

# Human Rights Inquiry

Call for evidence report



**Equality and  
Human Rights**  
Commission

## **Foreword**

This report draws on information that was submitted to the Equality and Human Rights Commission during the Call for Evidence that ran between 21 April and 15 July 2008. During this timeframe we asked anyone with an interest in human rights to contact us with their views, experiences and recommendations for positive change.

We are grateful to all the individuals and organisations from the voluntary, public and private sectors who gave so generously their time to share their knowledge and experience with us. This information has formed an important evidence base which has helped shape the Human Rights Inquiry final report and recommendations.

We are particularly grateful to the 283 individuals and representatives of voluntary and community sector organisations who, through group evidence sessions, individual conversations and written submissions, ensured that the insights and lived experience of those whose voices are often overlooked were fed into the Human Rights Inquiry.

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## **Executive summary**

### **Background**

Ten years on from the introduction of the Human Rights Act (HRA), in 1998, it was felt that a review would be useful to see how effective its use is by public authorities and voluntary and community sector organisations in terms of protecting and defending the human rights of individuals in the UK.

### **Aims**

The Equality and Human Rights Commission (the Commission) ran a Call for Evidence between 21 April and 15 July 2008, and this report presents the evidence gained from that exercise. The information that was submitted during this time forms an important evidence base to help shape the Human Rights Inquiry final report and recommendations.

### **Methods**

The Commission asked parties with an interest in human rights to submit their views, experiences and recommendations for positive change.

This report combines the submissions of 385 representatives of public, private and voluntary service providers (including criminal justice, inspectorates, higher and further education, health and local government), their service users (members of the public) and delegates of organisations with a particular interest or role in human rights issues. The evidence was gathered from group evidence sessions, individual interviews and written submissions.

### **Key findings**

#### **Benefits of the Human Rights Act**

Organisations perceived the Human Rights Act as adding value or improving functions and services. Service providers at national, regional and local level referred to the benefits that their work around human rights had brought or could bring to their roles as both service providers and employers. It was cited by service providers

that a commitment to integrating human rights had translated into positive outcomes for both staff and service users, and that it helped ensure high-quality services.

The benefits of the Human Rights Act cited included:

Balancing competing rights.

Giving priority to preventing discrimination.

Increasing accountability.

Improving ability to provide services.

Delivering core functions more effectively.

Improving treatment of and respect shown to staff.

Improving treatment of and respect shown to service users (putting service users at the heart of policy development and service delivery).

Providing an overarching context for work on separate equality strands.

Some organisations reported other, unforeseen, benefits of integrating human rights, including bringing together people within an organisation to discuss difficult issues, to improve understanding of the functions of other parts of the organisation and to explore ways of working better.

### **Use of the Human Rights Act**

Many submissions from voluntary and community sector organisations and individuals were critical of aspects of the performance of public authorities in relation to human rights, often stressing that a culture that respects human rights was not systematically mainstreamed throughout the organisation, sector or geographical area. However, others were positive about the progress and efforts that some bodies were making, and numerous examples of positive practice within public authorities were given.

Most voluntary and community sector organisations saw the potential of the Human Rights Act to support their work and bring about improvements in the lives of individuals and communities. They reported that citing the Human Rights Act (on its own or in conjunction with other arguments) often helped them achieve positive change, and it was felt that the Human Rights Act was a useful tool in challenging

the policy and practice of public authorities, successfully advocating on behalf of individuals or empowering those vulnerable to having their rights violated.

### **Barriers to using the Human Rights Act**

One of the major barriers to using the Human Rights Act was the disjointed structure of some public authorities and departments, which many felt inhibited the creation of a culture that respects human rights. In many cases, human rights principles had not been meaningfully integrated into working practices (often despite the existence of policy documents stating an organisation's commitment to mainstreaming the Human Rights Act into service delivery), and frequent references were made to the lack of human rights knowledge of front line staff. A number of submissions complained about leaders not being committed to ensuring that human rights principles were embedded, while fear of change and over-reliance on knowledgeable team members were other factors.

Another major barrier to using the Human Rights Act identified through the Call for Evidence was lack of resources. Resource constraints and underfunding were viewed as undermining the implementation of human rights principles in both public authorities and voluntary and community sector organisations.

A further challenge was the perception of the Human Rights Act and human rights issues. Many felt that members of the public were poorly informed about human rights, and many believed that 'bad press' relating to the Human Rights Act had contributed to a negative public perception of it. Many individuals and organisations believed the media only report on 'silly' human rights cases, and some said that sensationalist publicity put them off using the Human Rights Act and felt it had also adversely influenced government policy. Some submissions stated that the Human Rights Act was perceived as complex, while the use of certain language when referring to it diluted its potential impact by making the obligations on bodies appear optional rather than underpinned by law. A number of submissions suggested that other legislation, such as the Disability Discrimination Act, was seen to be more effective than the Human Rights Act in addressing certain areas of discrimination and disadvantage.

Another notable issue that emerged through the Call for Evidence was the apparent confusion that existed between the concepts of equality and diversity and the concept of human rights, and it appeared that some organisations saw the two as interchangeable. Many bodies requested specific guidance clarifying the relationship between equality and human rights.

Many organisations were open about the challenges they faced in complying with the Human Rights Act and operating a culture that respects human rights, but none of the submissions stated that the barriers experienced were insurmountable; indeed many suggested solutions.

## **Ways forward**

In order to meaningfully integrate the Human Rights Act and human rights principles into working practices, sustained and visible leadership from those holding positions of influence within organisations is essential. Some submissions suggested that human rights should be incorporated into current performance frameworks and indicators, with audit and inspection a key driver in ensuring effective integration into policy and practice. It was also felt that organisations need to be aware of their role in being proactive and preventative rather than simply reactive.

Perceptions of human rights issues need to be improved, and unequivocal support from central government for the Human Rights Act and its underlying principles is of utmost importance. A small number of national voluntary and community sector organisations suggested that the imposition of a public duty to promote human rights would be the most effective approach to moving the agenda forward.

Submissions consistently identified education as essential in progressing work on human rights, and a national campaign was suggested to raise awareness of the Human Rights Act and its relevance to the individual. Many bodies also felt it would be helpful to be provided with centrally prepared documentation advising on developing policies integrating human rights. Others requested case studies setting out good practice examples of implementation of the Human Rights Act

within different sectors, and a number suggested sharing information and learning between relevant organisations.

In order to overcome the barriers experienced due to the perceived complexity of the Human Rights Act, facilitating access to legal advice and representation was seen as key, and the importance of effective locally based advocacy groups was also highlighted.

Submissions from public authorities looked to the Commission to provide clarification on the relationship between equality and human rights.

## **Conclusion**

Emerging from the Call for Evidence submissions is a strong indication that the Human Rights Act is seen as adding value or improving functions and services. Many organisations see the potential of the Human Rights Act to support their work and bring about improvements in the lives of both staff and service users. The Human Rights Act is seen as a useful tool in challenging policy and poor practice, empowering vulnerable individuals and improving conditions within communities.

Various barriers were acknowledged as hindering the full use of the Human Rights Act, including lack of meaningful integration within organisations, under-resourcing, poor grasp of human rights issues, perceived complexity of the legislation, and confusion over the relationship between equality or diversity and human rights.

Many organisations, however, were keen to address the challenges they faced, suggesting possible actions that could be taken to help them comply with the Human Rights Act and move forward in creating a culture that respects human rights.



## **1. Methodology**

The Call for Evidence was launched on 21 April 2008. The deadline for responses was extended to 15 July in order to allow time for individuals and organisations to prepare their responses.

We produced three Call for Evidence forms (see Appendix 1) and adapted questions to make them relevant to the following categories of stakeholders:

- service providers (including public, private and voluntary organisations)
- service users and other individuals
- organisations that have an interest in human rights, or who represent the interests of individuals or specific groups

We produced our Call for Evidence response form in a variety of formats – Welsh and English as well as Easy Read, Audio and Braille. Some of these were available to download from our website while others were available to order free from our helpline.

We also put procedures in place for people to send back responses in the most convenient way to them. Response to the Call for Evidence could be sent by email, fax, freepost, telephone or text phone in Welsh or English.

