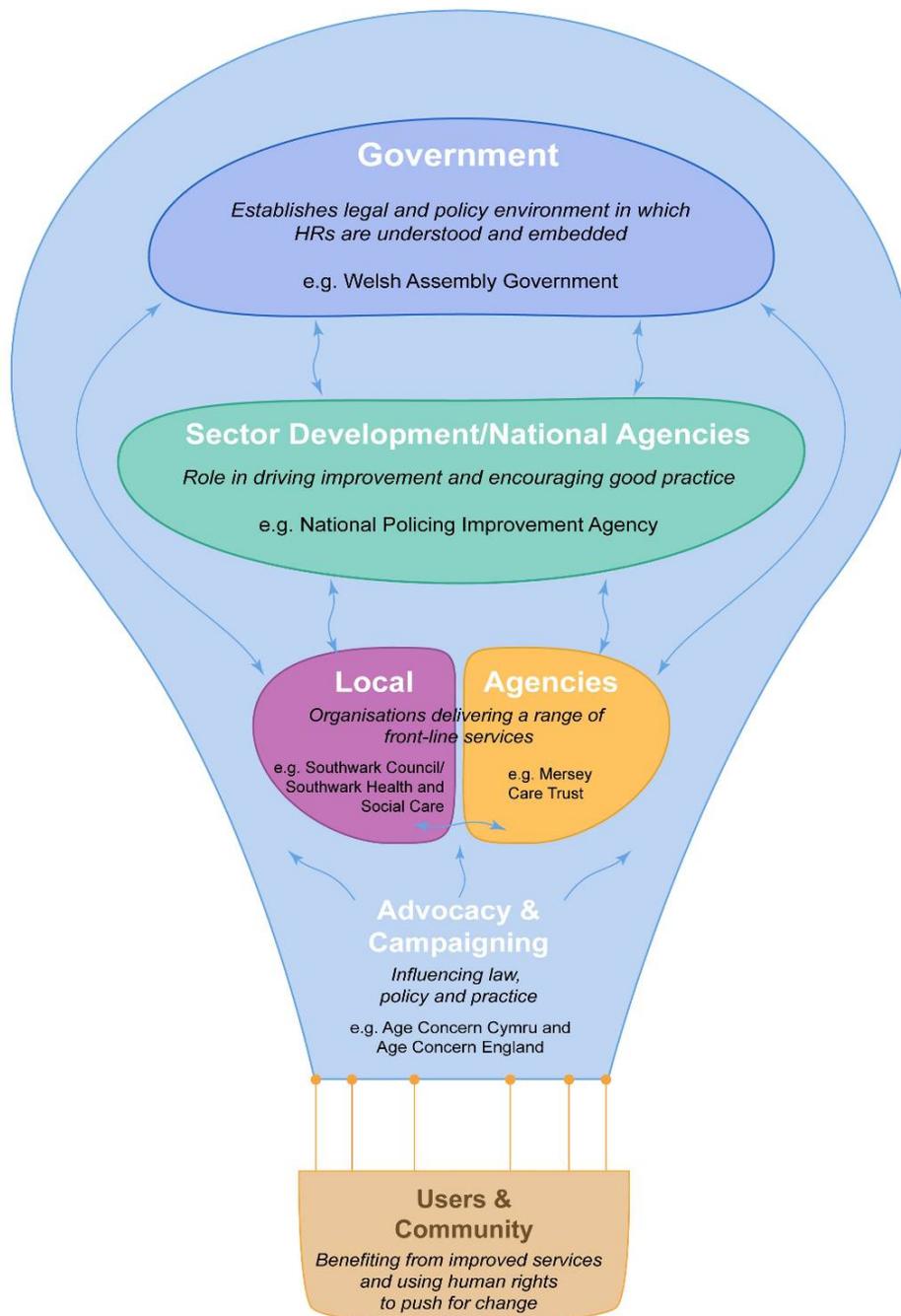
Age Concern’s approach to advocacy is grounded in the values of empowerment, social inclusion, independence and respect for people’s rights. Age Concern has actively campaigned across a number of areas to give a ‘voice to older people’, to ensure both that their rights are protected and services are designed and delivered with this in mind. Age Concern, like other advocacy providers, has also been examining and developing the skills and knowledge which staff and volunteers need to deliver a high quality advocacy service.

Nevertheless both Age Concern England and Age Concern Cymru recognise that they are only part of the way along a journey to integrate human rights across their organisations, including in their advocacy work. Though much of their activity contributes to the protection and promotion of older people’s human rights, it has not always been conceptualised in these terms or directly linked to the Human Rights Act.

Age Concern’s current policy objectives now make explicit reference to the Act and the European Convention, with a primary focus on the Articles that are of most relevance to older people. Age Concern Cymru’s Elder Abuse Project and Age Concern England’s National Mental Capacity Advocacy Project are two examples of creative initiatives which are beginning to make more explicit links and references to the Act. The need for further training and guidance on human rights is now being recognised both ‘top-down’, by leaders in the two organisations, and ‘bottom up’, from advocates who work directly with older people.

10 For more information about Age Concern England see <http://www.ageconcern.org.uk>.
For more information about Age Concern Cymru see
<http://www.accymru.org.uk/en/1.htm>

Rationale for selecting case studies and their role in promoting human rights



4. EMBEDDING HUMAN RIGHTS – DRIVERS, VISION AND POLICIES, GOVERNANCE AND RESOURCING

The next three chapters provide further detail about how case study organisations have been embedding human rights into their practice, the challenges they have faced, and the lessons that can be learnt from this experience.

This chapter focuses on the ways in which staff in case study organisations have been interpreting human rights and thinking about what they mean for their organisation, the integration of human rights into policies and procedures and into senior-level decision making, and staffing of this agenda. The following two chapters outline how case study organisations are raising awareness of human rights among broader staff groups and beginning to integrate human rights into everyday practice, and how human rights are being promoted through and embedded into relationships with users and communities, partners and suppliers.

Drivers for engaging with human rights

While none of the interviewees in any of the five case studies underplayed the significance of the law and the potential risk of litigation as a key driver for engaging with human rights, most interviewees were at pains to highlight the positive benefits of focusing on human rights in improving services, overcoming injustice and inequality and building a fairer society. (More information about the different benefits identified by case study interviewees can be found in chapter 7).

Internal leadership and championing seems to have been a critical factor in creating a ‘positive narrative’ about human rights and encouraging staff to focus on the potential benefits of engaging with the issues, rather than adopting a more narrow, ‘risk-oriented’ or ‘compliance’ focus. Leaders in each of our case study organisations have championed human rights in different ways; some have led from a position of personal expertise, others have led by giving licence and public backing to other members of staff. There does not appear to be any one model of effective leadership in this area. What seems to be most important is that those in positions of authority not only sign off policies and ‘make the right noises’ in speeches and at conferences, but that they seek to lead by example and demonstrate in their day-to-day activities how staff can put into practice the values underpinning the HRA. A clear narrative from the top of the organisation that articulates the links between human rights and other important corporate values and agendas – such as equality diversity and personalisation of services – also seems to have been important in encouraging staff to approach the issues in the most productive way.

External pressure has also been important in encouraging engagement with human rights in a number of the case studies. For example, at Mersey Care Trust, consultation with users and carers around the formation of the new organisation in 2001 revealed a groundswell of opinion in favour of a new approach that emphasised the rights of users and carers and the importance of involving them in decisions about their own care. Liverpool continues to benefit from a strong voluntary and community sector, and support from community and advocacy groups has also been important in championing this kind of approach from the outside.

Political commitment to human rights at the Welsh Assembly Government

As a devolved government, the Welsh Assembly Government has a statutory duty to comply with the Human Rights Act as set out in the Government of Wales Act (2006) and the Government of Wales Act (1998)¹¹. Although compliance with the legal framework is obviously important, the political drive has been to go beyond this and embed the principles and spirit of the Act into policy and decision making.

Interviewees at the Welsh Assembly Government felt that the level of Ministerial support for human rights has been a key factor in explaining the progress that has been made to date. Ministerial support has helped to ‘set the tone from the top’ and encourage the integration of human rights principles into key policies and strategies. It has also helped to ensure that the integration of the Act has been cross-cutting. After hearing Brian Gibbons speak at the Human Rights Summit in March 2008 (see later for more details), one interviewee felt inspired and said: ‘the Welsh Assembly Government has made Wales a rights-friendly place to live’.

Joint political-party commitment has also been important in leading change to embed human rights. ‘One Wales’, the Government’s progressive agenda for Wales, sets out common goals to improve the quality of life for all people in Wales, especially the most disadvantaged and vulnerable¹². Recognising the diversity of Wales, this four year programme sets out some ambitious goals to promote equality and enhance citizenship and community cohesion. Although adherence to the Act is not made explicit in ‘One Wales’, the underlying human rights principles of fairness, dignity, equality and respect underpin its aspirations.

11 See http://www.opsi.gov.uk/acts/acts2006/ukpga_20060032_en_1;
http://www.opsi.gov.uk/ACTS/acts1998/ukpga_19980038_en_1

12 See <http://wales.gov.uk/strategy/strategies/onewales/onewalese.pdf?lang=en>

Leading by example at Mersey Care Trust

At Mersey Care, the Trust's evolving human rights strategy is being built on a strong foundation and firm commitment to a rights-based approach to user and carer involvement. The Chief Executive has played a critically important role in providing visible leadership for this agenda. One example of this relates to the involvement of users and carers in performance management of staff – a corporate policy which initially caused some concern among staff groups. In order to help overcome these concerns, the Chief Executive opted to be among the first cohort of people to be assessed in this way.

NPIA: leading through expertise

The Chief Executive of the NPIA is a strong advocate for human rights who has contributed to national debates on this topic. Commitment from the top helps to ensure that the Human Rights Act is prioritised across the Agency. It is also an important driver for ensuring human rights are integrated into policies and practices and shape the values of the organisation, as evidenced in the Agency's Diversity Statement.¹³

Interviewees in some of the case study organisations identified pieces of legislation or guiding documents other than the HRA itself as critical in driving forward a rights-based approach within their organisation. The Mental Capacity Act, the UN Principles for Older People and the UN Convention on the Rights of the Child, for example, were identified as important documents that are shaping policy decisions and organisational practice.

In some cases, these documents were regarded as more pressing and more helpful in guiding day to day activity as they were seen to relate more closely to the particular client group that staff were grappling with or sector in which they were operating. Nevertheless, interviewees recognised the value of the HRA in establishing a set of rights that apply to everyone. They also suggested that the HRA was helpful in providing a more comprehensive rights-based framework, which directs attention to rights that may sometimes be overlooked, such as the right to respect for private and family life. Some interviewees suggested that further work

¹³ www.npia.police.uk/en/5187.htm

was required to ensure that other rights based documents are understood and interpreted more clearly within the wider context of the HRA.

Human rights for older people and children in Wales: the role of the HRA and UN frameworks

In the Welsh Assembly Government, the rights of older people are enshrined in the *Older People's Strategy for Wales*¹⁴, which has recently received international recognition for its vision and scope. The Strategy draws upon the United Nations Principles for Older People,¹⁵ rather than directly from the Human Rights Act. However, interviewees suggest that the HRA gives further legitimacy to the Assembly Government's rights based approach to services for older people.

Similarly, the UN Convention on the Rights of the Child is helping to reshape policy and children's services in Wales¹⁶. The Welsh Assembly Government is adopting a rights based approach; its seven core principles are listed below, linked to the UN Articles:¹⁷

Giving children a flying start (Articles 3, 29 and 36).

Having access to a comprehensive range of education, training and learning opportunities (Articles 23, 28, 29 and 32).

Having the best possible health, physical and mental, social and emotional well-being (Articles 6, 18-20, 24, 26-29, 32-35, 37 and 40).

14 Welsh Assembly Government, *The Strategy for Older People in Wales 2008-2013*, (2007).

15 In 1991, the General Assembly adopted the [United Nations Principles for Older Persons \(resolution 46/91\)](#). The [Principles](#) aim to ensure that priority attention will be given to the situation of older persons. The UN Principles address the independence, participation, care, self-fulfillment and dignity of older people. See: www.un.org/esa/socdev/ageing/un_principles.html

16 The UN Convention on the Rights of the Child is a legally binding international agreement created in 1989 that commits signatory governments to protecting children's rights. The Convention sets out these rights in 54 Articles and two Optional Protocols. It spells out the basic human rights that children everywhere have: the right to survival; to develop to the fullest; to protection from harmful influences, abuse and exploitation; and to participate fully in family, culture and social life. The four core principles of the Convention are non-discrimination; devotion to the best interests of the child; the right to life, survival and development; and respect for the views of the child. Source: Unicef.

17 Welsh Assembly Government, *Core Aims for Children and Young People*.

Having a safe home and a community which supports physical and emotional well-being (Articles 19, 20, 25, 32-25).

Be listened to and treated with respect and having race and cultural identity recognised (Articles 19, 20, 25, 27, 32-35).

Not being disadvantaged by poverty (Articles 6, 26, 27 and 28).

Having access to play, leisure, sporting and cultural activities (Articles 15, 20, 29 and 31).

A recent NGO report 'Stop, Look, Listen: the road to realising children's rights in Wales' points out that:

This emphasis on the importance of children's rights can be most clearly seen when the Welsh Assembly Government adopted the Convention as the basis of all its policy making for children and young people in 2004, positioning its overarching strategy for children and young people within a UNCRC based framework¹⁸.

Reinforcing other mental health legislation: human rights at Mersey Care Trust

Interviewees at Mersey Care Trust suggest that for many of their staff the current focus of attention is on the amendment to the Mental Health Act (1983)¹⁹ and the Mental Capacity Act (2005)²⁰ as these pieces of legislation clearly relate to the Trust's 'core business' and are heralding important and pressing changes for the organisation. However, some of the principles embedded in these pieces of legislation are thought to be very much in line with the principles embedded in the HRA. For example, the Mental Capacity Act is underpinned by the following five principles:

A presumption of capacity - every adult has the right to make his or her own decisions and must be assumed to have capacity to do so unless it is proved otherwise

18 Wales NGO alternative report, Stop, Look, Listen: the road to realising children's rights in Wales (2007).

19 For a summary of the Mental Health Act (1983) see http://www.dh.gov.uk/en/PublicationsAndStatistics/Legislation/ActsAndBills/DH_4002034

20 http://www.opsi.gov.uk/ACTS/acts2005/ukpga_20050009_en_1

The right for individuals to be supported to make their own decisions - people must be given all appropriate help before anyone concludes that they cannot make their own decisions

That individuals must retain the right to make what might be seen as eccentric or unwise decisions

Best interests – anything done for or on behalf of people without capacity must be in their best interests, and

Least restrictive intervention – anything done for or on behalf of people without capacity should be the least restrictive of their basic rights and freedoms²¹.

Interpretation and fit with other corporate agendas

Interviewees in the five case studies interpreted the significance of human rights in different ways, reflecting the different roles and functions of their organisations and the context in which they are operating. Participants from the Welsh Assembly Government, for example, highlighted that human rights were regarded as an essential component of the legal and policy framework that the Assembly Government was trying to establish in Wales. Participants highlighted a speech by First Secretary Rhodri Morgan in October 2000, in which he commented that:

*The Act was fully in keeping with the aims of the National Assembly to create a fully inclusive society in Wales, and since it came into being, the Assembly has been bound by the Government of Wales Act to comply fully with the European Convention on Human Rights.*²²

For interviewees at the NPIA, human rights were understood in the context of the Agency's role as a development body for the police force. The Agency's work in promoting human rights was seen to be an important part of their work in supporting good police practice and, in turn, helping to boost public trust and confidence in the service.

21 Source: Department of Health
http://www.dh.gov.uk/en/Publicationsandstatistics/Bulletins/theweek/Chiefexecutivebulletin/DH_4108436

22 First Minister Rhodri Morgan speaking at the Welsh launch of the Human Rights Act, Cardiff, 2 October 2000.

'Policing is a balancing exercise between individual rights and those of wider society. Human rights are part of everyday policing business.'

