

The role and experience of inspectorates, regulators and complaints-handling bodies in promoting human rights standards in public services

Final report for the Equality
and Human Rights Commission

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ACRONYMS

AC – Audit Commission

AHC – The Healthcare Commission’s Annual Health Check

BIHR – British Institute of Human Rights

CAA – Comprehensive Area Assessments

CPO – Chief Probation Officer

CSCI – Commission for Social Care Inspection

CQC – Care Quality Commission

DRR – Drugs Rehabilitation Requirement

EHRC – Equality and Human Rights Commission

HC – Healthcare Commission

HIW – Healthcare Inspectorate Wales

HMI Prisons – HM Inspectorate of Prisons for England and Wales

HMI Probation – HM Inspectorate of Probation for England and Wales

HRA – Human Rights Act 1998

HSCA – Health and Social Care Act

HSCB – Health and Social Care Board

IPCC – Independent Police Complaints Commission

MAPPA – Multi-Area Public Protection Arrangements

MHAC – Mental Health Act Commission

NMS – National Minimum Standards

OPM – Office for Public Management

PHSO – Parliamentary and Health Services Ombudsman

PIP – The HC’s Planning for Inclusion Process

SURP – Service User Reference Panel

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1. EXECUTIVE SUMMARY

1.1.1 On 6 March 2008, the Equality and Human Rights Commission (EHRC) launched an inquiry to find out how public authorities are responding to the Human Rights Act 1998 (HRA). The Office for Public Management (OPM ®) was commissioned to design and deliver a research project aimed at exploring the role and experiences of complaints-handling bodies, inspectorates and regulatory bodies (inspectorates¹) in relation to human rights practices, and how these have implications for the organisations they inspect. This report summarises the findings of that study.

- The study comprised 60 semi-structured qualitative interviews with representatives from a sample of 11 inspectorates in England and Wales. It was informed and supplemented by desk-based research involving analysis of key documents relevant to each inspectorate.

1.2 Current state of play

1.2.1 Since the introduction of the HRA in October 2000, a wide range of activities to integrate human rights have been undertaken by inspectorates. These range from incorporating human rights into corporate plans and equalities strategies, training and development programmes, reviewing and re-aligning policies and monitoring case law. The research did not find a single, systematic approach for integrating the HRA across inspectorates, but rather a mixture of ad hoc approaches. The study identified that:

- two thirds of inspectorates have explicitly or implicitly set out their commitment to human rights in their corporate plans and value statements
- several inspectorates have integrated human rights within equalities and diversity strategies, and
- there is uncertainty and some inconsistency in the way in which staff at inspectorates feel human rights are embedded in inspection frameworks: a number of respondents can point to human rights being reflected in inspection frameworks, others don't know or say it is there but not always referred to as human rights.

1.2.2 Overall, differences in inspectorates' approaches have been driven by the need to comply with the HRA, the nature of an inspectorate's role, function and remit together with whether or not it sees human rights as a priority.

1 For ease of reference, the term 'inspectorates' is used here to refer to all the organisations within the case study sample. Where there are differences noted between the types of organisations, or functions, this will be made explicit in the text.

1.3 Criteria which supports the integration of human rights

1.3.1 This study does not highlight which inspectorate is doing better than another as there is currently no typology of good practice to benchmark against. However, the study does identify a number of criteria which some inspectorates have adopted that support a strong approach for integrating human rights.

1.3.2 These included:

- making explicit links to human rights within corporate strategies and plans. Inspectorates which do this are better placed to create a corporate realisation of human rights. It also helps to emphasise the inspectorate's role and accountability for human rights. This is further strengthened if it is accompanied by an integrated approach to equality, diversity and human rights as set out in equality and diversity strategies
- having strong and visible leadership from the top of the organisation for human rights. Evidence suggests good practice includes clear leadership from the top, cascaded down through the organisation through clear structures with a focus on shared ownership. This seemed to be important for getting shared ownership and accountability for human rights in inspectorates
- having processes in place for the systematic review of policies and procedures against the HRA and emerging case law, and
- having robust training and development plans for staff which integrate human rights into core training needs. Respondents felt that training needed to be approached in a way that was exciting and attractive to people.

1.3.3 Whilst most inspectorates have some elements of these criteria, not one inspectorate has all of them.

1.4 Integration of human rights into inspection and complaints-handling frameworks

1.4.1 The study identified a number of good examples of inspection frameworks that integrate human rights. These are set out in Section 4 of this report. It is clear that for inspectorates such as HM Inspectorate of Prisons, which have been tasked specifically, on a statutory basis, to protect human rights, the HRA has strengthened their remit rather than led them to do anything new. Some other inspectorates such as the Commission for Social Care Inspection, the Healthcare Commission and the Audit Commission have also made either an explicit or implicit reference to human rights in their inspection frameworks. References to human rights mainly arise because the principles of fairness, dignity, equality and respect are seen as fundamental

to their work, human rights are seen as a priority and/or the national standards for inspection set by government integrate human rights principles.