### **1.1 Dissemination**

In order to ensure that as many relevant organisations and individuals as possible were aware of the Call for Evidence, we:

- carried out a press launch
- sent letters and emails to more than 800 stakeholders from the public, private and voluntary sectors at national, regional and local level asking them to respond to the Call for Evidence and to disseminate it to individuals and organisations they work with or know of
- sent the information to all Members of Parliament and Assembly Members in England and Wales to encourage them to talk about the Call for Evidence with people in their constituency and prepare a response on their behalf

- disseminate the Call for Evidence at regional and local level through the Commission's English regional offices
- presented information about the Call for Evidence at relevant seminars

## **1.2 Call for Evidence group evidence sessions**

We recognised that particular groups could potentially experience barriers to submitting evidence to the inquiry. We also recognised that these groups could have very useful information regarding personal experience of human rights issues which would help inform the inquiry and enhance the quality and quantity of responses. We therefore organised group evidence sessions and meetings with individuals to discuss Call for Evidence questions in an accessible manner and supplement the general written Call for Evidence. As a result of this, we met with 167 representatives from the voluntary and community sector and individuals in England and Wales separately or in group evidence sessions. The meetings held were:

- six group evidence sessions held in England and Wales.
- 20 interviews carried out with Young Carers and representatives of voluntary and community sector organisations working with them.
- An evidence-gathering event organised by the British Institute of Human Rights and delivered jointly by the Commission and British Institute of Human Rights staff, and attended by 54 representatives of grass roots voluntary and community sector organisations.
- A meeting with Gypsy and Traveller representatives at Dale Farm in Essex.

### 1.3 Number of organisations/individuals who submitted evidence

#### Written submissions

Service providers	58
Service users/individuals working for service provider or for a representative organisation responding in their personal capacity	67
Government	32
Voluntary and community sector groups representing individuals	61
<b>Total written submissions</b>	<b>218</b>

#### Total number of those submitting evidence

Written submissions	218
Group evidence sessions	167
<b>Total</b>	<b>385</b>

### 1.4 Spread of responses from public authorities across sectors

We received the following number of responses from service providers:

Health	18
Criminal justice	5
Local government	17
Inspectorates, regulators and ombudsmen	8
Education and children	5
Other	5
<b>Total</b>	<b>58</b>

It is notable that a significant proportion of the Call for Evidence submissions came from service providers in the health and local government sectors. Responses from health providers tended to be longer and cover a wider range of issues than those from other sectors, perhaps indicating a greater depth of work on human rights.

A response from a national health agency stated that human rights awareness was widespread across the sector.

Our research with employers shows that they are very aware of the provisions of the Human Rights Act. Many NHS trusts have incorporated the accountability and responsibility for carrying out their duties under the Act into their overall equality and diversity strategies. This has enabled them to take a more holistic approach to this area and has allowed them to create better links between the employment and service delivery elements.

**NHS Employers, Call for Evidence response**

We did not receive submissions suggesting that awareness of human rights was similarly embedded across other sectors.

## 2. Benefits of the Human Rights Act

### 2.1 The benefits of adopting human rights approaches

As highlighted in the Human Rights Inquiry literature review, some high-profile stakeholders seem unconvinced of the benefits that adopting a human rights-based approach can bring to public authorities. The Local Government Association (LGA)'s former chief executive, Paul Coen, is quoted as stating:

'I honestly cannot think of any time that people have raised with me, either in a council setting or [at the LGA] the importance ... or value of this legislation.'<sup>1</sup>

However, in responses to the Call for Evidence, a wide range of service providers at both national and local level (including local authorities) referred to the benefits that their work around human rights had brought or could bring to their roles as service providers and employers.

Of the 58 responses that were submitted by service providers, we only received one that stated that the organisation did not routinely use the Human Rights Act. However, even this organisation recognised the relevance of the Human Rights Act.

Whilst the Human Rights Act obviously affects prisons and prisoners, we do not routinely use the Human Rights Act. The [...] Act informs the Prison Service Instructions issued to us (to which we must adhere) so it affects the establishment indirectly in that manner.

**Acting head of operations, Offender Interventions and Services, HM Prison Dovegate**

All other submissions from public authorities indicated that organisations perceived the Human Rights Act as adding value to or influencing the functioning of the organisation. The benefits that were listed by organisations included:

- Supporting the balancing of competing rights.

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<sup>1</sup> Interview with Paul Coen, former chief executive, Local Government Association, 27 February 2008

- Giving appropriately high priority to preventing discrimination.
- Increased accountability.
- Increased ability to provide services.
- More effective delivery of core functions.
- Improving treatment of and respect shown to staff and service users.
- Providing an overarching context for work on separate equality strands.

Public authorities provided numerous practical examples of how they had used the Human Rights Act to benefit service users and ensure high-quality services.

## 2.2 Relevant illustrative quotes

### Balancing competing rights

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

**Individual working for Cardiff University, Call for Evidence response**

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

**London Probation, Call for Evidence response**

The Human Rights Act has been used by the [organisation] to ensure that, in delivering its services, the rights of the individual are always fully considered and balanced against the wider obligations of society to protect children and other vulnerable groups.

**Criminal Records Bureau, Liverpool, Call for Evidence response**

### **Giving priority to preventing discrimination**

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

**Conwy and Denbighshire NHS Trust, Call for Evidence response**

### **Increased ability to provide services**

One positive use is in relation to foreign nationals for whom we would not be able to provide a service ... under the existing immigration legislation [but services could be provided] if failure to do so ... breached their human rights. This is particularly used to keep families together rather than the children being placed in care.

**Hull City Council, Call for Evidence response**

### **More effective delivery of core functions**

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

**Mental Health Act Commission, Call for Evidence Response**

The Human Rights Act has ensured and continues to ensure that the [organisation] is always conscious of the rights of individual applicants and that these are always fully considered when designing and implementing its services.

**Criminal Records Bureau, Call for Evidence response**

The Act's intention seems to me to attempt to provide:

- Substantive protection for individuals against the violation of their rights by states.
- A strengthening of the principles of democracy.
- The elevation of the position of rights in society.

In doing these things, I think that it bolsters the basic principles of democratic policing that most police officers joined the service to uphold and which are

enshrined in that part of the attestation in which police officers swear, on taking up their office, to discharge their duty 'without fear or favour'.

**Individual, Association of Chief Police Officers, Call for Evidence response**

### **Improving treatment of and respect shown to staff and service users**

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

**Health Trust, Newcastle NHS Trust, Call for Evidence response**

### **Using the Human Rights Act to provide an overarching context for work on separate equality strands**

Some public authorities were clear about the benefits that the use of the Human Rights Act could bring in terms of adding to and linking strand-based equality approaches to give a more in-depth understanding of those using their services.

We have also used the Human Rights Act to develop awareness and understanding of the concept of 'identity' and of the multiple, and often complex identities we have as human beings. This has helped us to develop a cross-strand approach to our work and to consider the many different social and cultural characteristics that define us as individuals and need to be understood if we are to provide services and employment that are patient/employee-focused and needs-sensitive.

**NHS Centre for Equality & Human Rights**

Submissions from voluntary and community sector and representative bodies also highlighted the usefulness of a human rights approach on helping to join up strand-based equality work.

The [organisation] considers the Human Rights Act is a potentially powerful additional tool for those working towards equality. The concepts contained within the Human Rights Act can be usefully deployed in cases where multiple or intersectional discrimination has occurred as an alternative to traditional

approaches which require the need to box the individual concerned into a particular equality strand.

**The Bar Council, working party, Call for Evidence response**

### **2.3 User involvement and empowerment**

Some organisations believed that human rights principles supported them in promoting a service-user focus which put the experiences and views of those using services at the heart of policy development and service delivery. This was viewed by organisations as improving the effectiveness, targeting and relevance of service provision.

[The organisation's] vision and values reflect a human rights approach. We seek to put people who use social care services first and speak and act in a way that respects people's rights and choices. This fits with the concepts of empowerment and participation – key to a human rights approach that puts people who use services at the centre of the design and delivery of services.

**Commission for Social Care Inspection, Call for Evidence response**

### **2.4 Other benefits of mainstreaming human rights**

Some organisations that had attempted to mainstream human rights meaningfully throughout their organisations reported other positive benefits that were unforeseen.

Thinking about human rights also gave us an opportunity for organisational development: it brought people together to discuss some difficult issues, and helped us understand better what other parts of the organisation do, and how we might work better together. This was an unexpected outcome.

**Mental Health Act Commission, Call for Evidence response**

### **2.5 Practical benefits for service users**

Service providers gave examples of where they felt that an organisational commitment to integrating human rights had translated into positive practical outcomes for both staff and members of the public.

[A human rights approach] shows benefits for service users and carers who say they 'feel valued', 'have meaningful things to do', 'have more confidence', 'learned new skills' and 'employment'. They see real improvements in information, staff attitudes and clinical practice, family provision and in-patient environments.

**Mersey Care NHS Trust, Call for Evidence response**

Positive outcomes as a result of the training:

- Decision-makers in our education department using human rights framework to address issues including bullying and discipline.
- Housing officers using a human rights approach to resolve complex dilemmas around information sharing and responses to anti-social behaviour.
- Social workers using human rights arguments to ensure better outcomes for service users.