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

For staff at Mersey Care Trust, human rights were regarded as critical in helping to protect particularly vulnerable service users. In a context in which staff have considerable power over users, including in some cases the power to deprive them of their liberty, attention to human rights was seen as essential in safe-guarding service users and ensuring their interests are put at the heart of service delivery.

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

For some interviewees at Southwark, a focus on human rights was seen as a natural extension of the council's long-standing efforts to promote equality and demonstrate respect for diversity. Operating in a very diverse borough, staff highlighted the particular value and significance of human rights in relation to community cohesion. Emphasising what communities have in common, rather than what makes them distinct, they point out that human rights can be a useful under-pinning principle for service design and delivery in a diverse area.

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

For staff at Age Concern England and Wales, giving a voice to older people and promoting and protecting their rights are regarded as cornerstones of the organisation's work. In this context, human rights are seen to have considerable potential to strengthen advocacy on behalf of older people:

'The Human Rights Act can apply to any situation and is central to the personalisation agenda. Treating people the same is quite different from treating people equally and human rights helps to focus on the latter. It allows people to look at an issue in a different way. It helps to highlight the potential for abuse which may be overlooked or perhaps may not have been considered at all.'

In most of our case studies, the central principles underpinning the Human Rights Act – fairness, respect, equality, dignity and autonomy²³ – were seen to link naturally to wider corporate goals and values. However, in most cases, with the possible exception of the Welsh Assembly, the links have not been made explicitly until more recently. Many interviewees felt that forging more explicit links to the HRA and human rights principles was a ‘logical next step’ and important in ‘*adding weight*’ to corporate values and agendas that might be pushing in a similar direction.

Human rights and equality, diversity and cohesion at Southwark

For some time, Southwark Council has had a strong reputation for its work on equality and diversity, community cohesion, and consultation and engagement. In the 2007 Corporate Performance Assessment, for example, the Audit Commission commented that ‘the council contributes positively to wider community objectives: examples include reduction in crime, promotion of sustainable transport and community cohesion. Major plans also take account of the needs of hard-to-reach residents’²⁴. Interviewees consulted as part of this project argue that through this and other work, the council had already made good progress in embedding principles of respect, fairness, dignity and equality into its work. These principles are also central to efforts to embed human rights – though they may not have been explicitly ‘badged’ in this way until more recently.

23 The values underpinning the Human Rights Act are commonly referred to as the FRED or FREDA principles.

24 See Audit Commission: Comprehensive Performance Assessment (CPA) scorecard 2007: <http://cpa.audit-commission.gov.uk/STCCScorecard.aspx?TaxID=107650>

Mersey Care Trust: the links between human rights and user and carer involvement

At Mersey Care, much of the Trust's involvement and engagement activity with users and carers contributes to the promotion of human rights, even if this has not always been viewed explicitly in this way.

For example, the Trust has a longstanding collaboration with Barnados Young Carers in Liverpool. This has included a scheme to involve children and young people in designing family rooms on psychiatric wards. For many children and young people, psychiatric wards can be intimidating places. The new scheme has involved children and young people in developing family rooms which are children-friendly and welcoming. Those rooms that meet the criteria that children and young people have developed themselves are awarded a 'Jelly Bean' logo. The Trust argue that this is a good example of where user and carer involvement has changed the way that services are designed and delivered and contributed to the promotion and protection of human rights – in this case Article 8 of the European Convention on Human Rights covering the right to respect for private and family life²⁵.

Vision and integration into policies and strategies

In each of the case study organisations work is underway to explore how human rights can be more explicitly integrated into corporate policies, strategies and procedures. Case study organisations are at different stages of progress in this respect; some have made considerable progress while others are still at the early stages – integrating human rights as key corporate documents come to the end of their natural life and are up for renewal.

For the most part, human rights have been highlighted in corporate strategies and policies and woven into existing equality and diversity schemes. In only one of our case studies has a separate human rights policy been created (and this will be integrated into a single equalities scheme in due course). Some interviewees had clear conceptualisations of the links between human rights and equality and diversity – with human rights as the overarching 'umbrella', or the bedrock or foundation, of principles that apply to all. However, others reported that these links were unclear to

25 For more information see <http://www.nhscentreforinvolvement.nhs.uk/docs/Case%20Study%20-%20partnership%20-%20Mersey%20care%20Family%20Rooms.pdf>

them. Several of those we talked to felt that the links between the two agendas needed to be clarified and strengthened in corporate documents and in their organisation's approach.

'The new 'E and D' strategy is underpinned by human rights. But I don't think this is explicit enough in the strategy...'

Most of the corporate documents reviewed as part of this study refer to the Human Rights Act and human rights principles in broad terms. Most organisations seem to be at an early stage in developing a clear vision and specific objectives to guide their work in this area. Perhaps reflecting this stage of development, and confirming findings in the literature review produced for the Human Rights Inquiry, many interviewees found it quite difficult to articulate with any degree of precision what an organisation that had fully embedded human rights might look like.

'If the organisation was fully taking on board human rights there would be a better process for deliberating on issues and dilemmas and service users would know about their rights and be actively challenging and raising concerns...there would be lots of debate and discussion about this.'

'My sense is that being a human rights based organisation would involve...using human rights as a framework for making all decisions more explicitly and being able to slice through the organisation and see human rights running through it like a stick of rock...all staff could explain what they do in these terms. We're quite a long way from this still.'

'Deciding what the priorities are...this is the challenge. This is one of the things that's so complicated about this, when so much of it is a priority. The agenda is so huge...it's really hard for people to think about how to operationalise this in their work...The difference with human rights is that all other issues relate back to this. You can't treat it like a separate issue. It's woven into all these things.'

'We haven't got a clear vision of what this might look like. We've had long discussions about it. But there are too many paradoxes that we're dealing with. Also some legislation and policy appears to be in tension with human rights. I'm not saying the legislation should be changed...just that it's hard to create a clear vision in this complexity. ...Society needs to make sense of this...rather than painting simplistic approaches. It might be helpful to try to say what an organisation that was doing this well looks like and how would they be handling these paradoxes and challenges.'

Interviewees in most case studies recognised that while integration into policies and procedures was important in signalling an organisation's commitment to human rights, it did not guarantee positive outcomes. For example, the Welsh Assembly Government's policy framework for children's services, which has integrated the UN Convention on the Rights of the Child, has been identified as a success story. However, interviewees at the Welsh Assembly Government recognise that effective implementation is just as important as robust policy. As the Commissioner for Children's Services in Wales reported in the UK Children's Commissioners joint report to the UN Committee on the Rights of the Child (UNCRC):

*'Although there is much to be proud of in Wales's treatment of its children and young people, there are also some particular problems... policies were not being implemented fully and consistently across Wales.'*²⁶

The Commissioner set out a challenge to ensure that children's rights are realised at the point at which children engage with services and experience the outcome of policies and procedures. The Welsh Assembly Government is now working towards this and continues to have ongoing debate and dialogue with the UNCRC Monitoring Group.

26 UK Children's Commissioner's report to the UN Committee of the Rights of the Child (2007). The Assembly Government's report 'Rights in Action' also demonstrated its commitment to monitoring progress made in implementing policies to promote children's rights.

The Welsh Assembly Government: a ‘rights based approach’ to policy development

In addition to the ‘One Wales’ agenda (highlighted above), interviewees at the Welsh Assembly Government report that equality and human rights are embedded within other key strategic documents.

For example, in ‘Wales: A Better Country’, the vision is to create a fairer, more prosperous, healthier and better educated country rooted in a commitment to social justice and equality of opportunity.²⁷ Similarly, the ‘Making the Connections: Building Better Public Service’ strategy encourages public services in Wales to become more responsive to the needs of individuals and communities²⁸. Its vision is structured around five customer outcomes which interviewees suggest reflect human rights principles even though they are not explicitly referenced to the Human Rights Act. The core outcomes include:

- Access and advice
- Personal experience – citizens will be treated with dignity and respect
- Responsiveness – services which take account of need
- Language options; and
- Redress.

Public Service Management Wales (PSMW²⁹) is now developing practical approaches to assist public services achieve the cultural transformation necessary to meet these aims.

The Welsh Assembly Government is working towards publishing a revised equalities strategy in the Autumn of 2008, which will guide departments on mainstreaming equality and human rights into their work. Departmental strategies such as ‘The Older People’s Strategy for Wales’³⁰ have also helped to embed a rights based approach, even if they do not always draw on the Human Rights Act itself.

27 Welsh Government Assembly, Wales: A Better Country, 2003.

28 See <http://wales.gov.uk/about/strategy/makingtheconnections/?lang=en>

29 PSMW works to support and help build the capacity of managers and leaders across the public service in Wales. For more details see <http://new.wales.gov.uk/psmwsubsite/psmw/?lang=en>

Embedding human rights into policies and procedures at Southwark

In Southwark, the council's Equalities and Human Rights Scheme was recently updated to include human rights³¹. The new scheme, which runs from 2008–2011 sets out how the council will work to ensure that human rights and equality and diversity are mainstreamed into every aspect of council activities. This scheme provides the strategic framework for the delivery of equalities outcomes, linked to priorities set out in Southwark 2016 (the Sustainable Community Strategy)³². The Scheme identifies that:

'Southwark's approach to equality and diversity is to recognise and value difference whilst also holding on to what we all have in common. The council's vision is clearly set out in Southwark 2016. It describes how our commitment to reducing the inequality gap underpins all our plans. We want to be an example to the whole country of successfully fusing the celebration of diversity with greater social inclusion and cohesion.'

30 Welsh Assembly Government, The Strategy for Older People in Wales 2008-2013, (2007).

31 See http://www.southwark.gov.uk/Uploads/FILE_35450.pdf

32 See <http://www.southwark.gov.uk/YourCouncil/SouthwarkAlliance/WhatSouthwark2016.html>

Mersey Care Trust's new corporate human rights strategy

In January 2001, Mersey Care Trust published its first three year corporate human rights strategy³³. The Strategy, which is supported by a small amount of dedicated resource, aims to ensure that human rights become an integral part of the Trust's culture and the way in which it operates. The Strategy sets out how, through leadership and governance, strategy and policy, and practices and processes the Trust will:

- Put human rights at the heart of the Trust
- Ensure accountability for human rights
- Empower service users, carers and staff about human rights
- Enable everyone to participate in the development of a human rights based approach (HRBA) in a meaningful way
- Protect those in Mersey Care most vulnerable to breaches of their human rights.

The Trust's single equality scheme was reviewed in 2007 and will be updated again in 2009 and published as an integrated equality and human rights scheme.

Legal and equality, diversity and human rights validation at the NPIA

The NPIA has a legal validation procedure for all published materials, both those that relate to the internal workings of the organisation and those with an external focus. This procedure is carried out by the Legal Services team, which is split over two sites – in Harrogate and in Wyboston. Previously part of the Quality Assurance department, the Legal Services team is now a part of the NPIA's secretariat, along with the Equality and Diversity and Human Rights team (EDHR), placing it at the centre of the organisation, close to where important decisions are made.

The Legal Services team currently has two diversity and human rights officers (and plans to recruit a third) who are responsible for legally validating materials from an

33 See http://www.mersecare.nhs.uk/Library/About_Mersey_Care/Trust_Board/General_items/Human%20Rights%20Strategy%202007.pdf

equality and diversity and human rights perspective. In addition to ensuring that materials accurately reflect the law and are compliant with it, officers try to ensure that they also reflect good practice in the policing community.

'The diversity and human rights validation process is very important – it makes sure we're sending out the right messages – and that there are no errors in what we're doing. It's about us modelling the right kind of approach.'

Governance and senior level decision-making

In addition to integrating human rights into corporate policy and strategy documents, interviewees recognised the importance of ensuring that the Human Rights Act and human rights principles are taken into account at the point and in the places in which important corporate decisions are being taken. Interviewees in some of the case studies identified steps that their organisations are taking to help ensure that human rights are explicitly woven into governance arrangements. In some instances, the formation of new organisations or changes in governance and constitutional arrangements have provided opportunities to make these changes.

In addition to integrating human rights into the principles that govern decision-making, some of the case study organisations are creating new procedures for submitting information to governing bodies that give greater emphasis to human rights. The organisations that have progressed the furthest in thinking about governance and human rights have also invested in training and awareness raising activities for those in governance roles, recognising the importance of ensuring that they have the skills and capability to probe and challenge around this complex agenda.

Those organisations that have begun to integrate human rights into governance and corporate decision making arrangements report that this is helping to improve the quality of decision making. While interviewees are under no illusion that integrating human rights into decision-making will necessarily lead to 'better' decisions in all cases, they highlight that a focus on human rights is helping to clarify the range of competing issues and interests at play and guide the development of options and solutions that are more proportionate and respectful of individual rights³⁴.

34 For more details about how human rights are being used to strengthen decision-making among front line staff who work directly with the public, see chapter 5.

'We're very confident it will lead to better decision making. (Using human rights means that) there can be no sulking as result of making a decision...we're all very clear about why we're doing things now. It makes our rationale explicit and overt...it's helping us to do this.'

'We know that we make all kinds of difficult decisions in our jobs. It's helpful to have in place a framework that makes you feel more secure that you've made reasonable decisions and done this in reasonable way. We need this and we need to be seen to have this.'

Human rights, governance, and decision-making at Southwark

In May 2008, Southwark Council agreed a new constitution, which sets out how the council operates and the procedures to be followed to ensure that decisions are made in an open and accountable manner³⁵. Human rights are included in the new constitution as one of the core principles for decision-making in the council. The constitution also assigns a specific duty to the executive to:

'Promote human rights, equality of opportunity and the interests and particular needs of all those who experience discrimination or disadvantage by virtue of their race, gender, disability, sexuality, or age.'

Southwark have embedded human rights into a number of other important corporate procedures. For example, it has included human rights in a checklist of factors to be taken into consideration by committee lawyers when clearing reports. The council has also developed a standard reporting template, which features prompts to consider equality and diversity and human rights issues and implications.

Southwark have also developed a training package for elected members on human rights and this is now part of Southwark's ongoing member development programme.

35 <http://www.southwark.gov.uk/YourCouncil/HowTheCouncilWorks/councilconstitution.html>

Governance and human rights at Mersey Care NHS Trust

At Mersey Care, the Trust Board regarded the creation of the new organisation in 2001 as an opportunity to forge a new rights-based approach to service delivery. Responding to demands from users and carers to be more involved in the services that affect them, a decision was made to appoint a Board level Director for User and Carer Involvement. At the Trust Board, the views of users and carers are also represented by the Chair of the User and Carer Forum (see chapter 6 for more details).

All papers submitted to the Board now have to include a cover sheet, which explicitly identifies the human rights issues that need to be taken into consideration in Board decisions. Since April 2008, the governance committee of the Board has been given a clearer remit in relation to human rights. From April 2009, governance committees in each of the main service areas will also be given a specific remit in this area.

As a result of these developments, interviewees at Mersey Care Trust report that human rights now have a higher profile in the governance of the Trust. Debates about smoking and the smoking ban provide an example of how Mersey Care's Board have used human rights principles to make important decisions in the Trust.

Government regulations under the 2006 Health Act mean that enclosed public places, including hospitals, became 'smoke-free' from 1 July 2007. Patients at Rampton high security psychiatric hospital challenged the smoking ban in a test case which claimed that the refusal to permit cigarettes in the hospital's buildings or grounds breaches Article 8 of the European Convention which guarantees respect for private and family life. They argued that the hospital is the patients' home and to stop them smoking there when they are not free to go elsewhere constituted a disproportionate interference with their right to do what they want in their own home, as long as it poses no harm to anyone else.

In May 2008, Lord Justice Pill and Mr Justice Silber rejected the Rampton patients' claim for a class exemption (though individual exemptions are still legally possible) stating that: 'Both health and security considerations justify the ban, even though smoking in the grounds, which may be possible at other hospitals, is not feasible at Rampton'.