1.4.2 However, when putting into practice the inspection of human rights a wide variety of experience was reported. The extent to which the organisations put human rights inspection into practice seemed to depend upon:

- how well they were able to contextualise human rights to their day-to-day inspection activities
- how confident inspectors felt able to talk about and be knowledgeable about human rights with the public sector organisations they inspect
- the extent to which public bodies were familiar with and used the language of human rights
- the extent to which there was clarity on how human rights informed the inspection frameworks, and
- how they could draw out human rights issues and make explicit reference to them in their correspondence and inspection reports.

1.5 Reporting on human rights

1.5.1 Despite the variety of ways in which human rights has been incorporated into inspection frameworks and assessment tools, little or no direct reference has been made yet to human rights in inspection reports for individual public bodies and/or national research reports. However, in both cases inspectorates may argue that human rights issues have been reported, but not explicitly referred to as human rights issues, for example, reporting issues of patient safety or safe custody. There was a need for inspectorates to go further as one respondent said, *“the time is coming to report on human rights with more gusto”*.

1.5.2 There have been a couple of exceptions to the rule such as the Audit Commission’s report (2003)² and more recently the Joint Report of the Parliamentary and Health Service Ombudsman and Local Government Ombudsman on injustice in residential care (2007/8) which make explicit reference to human rights.³

1.5.3 There have also been some new and interesting developments in self-assessment tools for equalities and human rights, such as those developed

2 Audit Commission: Human Rights, Improving Public Services, 2003.

3 A joint report by Local Government Ombudsman and Health Service Ombudsman for the Health Service Ombudsman for England, Investigations into complaints against Buckinghamshire County Council and against Oxfordshire & Buckinghamshire Mental Health Partnership, Second report 2007-08.

by the Audit Commission for *Knowing your Communities*⁴. But, as respondents reported, the take-up of these tools has not been as widespread as the Audit Commission would like.

1.6 Public bodies response to human rights and good practice

1.6.1 There is little systematic collection and/or identification of good practice by inspectorates on how public bodies are embedding human rights. As the elucidation of good practice examples is not a component of routine inspection process, inspectorates are limited in their ability to capture such information. Respondents expressed a range of views, but what was clear from this research is that no one could give an overall picture on how human rights had been integrated into specific public sectors such as health or local government.

1.7 Impact of the wider regulatory policy environment

1.7.1 The study needs to consider changes in the regulatory policy environment which have the potential to impact on the degree to which human rights are embedded in the future, across inspectorates and the public bodies they inspect. The challenges of: strategic regulation; mergers and the introduction of new inspection frameworks such as Comprehensive Area Assessments (CAA) could have an adverse affect on how human rights is taken forward at inspection.

1.7.2 However, in relation to the new Care Quality Commission (CQC), it is positive to note that the Department of Health's consultation on the framework for the registration of health and adult social care providers makes explicit reference to embedding human rights into the registration framework, so that relatives and carers are treated with respect.⁵

1.8 Challenges and barriers

1.8.1 Although there is a wide range of activities undertaken in response to the HRA, there was consensus amongst respondents that they still had much further to go to positively promote human rights, both internally and in their work with public bodies. One of the biggest obstacles to overcome is making human rights relevant to an inspectorate's work, particularly when *'80 per cent of your staff undertake the audit of accounts and it's difficult to see how to make human rights relevant to their work'*.

1.8.2 A strong message emerging from interviewees was that providing training and guidance alone is insufficient, particularly where staff are less familiar

4 Audit Commission, op cit.

5 Department of Health, Consultation on a framework for the registration of health and social care providers, 2007.

with the language of human rights and/or with translating it into their day-to-day roles. Training and awareness-raising needs to be focused on providing ongoing support, and reassurance, rather than being simply instructive. There can be a need to build confidence, making very clear the expectations of different staff, while also 'myth-busting' and providing specific, relevant examples of human rights in practice.

1.8.3 Respondents highlighted a number of additional barriers which they believe stand in the way of taking human rights forward within their organisations. These included:

- difficulties in understanding what the HRA means for their everyday work. The problem here seems to be with the legalistic language. An auditor said, *“one of the difficulties with the HRA is that unless you translate it into simple language, people on the ground do not understand what they have to do or how they can make sure that they are compliant”*
- overcoming resource and capacity issues. An inspector said that, “to identify the public bodies that are doing particularly well in terms of human rights is likely to cause a challenge, as there will be resource implications from our end and it is not always easy to know what doing well looks like at this stage”, and
- overturning the current attitude towards human rights, so rather than it being seen as an additional burden for people, it should be integrated into everyday practice.

1.9 Future support

1.9.1 Respondents identified a number of key areas for taking human rights forward within their organisations. These included:

- clearer and more targeted guidance
- clearer definitions of terminology
- the capturing and wider dissemination of good practice case studies
- conducting more research into the benefits of human rights approaches and disseminating these widely
- increased awareness-raising activities
- provision of training and ongoing development support for individuals and organisations, and
- support from the EHRC; and stronger leadership at the national level.

INTRODUCTION

1.10 Aims

1.10.1 The Equality and Human Rights Commission (EHRC) launched an inquiry to find out how human rights work in Britain in April 2008. It involves a number of different strands of activity, including: three research projects; an open call for evidence; panels on key issues; and, some work to explore public perceptions and experience. This report complements the other strands of research.