**Southwark Council, Call for Evidence response**

Examples of promoting:

- **dignity** include ensuring there are sufficient staff on duty to meet the individual needs of patients and their fundamentals of care; ensuring staff are available to feed patients at meal times.
- **privacy** include privacy on wards; curtains around patients' bed space that are fit for purpose. Vigorous attempts to segregate men and women are made; there are no mixed-sex bays on acute general medical and surgical wards at the Trust.
- **equality** include ensuring patients are not denied essential treatment based on their age.
- **respect** include involvement of patients/voluntary sector in the assessment of Trust policies.
- **fairness** include ensuring robust and fair process in staff/patient panel meetings;
- **autonomy** include involving patients in decisions about their individual treatment and care; involving patients in a decision about end of life care and 'Do Not Attempt Resuscitation' decisions.

**Conwy and Denbighshire NHS Trust, Call for Evidence response**

We authorise temporary road closures for various cultural, religious and social events after consultation with the police who are required to provide a police officer to attend and ensure the safety of the public. The local police force decided that they would not provide a police officer, as they did not wish to be subject to litigation in the event of any injury to members of the public. It was only after protracted written and telephone correspondence over several months and our insistence upon the Article 11 rights of the public that we were able to persuade the police to agree. We doubt the police would have agreed if the above article had not existed.

**Selby Council, Call for Evidence response**

### **3. Use of the Human Rights Act**

#### **3.1 Use of the Human Rights Act in public authorities highlighted by individual service users and voluntary and community sector/representative bodies**

Despite the fact that many submissions from voluntary and community sector organisations and individuals were critical of aspects of the performance of public authorities in relation to human rights, numerous examples of positive practice within public authorities were submitted. One project that was highlighted in a number of submissions was Human Rights In Healthcare, the Department of Health-led project to assist organisations across the NHS in using a human rights-based approach to help improve the way services are delivered.

One aspect of good practice which was particularly positively reflected in submissions from voluntary and community sector organisations was the meaningful involvement of service users and voluntary and community sector bodies in training staff and designing and evaluating services.

We work a lot with [college] and [university] ... and what they have done from the very start is involve organisations like [service user-led disability organisation] throughout the three-year period that the social workers are trained. So we are actually involved in making up the curriculum, so it is not going through just textbooks and academia, actually, they have work placements in various organisations in disabled persons' areas; they have service users who go in and talk in a lecture and give case studies. They have service users at the interview stages ... So when people are coming out of it, qualified, it is not just from a textbook that's 10 years old; they are actually understanding how their practice or lack of rapport works. So I think that's helping things to change for the future.

**Voluntary and community sector organisation, North East England, Call for Evidence group evidence session**

Submissions from voluntary and community sector organisations stated that some public authorities had not yet fully mainstreamed a human rights culture throughout

the organisation but were working towards doing so. The submissions were positive about the commitment of these public authorities and the progress that some bodies were making in their work around human rights.

[Health trust] have worked on an excellent pilot human rights-based approach to healthcare. This is not yet embedded in all its services, but does illustrate potential ways of developing human rights in health services. It represents good practice in partnership working with its constituency and medical professionals to develop the approach.

**Vision Sense, Call for Evidence response**

However the majority of submissions from voluntary and community sector and individuals reporting examples of good practice by public authorities also stressed that such good practice was not systematically mainstreamed throughout the sector, geographical area or in some cases even throughout the organisation.

Considering this paltry evidence [of good practice], it is possible that the gap between the law and its application is greater in human rights terms than many other legislative areas.

**Vision Sense, Call for Evidence response**

### **3.2 Use of the Human Rights Act by voluntary and community sector organisations**

Voluntary and community sector organisations also submitted examples of how they had used the Human Rights Act either to challenge the practice of public authorities or to empower those who might be vulnerable to having their rights violated.

We looked at the Human Rights Act to look at young people being entitled to respectful relationships ... and understanding that they don't deserve abuse and about understanding their rights within their own personal sexual relationships. On the website that we developed with young people, there was a section about understanding their rights to that within the Human Rights Act and we worked to try

and word it in a way that was accessible – and that was quite a difficult thing to do because it was very academic in trying to use more accessible language (*sic*).

**Individual, East Midlands, Call for Evidence group evidence session**

The voluntary and community sector bodies that reported using the Human Rights Act stated that the Human Rights Act arguments that they had used had often achieved their purpose in terms of bringing about change. For a small number of voluntary and community sector organisations (particularly those working with asylum seekers and refugees), it was felt that the Human Rights Act was one of the only tools that was available to them to challenge the policy and practice of public authorities.

Many smaller voluntary and community sector groups operating at a local level stated that they did not have sufficient knowledge of the Human Rights Act to use it at all in challenging public authorities. However some of the groups referred to using human rights principles in support of their arguments.

Our group [in group evidence session] represented churches, aged people, communities, a mixed group with mixed experiences. None of us have used the Act as such – we've all used its principles, but we haven't actually referred to the Act.

**Voluntary and community sector organisations, East Midlands, Call for evidence group evidence session**

Although, as stated previously, some organisations did not feel completely confident in their depth of knowledge around the Human Rights Act, a small number had accessed existing guidance and used it successfully to advocate on behalf of individuals.

This is a new area of work for us and we have not had extensive training in this area. However, we have started to try and use the Human Rights Act to challenge services and, using the Human Rights Act Toolkit as resource material, we were able to successfully help an older disabled person. We stated that the person's rights under the Human Rights Act (Article 8) were being denied. This included his

rights to a private life (including relationship), his right to respect of his home (including independent living) and his rights to participating.

**Choices and Rights Disability Coalition, Call for Evidence response**

Some voluntary and community sector organisations who described using the Human Rights Act stated that, when they used the Human Rights Act to challenge public authorities, it was usually in conjunction with other arguments.

We do find that from the advice field in general it is very difficult to build a firm case against a public authority purely on grounds of human rights legislation, and the stronger cases are usually based on a combination of such legislation and primary legislation, and when the outcome is successful, this is due to a point of primary legislation and/or guidance.

**Counsel and Care, Call for Evidence response**

The majority of voluntary and community sector organisations saw the potential of the Human Rights Act to support the work that they were doing and bring about improvements in the lives of individuals and communities. However in the submissions from voluntary and community sector organisations it was clear that more work explicitly using the Human Rights Act was being carried out by larger, national bodies. This may be related to the greater resources of these organisations and their ability to recruit and train specialist staff.

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

**Choices and Rights Disability Coalition, Call for Evidence response**

The following six examples illustrate how the Human Rights Act has been used by voluntary and community sector organisations to achieve positive change.

1. Mr V's wife was moved into a nursing home after she had a fall in which he was also injured. Mr V's wife has Alzheimer's and is blind. The placement was temporary and Mr V was told that his wife would then be moved to another care home on a permanent basis in P\*\*\*\*\*, which is some distance away from their

family home. They were told by their local council social services that this was because this care home was the only one which could meet his wife's needs. Mr V said that this distance was too far away for him to travel to see his wife and also for other family members to see her as well. We provided him with detailed information on how to challenge this decision: that is, in terms of the assessment including emotional needs, and the choice legislation, but also with regards to Article 8 right to private and family life. The outcome was that Mr V's wife could remain in the nursing home close to her family and local area.

**Counsel and Care, Call for Evidence response**

2. We have also used the Human Rights Act to try to negotiate a disabled young man's return to college. He had withdrawn from his college course, in part because the college insisted on hoisting him on and off the toilet, a process which was causing him a great deal of pain and distress. We met with the college and used human rights arguments, in addition to those in the manual handling case taken by the Disability Rights Commission.

**Choices and Rights Disability Coalition, Call for Evidence response**

3. The proprietor of a private care home approached us to explain her concern that an older married couple, who had been meeting the full cost of their care for many years, but had now become eligible for local authority funding, were being forced to leave the care home. In this case the issue was not the cost of care, but a question as to whether the couple needed care home accommodation or whether their levels of disability would enable them to be supported at home.

We visited the couple and spoke to them in private, independent of the staff of the home, to avoid any potential conflict and enable the individuals to speak freely. We explained to them that the assessment by social services of their care needs was open to challenge because it had not taken into account their attachment to the home (where they had lived for many years), nor the fact that they had sold their own home to move into residential care and would be effectively homeless. They had no family who could support them.

We explained that they had human rights under Article 8 and that the local authority had to take those rights into account and decide whether it could justify overriding them. In this case, the combination of their homelessness, their length of residency in the care home and their obvious fear of leaving it made their case a strong one. We put them in touch with a specialist solicitor, but, fortunately, armed with these arguments, they were able to persuade the authority to change its mind.