Against this backdrop, a delegation of users and carers attended a recent Board meeting at Mersey Care Trust to present a petition arguing against a total smoking ban in Mersey's facilities. Discussions at the Board meeting focused explicitly on the

human rights issues involved. As a result of these discussions, the Trust Board decided to allow for both individual and class exemptions for patients to smoke outside at some types of facilities – taking better account of the human rights of users, while respecting the health and security issues involved. Participants involved in this debate felt that the focus on human rights was helpful in clarifying the range of competing issues and interests at play and developing options that were more carefully focused around the rights of the individual.

Staffing and resourcing human rights

Case study organisations have staffed and resourced human rights in a variety of different ways. In Southwark, for example, human rights have been championed by the Principal Lawyer for Employment, General Litigation, Licensing and Prosecutions, working alongside the council's Principal Social Policy Office. At Mersey Care NHS Trust, the agenda has been led by the Director for User and Carer Involvement, working alongside the Equalities and Human Rights lead officer. There does not appear to be any one approach to the corporate management of human rights that is more successful than another. What seems to be critically important is that those people with responsibilities for championing human rights have access to senior level decision makers and are visibly supported by them. They also need to have personal skills of influence and persuasion to operate effectively across team and departmental boundaries, in situations where they may not be able to rely on seniority or 'positional authority' to drive change. Having access to a small amount of dedicated resources to pilot initiatives and organise training and awareness raising events also seems to be important. These factors seem to be more important than where those responsible for human rights are located within an organisation.

In addition to corporate leads, some of the case study organisations have begun to identify people to raise the profile of human rights and advocate for change within different departments or service areas. In large and complex organisations creating a network of human rights champions seems to have been helpful in ensuring that human rights are prioritised alongside other important agendas and integrated into different work streams. Interviewees have highlighted the importance of ensuring that those chosen to act as human rights champions are well trained and supported. They have also indicated that for some groups of staff, particularly for professionals, it may be important to choose advocates from within the group, preferably senior staff who are seen to have credibility and can lead by example.

NPIA: equality, diversity and human rights at the centre of the organisation

The NPIA's Equality and Diversity and Human Rights team (EDHR) is located under the central Secretariat. EDHR has two teams. One is primarily responsible for ensuring equality and human rights are mainstreamed into all internal business activities and that they are fully compliant with equalities and human rights legislation. The second team provides operational support and guidance to forces, helping them to comply with legislation and ensure that both staff and the public are protected against all strands of discrimination and treated fairly and equitably³⁶.

Southwark Council: championed by lawyers but a job for everyone

In Southwark, the Principal Lawyer for Employment, General Litigation and Licensing and Prosecutions has played a critical role in championing human rights across the council since 2003. However, despite the fact that the agenda has been championed from Legal Services, staff at Southwark emphasise that the council's approach has been driven by a broader set of considerations, not just a concern to avoid the risks associated with litigation.

The Principal Lawyer works alongside the Principal Social Policy Officer, who leads on promoting equality and diversity and human rights throughout the council and building capacity and ownership in departments. These two members of staff work closely with a group of officers from different departments with equalities portfolios who meet regularly to support each other and share good practice.

More recently, the Corporate Management Team at Southwark has replaced the Chief Officer's equalities sub group as the lead role with regard to the council's strategies in this area. Departmental leaders are now responsible for ensuring that human rights and equality and diversity are embedded into their service areas through a range of mechanisms including: integration into service level policies and procedures; best value review processes and the council's Equality Impact Assessment process (see chapter 5).

36 Further information about NPIA's outward facing activities in respect of human rights can be found in chapter 6.

Investing in leadership at Mersey Care Trust

Since the formation of the new organisation in 2001, Mersey Care Trust has had a Director- level post for User and Carer Involvement. For the past seven years, this post has been held by the same individual who came from a senior post working in mental health in the voluntary and community sector. She is widely recognised as a highly effective champion for the rights of users and carers, working alongside, and with the active support of, the Chief Executive. Critically, she has a seat on the Board and is able to influence strategy and decision-making at the highest levels of the organisation. The Director for User and Carer Involvement is now one of the driving forces behind the Trust's human rights right, working alongside the Equalities and Human Rights lead officer. Both members of staff are supported by a network of individuals who act as champions for user and carers rights in different departments. In the Spring of this year, the Trust formally identified the Medical Director and Director of Nursing and Care as clinical leads for human rights. These new developments are designed to foster professional leadership around human rights issues.

5. EMBEDDING HUMAN RIGHTS – RAISING AWARENESS AND BUILDING CAPACITY, INTEGRATING INTO SERVICE PLANNING AND REVIEW AND FRONT-LINE DECISION MAKING

This chapter explores how case study organisations are raising awareness of human rights, keeping up-to-date with developments in the law, and building capacity for change within their organisations. It also explores how human rights are being integrated into service planning and review and everyday work processes. The next chapter discusses in more detail how human rights are being promoted through, and embedded into, mechanisms for relating to users and communities, partners and suppliers.

Raising awareness and building capacity

Interviewees in the five case studies were asked to identify the most significant blocks, barriers and challenges they had experienced in promoting human rights in their organisation. The vast majority of responses to this question related to initial lack of understanding about human rights and the Human Rights Act on the part of staff and, to some extent, service users (see next chapter for more details).

In some cases, interviewees identified staff misconceptions about human rights and the Human Rights Act as an initial barrier to progress. Misconceptions related both to the beneficiaries of human rights and to the way in which human rights principles and the Act could be used to achieve change.

‘Making people realise human rights are for everyone, not just refugees and prisoners...also sometimes it (the HRA) is only seen as something that works if it goes through the courts.’

‘Getting people to realise that elder abuse is also human rights abuse is critical for preventing poor treatment.’

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

However, more than misconceptions or scepticism about human rights, interviewees highlighted the challenge of translating what they frequently described as a ‘broad set of principles’ into concrete action and helping staff to appreciate what human rights meant for them, in their day-to-day work.

'I don't think it (the HRA) is seen as a piece of legislation that is easily useable...(the challenge is) making the rhetoric of policy transfer into every day practice.'

'Some of this is quite subtle...it can be difficult to work out what these (rights) really mean for us...it's quite hard.'

'Sometimes there's a tendency not to think about all the articles that are important...People tend to focus on rights to life. But Article 8 on the right to respect for family and private life, that's also important, but sometimes it's overlooked.'

Research across the five case studies has confirmed the central role that good quality training has played in stimulating interest in human rights, over-coming misconceptions and developing capacity for change. While all interviewees recognise the importance of integrating human rights into organisational policies and procedures, they have told us that what has made a real difference in embedding human rights and creating real energy around this agenda has been a focus on winning hearts and minds. Training and capacity building events within organisations, and with partners (see chapter 7) have been critical in this respect.

The most successful forms of training seem to be those that are carefully tailored to the particular context in which staff are operating and the issues they are grappling with. Though generic awareness-raising can be useful as a first step, what seems to be important is that staff are encouraged to think about the particular human rights issues that are relevant for their area of work. Training programmes that are highly interactive and make use of personal stories and narratives to illustrate general points also seem to be more positively received by staff.

Some interviewees have highlighted the importance of raising awareness among senior managers and securing their active support before embarking on training programmes for their staff. 'Getting managers on-side' first can help to ensure that they act as champions for the training and are receptive to implementing suggestions for service change that might arise during or after training sessions.

In some of our case studies, external training providers have been used to deliver human rights training and this has proved helpful. While some staff with equalities and human rights responsibilities reported feeling confident to deliver general awareness-raising sessions, many felt that they lacked the detailed knowledge to help staff interpret case law and explore the implications of human rights for their work in any great depth. As one interviewee expressed it:

'We tried to do some training for people on human rights...but we found it quite hard. You need to have real expertise to deal with people's questions, for example around the different types of rights – absolute, qualified, limited etc. These concepts have been quite hard for people to grasp. We've learnt that we need to understand all this properly. Also how Articles and principles can be interpreted in practice, how wide or narrow to define and understand them. People don't always get this right...they're either hostile to the idea of rights or they over-do it.'

Mersey Care Trust and Southwark Health and Social Care have particularly valued the support they have received from the British Institute of Human Rights, who have helped to build capacity and confidence through bespoke training as well as through their central role in the Department of Health's Human Rights in Healthcare project (see below).

Interviewees report that training activities are beginning to change attitudes and encourage new ways of working:

'We are starting to see changes at the front line. For example, social workers, who probably tend to look at things through a human rights lens anyway, are now feeling more empowered to do this. They are now more vocal in mixed teams.'

'Now it's not just social workers telling others to improve, it's human rights legislation enshrined in law.'

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

Southwark's approach to human rights training and awareness raising for staff

In developing their first human rights action plan in 2003, Southwark identified staff training and awareness raising as the most important place to start in embedding human rights across the council. Beginning with a few departments – including Housing (now Environment and Housing), Social Services and Education (now Children's Services and Health and Social Care), the Principal Lawyer for Employment, General Litigation and Licensing and Prosecutions held briefings with senior managers to tell them about human rights, discuss the implications for their

areas of work, and outline the need for training. In order to help secure ownership of the training programme, the Principal Lawyer involved service leads in the process of commissioning an external supplier. The British Institute of Human Rights (BIHR) was selected and service leads worked alongside BIHR to ensure that training was tailored to the particular needs of different departments. Training was piloted and then rolled out across the council.

Over 600 staff at Southwark have now received human rights training. In some service areas – e.g. in housing – training has been mandatory; in others attendance has been voluntary. The legal services department has received specialist training to ensure it is able to provide appropriate advice to staff in other parts of the council.

Southwark's human rights training package is regularly reviewed and refined. Over time it has been improved to make it more interactive and more closely focused on the day-to-day work and particular priorities of different departments. More recently the training has been updated to include an element of action planning towards the end of the day, allowing staff to identify concrete ways in which they can embed human rights into their practice. Periodic meetings between the Principal Lawyer and service leads and BIHR provide opportunities to ensure that issues raised in training sessions can be discussed (on a non-attributable basis) and taken forward. Through the review process staff have voiced a need for a 'next stage' of more in-depth training that would focus on specific issues – for example on human rights and adoption or human rights and asylum.

Examples of positive outcomes as a result of Southwark's human rights training include:

- Decision makers in the children's services department are using human rights frameworks to address issues such as bullying and discipline
- Housing officers are using human rights to resolve complex dilemmas around information sharing and responses to anti-social behaviour
- Social workers are using human rights arguments to ensure the interests of all parties are considered when making decisions and to strengthen arguments to improve the quality of service provision.

Building staff and user capacity at Mersey Care Trust

Mersey Care Trust was expected to hold a human rights conference in November

2008 to raise awareness of human rights among staff and service users and carers. In addition, the Trust's new human rights strategy sets out a number of other objectives around training and support for staff, including:

- A skills audit and human rights training for the Board was expected for September 2008 and for senior managers by April 2009
- There are plans to include human rights as a mandatory competency in the Trust's key learning and skills framework by April 2011
- Human rights were expected to be a core component of Trust-wide induction by April 2009
- In addition, the Trust is planning to train a network of modern matrons to take notes with better regard to human rights issues.

Mersey Care Trust has a long-standing commitment to user and carer involvement, and users and carers are now involved in a range of activities at the Trust, including the recruitment and induction of new staff. The Trust's human rights strategy outlines commitments to ensure that:

- All new service users and carers involved in recruitment will be trained to ask human rights questions of candidates and assess their capabilities (expected by April 2009)
- All existing service users and carers involved in recruitment will be trained to ask human rights questions of candidates and assess their capabilities (by April 2011).

The Trust also has plans to recruit a pool of users and carers to become trainers on equality and diversity and human rights, with the support of the British Institute of Human Rights.

Monitoring developments in the law

In addition to training activities, interviewees in the five case study organisations have highlighted the importance of monitoring and disseminating developments in case law and tracking and learning the lessons from complaints in order to manage

risk and help staff to understand how human rights principles need to be interpreted in practice. Organisations are putting in place a range of mechanisms to do this. Some of these initiatives are also designed to be of benefit for a wider audience (see chapter 6 for more details).

As with training activity, interviewees have highlighted the importance of ensuring that information and advice on changes in the law are carefully tailored to the particular needs of different groups of staff and that plenty of examples and stories are used to bring complex issues to life in a simple and accessible way. In relation to complaints handling, interviewees have identified the need to put in place robust processes to interrogate data, examine the root causes of service failure and ensure that broader lessons are learnt.

Keeping staff abreast of developments in the law at Southwark
<p>Southwark’s Legal Services (SLS) department is structured to mirror broadly the council’s main service areas. Lawyers working in each of the sections in SLS are responsible for identifying new legislation and developments in case law and bringing these to the attention of their ‘client’ departments. SLS works closely with the social policy team, who also provide support and guidance to services on changes in the equalities legislation and the implications for the council.</p> <p>Staff in Legal Services have recently created the first in a series of new education law bulletins for officers in children’s services. The bulletin, which will probably be published on a bi-monthly basis, includes a section on human rights. This identifies areas of activity within children’s services that are likely to engage human rights, the relevant Articles, court decisions and examples of case law, and advice for officers about what to do. The bulletin is regarded as an important way of ensuring that front line staff and senior managers are aware of human rights and their implications for day-to-day activities.</p>

NPIA: learning the lessons from Independent Police Complaints Commission investigations

The NPIA is involved in emerging work to learn the lessons from Independent Police Complaints Commission (IPCC) investigations, many of which will raise issues relating to human rights³⁷.

The IPCC is currently developing a series of Learning the Lessons leaflets, which draw out the learning from recent IPCC investigations. The leaflets describe real life, challenging situations that officers have faced in the course of their work and provide guidance for police forces on how best to handle these situations in future. The leaflets are aimed at practitioners as well as strategic managers, are produced three times a year, and are published as inserts in well known police journals.

Learning the Lessons is overseen by an inter-agency committee, involving the NPIA.

Mersey Care Trust: reviewing case law and learning from incidents

At Mersey Care, case law is reviewed as it develops and the Trust has a system of issuing practice alerts; the responsibility rests with the Director of Nursing. The Trust's complaints handling committee has recently been replaced by group with a stronger remit to learn the lessons from complaints.

In addition, service users and carers at Mersey Care have recently been trained to take part in incident reviews. Pressure for involvement in this area came from users themselves and involvement is viewed by the Trust as important in opening the organisation up to scrutiny in some of the most challenging areas of its practice, where human rights issues might be most relevant.

37 See <http://www.learningthelessons.org.uk/>

Integration into service planning and review

As described above, interviewees have identified lack of understanding about how to translate human rights principles into day-to-day activities as one of the most significant barriers to progress. While training and awareness raising activities have been important in helping staff to begin to think about the implications of human rights for their work, there are clearly limits to what can be achieved in a half day or day long training session.

Integration of human rights into impact assessment processes was regarded by most interviewees as an important way of ensuring that human rights were built into the design of services from the start and taken into account when services were reviewed or changed. In most of the case studies, the practice of impact assessment is now well advanced in relation to the six equality strands. However, the five organisations are at different stages in integrating human rights. In some cases this work is well advanced, while in most it is still in the early stages or planned for the near future.

Interviewees have reported that assessment processes can be extremely useful in providing a thorough and in-depth analysis of a service and its actual and likely impact on different groups. However, they have also highlighted the importance of carrying out impact assessment 'in the right spirit'. Rather than taking a 'tick box' approach to impact assessment, interviewees suggest that the process should be used as a framework for encouraging discussion and debate about human rights among staff and as an impetus for structured conversations with users and communities (see chapter 6 for more details). Training for staff seems to have been helpful in improving the quality of assessments carried out. Interviewees have also highlighted the value of involving service users and their representatives in the process to provide additional challenge.

Southwark Council's approach to impact assessment

Impact assessments have been taking place in Southwark Council for several years focusing first on race, then disability and gender, before all six equality strands were introduced formally in the 2005 scheme. Human rights are now being integrated into these procedures³⁸.