1.10.2 This report is a contribution to the EHRC's inquiry to find out how inspectorates are responding to the HRA. The research project is aimed at exploring the role and experiences of inspectorates in relation to:

- human rights practices, and how these have implications for the organisations under their remit
- whether and how inspectorates are building human rights principles into their inspection frameworks, and exploring the benefits of a using human rights approach in their work
- identifying good practice in sectors within the scope of an individual inspectorate's remit, and
- sharing experience, between inspectorates in England and Wales, of using human rights principles as a framework for inspection.

1.10.3 This study also describes some of the shared challenges and barriers inspectorates face in embedding human rights into their practices, and outlines the guidance and support that they would like to see become available in the future. This study also seeks to identify individual inspectorate's knowledge of how well public bodies are implementing human rights.

1.11 Research limitations

1.11.1 This research found some evidence of inspectorates integrating human rights, through their inspection and audit regimes as well as through the production of guidance and by conducting research. However, the research found little evidence of inspectorates identifying good practice on integrating human rights in the sectors within their remit, no evidence of sharing experience of using human rights in inspection frameworks between England and Wales and little evidence of inspectorates extolling the benefits of human rights.

1.12 Background

1.13 Legal context

1.13.1 The HRA received royal assent in November 1998 and came into effect in the UK in October 2000. It gives rights to individuals to challenge decisions made by public bodies. The HRA applies to all public bodies including inspectorates and has the following implications:

- Section 6 (1) of the HRA makes it unlawful for a public authority to act in a way that contravenes the rights protected by the European Convention on Human Rights unless it is required to do so by primary legislation that cannot be interpreted in any other way.
- Section 7(1) of the HRA allows anyone who feels that a public authority has acted incompatibly with their Convention rights to raise this before an appropriate UK court or tribunal.
- The HRA places positive obligations on public authorities to ensure that an individual's human rights are promoted and protected.

1.13.2 All inspectorates (without exception) are starting from the same base in that they have to comply with the HRA. Most respondents felt that compliance with the HRA has been the key driver for integrating human rights into their practices. An auditor captured this:

“As part of the planning process for our audits we do consider all legislation that is coming through and test ourselves against it. We also see whether or not we need to consider what arrangements the organisation we audit have got to ensure compliance – the extent to which we do this is based on risk.”

1.13.3 As well as compliance with the HRA, inspectorates have a key influencing role through inspection, audit and guidance to promote human rights in the public bodies within their remit of inspection. In this research we reviewed how inspectorates were promoting human rights, through their inspection and audit regimes as well as through the production of guidance and by conducting research – this is discussed in Sections 3 and 4.

1.14 Wider policy environment

Strategic regulation

1.14.1 Changes in the wider regulatory policy environment also have the potential to impact on the degree to which human rights are embedded in the future, across inspectorates and the public bodies they inspect. The challenges of: strategic regulation; mergers and the introduction of new inspection

frameworks such as Comprehensive Area Assessments (CAA) could have an adverse affect on how human rights is taken forward at inspection.

- 1.14.2 However, in relation to the new Care Quality Commission (CQC), it is positive to note that the Department of Health's consultation on the framework for the registration of health and adult social care providers makes explicit reference to embedding human rights into the registration framework, so that relatives and carers are treated with respect. A full description of the potential impact of the wider policy environment on human rights can be found in Appendix 4.

2. RESEARCH METHODOLOGY

2.1.1 As outlined above, the principal aim of this research was to provide an assessment of what inspectorates are doing now in relation to integrating human rights, to identify developing practice and to learn what lessons can be learnt for the future. The study commenced in June 2008 and was completed in October 2008.

2.2 Selecting sample inspectorates

2.2.1 A large number of bodies are involved in some form of inspection, regulation or complaints-handling in relation to public bodies across England and Wales. For practical purposes it was necessary to conduct research with only a sample of these bodies. OPM chose inspectorates on the basis that they had relevance to as large a number of individual public bodies as possible. The sample also took account of inspectorates with a range of different functions which included setting and monitoring standards, audit and inspection and complaints-handling duties. The inspectorates included in this research are listed below. An overview of their role, remit and function as well as a summary, where applicable, of legislation other than the HRA that governs their work can be found in Appendix 2.

- Audit Commission
- Commission for Social Care Inspection (CSCI)
- HM Inspectorate for Education and Training in Wales (Estyn)
- Healthcare Commission
- Healthcare Inspectorate Wales
- HM Inspectorate of Prisons for England and Wales (HMI Prisons)
- HM Inspectorate of Probation for England and Wales (HMI Probation)
- Independent Police Complaints Commission (IPCC)
- Mental Health Act Commission
- Parliamentary and Health Services Ombudsman (PHSO), and
- Wales Audit Office.

2.2.2 The study also took account of the number of changes and contextual issues affecting inspectorates and sought to include organisations with experience of one or more of the following areas:

- **Post-merger joint working** – The creation of the Care Quality Commission in 2009 is likely to pose some challenges for the merged

authorities – Commission for Social Care Inspection, Healthcare Commission and Mental Health Act Commission. These bodies will need to consolidate and align their respective ways of working, while being careful not to lose the good practice within individual organisations.