#### **Help the Aged, Call for Evidence response**

4. Our policy section was contacted by a concerned neighbour and informal carer of a woman of 96 living on an estate, formerly owned by the local authority and now transferred to a social landlord (housing association). The local authority had just, in the face of strong local opposition, passed in principle a planning application to increase the housing stock on the estate. The proposal involved the demolition of the bungalows, inhabited by older and disabled people, and replacing them with a small number of larger bungalows and a far greater number of low-rise flats.

The issue of the human rights of the older population had already been raised in general terms, but the planning officer had advised members that these were not a planning concern. We were able to explain that this advice was wrong as the local authority had to carry out all its functions in a way that was compatible with the European Convention on Human Rights. The individual decided that she would challenge the grant of planning permission and she instructed specialist solicitors who worked closely with us to prepare a case, including attending a tenants' and residents' meeting at which a number of other older people expressed interest in joining a legal challenge.

The local authority, in light of representations, agreed that it had been wrong in disregarding the human rights issues in the case (particularly Article 8, although Article 2 was also raised). As a result, the authority asked for the assistance of our legal officer in putting things right. Productive meetings took place and an independent report was commissioned to look at the process and the flaws in consultation, etc.

The outcome was that flaws identified in the independent report were acted upon and the housing association agreed, after further consultation, to put in a fresh proposal, which took Article 8 rights into account and included a number of significant procedural protections for older residents.

**Help the Aged, Call for Evidence response**

5. We were contacted by a group of supported housing tenants of a local authority who were threatened with eviction from their accommodation to make way for extra care accommodation for which the majority would be ineligible. Again, we involved specialist solicitors and attended meetings with the tenants and the council.

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

**Help the Aged, Call for Evidence response**

6. We worked with Pierce Glynn Solicitors to push a case for judicial review on access to secondary care for refused asylum seekers (the case of R (A) v Secretary of State for Health and West Middlesex University Hospital NHS Trust). The case involved a Palestinian refused asylum seeker with liver disease who was unable to return home and denied access to hospital treatment in the UK. The review sought to challenge the way the Department of Health provides secondary care.

New NHS charging regulations were introduced in April 2004. Previously, anyone who had been in the UK for 12 months or more could access secondary care, including HIV treatment, free of charge. The new regulations changed this rule, requiring refused asylum seekers and undocumented migrants to pay for secondary care. The result is that these individuals, if diagnosed with HIV, are frequently faced with bills for thousands of pounds which they are unable to pay, in almost all cases being destitute.

For all other serious communicable diseases and all other sexually transmitted infections, treatment is always provided free of charge irrespective of residency

status, but HIV is explicitly excluded from this provision. The regulations governing NHS charging, and a number of key exemptions to them, were enshrined in the NHS Act 1977 and the NHS (Charges to Overseas Visitors) Regulations 1989.

Among other grounds, the case referred to the following Articles of the European Convention on Human Rights (adopted by the UK into the Human Rights Act 1998): Article 2 – right to life; Article 3 – prohibition of torture or inhuman or degrading treatment; Article 8 – right to private and family life; Article 14 – prohibition of discrimination.

The case also referred to Articles in other human rights conventions/declarations. These include:

- Declaration on the Human Rights of Individuals who are not Nationals of the Country in which They Live: Article 8 – right to health protection and medical care
- Universal Declaration of Human Rights: Article 25 – right to a standard of living adequate for health and wellbeing
- International Covenant on Economic, Social and Cultural Rights: Article 12 – right to the enjoyment of the highest attainable standard of physical and mental health
- European Social Charter: Article 13 – right to social and medical assistance

The judge determined that all refused asylum seekers who had been given 'temporary admission' (a Home Office IS96 form) should be considered as legally and 'ordinarily resident' in the UK, and therefore able to access free secondary care while they remain. The Department of Health has signalled that it will appeal the judgement. NAT (*National Aids Trust*) were delighted by the judgement as, for the present, it means that refused asylum seekers will now be able to access HIV treatment free at the point of delivery.

**National Aids Trust, Call for Evidence response**

## 4. Barriers to using the Human Rights Act

### 4.1 Capacity of individuals

A number of submissions stated that members of the public had a low level of knowledge about the Human Rights Act. No submissions reflected a view that members of the general public were well or even adequately informed about it.

Most individuals who submitted evidence to the Human Rights Inquiry had not used the Human Rights Act or referred to human rights principles to challenge public authorities even in instances where they may have been justified in doing so.

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

**Individual, Equality and Human Rights Commission/British Institute of Human Rights Call for Evidence group evidence session**

Many submissions emphasised that vulnerable and excluded groups within society who would be most likely to have their human rights violated were not only unlikely to know about their rights under the Human Rights Act but also unlikely to assert their rights through challenging the practice of public authorities. The submissions emphasised the power imbalance between public authorities delivering services and individuals who might be subject to human rights abuses. The range of vulnerable groups identified in submissions to the Call for Evidence as likely to experience significant issues was very wide, leading to the conclusion that perhaps more people experience barriers to using the Human Rights Act than are able to use it with ease.

### Poverty

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

**Voluntary and community sector organisation, Equality and Human Rights Commission/British Institute of Human Rights Call for Evidence group evidence session**

### **Asylum seekers and refugees**

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

**Voluntary and community sector organisation supporting older people, Equality and Human Rights Commission/British Institute of Human Rights Call for Evidence group evidence session**

I am from a country destroyed by civil war where human rights don't exist at all. When people come to this country and once they are sheltered and given benefits, they don't want to talk/complain.

**Voluntary and community sector organisation, Equality and Human Rights Commission/British Institute of Human Rights Call for Evidence group evidence session**

### **Disabled people**

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

**Voluntary and community sector disability organisation, North East England, Call for Evidence group evidence session**

There is a particular issue for people with enduring mental health problems and people with learning disabilities around an individual's capacity both to obtain and understand information about the Human Rights Act and how it might help them. There are groups of people who are particularly disadvantaged in terms of knowing and being able to press for their rights, such as people who have profound learning disabilities and disabled people from ethnic minority communities. For people with mental health problems there can be an issue of fluctuating capacity that means

they may be seen as able to stand up for their own rights, whilst not in fact able to do so at times

**Mental Health Foundation, Call for Evidence response**

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

**The Royal National Institute for Deaf People, Call for Evidence response**

**Older people**

Much has been written concerning the social exclusion and the lack of respect for the human rights of frail older people and people with learning disabilities.

My experience and the research evidence support the view that vulnerable people with these impairments experience a 'power imbalance' and in consequence a reluctance to complain.

**Professor Luke Clements, Call for Evidence response**

Older people tend to internalise ageism and think they are not entitled to human rights. The YL case (*which found that private and voluntary sector providers of residential care are not bound by the Human Rights Act*) compounded the message to older people that they are not quite human.

**Voluntary and community sector organisation supporting older people, Equality and Human Rights Commission/British Institute of Human Rights Call for Evidence group evidence session**

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

**Southampton Seniors Council, Call for Evidence response**

## **Young people**

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

**Individual (working within local authority), southern England, Call for Evidence response**

## **Transgender status**

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

**Voluntary and community sector transgender organisation, Equality and Human Rights Commission/British Institute of Human Rights Call for Evidence group evidence session**

## **4.2 Organisational culture and structure**

One of the major barriers identified through the Call for Evidence was the organisational culture and structure of public authorities, which many individual respondents and voluntary and community sector organisations felt inhibited the creation of a human rights culture. Submissions highlighted different elements of the structure and culture of public authorities which it was perceived acted as a barrier to work around human rights. These included:

- A disconnect between policy and delivery.
- Lack of mainstreaming.
- Lack of joined-up working between public authorities/departments within public authorities.

## **4.3 Disconnect between policy and delivery**

Many voluntary and community sector submissions highlighted what they perceived as the 'paper-based' nature of some public authorities' compliance with the Human Rights Act. A number of submissions described the approach as 'box-ticking'. Frequent references were made to the lack of human rights knowledge of operational level staff, involved in directly delivering services or dealing with members of the public, despite the existence of policy documents stating the

organisations' commitment to mainstreaming the Human Rights Act into service delivery. voluntary and community sector organisations stated that when challenged or questioned around the Human Rights Act, such staff did not respond positively; indeed some believed that the responsibility for raising human rights should lie with voluntary and community sector organisations.

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

**Voluntary and community sector migrant organisation, Equality and Human Rights Commission/British Institute of Human Rights Call for Evidence group evidence session**

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

**Voluntary and community sector refugee support organisation, Equality and Human Rights Commission/British Institute of Human Rights Call for Evidence group evidence session**

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

**The Royal National Institute for Deaf People, Call for Evidence response**

#### **4.4 Lack of mainstreaming**

Submissions, particularly those from group evidence sessions, stated that lack of mainstreaming and meaningful integration of human rights principles had resulted in isolated examples of good practice from individuals working within public authorities who had a particular knowledge of or interest in human rights. When

these individuals left the organisation it was felt that the drive to promote human rights and the knowledge necessary to deliver change was lost.