Assessments take place when developing a new service or substantially changing an existing service, and on a rolling basis. Departmental leaders are now responsible for indicating in their business plans when, during a three year period, impact assessments of their services will be carried out, and these will be reviewed by executive members for each portfolio.

The impact assessment process at Southwark involves three stages: an early scoping phase involving staff workshops to identify and begin to explore the issues that might be relevant from an equalities and human rights perspective; a second phase in which more detailed data gathering takes place, involving a review of consultation findings, research evidence and, in some cases, some new primary research; and a third stage in which staff address findings from stages one and two and develop and implement an action plan.

Those impact assessments that are rated (at the first or second stage) as having higher potential impact on equalities and human rights are reviewed by the council's Equality and Diversity Panel. This is a group of voluntary and community sector representatives who are knowledgeable about both the local community and the council's activities. The group acts as a critical friend, providing challenge and support. Service leads are required to demonstrate in their impact assessment reports how they have responded to issues raised by this group. (The group reviewed the schedule of relevance for the 2008 scheme to identify those policies and procedures that are likely to be priorities for impact assessment in the first place.)

Actions that are identified as a result of the impact assessment are built into service level plans and reported on, through regular performance reporting mechanisms. This was regarded by interviewees as a better approach than having a separate human rights or equalities action plan, as it helped to encourage ownership by departments. Social policy leads anticipate that quarterly performance reporting to

38 For more details see:
<http://www.southwark.gov.uk/YourCouncil/equalities/EqualitiesatSouthwark/equalitiesandhumanrights.html>

executive members will help ensure a continuing focus on service improvement with regard to equalities and human rights.

The council has developed guidance material for staff carrying out impact assessments and each department receives support from a dedicated member of the social policy (equalities) team. Those staff members with lead responsibilities for carrying out assessments are expected to attend a bespoke training session. Staff involved in delivering these sessions highlight that the quality of impact assessments coming through from departments in which staff have received training has improved considerably.

Impact assessment at the Welsh Assembly Government and the NHS Centre for Equality and Human Rights in Wales

The Welsh Assembly Government is committed to integrating equalities and human rights into policy making and has developed a number of tools to help departments with this task.

Inclusive Policy Making (IPM) is an approach to equality and human rights impact assessment which guides departments through the policy making process. It supports departments to demonstrate that a new or revised policy complies with statutory requirements and mainstreams equality and human rights. Departments carry out this process in conjunction with the Equalities and Human Rights division and interviewees have acknowledged IPM as a useful tool³⁹.

Founded in 1994 and funded by the Welsh Assembly Government, the NHS Centre for Equality and Human Rights was established to help build capacity and ensure patients and staff are treated fairly in accordance with their needs. It is a key strategic resource to help NHS Wales to embed both equalities and human rights. The Centre has recently refined its work to support the generation and dissemination of examples of good practice and to provide more expert advice on equality and human rights issues.

The Equality Impact Assessment Tool, developed by the NHS Centre for Equality and Human Rights is designed to place human rights at the centre of decision making and service design⁴⁰.

39 For more details see: <http://wales.gov.uk/topics/equality/inclusivepolicy/?lang=en>

40 For more details see: <http://www.wales.nhs.uk/sites3/page.cfm?orgid=256&pid=4315>

First, when considering the potential impact of a policy on service users, members of the public and employees, the tool prompts users to consider:

- Who will this Policy affect?
- What are the equality profiles of the individuals or groups affected?
- Is there any evidence to suggest the Policy could affect some individuals differently than others?

Secondly, in relation to human rights, it prompts users to consider whether the policy raises:

- Issues of dignity and privacy for patients or staff?
- Issues of patient choice, control, empowerment and independence?
- The protection and promotion of the safety and welfare of patients and staff?
- The treatment of vulnerable groups or groups that may experience social exclusion, for example, gypsies and travellers?
- Issues of patient restraint and control?
- The right of a patient or employee to enjoy their family and/or private life?

An interviewee from a hospital trust in Wales that uses the Centre's tool said that it has provided them with a useful framework to think through the human rights implications of their work, and is already beginning to make a difference. The Trust has used the tool to review some of its mental health policies – such as those relating to security of patients' property, observation of patients and patients' outings – and as a result has made some important changes. The process of discussing issues and deliberating how to balance Convention rights was seen to add real value to the decision-making process in the Trust.

Integration into front line decision-making

In addition to training and impact assessment, interviewees in some of the case study organisations have identified a number of initiatives that are under way to integrate human rights into front line decision-making processes and work with individual service users.

In 2006 the Department of Health began working with the British Institute of Human Rights (BIHR) to explore how human rights can be used to deliver benefits for users, carers and staff in a health setting. DH and BIHR worked alongside five pilot NHS Trusts – including two of our case studies, Southwark Health and Social Care and

Mersey Care Trust (as well as Surrey and Borders Partnership NHS Trust, Birmingham Teaching PCT, and Tees, Esk and Wear NHS Trust)⁴¹. Interviewees at both Mersey Care Trust and Southwark report that participation in this project has been extremely beneficial in helping them to develop their approach to human rights. Training and ongoing advice and support from the BIHR has given them the opportunity to deepen their understanding of human rights. A dedicated piece of work, with clear aims, project milestones and reporting arrangements has helped to focus effort and ensure that human rights are prioritised in the context of busy workloads. As interviewees commented:

'The British Institute helped us to understand the issues better...we gained some knowledge which we're now applying in other ways. The project helped to...set some goals and create a specific focus for our work. It put some structure around an area where it can be difficult to know what to do practically.'

'Human rights always seemed a bit legalistic before...quite hard to grasp. We needed some time to think it through and work out what it meant and could mean for us. The DH/British Institute project enabled this to happen.'

As a result of this project, as well as other internally-generated pieces of work, both Southwark and Mersey Care Trust have begun to create some new decision-making frameworks and tools that take human rights into account and/or integrate human rights into those frameworks that already exist. As was highlighted in relation to governance, interviewees in both sites report that this is helping to improve the quality of decision-making.

Much of this activity is still at an early stage and further work will be required to monitor its impact over the longer term. However, it seems that these initiatives have helped to stimulate energy and enthusiasm among the staff involved and have also acted as a further impetus to develop a stronger corporate approach to human rights⁴².

41 Snapshot case studies of where these pilot projects had got to were included in the document: Human Rights in Healthcare – A Framework for Local Action, published in 2006. Phase two of the DH pilot project, which started about 6 months ago, has now come to an end and an updated publication will be launched in October 2008.

42 Southwark Health and Social Care's participation in the DH/BIHR project is discussed in the following chapter.

Using human rights to review the quality of care and develop care pathways at Mersey Care Trust

Mersey Care Trust have used the DH Human Rights in Healthcare project as a vehicle for exploring how human rights principles can be integrated into the development and assessment of care pathways. The Trust chose the learning disabilities service to pilot this work because it deals with particularly vulnerable people, who can be most at risk of having their human rights breached.

Staff felt that it was important to try to find a way to enable people with learning disabilities to express their views and opinions about human rights issues relevant to their care and treatment in the inpatient services run by the Trust. So, in phase one of the project, the team developed a questionnaire to assess the quality of in-patient care, in human rights terms. The questionnaire is filled in after a user has been through the service and explores their experiences at various stages in their care journey against Articles in the HRA and FREDa principles. The questionnaire has been designed to be easy to understand so that it can be filled in by users themselves, with some help if necessary. Where this is not possible, carers are able to fill it in instead. Evaluation of the questionnaire has highlighted the need for a number of changes to make it more effective – including simplifying language and presentation still further. Amendments are now being made. An action plan, setting out how the service will respond to the issues raised by users who have completed the questionnaire, is also being drawn up.

Phase two of the project is focusing on human rights and the management of risk. Interviewees at Mersey Care highlight that in developing care pathways, professionals have traditionally been strongly focused on minimising risk. Staff in the learning disabilities service are using this part of the project to develop a new, more person-centred, approach to the identification of appropriate care pathways, which more explicitly balances risk with a consideration of individuals' rights.

As a first step, an existing risk screen, which identifies risk to self, to others and to property, was adapted to integrate human rights principles and Articles from the HRA. The Keeping Me Safe and Well Risk Screen uses a traffic light and scoring system to assess risks. Guidelines have been produced to help staff to use the screen, which set out the FREDa principles and Articles of the HRA that are relevant to each major risk. These guidelines emphasise the positive obligations on the Trust as a public body to protect the human rights of service users. The idea is that the screen is completed by staff working alongside their service users.

The screen will also be completed by an independent person who knows the user well, so that any differences between user/user representative and professional perspectives can be explored.

In addition, staff in the learning disabilities service have rewritten the Joint Risk Assessment and Management Plan (J-RAMP). The J-RAMP has been used for a number of years by the Trust and Commissioners in the PCT and social services in Liverpool to assess risk and develop management plans for people with learning disabilities who have the most complex needs. The re-written J-RAMP applies an explicitly human rights based approach to the identification and management of risks, taking into account users' personal history and history of risk-taking behaviours. The revised J-RAMP directs staff members through a series of questions and checklists that enable them to ensure they have identified the risks inherent in any condition and in their proposed management strategy (and that this is lawful and proportionate). The J-RAMP includes guidance for staff to help them understand key human rights concepts, with examples from practice to bring these to life. Staff involved in the DH project feel confident that the revised J-RAMP will result in better decision-making and argue that it will only take a short amount of extra time to complete.

Finally, staff in the learning disabilities service have developed a benchmarking tool, which allows professionals to assess appropriate levels of user involvement in their own care. Organised across eight domains – e.g. housing, leisure etc – the benchmarking tool allows professionals to consider how involvement can be 'ratcheted up', as users' health and well-being improves. In future, staff hope that this benchmarking tool can be used to develop some standards for user involvement which can be embedded into commissioning arrangements. They plan to pilot the tool in their own in-house community residential service to see how this might work in practice.

Staff participating in the DH project at Mersey Care Trust report that it has been extremely helpful in deepening their understanding of human rights and in particular in thinking about how a set of broad principles can be meaningfully embedded into everyday practice. They have identified the following learning points for others:

In developing frameworks/tools to embed human rights it's important to balance the desire to create something new and different with the need to build on processes and ways of working that staff are already familiar with. It will often be better to adapt existing tools and frameworks, rather than develop something entirely new.

Good training is essential to explain human rights principles to people and the rationale for the development of new approaches to service delivery. It's important to focus on the basic concepts and ideas and use everyday examples and case studies to help people understand what human rights mean for them, in their particular roles.

Different professional groups tend to have different mindsets, ways of seeing the world and preferred styles for learning about it (e.g. experiential, data-driven etc). These differences need to be reflected in training and support offers.

It helps to have some dedicated resource to get new projects of this kind off the ground.

It's important that projects designed to change services are underpinned by further engagement with users and carers to inform them about their rights, in a way that is easy for them to understand.

Human rights and decision-making in children's services at Southwark Council

At Southwark officers in children's services are required to take important decisions on a daily basis that affect the rights and well-being of children and their families. These decisions may include considering whether: to carry out a statutory assessment of a child's special needs; to prosecute a child's parents for their child's non-attendance at school; or to provide a child with home to school transport. In order to support children's services officers to follow the highest standards in making decisions, Southwark have developed Decision-Making in Service Delivery: A Guide to Good Practice⁴³.

The guide originated out of a human rights audit of policies and procedures in social services. Originally focused solely on how to make decisions with human rights in mind, the final version of the guide sets out a broader range of factors that officers need to consider when making a decision, including: statutory powers and government guidance; common law; custom and practice; children's services policies; the council's constitution; and employment contracts – as well as human rights and equalities legislation.

The guide sets out a number of important principles for effective decision making, including: the proper exercise of discretion, the appropriate application of policy, reasonableness and proportionality, consistency, holding a fair hearing, and giving reasons for decisions. It demonstrates how human rights need to be considered in relation to each of these aspects of the decision making process and reinforces the need to take account of key human rights principles of fairness, respect, equality and dignity. In addition, a separate chapter of the guide focuses specifically on human rights and their implications for decision making. A final chapter of the guide sets out some of the most important implications of, and risks arising from, poor decision-making, including poor service outcomes, a decline in public trust, legal challenge and loss of reputation. An A4, 'pull-out,' appendix to the guide provides further detail on the particular HRA Articles that tend to be engaged most frequently in children's services, with examples from recent case law.

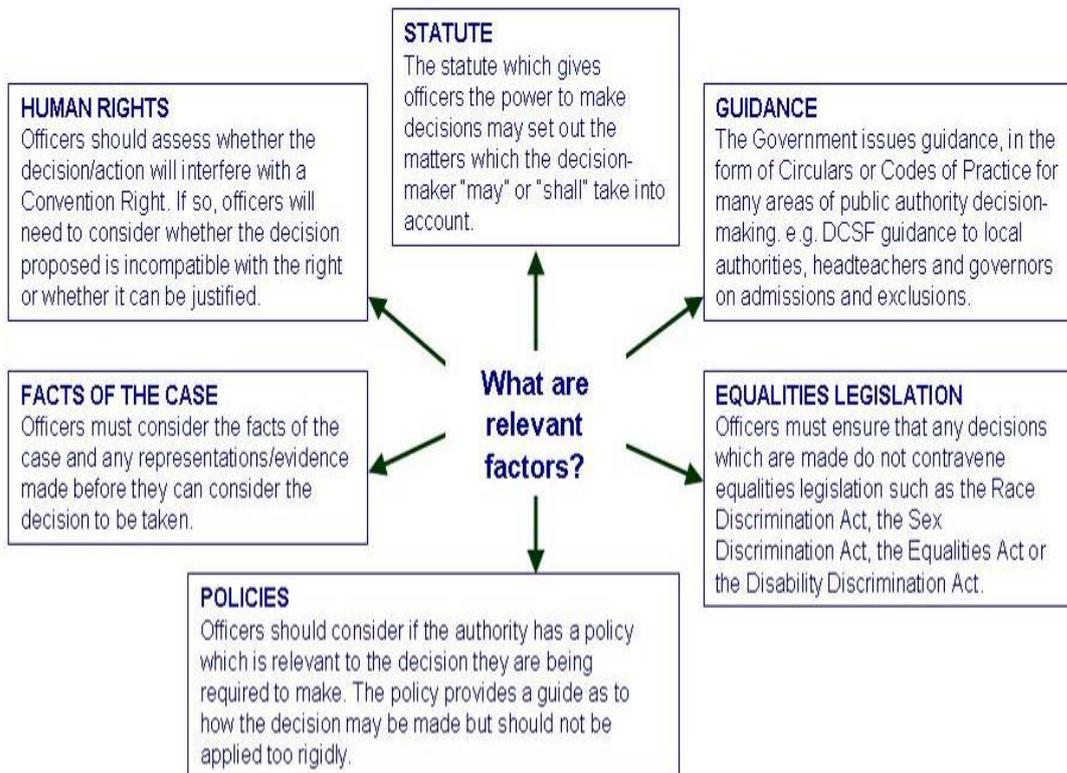
Early feedback on the guide from managers in children's services has been positive and it is hoped that this will become embedded within the service and introduced to new staff members as part of induction. Southwark plan to appoint a member of staff in children's services to champion the guide and organise a series of training events

43 Decision-Making in Service Delivery: A Guide to Good Practice, Draft 2008.

to help people to use the guide effectively. Staff at Southwark hope that, over time, the guide might be used in other areas of the council, with some small adaptations.

Principle 3 – relevant and irrelevant considerations.

The diagram below highlights the factors that are relevant for decision-makers to consider in the decision-making process.



Tracking progress and measuring outcomes

Interviewees consulted as part of this study recognised the importance of integrating human rights into performance management arrangements and monitoring their organisation's progress in embedding human rights. However, some organisations have yet to begin thinking about how to do this, and those that have tend to be focusing on tracking progress against planned activities – e.g. the numbers of staff who have received human rights training or the numbers of policies that have been impact assessed – rather than measuring the impact of their work.