- **Delivering new statutory duties for inspection** – The creation of a new joint inspection framework – CAA will combine for the first time the perspectives of seven partner inspectorates to provide an assessment of outcomes for people in an area and a forward look at prospects for sustainable improvement. New inspection criteria will be developed and it will be important not to lose the equalities and human rights dimension from it.
- **Wales-specific inspectorates** – While some inspectorates cover England and Wales, others are Wales-specific. In any study such as this there is value in seeking to identify areas of commonality and difference in implementation, as well as any particular challenges/opportunities presented by cross-boundary working and/or sharing of learning.

2.3 Selecting respondents

2.3.1 The study comprised 60 semi-structured qualitative interviews – conducted face-to-face and via telephone – with representatives from a sample of 11 inspectorates. A list of interview questions can be found in Appendix 3. The research team contacted the chief executive (or equivalent) in the first instance and asked for up to eight nominated individuals in total. Interviewees were in the following groups:

- front-line staff – those delivering day-to-day inspection, audit and/or complaints-handling activities
- middle and senior managers – those responsible for managing teams of front-line staff, developing strategies and policies, and action planning, and
- director-level individuals – those operating at board-level with an overarching responsibility for ensuring the organisation works in accordance with the HRA.

2.3.2 This was informed, and supplemented, by desk-based research involving analysis of key documents relevant to each organisation. The research team gave clear guidance about the ‘ideal’ sample, the final interviewee sample was dictated by the organisation itself and interviewee availability.

2.3.3 The focus of this study was on inspectorates and, therefore, views from other organisations, such as inspected bodies, were not sought.

2.4 Interpreting the study data

- 2.4.1 This study was not in any way concerned with identifying breaches of the HRA. It was conducted in the spirit of identifying what activities inspectorates have been engaged in to embed human rights into their practices and what lessons can be learnt. The reader should take care when interpreting the data as the research was largely based on interviewee perceptions on how human rights has been embedded within their organisations, which can be very different from how the HRA has been actually integrated. Also, the number of interviewees selected in any one inspectorate was comparatively small in relation to the overall staff size and this makes it difficult to draw any conclusion that an individual's experience is a reflection of how the organisation has responded to human rights as a whole.
- 2.4.2 OPM has adhered to ethical research practice and as far as possible and has written the report in a way that prevents particular findings from being attributed to a particular organisation or individual. However, where OPM received permission from the inspectorate or where developing practice was reported publicly we have made reference to it in this report.
- 2.4.3 This study will not tell us which inspectorate is doing better than another as we have no typology of good practice to benchmark against. However, we have reported on developing practice and the challenges which inspectorates face. These can be taken forward in future research to establish such a benchmark.
- 2.4.4 Also, given that the focus of this study was on the inspectorate's themselves, the views from other organisations, such as public service bodies, were not sought. Therefore, any data should be interpreted acknowledging the fact that it reflects inspectorate perceptions only.

2.5 Structure of this report

Section 3: describes evidence related to how inspectorates have embedded human rights in their day-to-day functioning.

Section 4: discusses what action inspectorates have taken to integrate human rights in inspection frameworks and processes.

Section 5: sets out the inspectorates' knowledge of how human rights have been embedded by public bodies.

Section 6: summarises the challenges and barriers facing inspectorates, highlighted through the research.

Section 7: describes what support and further guidance inspectorates would find useful to help embed human rights into their everyday practices.

3. WHAT ARE INSPECTORATES DOING ABOUT HUMAN RIGHTS?

This section examines what inspectorates have been doing since the introduction of the HRA to integrate human rights into their everyday work. As well as providing an overview on the overall approaches taken by inspectorates, we have looked at progress across specific areas including:

- the leadership and level of commitment to human rights
- the integration of human rights into corporate plans and strategies
- integration of human rights with equality and diversity
- how inspectorates have reviewed their policies and are keeping up-to-date, and
- the extent to which there has been training and development across inspectorates.

3.1 Overview

3.1.1 Overall, respondents across all inspectorates pointed to a wide range of activities that had been undertaken to integrate human rights since the introduction of the HRA in October 2000. These range from incorporating human rights into corporate plans and equalities strategies, training and development programmes, reviewing and re-aligning policies, and monitoring case law. We didn't find a systematic approach or a single approach for integrating the HRA across inspectorates, but rather, a mixture of ad hoc approaches. We identified that:

- seven out of 11 inspectorates have explicitly or implicitly set out their commitment to human rights as reflected in their corporate plans and value statements
- several inspectorates have integrated human rights with equalities and diversity strategies
- there was considerable variation in the extent to which respondents feel they ought to be kept informed about emerging case law on human rights
- a number of respondents could point to human rights being reflected in internal policies and inspection frameworks, while others didn't know or said it is there, but not always referred to as human rights.

3.1.2 Despite the wide activities undertaken in response to the HRA, there was consensus amongst respondents that they still had much further to go to positively promote human rights both internally and into their work with public bodies.

3.2 Leadership and commitment to human rights

Internal leadership of human rights

3.2.1 When asked where responsibility and accountability for human rights lies within the inspectorate, some respondents spoke about shared ownership and accountability throughout the inspectorate being helpful, while others emphasised the importance of strong senior commitment and leadership. Elements of both – ‘it needs to be bottom-up and top-down’ – appear to feature in inspectorates where respondents felt human rights was central to, and obvious in, the way they work.