Some individuals are very good, but practice is not mainstreamed or integrated enough, so there is over-reliance on (and lack of availability of) good individuals.

**Voluntary and community sector organisation, Equality and Human Rights Commission/British Institute of Human Rights Call for Evidence group evidence session**

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

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

**Voluntary and community sector organisation, Equality and Human Rights Commission/British Institute of Human Rights Call for Evidence group evidence session**

However some submissions from local level service providers recognised that creating a human rights culture within the organisation would present internal challenges, particularly to accepted working practices but had designed ways to address and overcome these challenges.

Mainstreaming equality, diversity and human rights into the culture of the organisation means culture change, which inevitably brings challenges. The University provides robust equality and human rights training to empower people and enable them to embrace these changes.

**Individual working at Cardiff University, Call for Evidence response**

Other public authorities described how they had used a human rights approach to specifically challenge entrenched assumptions and work practices that had a

negative impact on service users and emphasised the benefits that such an approach could bring to the organisational culture.

[Human rights] concepts have been used to challenge assumptions made about the quality of life of severely disabled [people].

**The Bar Council working party, Call for Evidence response**

It was clear from the evidence that barriers to implementing human rights were being experienced without service providers being aware of this fact. A private body running a prison gave evidence that they considered it sufficient for senior managers to have dedicated training in human rights without extending that training to all staff.

Dedicated human rights training for all senior managers was a positive experience. The company has to ensure such sessions are available for all new senior managers and consider extending it to other staff.

**Individual working for private organisation, HM Prison Wolds**

#### **4.5 Lack of joined-up working between public authorities/departments within public authorities**

Individuals and voluntary and community sector organisations described the negative impact that they felt disjointed working between public authorities (and, in some instances, between departments within public authorities) had on their experience of services. Submissions described services that were structured in ways that made little sense to those receiving services. This point was particularly emphasised by young carers and those representing them.

A huge issue is the structures, the way the structures – for example, health services in one box, social care in another box. People’s lives, particularly young carers’ lives and their family’s lives, are not experienced in boxes. They are experienced as a whole. Services don’t meet those needs.

**Young Carers Network, Call for Evidence group evidence session**

#### **4.6 Legalistic and complex**

Some submissions stated that the Human Rights Act was perceived both within public authorities and by members of the public as extremely complex and purely based within the legal sphere. This is despite the fact that the schedule of rights in the Human Rights Act is relatively simple and short, compared to most legislation. This perception presented a barrier in terms of employees in public authorities who were not employed in legal departments seeing the Human Rights Act as something that was relevant to them in their roles and for members of the public perceiving Human Rights Act as something that they could use.

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

**General Social Care Council, Call for Evidence response**

People had little knowledge about the Human Rights Act or the Commission. The Human Rights Act appeared to be legalistic and in the realm of the legal profession.

**Black Voluntary Sector Network Wales, Call for Evidence response**

A number of submissions from public authorities referred repeatedly to members of legal staff when they were setting out who used the Human Rights Act within the organisation or who had expertise in this area. Although, naturally, legal staff have an important role to play, it is perhaps indicative of a lack of effective mainstreaming that those formulating policy or delivering front-line services were not referred to.

#### **4.7 Lack of resources in public authorities**

The lack of resources as a barrier for public authorities delivering on their obligations under the Human Rights Act was highlighted as an issue by more voluntary and community sector organisations and individuals than public authorities themselves. Lack of resources was identified as one of the major barriers for public authorities in effectively delivering on their responsibilities under the Human Rights Act.

Budget seems to supersede any legislation.

**Voluntary and community sector organisation, North East England, Call for Evidence group evidence session**

A number of submissions highlighted situations where the implementation of human rights principles had been adversely affected by resource constraints.

Service users are being left to sit in their own urine ... but this is not the fault of the nurses themselves; it is due to not having enough staff.

**Voluntary and community sector service user organisation, Equality and Human Rights Commission/British Institute of Human Rights Call for Evidence group evidence session**

With regard to my son's future – I fear he may not have one. We will have to battle and fight for secondary education (he has severe learning difficulties too and we want to keep him in mainstream education), sixth form (little or no vocational education for children like my son in my borough), college (non existent and likely not enough support to take him there and provide one-to-one or whatever he needs) and then he is going to sit in a room in a day centre with other disabled people aged 18–60/70 and vegetate because there are not enough support staff or things to do ... I know this because I know people in this position now and I know people who visit these dreadful places and see the overcrowded hopelessness.

**Individual, Call for Evidence response**

Resource constraints were viewed by some voluntary and community sector organisations as undermining positive work on training and awareness-raising work around human rights carried out by some public authorities.

If high-level staff understand the Human Rights Act then [other] staff will do so too. In wards, rights and dignity are picked up in training but, in practice, staff cannot relate these words to their day-to-day jobs because of lack of time and resources.

**Isle of Wight Advocacy Trust, Call for Evidence response**

Some submissions highlighted strong feelings of individuals and voluntary and community sector groups around their perception that lack of resources was used as an excuse by public authorities to disguise structural organisational barriers, a lack of willingness to address issues and a lack of interest in the issues that really affected those receiving services.

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

**Voluntary and community sector youth organisation, North East England,  
Call for Evidence group evidence session**

#### **4.8 Lack of funding for voluntary and community sector groups and link to capacity**

Voluntary and community sector organisations operating at a local level highlighted lack of funding and funding structures as a major barrier in gaining the necessary knowledge of the Human Rights Act and using it to advocate on behalf of the individuals that they represented.

Voluntary and community sector submissions indicated that they perceived that a 'contract culture' was beginning to impact on smaller organisations who could not compete with larger organisations that may have more experience of writing polished funding bids. Core funding for organisations was reported as having significantly decreased, leading to voluntary and community sector bodies being required to deliver against targets specified by public authorities, rather than offer the responsive advocacy-based services that vulnerable individuals may need to uphold their human rights. Smaller organisations stated that this 'target-driven treadmill' also offered little opportunity for staff to gain the new skills and knowledge required to effectively challenge public authorities around potential breaches of human rights.

Some voluntary and community sector organisations also felt that the ability of the grass roots voluntary sector had been adversely affected by the Commission on

Integration & Cohesion's recommendation regarding single group funding which they believed had resulted in less funding going to small, local equality-focused groups. It was felt that this could result in the needs and voices of excluded groups being even more marginalised.

A worryingly element that emerged from group evidence sessions was the suggestion from representatives of voluntary and community sector organisations that those grass roots organisations which are most effective in challenging public authorities in regard to their obligations under the Human Rights Act are being effectively silenced through funding being reduced or not granted by the very bodies that have been the subject of complaints.

There is a lack of money for support. For example, new ways of supplying funding to groups may have the effect of forcing out support groups, particularly those seen as 'trouble makers'.

**Voluntary and community sector service-user organisation, Equality and Human Rights Commission/British Institute of Human Rights Call for Evidence group evidence session**

#### **4.9 Negative perceptions**

A number of submissions from public authorities, voluntary and community sector and individuals stated that negative perceptions of human rights and the Human Rights Act were a barrier to the effective implementation of the act.

Some submissions highlighted the fact that particular groups of people were commonly perceived as particularly benefiting from the Human Rights Act and being undeserving of the protection it affords. Groups mentioned included refugees and asylum seekers, those suspected of terrorism offences, and Gypsies and Travellers.

The main barrier is public perception, primarily when dealing with Gypsies and Travellers, who have rights under the Act.

**Test Valley Borough Council, Call for Evidence response**

It was felt that the negative perceptions surrounding the Human Rights Act and indeed, as one submission put it, negative reactions to 'any mention of human rights' influenced the extent to which public authorities in carrying out their functions could openly refer to human rights principles as guiding or underpinning their work.

There is certainly a negative public perception of the human rights act as there is with health and safety, for example often cited as 'political correctness gone mad'. Often this negative perception creates a barrier to even discussing the issues.

**Hull City Council, Call for Evidence response**

Many submissions identified the media as playing a significant role in developing and sustaining negative perceptions of the Human Rights Act. The nature of this reporting was viewed as impacting not only on how the general public saw the Human Rights Act but also on the willingness of organisations to openly use it. Other submissions stated that they felt that the negativity surrounding Human Rights Act had adversely influenced government policy.

The media only report 'silly' human rights cases.