More recently, some case study organisations have begun to think about how they can measure the outcomes of human rights activity, both at a departmental and corporate level. Being able to demonstrate measurable benefits for users and communities (and for staff) is seen to be critical in sustaining energy and enthusiasm for human rights and overcoming scepticism.

'We want to see how we can link this agenda to one about quality...to make people see the practical benefits of doing this. It's not enough just saying it's the right thing to do.'

As part of the Human Rights in Healthcare project, for example, Mersey Care Trust is beginning to develop some quantifiable measures based on their learning disabilities questionnaire tool and evidence of changes to care packages from patient files and records⁴⁴. Building on this work and linked to the Trust's new human rights strategy, Mersey Care also has some plans to develop a series of measures to monitor the impact of its wider corporate activities in this area. However, this work is in the very early stages. We have not yet seen evidence that organisations have developed a systematic corporate performance framework to assess the outcomes of their human rights work across the board.

<p>Estimating the costs and benefits of a rights-based approach to user and carer involvement at Mersey Care Trust</p>
<p>Mersey Care Trust has a total income for 2008/9 of approximately £186.5 million. The Trust plans to spend £380,000 on user and carer involvement (£400K if all associated posts are filled). These figures include salaries, payments to service users (£12 an hour, amounting to £82,500 in 2007/08), and administration costs. The Trust argues that this means they are spending less than a quarter of 1 per cent of their income to ensure they spend the other 99.75 per cent more effectively⁴⁵. Specifically, the Trust feels that it receives the following benefits:</p> <ul style="list-style-type: none">• Service users and carers who feel valued, have interesting things to do, and are able to develop new skills and access employment opportunities. The Trust's SURE survey (see chapter 6) has also begun to identify perceived links between rights based involvement activities and health outcomes.• Staff who are more likely to be empathetic and understanding, as they are recruited by service users/carers for their skills in this area

44 Human Rights in Healthcare Evaluation: Final Evaluation Report, Ipsos MORI for the Department of Health, July 2008.

45 Figures supplied by Mersey Care Trust.

- Managers who get a pool of service users/carers with a wide range of talents and experience to draw on
- Stronger user and carer focused governance, service change and development
- A major contribution to an organisational culture based on fairness, respect, equality, dignity and autonomy.

Interviewees at the Trust recognise the importance, over time, of being able to point to the demonstrable benefits that focusing on human rights can bring. To that end, the Trust's new human rights strategy includes an action plan which details a series of objectives designed to ensure human rights principles are integrated into planning and to capture the benefits arising from this, including:

- By April 2009, all Directorate Business Plans to demonstrate how they protect and enhance human rights of service users, carers and staff.
- By April 2010, human rights based quality indicators to be incorporated into Trust services, monitoring and evaluations.
- By April 2011, all staff performance to include human rights goals and monitoring as appropriate

Monitoring progress in embedding human rights at Southwark Council and Southwark Health and Social Care

In Southwark, progress against the council's Equality and Human Rights scheme will be monitored and communicated in a number of ways. All departments will be responsible for publishing information from assessments exploring the impact of their services and how to access them. This will be fed into quarterly performance reports on equalities and human rights actions to the Executive Member for citizenship, equalities and communities. These reports will be brought together in an annual report to the Executive and a summary report will be produced from July 2009.

In Southwark Health and Social Care, the equality and human rights team are working with the performance team to develop some human rights based performance indicators. The main purpose of the indicators is to evaluate what difference organisational changes and the learning and development programme around human rights are making to service users. Equality and human rights indicators are still in the early stage of development.

6. EMBEDDING HUMAN RIGHTS – ENGAGING WITH USERS AND COMMUNITIES, PARTNERS AND SUPPLIERS

This chapter discusses how case study organisations are embedding human rights into interactions with users and communities, and work with partners and suppliers, and emerging evidence about the impact of this work.

All of the case study organisations that took part in this research have in place a variety of mechanisms to engage with the individuals, groups, and organisations that make use of their services. The first section explores how case study organisations are using engagement with the public and with individual users to promote human rights. The following section looks at how they are approaching engagement with partner organisations.

Community engagement, involvement, and advocacy

Most of the people we interviewed regarded engagement mechanisms as central to their organisation's attempts to build a human rights friendly culture. Having effective mechanisms in place to hear and take account of the public and service users' views was one way of helping to ensure that public service organisations identify the different rights claims that might be engaged as a result of their work and develop appropriate and proportionate solutions to address these claims if and when they arise.

In addition to 'general engagement' activities around needs and priorities, most of those interviewed as part of this study recognised the importance of more specific engagement work to inform and educate users and the public about their human rights. In addition to leadership from the top of organisations, and awareness raising and capacity building among staff, informing users and the public about their rights was seen as important in 'creating pressure for change from below'.

Some case studies are beginning to take steps to do this, but the process has not always been straightforward. Interviewees have indicated that levels of understanding of human rights are not that high among some groups, and it can be challenging to find language in which to describe human rights principles and concepts in a simple and accessible way. Research also indicates that there can be a degree of nervousness about informing users and the public about their rights, at least before organisations have trained staff thoroughly and put in place robust mechanisms to deal with any issues that might arise. What seems to be required is a process for

informing users that helps them to understand their rights but also to appreciate the complex balancing acts that public bodies need to make⁴⁶.

Given the challenges associated with informing people about their rights, interviewees have highlighted the importance of ensuring that strong advocacy arrangements are in place. However, interviewees at both Age Concern and in those organisations delivering front line services identify that the coverage and quality of advocacy can be patchy.

'People sometimes don't want to complain or challenge – they need the support of advocates but there are not enough of them.'

The HRA is regarded as having considerable potential to strengthen advocacy arrangements. Interviewees highlighted that the HRA could be used informally as well as more explicitly to influence service provision. As one interviewee pointed out:

'Sometimes the mere mention of human rights can be a force for change.'

The Human Rights Act was also regarded as important in highlighting issues that may be overlooked or, while serious in nature, not necessarily regarded as 'abuse', providing increased protection for groups of people who may be least likely to complain.

In one example of successful advocacy, Age Concern Cymru was asked to advocate for a family where a man had been inappropriately discharged from a psychiatric unit with the same care package that he went in with. This meant that he could not have coped in the community in the medium term. ACC raised objections using Article 8 of the Human Rights Act, which resulted in a rearranged package of care that would allow him to live in the community for a further three years.

Despite these perceived benefits, case study research suggests that the full potential of the HRA has yet to be exploited in advocacy. There is some positive work underway in some of the case studies to address this issue and build human rights, and the HRA more explicitly, into engagement with service users and advocacy arrangements in future.

46 Deliberative Public Engagement: Nine Principles (Involve/National Consumer Council, June 2008) sets out the principles that underpin effective, deliberative engagement with the public. Deliberative processes involve a range of people in learning, discussing, and working out solutions to complex problems together. The nine principles set out in the report are that the process: makes a difference; is transparent; has integrity; is tailored to circumstances; involves the right number and types of people; treats people with respect; gives priority to participants' discussions; is reviewed and evaluated to improve practice; and participants are kept informed.

Mersey Care Trust: the benefits of a rights-based approach to user and carer involvement

Interviewees at the Trust argue that their approach to user and carer involvement helps to ensure that the rights and interests of users and carers are heard by the organisation and integrated into decision-making at all levels.

The Director for User and Carer Involvement manages a bank of users and carers who have expressed interest in being involved in engagement activities throughout the Trust. Since 2001, when Mersey Care was established, the Trust decided that service users and carers would be paid for their time (in addition to being paid expenses). Users and carers are now involved in a wide range of activities throughout the Trust, including recruitment, induction, objective-setting and performance review of staff, procurement, and finance.

Users and carers receive support and training from a network of lead officers at the Trust, including a dedicated Human Resources manager (the first post of its kind in the country). The Trust strives to treat involvement opportunities as jobs – with role descriptions/person specifications – and to help people make informed decisions and access the most appropriate opportunities. In some cases, involvement has helped users to go on to access paid employment. For example, one user who used to be a postman before becoming unwell is currently working on a placement in the Trust's post room – providing the Trust with useful expertise and providing opportunities for him to build his skills and confidence before re-entering the workplace.

Mersey Care has a Service User and Carer Forum which debates issues of interest to users and their carers and can raise concerns and request responses from senior staff. It has a link to senior decision makers through its Chair, who sits on the Trust's Board. Although patients at Ashworth cannot participate directly in this group, Forum members attend meetings at the high security facility and try to ensure the views of Ashworth's residents are aired at Forum meetings.

Mersey Care also has a Service User Research and Evaluation group (SURE) – a small group of users and carers who have been trained to carry out evaluation work to assess the impact of user and carer involvement at the Trust. SURE has recently repeated a survey of managers and users and carers, first carried out in 2005, to explore how much progress the Trust has made in involving users and carers in a meaningful way. The data collected from both service users/carers and manager surveys support the view that involvement opportunities are having

a positive effect on service users and carers themselves as well as Trust managers⁴⁷.

The survey revealed that 89 per cent of service users felt that involvement had made a positive impact upon their recovery and well being. The figure for carers was 71 per cent.

'Being involved in Mersey Care has given me more confidence and has helped me feel useful again.'

'I was a professional in a Psychiatric team prior to my mental health problems. My confidence and view of myself was very low....involvement brought my skills to the forefront and I have been able to use them in the work I do for Mersey Care.'

Seventy two per cent of managers said that involving service users and carers had made 'a lot of positive difference' to them, with a further 22 per cent saying that it had made 'some positive difference' to them; none of the managers responding to the survey felt that it had made a negative impact.

'It serves as a constant reminder/prompt that when we strip everything else away; every vested interest, all politics and tribalism that this is why the organisation exists.'

'At the meetings I attend, the service user and carer members often ask the most pertinent questions or questions not previously considered.'

Under the new human rights strategy, the Trust is planning, by April 2009, to undertake some further work to ensure that involvement of users and carers in Trust activities is more explicitly linked to human rights and evaluated on these terms by the SURE group. The Trust has plans to involve users and carers in ensuring that policies and procedures are 'human rights proofed'. In addition, there are plans to develop, by April 2010, a charter of human rights setting out what service users, carers and staff can expect. The Trust is developing a human rights communication plan for staff, service users and carers which will be implemented later in 2008.

Interviewees at the Trust also highlight the importance of ensuring that adequate arrangements for advocacy are in place. The Trust's population is very diverse, and while advocacy is strong in some services, it is recognised as weaker in others. Current mental health legislation sets out new requirements around advocacy and the local Primary Care Trusts are working to ensure these will be met.

47 An Evaluation of Service User and Carer Involvement in Mersey Care NHS Trust, July 2008.

Engaging with children and young people in Wales

The right for children and young people to participate in public life is enshrined in Article 12 of the United Nations Convention on the Rights of the Child. The Welsh Assembly Government has used the Convention as a foundation for developing all of its policies relating to children and young people and as a spur to embed and deepen engagement with this group. Interviewees have identified engagement and consultation as important mechanisms for raising awareness about human rights and establishing a pro human rights culture within public bodies.

One of the ways that the Welsh Assembly Government is engaging with children and young people is through the Children's Assembly for Wales, known as Funky Dragon⁴⁸. Funky Dragon was established in 2004 and its main aim is to provide an opportunity for under-25 year olds to get their voices heard on issues that affect them. It provides a way for young people in Wales to speak directly to the Government and policy makers. The Assembly works with local authority-wide youth forums as well as other local and national organisations to identify representatives for the Grand Council. The Grand Council meets with the Welsh Assembly Government on a regular basis to put across the views of children and young people in Wales. The Young People's Assembly also participates in decisions about national quality standards.

In 2006 the Funky Dragon undertook a project, 'Our Rights Our Story'⁴⁹, which engaged 12,000 young people in discussions about their experiences of living in

Wales, in order to determine how well they are able to access their rights under the United Nations Convention on the Rights of the Child. It found that:

Predominantly, young people felt very positive about living in Wales and being Welsh, and there was an overwhelming sense of 'pride' about the country.

However, the process also highlighted that many young people have no knowledge or understanding of their rights and struggled to respond to questions

48 For more details see <http://www.funkydragon.org/>

49 Funky Dragon, 'Our Rights, Our Story' report (2007). For more details see <http://www.funkydragon.org/en/fe/page.asp?n1=1036>.

about whether or not they are accessing them.

Southwark Council and Southwark Health and Social Care: keeping residents and service users up to date

At Southwark, the council produce a magazine, Equalities News, which is circulated to the public and sent to various community and voluntary groups and networks⁵⁰. Equalities News includes a foreword from the Executive Member for citizenship, equalities and communities and includes articles on various cultural events, and information about and feedback on consultation processes. The latest publication includes information about the council's new Equalities and Human Rights scheme and Southwark Health and Social Care's participation in the Department of Health's Human Rights in Healthcare project.

Southwark Health and Social Care plan to do more work to inform Southwark residents about human rights. This includes a generic human rights guide for users of health and social care services and their carers.

Age Concern: two new rights-based advocacy projects for older people

Age Concern's approach to advocacy is grounded in values of empowerment, social inclusion, independence and respect for people's rights and interviewees have highlighted a large number of cases where they have successfully advocated on behalf of individuals to protect and promote their rights. However, they also report that while human rights principles such as dignity and respect are at the heart of their advocacy work, to date advocates have not always explicitly referred to the HRA. Interviewees argued that there was further scope to use the HRA to add weight to advocacy work and strengthen arguments for change. Two interesting new projects are beginning to explore how this might be achieved.

50 For more details see <http://www.southwark.gov.uk/YourCouncil/equalities/CurrentIssuesfolder/EqualitiesNews.html>

Age Concern Cymru's Elder Abuse Project

In December 2006, Age Concern Cymru developed a new project to tackle elder abuse⁵¹. It is funded by Comic Relief and has been designed to influence policy and practice and develop advocacy in Wales as a key means of tackling the abuse of older people. Some early successes from the Elder Abuse Project include:

- Raising the profile of elder abuse and human rights by hosting a series of seminars bringing together experts on elder abuse, front-line professionals working in health, the police and social care, and commissioners and policy makers. The first seminar was held in May 2007 and focused on elder abuse within care homes and domiciliary care settings. The seminar explored the concept of elder abuse through the wider perspective of human rights. The seminar came up with a series of 'policy asks' for the Welsh Assembly Government and interviewees report that the seminar was successful in beginning to influence practice on the ground.
- Working in partnership with a range of colleagues, for example on the 'dignified revolution', an initiative launched in January 2008 by a group of individuals, the majority of whom are nurses, who want to improve the care of older people in hospital⁵².
- Improving the practice of local agencies – for example, after presenting with a local Age Concern office to raise the need to improve practice in health and social care around dignity there have been improvements in the practice of a local hospital.
- The Elder Abuse team has also contributed to a range of other initiatives, including helping to publicise a new legal advice line launched by Liberty, which will be an important resource for advocates.

Some of the challenges and success factors the Elder Abuse team has encountered to date in working with human rights include:

- Helping to overcome perceptions that human rights apply only to refugees and prisoners, rather than to everyone – including older people.
- Overcoming perceptions that human rights are only relevant if a case goes to court, rather a useful tool to challenge service failure at an earlier stage.

51 For more information see: <http://www.accymru.org.uk/1/4044.htm>

52 For more information see: <http://www.dignifiedrevolution.org.uk/>

- Embedding human rights principles into all aspects of health and social care, including into commissioning and monitoring arrangements and inspection, to help prevent the need for challenge at a later stage.

Age Concern England's Mental Capacity Advocacy Project (MCAP)

The Mental Capacity Advocacy Project (MCAP) is a new volunteer advocacy pilot project designed to help older people who lack mental capacity⁵³. The three-year project began in October 2006, and is funded by the Department of Health and Age Concern England. Its mission is 'to develop, explore and evaluate a volunteer advocacy service for older people who lack mental health capacity'. The central challenge in this work is to find ways to provide effective 'Non-Instructional Advocacy' with this group – in other words to develop a model of advocacy that empowers the older person, even if they have not asked for the advocate to be there. A rights based approach has been central to the development of this approach.