3.2.2 A minority of respondents felt that irrespective of how strong and committed their senior managers were in relation to human rights, there were still significant challenges to overcome in making human rights connect with everyday work. A respondent said:

“When 80 per cent of the business is about audit it is difficult to see where the human rights dimension fits when auditors are auditing accounts.” (Auditor)

3.2.3 It is important to note that, while respondents described different approaches to leading human rights, there is evidence to suggest that there are different views, within inspectorates, about where overall responsibility and accountability for human rights lies. Some people were very clear about where they thought it lay but gave different answers to their colleagues – for example, citing specific managers, when others identified individual members, or all of the executive board. Other respondents were less clear.

3.2.4 Part of the problem for leading and communicating human rights related to the following as identified by respondents:

- **It was often assumed people understood who took responsibility for human rights.** It is important not to be complacent, or to assume that people understand who leads and/or takes responsibility for human rights.
- **Messages weren’t reiterated on an ongoing basis.** “[P]eople need to be constantly reminded”. Even where human rights has a high profile, it is important to consider communications of the issue as a constant activity recognising that awareness is as much a case of “people not forgetting and...not becoming complacent” as it is about having appropriate structures in place.

- **Staff in some roles have more awareness of internal structures for leading human rights than others** – for example, those with particular responsibility for communicating, or leading equality, diversity and human rights activities. There may be more heightened understanding ‘in pockets’ than in general. Within one inspectorate, members of staff with particular responsibilities for equality, diversity and human rights thought that structures were clear, whereas another person, with no links into the structures in place, was aware of relevant strategies, and of the requirements, but had limited knowledge about governance and accountability arrangements for this strand of work.

External leadership of human rights

- 3.2.5 The Government’s role in terms of leading and providing a steer on human rights was highlighted by respondents from inspectorates in Wales as being particularly helpful. The Welsh Assembly Government was praised by these respondents for the way it has raised the profile of human rights nationally, prioritising the issues and making clear the responsibilities of public authorities, as well as the way it leads by example and offers support and guidance to other departments. The National Health Care Standards for Wales was quoted by respondents as a good example of guidance.⁶ Such comments were not mirrored by respondents from inspectorates within England.

“The Welsh Assembly Government has a regulatory code and they have paid particular attention to human rights in putting it together.” (Manager)

“...we have been sourcing help and advice [from the Welsh Assembly Government] as well as from our own internal people... The Welsh Assembly Government is an exemplar. They are taking this agenda very seriously.” (Director-level respondent)

3.3 Organisational commitment to human rights

- 3.3.1 A commitment to human rights at the organisational level seems to be manifest through a sound understanding of the relationship between equality, diversity and human rights and willingness to address human rights itself, explicitly, for example, through the organisation’s values as well as through its policies and strategies, training and support and review processes. Many respondents also talked about commitment to human rights being demonstrated through leading by example in order to model human-rights-sensitive behaviour, both internally and externally.

6 Welsh Assembly Government, Health Care Standards for Wales: Making the connections: Designed for life (May 2005).

“Documentation plays a part, but behaviours make things happen...if you model behaviour, you can grow practice.” (Director-level respondent)

- 3.3.2 Commitment to integrating human rights was also sometimes driven by legal frameworks within each inspectorate operates. For example, HMI Prisons works within an international human rights framework, therefore, the commitment to human rights was already there. The HRA helped to provide further legitimacy to the inspection approach already taken.
- 3.3.3 Our research shows that commitment to human rights varies to a greater degree at the individual rather than at the organisational level. At the organisational level, human rights appears to be implicit or explicitly referenced in most of the work of case study inspectorates, through internal policies and strategies and the process of inspection. At the individual level, however, some respondents at all levels talk about having very limited knowledge of the detail of the HRA in terms of how it actually relates to their day-to-day roles.
- 3.3.4 Explanatory factors include: whether or not the terminology ‘human rights’ is used at the organisational level; the role and nature of the organisation; and, the role and duties of the individual. Some individuals are aware that, by default, they are compliant as they adhere to the policies and procedures set out by their organisations, which address human rights, but they themselves do not understand how such procedures relate to the HRA. The challenge here appears to be not so much in ensuring compliance at all levels but in ‘translating human rights’ into something meaningful.

“...human rights are embedded in the culture of the organisation...but [in] my job role...I don’t know about it...I’ve not dealt with anything to do with human rights.” (Manager)

- 3.3.5 To illustrate this point, in contrast, quotes below are from respondents who are comfortable with the language of human rights, and/or feel that it has been made very clear to them what the HRA means for the work they do.

“[The HRA has] brought clarity to what we already do...” (Front line worker)

“As an inspecting body, I would never go up [during an inspection] and say ‘What is the Human Rights compliance?’ but...I am aware of the HRA as overarching principles...” (Front line worker)

3.4 Integration of human rights into corporate policies and strategies

3.4.1 Human rights feature in the corporate plans, strategies and value statements in seven out of the eleven inspectorates in the sample, either explicitly by referencing to the HRA directly or implicitly through focusing on individual rights without necessarily using the language of human rights. For example, respondents commented that human rights principles are fundamental to the CSCI's mission for making social care better for people, but these are not explicitly referred to as human rights.