**Voluntary and community sector organisation focusing on the criminal justice sector, Equality and Human Rights Commission/British Institute of Human Rights Call for Evidence group evidence session**

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

**Voluntary and community sector mental health organisation, Cardiff, Call for Evidence group evidence session**

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

**Voluntary and community sector organisation, East Midlands, Call for Evidence group evidence session**

Some influential media, which continually portray the Human Rights Act as a 'criminals charter', and also as irrelevant and out of touch, is extremely unhelpful in the difficult context in which we work. These messages appear to influence policy- and decision-making at the highest level in government.

**London Probation, Call for Evidence response**

Some individuals who responded stated that, as a result of the negative publicity surrounding the Act, they had taken on these messages regarding the act and felt that it had little relevance to them and their experiences.

As somebody who lives on a council estate and gets on with whatever I do, through the media and different things it just seems to be something that belongs to Europe or something ... and is used by people who are trying to wheedle their way out of something they have actually done and been convicted of ... human rights, to Joe Public, as I said ... it's way away.

**Individual, North East England, Call for Evidence group evidence session**

#### **4.10 Lack of leadership**

Submissions from voluntary and community sector and individuals complained about the perceived lack of leadership from those in positions of power in public authorities both at a local and national level and from central government in regard to human rights.

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

**Bexley Council for Racial Equality, Call for Evidence response**

A number of submissions emphasised the central role that leadership can play in ensuring that human rights principles are understood, perceived to be relevant and meaningfully integrated into policies and working practices across an organisation.

Commitment from leaders was seen as essential in making progress on human rights issues.

We need cheerleaders in powerful positions who can really bring about change ... in terms of leadership on this issue from people in the public sector in those very influential positions was what could actually shift the agenda forward and quite quickly.

**Voluntary and community sector Lesbian, Gay, Bisexual and Transgender organisation, East Midlands, Call for Evidence group evidence session**

Clear, positive messages about the benefits of a human rights approach from those in leadership positions was also emphasised as important, not only in embedding a human rights culture, but also in combating pervasive negative messages regarding the Human Rights Act.

I think that if the positive aspects ... were perhaps more effectively articulated by senior police leadership, some of the perceived difficulties associated with the Act voiced by some of the more vociferous critics might reduce in public prominence.

**Individual, working for Association of Chief Police Officers, Call for Evidence response**

#### **4.11 Barriers identified by public authorities**

Many organisations at local level were open about some of the challenges that they faced in complying with the Human Rights Act and creating a human rights culture within their organisations.

Some of the most common barriers identified related to embedding work across the organisation, dealing with negative perceptions of human rights (held by the general public and also by staff) and a lack of knowledge/confidence among some staff.

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

**Inspectorate/regulatory body, London, written Call for Evidence**

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

**Isle of Wight Primary Care Trust, Call for Evidence response**

More work could be done to ensure other plans [apart from Children's Strategy] meet and, where possible, promote the articles contained in the Human Rights Act.

**West Berkshire Council, Call for Evidence response**

A submission from a local authority which has carried out an in-depth human rights training programme for staff in key directorates highlighted the challenges they had encountered in introducing a new and untried concept to employees.

Getting very busy people to engage in training, which is new, and unfamiliar to them. Effectively the hardest part can be selling the training product. It appears resource intensive in terms of time and cost, when staff do not know what real value the training can give to a division.

**Southwark Council, Call for Evidence response**

Despite the breadth of barriers described by public authorities, none of the submissions stated that the barriers experienced were insurmountable. Indeed many submissions described how barriers had been overcome or suggested solutions (see Chapter 6: Ways forward).

## 5. Overarching themes

### 5.1 Relationship between equality and diversity, and human rights

One notable issue which emerged clearly through the Call for Evidence was the apparent confusion that existed in some public authorities between the concepts of equality and diversity, and human rights.

Some public authorities when invited to outline the steps which they had taken to use the Human Rights Act, listed the work that they had carried out to promote equality, with particular emphasis on setting out steps taken to comply with the three Public Sector Duties. It appeared that these organisations conflated human rights with equality and diversity and saw the two terms as interchangeable.

A reliance on evidence around equality was particularly apparent in submissions from some central government departments in England.

Submissions from public authorities which described a systematic approach to mainstreaming human rights did not rely so heavily on equality and diversity related evidence. In these submissions, public authorities referred to a range of issues throughout the organisational functions which had been influenced by work on human rights and a variety of workstreams that addressed these issues.

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

**Medway NHS Foundation Trust, Call for Evidence response**

A number of public bodies and voluntary and community sector organisations requested specific guidance clarifying the relationship between equality and human rights, and offering practical guidance on how to embed work on equality within a human rights framework and how human rights can be used to support 'joined-up' work on multiple discrimination.

[response to question '*What might help your organisation use the Human Rights Act more effectively?*']

Guidance on the relationship between the six equality strands and the Human Rights Act.

**Redbridge Primary Care Trust, Call for Evidence response**

The relationship between the Human Rights Act and other legislative initiatives such as the Disability Discrimination Act 1995, the Equality Act 2006 the Race Relations Amendment Act 2000 and the Data Protection Act 1998 could be made clearer.

**General Social Care Council, Call for Evidence response**

Human rights may be better equipped than current equalities/anti discrimination practice to take into account 'multiple discrimination' (for example, someone who faces unfair treatment for a number of reasons such as being disabled and a woman). Guidance on this would be helpful.

**Waltham Forest Council, Call for Evidence response**

More work needs to be carried out to join up human rights, equality and community cohesion in policy and practice ... what would help us are practical tools and guidance which clarifies ... how human rights supports existing equalities legislation.

**Legal Services Commission, Call for Evidence response**

## **5.2 Use of equalities legislation**

A number of submissions from disabled individuals or voluntary and community sector organisations focusing on disability issues stated that they used the Disability Discrimination Act as a lever for change and challenge, and did not feel that the Human Rights Act was as useful in addressing issues of discrimination and disadvantage for disabled people. This was not apparent in submissions focusing on other equality strands. In taking forward work on promotion of the uses of the Human Rights Act, it would perhaps be useful to target disabled people and their representative organisations.

We have had very few calls from our members regarding using either the Human Rights Act, or about how they could use the concept of human rights in general. When looking at disability, our members concentrate on their duties under the Disability Discrimination Act and Disability Equality Duty rather than from a human rights perspective.

**Employer's Forum on Disability, Call for Evidence response**

I considered that the use of the Disability Discrimination Act 2005 was the better way to proceed at the time, but the breach also affects my rights under the Human Rights Act.

**Individual, Wales, Call for Evidence response**

In its response to public authority consultations [*organisation name*] often refers to the Human Rights Act, specifically Article 2 on the right to education. It does so to raise awareness that no person should be denied the right to education. However, in fulfilling its mission to promote opportunities for disabled young people and adults in post-16 education, [*organisation name*] has found the Disability Discrimination Act to be a more powerful and appropriate tool.

**Skill: National Bureau for Students with Disabilities, Call for Evidence response**

### 5.3 Language/terminology

Some submissions from voluntary and community sector organisations highlighted the use of language related to the Human Rights Act as a barrier to meaningful progress. Submissions pointed to the propensity of public authorities to use terms describing human rights principles such as 'dignity' and 'respect' in policy documents, without linking them to their legal underpinning in the Human Rights Act. This was perceived to dilute the potential impact of the Human Rights Act and make the obligations on public authorities appear optional and aspirational.

One submission described this approach as 'human rights lite'. Major problems associated with 'human rights lite' were identified as:

(i) it obscures the important fact that human rights are enshrined in law and that people can, if necessary, enforce them via the Human Rights Act – this is a powerful incentive for public authorities to embrace a broader human rights agenda; and  
(ii) it tends not to be part of a meaningful process across a whole organisation and rarely leads to any significant change – for example, staff may respond to introductory information about the ideas or values behind the Human Rights Act by saying ‘we are already doing this, we don’t need to waste any more time learning about this’.

The submission emphasised that the embedding of human rights principles in isolation from their legislative foundations cannot ensure that the specific human rights set out in the Human Rights Act are realised.

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

**British Institute of Human Rights, written Call for Evidence**

A number of submissions from public authorities made repeated reference to human rights principles incorporated into policy-making without referring to the underlying legislation. Without access to further documentation, it is not possible to determine if the approach set out in these submissions could be described as ‘human rights lite’. However given the number of instances where this occurred it may be useful to explore this issue further.

The Inquiry received evidence from a private body running a prison of what they believed to be a good practice example of using human rights.

We introduced into the training of all our staff a talk by the director about the importance of treating all people (prisoners, in particular) fairly and respectfully,

even if they are not always courteous towards you. As a result of this, all inspections and visits have concluded we have developed good relationships between staff and prisoners.