The main beneficiaries of this new service will be older people with dementia, but the MCAP will also be advocating for older people who may lack mental capacity due to other causes such as learning disability, stroke or brain injury. There are four local Age Concern pilot sites involved in the project: Blackpool and District (in partnership with N-Compass); Cheshire; Slough and Berkshire East Warwickshire. The pilot sites enable the MCAP to work across different regions in England, with rural and urban communities, and with ethnic minority groups and hard-to-reach groups.

The MCAP is being delivered by Volunteer Advocates, many of whom are older people themselves. They receive a full training package on a variety of topics, including the Human Rights Act. In the first year, the MCAP has recruited over 30 volunteer advocates across the four pilot sites, with over 20 active volunteer advocates who have completed their core training.

There have been a number of early referrals to the service which, although they do not mention the HRA explicitly, are clearly grounded in human rights principles such as the right to life, respect for private and family life, and the need to be treated with dignity and respect. Some examples include:

- A woman with dementia was placed, according to her wishes, in a care home by the sea. Family members had since made themselves known to the home

53 For more information see: <http://www.ageconcern.org.uk/AgeConcern/mhap.asp>

and were demanding that she be moved into another home near them in another part of the country. The Volunteer Advocate developed a relationship with the client, following numerous visits, to attempt to establish what her wishes were and to gather further information. The Volunteer Advocate had some success in developing two-way communication with the client using the 'talking mat' tool. On-going work with this tool has shown that the client is happy to continue to reside at the home. The Volunteer Advocate has attended a team meeting to support the client, who remains living in the home. The MCAP has also secured an advocate from another organisation to support family members.

- A woman recently admitted to a nursing home was referred to the MCAP by the home, as she was showing signs of distress. The Volunteer Advocate took a person-centred approach to getting to know the client in order to ascertain the cause of the distress. The Advocate determined that the client had lost contact with her granddaughter who had been struggling with debt. The Volunteer Advocate arranged for the granddaughter to visit the client to provide reassurance that the debt is being paid off. Staff at the home now provide reassurance to the client about when she will be seeing or speaking with her granddaughter. By helping her to maintain family relationships, they have contributed to her feeling more comfortable living in a new setting.

To date, those involved with the MCAP report that it is easier to cite examples of where the Mental Capacity Act rather than the HRA has been used to argue for change. However, the project is still at an early stage and the MCAP continues to investigate how they can use the HRA more explicitly in their advocacy work. The MCAP's project manager is encouraging Volunteer Advocates to share best practice, including how they have used the Human Rights Act in their work to negotiate change.

Influencing others and working in partnership

In addition to engaging directly with the public and with individual service users, case study organisations are engaged in a whole host of other activity designed to raise awareness of human rights and influence the policy and practice of partner organisations. For the Welsh Assembly and for the NPIA, who work largely through other public sector bodies, this has been a particularly important aspect of their work to promote human rights.

Clearly, having effective mechanisms in place to manage stakeholder relationships is critical in creating ‘coalitions for change’ around human rights. Several of our case studies have highlighted how their attempts to put human rights at the centre of joint working have actually helped to strengthen partnerships and re-energise partners around a common goal:

‘The rights based approach has been helpful in bringing departments to work together on a theme. It has galvanised joint working’.

The Welsh Assembly seems to have been particularly successful in stimulating debate about human rights among partners in Wales. In addition to producing guidance documents and reports, it has hosted events and encouraged networking and the sharing of good practice. Future plans for a series of action learning sessions would seem to be a positive step forward, and a response to a clear message from interviewees who took part in this research about the importance of capacity building initiatives in achieving change.

The Welsh Assembly Government: using strong links with public bodies to champion human rights in Wales

Interviewees both inside and outside the Welsh Assembly Government reported that the Assembly Government’s devolved status meant that it had stronger links with public bodies throughout Wales. These links made it easier for the Welsh Assembly Government to raise awareness about policy developments, including human rights, and for public bodies to influence policy.

The Human Rights Summit

Interviewees identified a variety of approaches that the Welsh Assembly Government has used to raise awareness about human rights in Wales. One prominent example is that of the Human Rights Summit, a collaboration between Public Services Management Wales (PSMW), the Welsh Local Government Association, the Equality and Human Rights Commission and the British Institute of Human Rights. Held on 11 March 2008, the event attracted over 150 practitioners, thinkers, policy writers and individuals working within the broad public service community of Wales. The summit sought to create a new narrative and understanding of the relevance of human rights to people’s lives in Wales. It set out to answer the following questions:

- What are human rights? Why do we have them and why do they matter?

- How can the human rights framework help to shape and deliver better and more responsive public services?
- How do we dispel the myths that surround the notion of human rights and create a new narrative that moves people beyond an understanding of human rights as legal norms that must be upheld?
- What is the relationship between equality and human rights? In what ways can we engage individuals with the values of respect, dignity, fairness and equality?

The event was deliberately very different in design, making use of video presentations from disadvantaged individuals from across Welsh society and creating plenty of opportunity for discussion. One interviewee who attended the Summit reported that it had helped to 'turn the light on' – highlighting the relevance of human rights for the day to day work of their hospital trust. Since the Summit, the trust has worked to integrate human rights with equalities. A new, integrated, equalities and human rights sub-committee now reports directly to the Board giving human rights a prominent profile at the top levels of the organisation. An integrated equalities and human rights assessment tool is also being used to review policies. The use of notice boards and a dedicated intranet site is helping to raise awareness of human rights more broadly across the trust and, most recently, a new 'dignity in care' sub-group has been established.

One of the key outcomes of the Human Rights Summit has been the creation of a new Wales-wide human rights public service network to facilitate the sharing of existing knowledge and notable practice. A programme of action learning has been designed and developed in collaboration with the BIHR, bringing together different disciplines and professions to work across boundaries and policy areas – providing the opportunity to be genuinely collaborative.

Human Rights Road Shows

The Strategic Equality and Diversity Unit has also undertaken a series of road shows to promote equalities and human rights, as part of the celebrations of the 2007 European Year of Equal Opportunities. Personal accounts about the reality of living in society and experiencing inequality were used to illustrate what human rights meant to people and how these issues could be tackled. Around the same time a number of schools were visited to raise awareness about children's rights.

Mersey Care Trust: celebrating and promoting rights-based approaches to service delivery

One of the ways in which Mersey Care Trust encourages a continuing focus on user and carer involvement and human rights is through their Positive Achievement Awards⁵⁴. Open to services within the Trust, and to organisations within the Trust's footprint, these awards recognise '*the hidden gems in mental health*'.

In 2008, the Trust received 130 nominations for individual and team awards, in a number of different categories:

- Authentic engagement and involvement
- Creativity and innovation
- Improving the patient experience
- Equality and human rights
- Challenging stigma
- Winners' winner

NPIA: supporting good human rights practice in the police force and the wider police family

The NPIA's professional practice unit produce and disseminate policing Doctrine, on behalf of its tripartite governance arrangements – involving the Home Office, the ACPO and the APA⁵⁵. The primary customer for this element of the NPIA's work is the ACPO, which commissions the NPIA to carry out much of this work.

The NPIA produces three levels of Doctrine:

- Codes of Practice – these are produced under the provisions of Section 39A of the Police Act 1996 (Codes of practice for Chief Officers). Where the Secretary of State proposes to issue or revise a code of practice, the NPIA is required to prepare a draft of the new code or of the revisions. Before doing so, the NPIA must consult with the APA, the ACPO and any other relevant parties. Although

54 For more details see: <http://www.mersecare.nhs.uk/positiveachievements/default.asp>

55 For more details see: <http://www.npia.police.uk/en/5214.htm>

Codes of Practice are brought into effect through a statutory instrument, they are not legally binding. However, in discharging any function to which a Code of Practice relates, a chief officer must 'have regard' to the code. Although a breach will not result in criminal or civil liability, courts can take the breach into consideration when deciding whether to admit related evidence.

- Guidance: the next level of Doctrine is guidance produced by the NPIA and endorsed by the ACPO and other bodies. Guidance tends to be associated with national standards, which feed into inspection regimes, so has a certain weight behind it.
- Practice advice: this is advice on topics that forces have asked for further help with. Forces are not bound by the NPIA's practice advice, though it is likely to be picked up by inspectorates as good practice.

For all three types of Doctrine, the development process begins with a literature review including a survey of existing practice and specific recommendations – e.g. from Her Majesty's Inspectorate of Constabulary (HMIC) or the IPCC. The NPIA works closely with the relevant part of the ACPO in developing Doctrine. In addition, it engages directly with forces in this process to ensure that Doctrine meets their needs, is nationally appropriate and relevant, and can be implemented.

Staff involved in the development of Doctrine comment that human rights are integral to the NPIA's activity in this area. Some examples of the NPIA Doctrine and guidance for the police force that make reference to human rights include:

- Guidance on the management of police information, which sets out how the HRA impacts on the purpose of and processes for recording and collecting information.⁵⁶
- Stop and search guidance in relation to the Terrorism Act, which helps to make human rights real for front -line staff. 'The power conveyed by section 44 of the Terrorism Act 2000 must be used in accordance with the Human Rights Act 1998. Any police activity which infringes the rights of an individual under the Human Rights Act must be proportionate, legal and necessary. People must be treated with sensitivity, respect and dignity'⁵⁷.
- A new 250 page guidance manual for practitioners on the lawful use of covert

56 NPIA: Guidance of the Management of Police Information (2006).

57 NIPA, Stop and search in relation to the Anti Terrorism Act (2007).

powers. This is the first comprehensive guidance of its kind and was produced after extensive consultation. The guidance seeks to embed the Regulation of Investigatory Powers Act (RIPA) 2000 and human rights principles into covert policing and is supported by learning programmes for officers involved directly in this type of work, as well as senior investigating officers and the ACPO who sign this action off. The NPIA also runs a national helpline to help support police officers and those involved from other agencies – including local authorities.

In addition to these activities and products, staff in the legal services unit at the NPIA publish a journal called the NPIA Digest⁵⁸. This sets out developments in legislation and case law and is published monthly. The Digest includes a section on diversity and equality and human rights. It is produced not only to inform the NPIA staff, but also the wider 'police family'. Around 25 of the 43 police forces subscribe to the Digest which is also freely available on the NPIA's website. The Digest has about 10,000 individual subscribers – the majority of whom are police officers, but who also include academics and policy makers in approximately 30 countries around the world. The Digest is produced by staff with environmental scanning roles in the legal services department. These staff are in contact with networks of scanners working in police forces around the country who meet on a regular basis to discuss developments in policing and the law.

Commissioning and procurement

With more services being commissioned or procured rather than directly provided by the public sector, interviewees recognised the importance of ensuring that human rights principles are embedded into commissioning and contracting arrangements. However, it seems that while some positive steps are under way, this work is still at an early stage. This study did not explore this complex area in any depth; further targeted research will be needed to explore how effective these arrangements are in delivering improved public services over the longer term.

58 For more information see: <http://www.npia.police.uk/en/6288.htm>

Integrating human rights into contracts and commissioning at Southwark Council and Southwark Health and Social Care

At Southwark, the council's standard contracts have been amended to ensure that human rights issues and obligations are clearly set out. The council's standard conditions of contract for the provision of medium and large-scale services now impose an obligation on service providers to make sure that the way in which they deliver services is consistent with the principles, rights and duties set out in the HRA. This provision has been adapted for use in other forms of contract which are used for services of lower complexity and/or value.

Southwark Health and Social Care have been using their involvement in the DH's Human Rights in Healthcare project to explore how human rights can be integrated into commissioning arrangements. With more care being provided in the independent sector, they are concerned to find ways to ensure that users of commissioned services and their families are treated with dignity and respect.

In the first, scoping, phase of the work, staff at Southwark Health and Social Care decided to focus on the commissioning of fertility services. This stage of the work enabled them to explore in more detail the nature of the commissioning process as it currently operates and to begin to identify some of the human rights issues that might be potentially relevant at different stages of the process. In phase two, staff are focusing on Southwark Health and Social Care's broader approach to commissioning and how human rights can be integrated into this. The PCT's equality and (now) human rights lead and another colleague are developing a human rights based commissioning framework, with the support of the British Institute of Human Rights. The framework will set out a range of practical steps that commissioning organisations can take to build dignity and respect into service delivery for the future.

Commissioning is an important priority for Southwark Health and Social Care, and staff involved in this project feel that it is helping to deepen Southwark's understanding of the commissioning process and drive forward a more robust approach, which places individual rights and well-being at its centre. They report that human rights issues are now regularly raised in commissioning meetings and have been built into the Commissioning Operating Plan 2008, which has been submitted to NHS London.

A human rights training programme has been developed for staff in Southwark Health and Social Care around this project and over 600 staff have now been trained. As a first step, this activity has focused on general awareness-raising about human rights and the HRA. As a next step, Southwark Health and Social

Care is planning to develop a more detailed support programme for commissioning (involving guidance, training, peer review and best practice). It is also planning to explore how it can define service outcomes in the context of privacy, dignity and respect and make further use of patient feedback to inform commissioning arrangements.

A learning day on commissioning and human rights held in July 2008 (as part of the DH Human Rights in Healthcare project and involving all participants in the project, not just Southwark Health and Social Care) identified the following important learning points for those attempting to integrate human rights into commissioning arrangements:

- Every commissioning framework needs to be explicit about human rights and a Trust's commitment to ensuring that the human rights of service users are respected, protected and fulfilled by service providers.
- Contracts need to be underpinned by some clear human rights indicators. Provisions such as 'adherence to human rights and equality duties' is too vague; there need to be some precise outcomes for each duty.
- Practical guidance on human rights for commissioners and providers should be produced. Key messages on human rights need to be clear and simple.
- Leadership needs to be taken in this area, e.g. by the Healthcare Commission and other inspectorates/regulators.
- Commissioners need to identify which areas of commissioned services have a higher risk of raising human rights issues and prioritise these.
- Effective structures should be in place to enable commissioners and providers to communicate with service users and take their views and opinions into account.
- A key challenge is how to capture human rights breaches that are not obvious and often do not get fed back to commissioners.
- Human rights should be included in clinical and corporate governance and risk management.
- There should be a 12th competency on human rights and equality in World Class Commissioning.
- Resources on human rights should be provided to community groups in accessible formats and languages.
- Lessons from litigation against NHS Trusts should be collated and shared across the health service.
- Human rights should be placed at the heart of Service User Charters, e.g. the Care and Dignity Charter.

Integrating human rights into contracts at the NPIA

Sir Michael Bichard's Inquiry into the Soham murders came up with a number of recommendations which included the need to improve the management and sharing of information and intelligence by the Police Service at national and local levels, and for IT systems to support this. At the NPIA, the response has been to establish the IMPACT programme. The key elements of the IMPACT Programme are:

- Management of Police Information (MoPI): helping forces to meet common standards for police information management through a statutory Code of Practice and associated guidance.
- IMPACT Nominal Index (INI): which is enabling forces to establish whether any other force holds information on a person of interest .
- Police National Database (PND): this will provide a single access point for searching information held across all of the forces' main local operational information systems and national police systems.

Recognising that this work was likely to raise some important issues around equality, diversity and human rights issues such as the right to privacy, the NPIA carried out a public consultation on the implications of these changes. This included inviting responses from 40-50 community and other organisations and discussion at the Home Office select committee. Following feedback from this process, the NPIA has sought to set operational requirements and embed these into contracting arrangements with suppliers.

7. THE BENEFITS OF ENGAGING WITH HUMAN RIGHTS

Interviewees across the five case study sites have identified a number of different types of benefits of working with human rights and taking steps to embed human rights principles into organisational policy and practice. This chapter summarises the most frequently mentioned benefits. Many of these benefits have been alluded to in previous chapters.