3.4.2 A number of examples can be found which make explicit reference to human rights. The IPCC makes a clear public statement that the values of justice and respect for human rights, independence, integrity and openness are key to its business as reported both on its website and in its Annual Report (2007/08).⁷ Its Corporate Plan also highlights human rights as a key component of its 'operating context':

"The IPCC will need to operate in the context of the challenge, faced by government, the police and other bodies, of striking a balance between protection and preservation of human rights."⁸

3.4.3 The Audit Commission's Strategic Plan (2006) describes how important equality and human rights have become for the effective delivery of public services. Its regulatory response has been to make it a fourth strategic priority – to focus on service users and diverse communities and to 'challenge service providers to promote equality, diversity and human rights'⁹.

3.3.4 As set out in Figure 1 the Healthcare Commission's Strategic Plan (2005-08) outlines key activities for securing improvements for patients through better regulation. It explicitly states that it will use assessments and other activities to promote action to reduce inequalities in people's health and to improve their experiences of healthcare and access to services through greater respect for human rights and diversity.¹⁰

7 Independent Police Complaints Commission, Annual Report 2007/08, p7.

8 IPCC (2007).

9 Audit Commission (2007).

10 Healthcare Commission, Strategic Plan 2005-08,p.

Figure 1

Healthcare Commission's key objectives

'The Healthcare Commission is committed to furthering equality, diversity and human rights and reducing inequalities in health.

This commitment is set out clearly in our strategic goals and organisational priorities and is evident in our work. In particular, we are committed to:

- *using our assessments and other activities to promote action to reduce inequalities in people's health and to improve their experiences of healthcare and access to services through greater respect for human rights and diversity*
- *ensuring an explicit focus on inequalities, human rights and diversity in assessments'.¹¹*

3.4.5 Similarly, the Mental Health Act Commission has human rights at the heart of its objectives as set out in Figure 2.

Figure 2

Mental Health Act Commission

'All activity of the Mental Health Act Commission is informed by the principle of maximising equality and promoting human rights, as described in the Commission's strategy on equality and human rights. Beneath this overarching principle, the Commission's programme of work for this period will focus on making a positive difference to the lives of detained patients and is set out around the following core values:

- *A clear focus on the needs of patients and service users by maximising user involvement and autonomy;*
- *Promotion and protection of equality and human rights: in particular, dignity and respect for patients and service users at all times;*
- *Proportionality and targeting of resources and expertise;*
- *Openness and accountability;*
- *Collaborative working with other agencies.'*¹²

11 Commission for Healthcare Audit and Inspection (2008)d.

12 Mental Health Act Commission (2008)a.

3.4.6 As outlined in the figures above there are some good examples of integrating human rights into corporate plans and strategies. Integrating human rights in such an explicit way can demonstrate both a commitment to human rights, but can also send a message both internally and more widely to public bodies that human rights will be taken seriously by the inspectorate. Although the integration of human rights into policies and plans is important for demonstrating commitment to human rights, this does not necessarily mean that it is integrated into the everyday work of inspection.

3.5 Integration of human rights with equality and diversity

3.5.1 All inspectorates in the sample have strategies in place reflecting their obligations in respect of equality and diversity, but not all for human rights. There are some exceptions where the links have been explicitly made as outlined in Figure 3 and Figure 4.

3.5.2 Predominantly the focus of most inspectorates' equality and diversity strategies is on addressing the six equality duties¹³ and not human rights. However, some would argue that the principles of human rights – namely, fairness, dignity, respect and equality – underpin their strategies although are not explicitly referred to as human rights.

3.5.3 Most respondents were keen to emphasise some of the ideas or values relating to human rights as being integral to their equality and diversity strategies, but that they weren't explicitly referenced as human rights. The obvious dangers with this is that it does not help an inspectorate to create a corporate realisation of human rights, nor does it emphasise its role or accountability in relation to human rights

3.5.4 The way in which human rights is referred to by inspectorates seems to be linked to the relationship between – and understanding of – equality, diversity and human rights. Broadly, approaches taken at the strategic level can be categorised as follows:

- **One strategy for human rights, equality and diversity** – This group encompasses those with a scheme or strategy that addresses equality, diversity as well as human rights, with human rights referenced either explicitly or implicitly. The Mental Health Act Commission (Figure 3) and the Healthcare Commission (Figure 4) are two inspectorates which draw human rights with equality and diversity together.
- **Separate strategies addressing different duties** – This group encompasses those who focus their strategic approach on the six equalities duties – addressing them separately or in groups. Within this

13 Six equalities strands include: disability, race, equality, age, sexual orientation, religious belief, gender).

group, again, human rights can be referenced explicitly or implicitly, for example, within each equality strategy/scheme itself, or in linked publications, or supporting structures

Figure 3

The **Mental Health Act Commission** has brought together equality, diversity and human rights at the strategic level.¹⁴ The organisation's rationale for this is as follows:

- *'It is our belief that this strategy will place us in a stronger position to cope with the complexity of individuals' needs – it avoids the downside of single equality strategies which can risk attempting to pigeonhole individuals into categories such as "women", "BME", "older people", "gender issues". The complexity of real life means that individuals rarely fit into single categories.'*¹⁵

Figure 4

The **Healthcare Commission** has adopted an equality-duty-based approach, implemented within the context of explicit reference to human rights. The organisation has separate race, equality and disability schemes which are supported by a Statement of Intent focused on 'Promoting human rights and reducing inequalities'¹⁶.