**Individual working for private organisation, HM Prison Wolds**

It may be useful for the Commission to explore further the repercussions for privately run public services of the use of 'human rights lite' language. It may be that private bodies are unable to provide human rights compliant services if those commissioning services have failed to make explicit reference to the Human Rights Act.

#### **5.4 Evidence submitted by central government**

As has already been stated, initial evidence submitted by central government departments focused heavily on work carried out around equality and, in particular, steps taken to comply with the three public sector duties.

It was interesting to note that only a small minority of central government departments reported experiencing any barriers in implementing the Human Rights Act. This experience contrasted with that of a number of the other public authorities that responded to the Call for Evidence. These organisations identified a variety of barriers that they had encountered when embedding human rights into policies and practices. One of the most detailed and lengthy response regarding barriers was submitted by a public body which has received national recognition for its good practice in creating a human rights culture within the organisation.

Responses to question on barriers experienced in implementing Human Rights Act:

1. As this is a very complex area, the Trust would benefit from guidance on how to apply the different parts of the Human Rights Act to healthcare needs.

**North East Ambulance Service, Call for Evidence response**

2. A lack of awareness of human rights issues can be a barrier to mainstreaming throughout the organisation.

**Gwynedd Local Health Board, Call for Evidence response**

3. The term 'Human Rights' is seen as vague. In addition, managers have been concerned about how to balance competing rights.

**Waltham Forest Council, Call for Evidence response**

Barriers the Department may have experienced in using the Human Rights Act: Compliance with the Human Rights Act is always considered by the Ministry of Justice. The Human Rights Act has not generally proved to be a barrier to the Ministry of Justice in the development or in the operation of its policies or procedures

**Ministry of Justice, Call for Evidence response**

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

It may be useful to explore the apparently different experiences of central government and public authorities operating at a local and regional level in terms of barriers encountered.

### **The use of technology in overcoming barriers**

Central government departments had some innovative good practice examples to offer showing their use of technology to assist employees in understanding human rights and applying it in their everyday tasks.

#### **Raising awareness of human rights – e-learning**

A new e-learning package commissioned by the Ministry of Justice and the National Schools of Government was launched in April 2008. The package is interactive and assists individuals in understanding how human rights is relevant to their work. It is aimed at public authorities but is available to everyone on the internet. The link is as follows:

<http://www.nationalschool.gov.uk/virtualschool/index.asp>

**Ministry of Justice, Call for Evidence response**

The Department for Children, Schools and Families gave evidence that they used this resource and that it helped employees to fit their learning around their other commitments.

Similar but more specialised e-learning resources were referred to by the Crown Prosecution Service.

The Crown Prosecution Service launched its online human rights/European Court of Human Rights learning course for prosecutors, associate prosecutors and legal trainees which is available on the Crown Prosecution Service intranet. It has eight modules and provides practical advice on the application of the European Court of Human Rights and the Human Rights Act to guide their practice when advising on charging decisions, prosecuting cases and engaging with victims and witnesses.

**Crown Prosecution Service, Call for Evidence response**

The Crown Prosecution Service has managed to design this technology so that employees must consider human rights when carrying out their day-to-day tasks.

The Crown Prosecution Service electronic file management system automatically prompts the reviewing prosecutor and others who take key decisions on case files to consider the implication the European Court of Human Rights at key stages of the prosecution process. When prompted, a narrative response must be recorded to show that human rights have been considered.

**Crown Prosecution Service, Call for Evidence response**

## 6. Ways forward

Submissions from all sectors were consistent in terms of the suggestions that were forwarded for progressing work on human rights. Solutions fell into two categories:

- ‘Bottom-up’ measures – to support individuals and local level voluntary and community sector organisations to accurately identify breaches of human rights and challenge public authorities to improve their performance in this regard.
- ‘Top-down’ measures – aimed at supporting public authorities to improve their performance in terms of the Human Rights Act and provide clear leadership on this issue.

There was a general consensus that both ‘bottom up’ and ‘top down’ measures were needed to drive positive change.

### 6.1 Access to legal representation and support

Submissions highlighted increased access to legal advice and representation as a key step that was needed in order to overcome the barriers experienced by individuals and voluntary and community sector organisations in terms of using the Human Rights Act.

We are aware of limited cases in which homeless individuals or homelessness agencies have used the Human Rights Act to challenge poor public services. We, most of our members and homeless individuals would require significant legal advice to be able to understand the legislation to the extent to be able to challenge practice in this manner.

#### **Homeless Link, Call for Evidence response**

A shortage of solicitors with expertise in human rights was also mentioned in a number of submissions, particularly from voluntary and community sector organisations, as an area which needed to be addressed if individuals and the voluntary sector were to be able to tackle perceived violations of human rights.

However some submissions stated that although it was important to facilitate access to legal advice and representation, this was only a small part of any way forward.

A number of voluntary and community sector organisations highlighted the need for empowerment of individuals and voluntary and community sector organisations to be coupled with a top-down approach, where public authorities would be supported to proactively embrace their responsibilities under the Human Rights Act rather than merely react to a challenge.

It is therefore important that processes are preventative rather than reactive. Legal challenges only offer remedy after the event, whereas creating a culture of human rights means that violations are less likely to occur in the first place.

**Homeless Link, Call for Evidence response**

## 6.2 Capacity building at a local level

Voluntary and community sector groups and individuals highlighted the importance of effective locally based advocacy groups in supporting individuals to assert their rights under the Human Rights Act.

There are lots of disabled people who, until they found [*advocacy organisation*] have been wallowing, literally, in their own excrement ... and have had horrendous lives, and it is not until they come across somebody who actually understands and knows how to use legislation correctly to be able to change something ... [that] some changes in these people's lives happen.

**Voluntary and community sector disability organisation, North East England, Call for Evidence group evidence session**

A number of submissions highlighted the fact that without appropriate advocacy service, many individuals who were at risk of having their human rights violated would be left without an effective method of raising complaints and challenges.

It's very difficult for people with dementia. It's very hard to prove that their rights are not respected because they cannot talk for themselves. This is why we need ... advocacy bodies.

**Advocacy in Barnet, Call for Evidence response**

The provision of an advocacy service was not viewed as a general panacea but as a step that needed to be taken in conjunction with other targeted actions to facilitate the ability of service users to complain about and challenge the practice of public authorities.

Various easy-to-access grievance procedures should be readily available to make it easier to challenge poor public services. There should be more advocates to assist more vulnerable users to challenge them.

**Individual, London, Call for Evidence response**

### **6.3 Education and awareness raising**

Submissions consistently identified education as essential in progressing work on human rights. It was felt that human rights-related education should be integrated into the curriculum of schools, from the foundation stage onwards. Submissions suggested that current good practice (such as the UNICEF 'Rights Respecting Schools' programme, Hampshire Local Education Authority's whole school approach to promoting human rights and relevant British Institute of Human Rights projects) should be learnt from and built upon.

The Ministry of Justice gave evidence that they are funding and working alongside the British Institute of Human Rights and Department for Children, Schools and Families to develop an educational resource for use at Key Stage 3 of the citizenship curriculum. The new materials were piloted in September 2007 and was launched in July 2008 for introduction in the citizenship curriculum from September 2008.

A large number of submissions requested action to build knowledge and awareness of human rights among the general public, with a specific focus on targeted, accessible communication with excluded groups that were more likely to experience violations of their human rights.

Simplified information about the Human Rights Act specifically for Gypsies and Travellers – must be obvious it is for these groups or they won't consider that it's for them.

**Voluntary and community sector Traveller organisation, North East England, Call for Evidence group evidence session**

Easy to understand guidance for individuals (possibly different versions with strand-specific examples). This needs to include examples of how to apply it, how organisations can challenge using it, etc.

**Voluntary and community sector organisation, East Midlands, Call for Evidence group evidence session**

There needs to be a national campaign to raise awareness like there was with drink driving or wearing a seatbelt, to let people know that they have rights and how they can use them.

**Voluntary and community sector organisation, Equality and Human Rights Commission/British Institute of Human Rights Call for Evidence group evidence session**

#### **6.4 Role of the Equality and Human Rights Commission**

The fact that the Commission had been established with a specific remit to promote understanding of the importance of human rights, champion good practice and encourage public authorities to comply with Section 6 of the Human Rights Act was welcomed in a range of responses to the Call for Evidence.

However a number of submissions, mainly from voluntary and community sector organisations, set out significant expectations of the Commission in terms of delivering on its human rights mandate. These expectations included leading progress on human rights nationally, building capacity at a local level, shaping the public debate, and supporting and challenging public authorities on their performance.