1. Improving services and contributing to the creation of a fairer, more inclusive, society

Most case study interviewees were keen to emphasise that for them and their organisations the primary rationale for engaging with human rights was to ensure that the needs of individual users, rather than the priorities of service providers, were placed at the centre of service design and delivery. Adhering to human rights principles was seen as an important way of creating services that contributed to a fairer and more just society.

2. Establishing a set of service standards that are non-negotiable

In the face of pressure to achieve challenging performance targets in an increasingly tough financial context, interviewees highlighted the importance of the HRA and human rights principles in establishing some non-negotiable standards that can be used to 'safeguard' vital services, particularly for the most vulnerable. Given the complexity of the environments in which they were operating and the many competing and sometimes contradictory pressures and drivers shaping activity in their organisations, interviewees emphasised that hard decisions would often need to be made. However, the HRA had, at least in principle, the potential to ensure that the needs and interests of users and communities were prioritised.

3. Reinforcing related agendas and ensuring continuity

Research identified a perception that a number of other agendas and drivers are pushing in a similar direction to the HRA. Legislation such as the Mental Capacity Act, UN Conventions and Principles covering children and older people, and policy agendas concerned with user choice, personalisation, engagement and involvement were all regarded as important in encouraging a focus on the FREDA principles. The HRA was thought to reinforce these other agendas and help to guarantee a rights-based focus over the longer term, as other policy agendas come and go.

4. Adding weight to the equality and diversity agenda

Interviewees emphasised the value of the HRA and human rights principles in strengthening the equality and diversity agenda. In relation to individual cases of discrimination, the HRA and human rights principles were seen to add weight to arguments and help reinforce the need for change. At a more strategic level, the two agendas were seen as complementary and reinforcing, and springing from common values, even if the precise nature of these links was in need of further clarification.

5. Setting out a universal set of standards 'for everyone'

While equality and diversity legislation focuses on protecting and promoting the rights of individuals from particular groups, interviewees suggested that human rights can provide a helpful focus on what communities have in common. Human rights can establish a set of shared standards that apply to all. This can be of particular value in a highly diverse context, where human rights principles can underpin community cohesion initiatives.

6. Inspiring staff and re-connecting them with core public service values

Though efforts to embed human rights have not been without their challenges, interviewees in some case studies have found that engagement with the agenda, if appropriately managed, can have real benefits in terms of staff morale and enthusiasm. Human rights can help to remind staff why they chose to enter public service in the first place and what they are aiming to achieve, and have already delivered, for users and communities. Some case study sites have used human rights as a 'way into' debates about purpose, values, and plans for the future – for example at team or service away days – and report that this has had an energising effect on staff.

5. Improving decision-making and preventing problems further down the line

Research undertaken as part of this study confirms that a focus on the Articles in the HRA and the principles underpinning the Act can strengthen decision-making at both corporate and service levels and help to prevent service failure. Human rights can provide a useful 'lens' through which to explore difficult issues, helping to shed light on the different, sometimes competing or conflicting, interests of different parties. When individual rights have been engaged, and a public body intervenes, human rights principles can provide a 'check and a balance' – helping to determine appropriate and proportionate action.

8. Making the case for change

Evidence from the case studies suggests that the full potential of the HRA to strengthen advocacy has yet to be exploited. However, interviewees have provided examples of where human rights principles and the Act have been used by service

users and their carers and by independent advocates to challenge existing practices and achieve change. Interviewees in some case studies have also highlighted how staff are beginning to use human rights to challenge outmoded practices or services which are designed around the needs of service providers rather than users.

9. Shining a light on ‘Cinderella’ services

In addition to improving the quality of individual decisions, interviewees have highlighted the potential value that human rights can add as a ‘lens’ through which to review and improve entire service areas. Interviewees have suggested that human rights might prove particularly helpful in ‘shining a light’ on ‘Cinderella services’ – those services that are not subject to extensive scrutiny or inspection and may therefore lack strong incentives to improve efficiency and effectiveness. Citing the example of community equipment, one interviewee argued that human rights and the HRA could be used to encourage a stronger focus on identifying and responding to individual needs.

10. Tackling ‘hot topics’

Linked to point 9, above, interviewees in some of the case studies have found human rights to be a helpful framework through which to explore challenging topical agendas – such as commissioning, or partnership working, or personalisation. They have highlighted examples of where a focus on human rights has helped them to think through complex emerging agendas in a productive way that retains a focus on core values of equality, respect and dignity.

11. Managing organisational risk

Although almost all the interviewees in our case studies were keen to emphasize that their engagement with human rights was stimulated by a desire to improve services, it is clear that a concern to avoid litigation and the risk of damage to organisational reputation has also been a driver. Although there is no guarantee that building human rights considerations into decision-making processes will prevent decisions ending up in the courts, interviewees felt that having robust arrangements in place was an important way of minimising this risk.

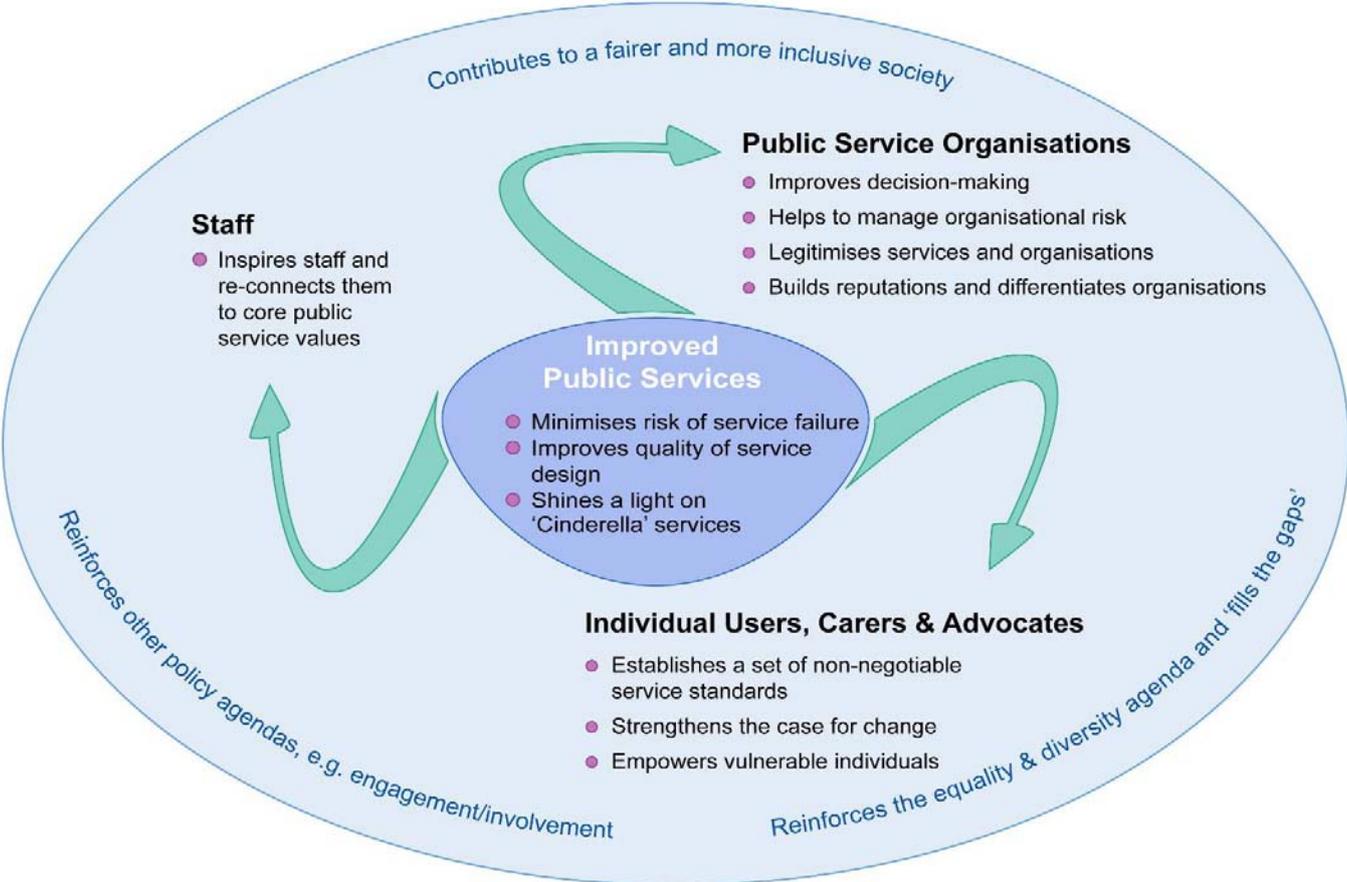
12. Legitimising and differentiating services and organisations

For many interviewees across the five case studies, human rights had an important part to play in their attempts to build public trust and confidence in services and in their organisation and in legitimating action and decisions.

Interviewees in one of the case studies also identified how human rights can be used as a way of differentiating organisations and building a more distinctive corporate profile. Operating in an increasingly competitive market for users, services, funding,

and staff talent, they felt that a focus on human rights was one important way in which they had been able to distinguish their organisation and help promote its positive values and culture.

Benefits of engaging with human rights



8. SUMMING UP AND MOVING FORWARD

This chapter returns to the aims of the project and briefly summarises some of the most important findings from our work. It sets out the key learning points for other public sector bodies and then goes on to outline some ways in which organisations across the public sector might be supported in making more progress in this area. The chapter reflects both what was found in the case study research and our own analysis and suggestions for possible ways forward.

Headline messages

This research set out to identify good practice in the public and voluntary sectors in relation to establishing a human rights culture and to identify the steps that organisations have taken in embedding human rights into their policy and practice. It also sought to assess the benefits of using human rights approaches for organisations, service delivery, customers and staff, and highlights the main lessons for other organisations.

It is important to reiterate that as a result of the difficulties of ascertaining what ‘good’ practice looks like in this field (see chapter two), the project was reframed as an investigation into ‘lessons from the field’. It is also important to remember that this research project explored the experiences of a small number of organisations, in which we conducted research with a limited number of staff. For these reasons the messages set out in this report need to be treated with caution. Nevertheless, some useful lessons have emerged.

Though a concern to avoid the risks associated with legal challenge under the HRA has undoubtedly been a factor in encouraging a focus on human rights, interviewees across the case studies have emphasised that their organisations have been primarily driven by a desire to improve services. In several cases, the HRA itself does not seem to have been the primary driver for change; other pieces of legislation or guiding documents have been as, if not more, important in encouraging a focus on the FREDA principles, which underpin the Act. However, in all of the case studies a stronger focus on the Act is regarded as an important priority going forward.

Case study organisations have interpreted the significance of human rights in different ways, reflecting the different purpose and functions of their organisation, the legal and policy contexts in which they operate, and their organisation’s particular values and corporate culture. For some case study organisations, engagement with human rights has flowed from a political or campaigning commitment to build a fairer, more inclusive society. For others it has grown out of a commitment to improve

services for those that are most disadvantaged or vulnerable. The primary focus of work in some of the case studies has been on finding ways of integrating human rights into everyday interactions between staff and vulnerable service users. In others, it has been building human rights into policies and procedures and into work with and through other public sector partners.

In each of the five case study organisations some interesting initiatives are underway to promote human rights and embed them into different aspects of organisational practice. Some positive benefits are beginning to flow from this work, however much of it is still at an early stage and further robust monitoring will be required to determine what tangible difference this makes for users and communities over the longer term.

While there are pockets of promising looking practice in particular areas of work, efforts to ensure that human rights become a core part of each organisation's corporate culture are still on-going and likely to require sustained effort into the future. As one interviewee commented:

'At the moment, if you cut through the organisation, you would get (another important corporate agenda). You would also find a great pocket of practice (in one particular service area). But this is a relatively small part of the organisation...It has taken about 4-5 years to get (the other corporate agenda) into the culture of the place. And this is relatively simple in comparison...human rights will take longer. Integrating it into decision-making tools will help it to become part of the routine...part of the culture of the place.'

Although interviewees have identified some common success factors for developing a strong corporate approach to human rights (some of the key elements are set out below), it may be too early to say with any degree of precision what an organisation with a 'human rights culture' looks like or how it might operate. In our view, further work is required of both public service organisations and the bodies that support them to articulate this, building on the lessons set out below.

Learning points for public service organisations

Engagement with human rights has clear benefits

Interviewees in our case study organisations are clear that engagement with human rights is beginning to result in benefits. While most organisations are not currently capturing these benefits in very systematic ways (and in some cases, initiatives are not yet seen to be at a stage where 'measurable' benefits can be discerned), there is a growing body of activity which is perceived to be benefiting users, carers and

communities, staff, and public sector organisations. Key benefits include: establishing some non-negotiable service standards that apply to everyone; providing a framework for making better decisions; strengthening advocacy; helping to re-energise staff and re-connect them with core public service values; managing organisational risk; and enhancing organisational reputation and distinctiveness.

Leadership is critical

Senior level commitment to human rights has been a critical success factor in all case studies. Visible support for human rights from politicians, Chief Executives, Board members and senior staff has been fundamentally important in beginning the journey to embed human rights. In addition, the creation of a supportive network of committed champions who can advocate for human rights among staff across the organisation, stimulate interest, and create pressure for change, has been invaluable.

The case studies suggest that one of the most important leadership actions is to demonstrate to staff and stakeholders how human rights fit with and reinforce other corporate agendas. This act of linking with other corporate priorities and values appears to have been important in ensuring that organisations move beyond narrow compliance to establish an active and embracing human rights culture. In future, we suggest that organisational leaders and champions need to give more thought to articulating what their particular organisation might look like and how it might operate if human rights were embedded into every aspect of its work.

A focus on winning hearts and minds and building human resource capacity is the best approach

All case study interviewees recognised the importance of the legal framework in which human rights operate, and the importance of integrating human rights into organisational policies and procedures and this research has identified some strong practice in this respect. However, it seems clear that what has made a real difference in embedding human rights and creating energy for change has been a focus on winning hearts and minds and creating human rights 'champions' within organisations. Good quality training has played a critical role in raising awareness of the benefits of focusing on human rights, helping to overcome misconceptions, and generating enthusiasm among staff.

The most effective training seems to be that which is conducted with the active buy-in of senior managers; is tailored to the specific needs of each service or department; and includes an element of action planning, allowing staff to identify concrete ways in which they can embed lessons learnt into their working practice. A strong focus on human rights in recruitment and induction also appears to be important in instilling human rights principles and values from the start.

Engagement with communities and other stakeholders can be a good platform for embedding and promoting human rights

Evidence from this study suggests that a strong culture of commitment to public and service user involvement and effective mechanisms to take account of people's views can be a valuable foundation for embedding human rights. Engagement helps public bodies to anticipate the rights claims that might arise as a result of their work and to develop appropriate and proportionate solutions to address these claims if and when they arise.

For organisations that do not deliver services directly to the public, but seek to influence the work of others, a culture of openness and effective mechanisms for engaging with front line organisations are critical in promoting human rights and gaining an understanding of the challenges that front line organisations face in embedding human rights into their practice.

Informing people about their rights and having robust arrangements in place for advocacy are critical

In addition to 'pressure from above' in the form of committed leadership, evidence from case study organisations has highlighted the importance of building pressure for change 'from below'. Organisations involved in direct service delivery need to inform users and their carers about their rights in language that is easy to understand. They also need to support the creation and strengthening of advocacy arrangements which help service users to articulate their needs and concerns – in particular those users who may be most vulnerable and least able to challenge service providers themselves.

Human rights need to be integrated into decision-making processes

One of the most significant blocks in embedding human rights for many of our case studies has been the challenge of making this agenda 'real' and 'meaningful' for staff. Training has been a critical first step in translating principles into practice. This research also demonstrates the importance of integrating human rights into processes for making decisions, both at a corporate level and within services and departments. Rather than creating a host of new, separate, human rights tools and decision-making frameworks, it seems that integration into existing tools and frameworks that staff are familiar with might be more successful.