In 2006, the Healthcare Commission had established a Committee on Equality and Human Rights, *'to support and advise the organisation as we develop our policies relating to disability and gender equality'*. Its purpose is to:

- *ensure that the Commission maximises its contribution to reducing inequalities in people's health and promoting equality of, and access to, experience and outcomes of healthcare*
- *ensure that the Commission becomes a model employer in respect of equality in employment*
- *ensure that the Commission meets its statutory duties and complies fully with all current and future legislation on equality and human rights*¹⁷.

14 Mental Health Act Commission (2007)a.

15 Mental Health Act Commission (2007)a.

16 Commission for Healthcare Audit and Inspection (2005).

17 Commission for Healthcare Audit and Inspection (2006).

3.5.5 Within the two broad groupings, the majority of inspectorates have developed additional plans and policies to ensure delivery of the provisions contained within their strategies, for example action plans or diversity statements, or have identified them as key issues within corporate plans.

3.6 Internal structures for embedding human rights and equalities

3.6.1 The extent to which human rights and equalities are integrated in an inspectorate can be understood by exploring the structures that have been put in place to integrate human rights with equality and diversity in inspectorates.

3.6.2 Respondents described inspectorates having:

- **separate committees/working groups for each strand of activity**, for example a group that leads on equality and diversity practice, and a separate but linked group with the same responsibility for human rights, or
- **one committee/working group that takes responsibility for equality, diversity and human rights**, that is to say, an approach that brings together the separate strands of work under one 'umbrella'.

3.6.3 Either instead of, or in addition to, one of the committee approaches described above, inspectorates might also have:

- **nominated leads/teams** with responsibility for particular aspects of equality, diversity and/or human rights. The responsibility for compliance with legislation, and/or leading activity in respect of equality, diversity and human rights lies with a particular department or named individual. This could be part of the remit of, for example, the human resources department, or a particular director-level staff member.

3.6.4 These approaches are combined with a range of mechanisms for leading and communicating human rights, equality and diversity within the organisation. These include, for example, having departmental or regional 'champions' and/or board-level prioritisation of work in this area.

3.6.5 Each of these approaches has its own strengths. However, what is clear from respondents is that too fragmented an approach across an organisation will mean the interplay between human rights and equalities will be less understood and at its worst it could run the risk that staff feel these issues are the responsibility of one or most distinct groups alone, rather than being 'everybody's business'.

3.6.6 As set out in Figure 5, the Audit Commission's structure is a good example for integrating equalities and human rights across the organisation. Membership is drawn from across the organisation, it has clear objectives

and has embedded action plans for equalities and human rights across the organisation.

Figure 5

The Audit Commission's Diversity Scheme¹⁸ sets out the structures for delivering diversity and human rights within the organisation.

*'Our **Diversity Strategy Board** gives advice and support to our Management Team and other groups to help us achieve diversity, focus on the service user and promote human rights. The Diversity Strategy Board regularly reviews our work so that we are consistent across the organisation.'*

The Diversity Strategy Board takes its membership from across the organisation and includes, *'regional services leads', 'diversity and equality representatives'* and *'staff who are part of the **Diversity, User Focus and Human Rights Knowledge Network**' which was established for the purpose of sharing learning and carrying out 'specific projects (for example...the Journey to Race Equality toolkit, the Knowing Your Communities toolkit and the Notable Practice website)'*.

A dedicated team within the human resources function of the organisation supports the work of the Diversity Board and links with the *'regional diversity champions within the four regional management teams'* and *'diversity champions in directorates'*.¹⁹

3.6.7 The Mental Health Act Commission is another good example. It has placed responsibility for equalities and human rights with the organisation as a whole, ultimate responsibility resting with the Board. The benefits of this approach give human rights and equalities strategic significance within the organisation – see Figure 6.

18 Audit Commission (2006)a

19 Audit Commission (2006)a

Figure 6

An alternative model can be found in the **Mental Health Act Commission**. The organisation's Strategy on Equality and Human Rights aims to '*embed a human-rights-based approach throughout the organisation in order to help safeguard and promote the human rights of all patients who are detained under the Mental Health Act and of all those who work for or on behalf of the Commission*'.²⁰

The leadership and ownership of human rights within the organisation reflects this aim in that it places 'responsibility for the development and delivery of the strategy on equality and human rights on the organisation as a whole, with ultimate responsibility resting with the Board'.²¹

3.6.8 Each approach has its own merits for engaging staff across the organisations on human rights and equalities issues. Interestingly, respondents from across 11 inspectorates still talked more confidently about equalities rather than human rights irrespective of the structures put in place. However, most agreed, not having a nominated individual or group of individuals designated to lead the agenda could lead to human rights and equalities being 'owned by no-one'.