One of the most frequently stated expectations of the Commission was that it would take a compliance-centred approach to ensuring that the Human Rights Act was adhered to. In some submissions, it was clear that organisations did not fully appreciate the Commission's remit in regard to human rights, particularly that it

cannot start an investigation under Section 20 of the Equality Act into whether a public authority has breached the Human Rights Act or that it cannot support individual cases in tribunals and courts where the issue would concern matters that fall only under the Human Rights Act.

The Commission should make it clear to public authorities that non-compliance of the Human Rights Act will not be tolerated.

**Worcestershire Racial Equality Council**

[The] Equality and Human Rights Commission [needs] to have a big education campaign. Targeting particularly building capacity in and supporting and empowering third-sector organisations who are seen as key people to challenge and embed the Human Rights Act in organisations.

**Voluntary and community sector organisation, London, Call for Evidence group evidence session**

Agencies like the Commission can come in and ask uncomfortable questions [of public authorities].

**Voluntary and community sector organisation, North East England, Call for Evidence group evidence session**

There is an increasing tendency to make individuals responsible for their own social care provision. While this brings potential benefits in terms of autonomy and self-directed care, it also brings with it a rolling back of the welfare state and thus a withering away of its protection of vulnerable individuals. Increasingly, the relationship between public authorities and service provision will become an arms-length one and the protection of the Human Rights Act less readily achievable. We think that these difficult and contradictory aspects of Government policy must be honestly debated and the human rights implications acknowledged. The Equality and Human Rights Commission is well placed to initiate and inform such a debate.

**Help The Aged, Call for Evidence response**

I think the Equality and Human Rights Commission is going to have a vitally important role here in trying to capture the public imagination on this issue.

**Voluntary and community sector Traveller organisation, London, Call for Evidence group evidence session**

There were calls, particularly from those submitting evidence through the group evidence sessions, for the Commission's ongoing work on human rights to be informed by a detailed understanding of the experience of disadvantaged groups at a local and regional level, and engagement with local public bodies. Submissions emphasised the central role of the Commission's regional offices in this.

It [the Commission] needs to be pro-active at a grass roots level. There is no point in having a commission that is an overseeing body. It's got to get to grips with the grass roots to establish what is the experience of communities, what is the experience of disadvantaged groups, what is the experience of vulnerable people.

**Voluntary and community sector disability organisation, North Wales, Call for Evidence group evidence session**

Submissions from public authorities looked to the Commission to provide guidance, particularly clarification on the relationship between equality and human rights, with some organisations seeing the Commission as having an opportunity to model this for other public authorities through its own policy approach.

The Equality and Human Rights Commission needs to adopt an integrated approach to human rights and equality, explain the extent of its human rights duties and powers, and provide practical guidance to organisations to ensure they understand and can implement the principles effectively within their work.

**Legal Services Commission, Call for Evidence response**

## **6.5 Information and guidance to public authorities**

Nearly all of the public authorities that submitted evidence to the Human Rights Inquiry called for information and guidance to be provided to support progress.

In particular, public authorities requested detailed, targeted, sector-specific

guidance. They also requested case studies setting out good practice examples of implementation of Human Rights Act within different sectors. Particular emphasis was given to requests for case studies dealing with resolution of conflict situations where rights had been appropriately balanced.

Central health-specific or local health board-specific guidance and/or training which clearly identifies human rights issues and requirements directly pertinent to our role and responsibilities.

**Gwynedd Local Health Board and Flintshire Local Health Board, Call for Evidence response**

Some voluntary and community sector organisations felt that further guidance and awareness raising was necessary for central government as well as other public authorities.

We need good guidance and education to public authorities ... with examples of good practice and policies, strategies, funding arrangements and so on, which are fully inclusive of people of all different beliefs and backgrounds. There needs to be a vast increase in understanding at all levels of government so that public authorities are fully aware of the specific issues and their direct duties of equal treatment, respect and dignity under the Human Rights Act 1998.

**British Humanist Association, Call for Evidence response**

## **6.6 Positive duty**

A small number of national voluntary and community sector organisations used their submissions to call for the imposition of a public duty to promote human rights, along similar lines to the three public sector equality duties. It was felt that not only would this be the most effective approach to moving the agenda forward, but would also remove the onus from individuals having to challenge powerful public authorities to assert their rights.

A positive duty to promote human rights [is needed]; we know from 30 years of other equality legislation that taking redress for rights not delivered is largely ineffectual in delivering change.

**Vision Sense, Call for Evidence response**

## **6.7 Leadership**

Open and visible leadership from central government and those holding positions of influence within public authorities was identified in a number of submissions as an essential prerequisite to progress being made. Good practice examples were highlighted where sustained and visible leadership had established human rights as a meaningful priority underpinning the delivery of high-quality services.

The important role of central government in providing a clear lead was emphasised both by public authorities and voluntary and community sector organisations. Submissions stressed the importance of central government not only meaningfully incorporating a human rights culture into policy and practice as a model to other public bodies but also of public and unequivocal support for the Human Rights Act and its underlying principles.

As stated above, submissions also indicated that many stakeholders are looking to the Commission to assume a leadership role and assertively embrace its human rights remit in terms of ensuring that the potential of the Human Rights Act to bring about positive change can be realised.

## **6.8 Incorporation into performance frameworks and indicators**

Some public authorities called for more widespread adoption of the Human Rights Act as a framework for improvement and suggested that human rights should be incorporated into current performance frameworks and indicators. Submissions highlighted audit and inspection as a key driver in effectively embedding human rights into the policy and practice of public authorities.

Explicit links made between Public Service Agreements, National Indicators and Local Area Agreements, and the Human Rights Act as a framework for embedding

and integration within the planning and business processes of local authorities (Fire and Rescue Service, Primary Care Trusts, Police, Councils, etc). Adoption of a Human Rights Act framework within Comprehensive Area Assessment at a local level and also within the Performance Assessment Framework (Comprehensive Performance Assessment Key Lines of Enquiry, for example within the Audit Commission's Fire and Rescue Service Key Lines of Enquiry).

**West Sussex Fire & Rescue Service, Call for Evidence response**

Nationally set NHS contracts for health service providers that we use whilst commissioning do not place enough of a specific duty on these organisations around the Human Rights Act. This can prove to be a barrier for us to monitor how the health services we commission are respecting and promoting human rights.

Were national NHS contracts for GPs and primary health care providers to include explicit reference to their obligations to promote and respect human rights we would then be able to work monitoring mechanisms into our contracts around this and ensure we and they meet our obligations.

**Brighton and Hove Primary Care Trust, Call for Evidence response**

## **6.9 Other ways forward**

A number of public authorities requested more work to establish networks or other methods of sharing learning between relevant organisations both in terms of positive practice and challenges experienced.

Others suggested that centrally prepared documentation that guided public authorities through the process of developing policies with appropriate regard to human rights would be helpful.

We may do better if the Department of Health provided policy templates which were demonstrably Human Rights Act compliant – we may still wish to adapt these for local use rather than simply transcribe them, but this would be a useful exercise.

**Broadmoor Hospital, Call for Evidence response**

## **Appendix 1 Call for Evidence questions**

### **Questions for voluntary and community sector/representative groups**

1. Have you offered support to individuals or used the Human Rights Act yourself to challenge the way an organisation provides services? If so, were some of the articles in the Human Rights Act or its principles explicitly referred to? If not, why not?
2. What do you think would help individuals using the Human Right Act to challenge poor public services?
3. What is your experience of how the Human Rights Act has been used by public authorities?
4. Do you have any good practice examples of public authorities which you think are using the Human Rights Act in providing services (such as treating service users with dignity and respect)? Could you please explain in which way you think that this represents good practice?
5. What do you think the barriers are for public authorities in using the Human Rights Act and how do you think they can be overcome?
6. What do you think would help public authorities to use the Human Rights Act more effectively?

### **Questions for service providers**

1. How has the Human Rights Act been used by your organisation?
2. Do you have any good practice examples of how the Human Rights Act has been used and can you explain in which way you think that this represents good practice?
3. Have you experienced any barriers in using the Human Rights Act? If so, what are they and how do you think they can be overcome?

4. How has your organisation used/could your organisation use the Human Rights Act to improve the way it provides services? What difference has this made/could this make in terms of providing services?

5. What might help your organisation use the Human Rights Act more effectively? (For example, guidance or good practice seminars.)

### **Questions for service users**

1. Have you ever used the Human Rights Act to challenge the way you have been treated by an organisation (for example, a university, a police service or a local housing office)? If so, did you explicitly refer to some of the articles in the Human Rights Act or to its principles? If not, why not?

2. What do you think would help people using the Human Rights Act to challenge poor public services?

3. Can you give us any good examples of particular public authorities using human rights principles or the Human Rights Act to improve the services they provide? Examples might include treating service users with respect or responding to individual needs. Please explain why you think any examples you give represent good practice.

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