Ways in which external stakeholders can support human rights

Improved support for human rights capacity building

Many of those consulted as part of this study highlighted the benefits that they had gained from external training provision, at least in the early stages of their human rights journey. High quality external training was particularly valuable in providing detailed knowledge of case law and in helping staff to understand how to interpret this in the context of their everyday work. In addition, many of our interviewees reported that on-going support from a knowledgeable external advisor has been critical in helping them develop their approach to human rights.

Some interviewees suggested there might be a role for a human rights capacity building 'gate-keeping' function, bringing together, promoting and validating the different sources of training, advice and support that are available to public sector organisations. This seems to us to be an idea worth exploring further.

Further sponsorship for pilot projects demonstrating how human rights can be integrated into everyday work

The case studies clearly demonstrate how discrete pieces of work to explore how human rights can be integrated into day-to-day work have been extremely helpful. Internally led and nationally sponsored projects such as the Department of Health's Human Rights in Healthcare project have deepened understanding and helped to identify concrete ways in which human rights principles can be put into practice. In moving forward, we consider there is a strong case for further sponsoring of pieces of work of this kind.

Further there may be value in organising a series of human rights 'thematic reviews'. These reviews might involve a range of activities designed to raise awareness of human rights and explore tangible, practical, ways in which human rights can be integrated into different service or thematic areas. Thematic reviews might provide the opportunity to begin to articulate with more clarity and precision what a service that had truly embedded human rights might look like. The case studies have highlighted the particular contribution that human rights can play in improving the effectiveness and efficiency of 'Cinderella' services – those smaller services which are not subject to external inspection and may lack strong incentives to improve. These services might be sensible early targets for thematic reviews of this kind.

Opportunities to network and share good practice

Reflecting the findings from many other research studies, interviewees told us that more opportunities to network and share experiences with colleagues engaged in similar activities would be one of the most effective ways of strengthening their

approach to human rights. Networking and learning activities might include: a series of action learning sets exploring the human rights implications of particular issues or themes, perhaps resulting in a new tool or guidance; conferences and other awareness-raising events; and peer reviews of progress in embedding human rights, where teams might visit similar organisations to share practice and act as a 'critical friend'. There is some good emerging practice in the Welsh Assembly Government to improve networking and learning which might be worth exploring further.

While some would value further guidance and new decision-making tools and frameworks (see below on the links between equality and diversity and human rights), for the most part, interviewees warned against reinventing the wheel. This study identified plenty of tools and frameworks which are already available and in development. What would seem to be most helpful is if these tools could be drawn together and shared more widely so that organisations across the public sector can make the best use of them.

Guidance on how to integrate human rights with equality and diversity

The research suggests that one area in which new guidance and support would be particularly appreciated is in integrating human rights with equality and diversity. While most interviewees appeared to have clear conceptualisations of the links between these agenda (with human rights as the overarching 'umbrella', or the bedrock or foundation, of principles that apply to all), a few were unclear and felt that further guidance would be helpful on how to draw these issues together and develop an integrated corporate response.

Assistance in communicating human rights to users, carers, and communities

There is already some positive practice underway in informing users and the public about their rights; for example the work of Funky Dragon, the Children's Assembly in Wales. Case studies have also highlighted some interesting ideas for the future such as Mersey Care Trust's plans to train a pool of users and carers to act as co-facilitators of human rights training and 'consultants' to service areas on these issues. However, it is clear that more work is required in this area. It will be useful to track those initiatives that have been highlighted in this report and others to draw out and share the learning – in particular about how engagement around rights can be conducted in such a way that builds trust and positive relationships between users and communities and public bodies.

Advice on tracking progress and developing appropriate indicators of success

In the original brief for this work, the Commission stated its interest in carrying out a cost/benefit analysis for embedding human rights within public sector organisations. However research conducted as part of this study indicates that achieving this

aspiration is still some way off, and is likely to prove challenging. In most instances, case study sites are not collecting detailed information on the costs of their human rights activity nor are they collecting information about benefits in a systematic way. At the present time, indicators being used to track progress tend to be concerned with activities – such as the numbers of policies that have integrated human rights or the numbers of staff who have received human rights training – rather than outcomes.

Our view is that further work is now required to help organisations in the public sector to establish what a performance management regime that embedded human rights might look like. This needs to build on emerging lessons from current initiatives, such as the DH Human Rights in Healthcare project⁵⁹. On the basis of this (limited) piece of research, we suggest that any performance framework would need to include the following elements:

- Some clear human rights objectives and priorities, linked to an organisational narrative about what it means to take human rights seriously and embed human rights into every aspect of organisational life.

A range of indicators to measure performance against these objectives. It seems likely that a mixed basket of different kinds of indicators might be required. These might include:

- Indicators related to service outcomes that link to Articles in the HRA – e.g. mortality and injury rates in care etc.
 - Indicators related to the FREDA principles – for example perceptions of treatment by public service organisations
 - Indicators designed to measure progress in delivering key activities in a human rights plan – e.g. numbers of front line staff who have received training, numbers of impact assessments carried out
 - Indicators designed to measure the outcomes of this activity – e.g. percentages of staff who have found training to be useful, improvements in levels of understanding as a result of training, evidence of changes to service design and delivery linked to training activity.

59 The Final Evaluation Report for the Human Rights in Healthcare project provides useful information about some of the indicators that the five pilot sites involved in the study have been using to measure their progress. Any future work should build on this foundation.

Indicators linked to complaints and legal challenge – e.g. numbers of complaints brought against the organisation involving human rights, numbers of complaints upheld, numbers of complaints brought by different groups etc.

- Incorporation of objectives and indicators into corporate performance ‘dashboards’, departmental/service and team objectives, and individual performance expectations and appraisals
- Regular reporting of progress to senior management teams, governing bodies, and to users and the public.

Further promotion of human rights by key stakeholders

This project was based on a very small number of case study sites, only some of which were involved in delivering services direct to the public. Nevertheless, some interviewees in these organisations suggested that it could be helpful if more explicit reference was made to the Human Rights Act and human rights principles in external inspection and audit. Though keen to ensure that the complexities of embedding human rights were recognised, some interviewees felt that a greater degree of external challenge might help to raise the bar in relation to service quality and ensure that people are treated with dignity and respect.

Further promotion of human rights by other key stakeholders including government departments, sector development agencies, improvement bodies and partnerships, and national training providers would also seem to be helpful. There may be scope for sector development agencies, for example, to use human rights more explicitly as a ‘lens’ through which to explore and tackle topical issues such as partnership working, personalisation and commissioning.

There may also be scope for agencies providing, sponsoring and funding management and leadership development programmes to do more to ensure that human rights are integrated into training offers, alongside equality and diversity issues.

APPENDIX 1 – INTERVIEW GUIDE

Background

Thank you for agreeing to take part in this research. The project is one of three new studies that the EHRC has commissioned as part of the Human Rights Inquiry – which will also include an open call for evidence, Inquiry Panels on various issues and some work to explore public perceptions and experience.

This purpose of the project is to explore the experience of promoting and embedding human rights principles within organisations that deliver public services. We want to learn from those organisations that have made good progress in this area and identify some practical lessons that will help to promote effective practice more widely. Your organisation will be one of five case studies for this work. The case studies will involve some background research and interviews with 6-8 people from different parts of your organisation.

Before we proceed, I just want to talk to you about how the information from our research will be used and reported. The focus of this work is very much on what works. However, we hope that you would also be willing to share with us some of the challenges you have experienced and the factors that have helped you to address these. We won't identify any individual by name in our report, though we will want to cite examples of effective practice that relate to particular organisations. In these instances, we'll ask for your permission before making reference to your organisation in our report.

OPM will not be required to disclose the identity of sources to the EHRC, except in exceptional circumstances where there is evidence of serious breaches of the Human Rights Act which endangers individual life or welfare.

Are you happy to proceed on this basis?

Questions

Context, awareness and understanding (for all interviewees)

- In your organisation, what are the major drivers for responding to human rights? (Probe: internal and external drivers; legal drivers and sanctions and role of Commission; pressure from inspectorates, etc)
- What do you think are the major implications of human rights for your organisation? (Probe: potential benefits, risks and challenges)
- How significant are human rights, in relation to other corporate agendas you are currently tackling?

Organisational responses – policy and practice (focus on those questions that are most relevant for each interviewee)

- Where does leadership for human rights lie in your organisation? (What works well/less well about the way human rights have been championed in your organisation?)
- Does your organisation have a clear vision of what it would look like if human rights were embedded into all aspects of its practice? How would you describe this?
- Have human rights been incorporated into corporate and service level plans and policies? (How was this done? To what effect?)
- What steps have been taken to ensure that staff members understand the main provisions in the HRA and the implications for their areas of work? (E.g. training and awareness raising, incorporation into job specs etc)
- Is your organisation regularly monitoring and disseminating developments in case law in this area? (Where is this being done? How effectively is it being carried out?)
- What role has human rights played in discussions and joint working with partners?
- How has a concern for human rights been built into procedures for commissioning and contracting services?
- What role have human rights played in your dialogue with users and communities?

Barriers, challenges, and learning about what works (for all interviewees)

- In which areas of your organisation's practice do you think you have made the most progress in relation to human rights? What explains this success?
- What have been the major barriers and challenges you have faced in embedding human rights in your organisation? How have you overcome these obstacles?
- What would be the most useful learning for others from your experience?
- What sources of guidance and support have you found most useful to date and what would you find most valuable in meeting future challenges? Where should this come from? (External and internal sources of support)

Evidence of impact to date (for all interviewees)

- Thinking about all the issues we have discussed today, what practical difference would you say your work has made for staff, users and communities? How do you know? (Probe: what data are they collecting? How robust is this?)
- What difference has a concern with human rights made, over and above what might have been achieved for other reasons – e.g. as a result of E&D legislation and other policy drivers. (Probe: closing gaps in E&D legislation, stronger focus on vulnerable groups, framework for making difficult decisions, etc).
- Are you currently collecting data on the costs associated with embedding human rights and any savings or efficiencies you might have achieved? If yes, what does this data tell you? If no, is this an area that you might be exploring in future? How do you plan to do this?

Specific initiatives and programmes (to be adapted for each study)

- What were the main drivers for this initiative/programme? (Probe: internal and external drivers; legal drivers, pressure from inspectorates, users, etc)
- Who has led and championed this initiative?
- What have you actually done?
- What has worked well and why?
- What has proved more challenging? How have you tackled the obstacles you have faced?
- What have you learnt about the value of embedding human rights in your practice and how to go about doing this successfully? What are the main lessons for others?

Documentation and possible further interviews

- Are there any important documents that will give us further information about the initiatives we have discussed today? Please can you email these to us as soon as possible?
- Are there any other people you think we ought to speak to in connection with the issues we have discussed? Please can we have their contact details?

Thank you very much for your participation.

APPENDIX 2 – ABOUT THE HUMAN RIGHTS ACT

Excerpts from: A Guide to the Human Rights Act 1998, Third Edition⁶⁰

The UK does not have a written Constitution as part of its national law. People here had long enjoyed a strong tradition of individual liberties but it has not always been easy to say precisely what was involved – or what to do when unwritten liberties conflict with other laws.

The 1950 European Convention on Human Rights (ECHR) is a binding international agreement that the UK helped draft and has sought to comply with for over half a century. The Convention enshrines fundamental civil and political rights, but for many years it was not a full part of our own law. Using the Convention usually meant taking a case to the European Court of Human Rights in Strasbourg. This was often time-consuming and expensive.

Since coming into force on 2 October 2000, the Human Rights Act has made rights from the ECHR (the Convention rights) enforceable in our own courts. This is much quicker and simpler than the old arrangement. And the Act gives people a clear legal statement of their basic rights and fundamental freedoms. The key principle of the Act is that wherever possible there should be compatibility with the Convention rights. The Human Rights Act is a major shift in the way our political and legal system works.

First, it requires all legislation to be interpreted and given effect as far as possible compatibly with the Convention rights. Where it is not possible to do so, a court may quash or disapply subordinate legislation (such as Regulations or Orders) or, if it is a higher court, make a declaration of incompatibility in relation to primary legislation. This triggers a power that allows a Minister to make a remedial order to amend the legislation to bring it into line with the Convention rights.

Second, it makes it unlawful for a public authority to act incompatibly with the Convention rights and allows for a case to be brought in a UK court or tribunal

against the authority if it does so⁶¹. However, a public authority will not have acted unlawfully under the Act if as the result of a provision of primary legislation (such as another Act of Parliament) it could not have acted differently⁶².

60 Ministry of Justice, 2006. See <http://www.justice.gov.uk/docs/act-studyguide.pdf>

61 In June 2007 the House of Lords ruled (in the 'YL' case) that the Human Rights Act does not apply to private and voluntary sector care homes providing services under contract to local authorities. However, section 145 of the Health and Social Care Act (which

Third, UK courts and tribunals must take account of Convention rights in all cases that come before them. This means, for example, that they must develop the common law compatibly with the Convention rights. They must take account of Strasbourg case law.

Not all the Convention rights are formulated in the same way. The different types of Convention rights are sometimes explained as:

- *absolute rights* such as the right to protection from torture, inhuman and degrading treatment and punishment (Article 3), the prohibition on slavery and enforced labour (Article 4) and protection from retrospective criminal penalties (Article 7)
- *limited rights*, such as the right to liberty (Article 5) which are limited under explicit and finite circumstances, set out in the ECHR itself, which provides exceptions to the general right
- *qualified rights*, which include the right to respect for private and family life (Article 8), religion and belief (Article 9), freedom of expression (Article 10), assembly and association (Article 11), the right to peaceful enjoyment of property (Protocol 1, Article 1) and to some extent the right to education (Protocol 1, Article 2). Interference with them is permissible only if what is done:
 - a. has its basis in law, and
 - b. is done to secure a permissible aim set out in the relevant Article, for example for the prevention of crime, or for the protection of public order or health, and
 - c. is necessary in a democratic society, which means it must fulfil a pressing social need, pursue a legitimate aim and be proportionate to the aims being pursued.

Any interference with a Convention right should be carefully designed to meet the objective in question and must not be arbitrary or unfair. Public authorities

received Royal Assent on 21 July 2008) closes the 'public authority loophole' in relation to residential care. As a consequence, private and voluntary sector organisations providing residential care services under contract to local authorities are now bound by the Human Rights Act. Section 145 is expected to come into force in late October 2008. Source: British Institute of Human Rights.

- 62 Sometimes, even if a public authority has not itself breached Convention rights directly, the authority may be responsible for failing to protect individuals from others who have. This responsibility to protect against the acts of other people which breach Convention rights is sometimes called a positive obligation.

must not “use a sledgehammer to crack a nut”. Even taking all these considerations into account, interference in a particular case may still not be justified because the impact on the individual or group is just too severe.

The Convention rights set out in Schedule 1 to the Human Rights Act:

Article 2: Right to life

Article 3: Prohibition of torture

Article 4: Prohibition of slavery and forced labour

Article 5: Right to liberty and security

Article 6: Right to a fair trial

Article 7: No punishment without law

Article 8: Right to respect for private and family life

Article 9: Freedom of thought, conscience and religion

Article 10: Freedom of expression

Article 11: Freedom of assembly and association

Article 12: Right to marry

Article 14: Prohibition of discrimination (in enjoyment of Convention rights and

Article 16: Restrictions on political activity of aliens

Article 17: Prohibitions of abuse of rights

Article 18: Limitations on use of restrictions on rights

The First Protocol

Article 1: Protection of property

Article 2: Right to education (The UK has accepted this Article subject to a reservation that it does so only so far as it is compatible with the provision of efficient instruction and training and the avoidance of unreasonable expenditure.)

Article 3: Right to free elections

The Thirteenth Protocol (replaces The Sixth Protocol from June 2004)

Article 1: Abolition of the death penalty

www.equalityhumanrights.com