3.7 Review of policies and procedures

3.7.1 Respondents from across all inspectorates felt that the introduction of legislation, including human rights, was always taken seriously by inspectorates. They were keen to point out that internal policies and procedures would have been systematically reviewed as well as processes for auditing or inspecting organisations. Several examples were highlighted by respondents:

- the Audit Commission reviewed its internal policies and procedures for human resources
- the Audit Commission included key questions into its audit processes to assess what arrangements local authorities were making to prepare for the HRA before the Act was introduced in October 2000
- the HMI Prisons for England and Wales updated and strengthened its inspection methodologies 'Expectations' to reflect the HRA²²
- the Healthcare Commission's inspectors work closely with the legal team

20 Mental Health Act Commission (2007)a.

21 Mental Health Act Commission (2007)a.

22 HM Inspectorate of Prisons for England and Wales, Expectations (2007).

on every investigation to identify potential breaches of the HRA

- the Mental Health Act Commission also undertook a programme to fully incorporate human rights into its work as highlighted in Figure 7 below.

Figure 7

'Making it Real' was a project commissioned by the Mental Health Act Commission in order to help it 'fully to incorporate the human rights framework within its work, so that it became a recognised part of regular activity across the organisation'.²³ The study was funded by the Department for Constitutional Affairs and the Department of Health, and delivered in partnership with Elborough Consulting Ltd.

Making it Real involved, in the first instance, a questionnaire completed by staff at the Commission and service user representatives from the Service User Reference Panel (SURP), as well as interviews with detained patients in older people's or learning disability units. This informed the development of a human rights training programme designed to increase participants' awareness of what it means to deliver a human rights approach to the way they work.

'Each training session ended with an analysis by participants of the practical implications of human rights for Mental Health Act Commission's different functions, policies and procedures.'²⁴

A follow-up questionnaire was undertaken after training, and then again six months after project completion, which showed improvements in awareness, understanding and perceived value of the HRA. The follow-up work also included visits to mental health units and review of guidance and documentation for visits.

Making it Real was seen very much as part of an ongoing process within the Commission, which involved implementation and subsequent review of the organisation's Equality and Human Rights Strategy²⁵ which is closely linked to its Service User Involvement Strategy.²⁶

3.7.2 Whilst inspectorates have systematic processes in place to review the implications of new legislation as public bodies they are also legally obliged to undertake equality impact assessments. The Healthcare Commission has

23 Collins (2007) p4.

24 Collins (2007) p5.

25 Mental Health Act Commission (2007)a.

26 Mental Health Act Commission (2005).

taken this a step further and included aspects of human rights in the impact assessment protocols. See Figure 8 below.

Figure 8

The **Planning for Inclusion Process (PIP)** equality impact assessment developed by the Healthcare Commission aims to identify the likely impact of, and issues arising from, the Commission's work and, in doing so, *'to identify issues, and plan action to maximise the opportunity for promoting equality and inclusion.'*²⁷

The PIP tool is designed to be used 'at the introduction of a new policy, project or function' or during 'the implementation of an existing policy, project or function'.²⁸ Human rights features throughout, for example:

- *PIP Initial Screening.*
- *Sections 1.8 and 1.9 of the tool²⁹ ask about the 'differential positive and negative impact' of the policy or project. The guidance prompts the person to think about the key provisions of the HRA when considering impact.*
- *Section 1.12 of the tool refers the person completing it to the legal responsibilities of public authorities under the HRA, and provides example questions to ask about the work, as follows:*

'The following questions may prove useful:

- *Will delivery of the policy/strategy/project affect a person's right to life?*
- *Will someone be deprived of their liberty or have their security threatened?*
- *Could this result in a person being treated in a degrading or inhuman manner?*
- *Is there a possibility that a person will be prevented from exercising their beliefs?*
- *Will anyone's private and family life be interfered with?*

If the answer is 'yes' to any of these questions (or to any questions regarding the other Articles below), can the policy be amended to avoid impacting upon Human Rights? If not, seek legal advice before proceeding.³⁰

27 Commission for Healthcare Audit and Inspection (2008)d.

28 Commission for Healthcare Audit and Inspection (no date)a.

29 Commission for Healthcare Audit and Inspection (no date)b.

30 Commission for Healthcare Audit and Inspection (no date)a.

3.8 Training and development

3.8.1 There is widespread acknowledgement of the need for ongoing training in relation to human rights, even in organisations where respondents thought they were well supported in that respect. There were a number of reasons for this:

- human rights are an ever-evolving agenda and, as such, there needs to be continual support given to staff to interpret and apply legislation to their day-to-day work. Also, very now and then there is a legal case that requires practice to change.
- some inspectorates, it was suggested, do not have such a strong history of framing their work in terms of human rights; in such cases, it can take longer, and require consistent communication to embed a culture in which day-to-day activity is expressed in the language of human rights.
- there will always be training needed so long as there is staff turnover. New members of staff, even those with demonstrable understanding of the issues, need to understand how human rights are applied within the particular context and there was recognition of the benefits to existing staff of ‘refresher’ training; *“constantly embedding, reinforcing [and] developing confidence”*.

3.8.2 Respondents highlighted a wide range of training and development activities relating to human rights. This study is unable to report on the quality of the training provided but most respondents were at least able to say that they had received some form of training on human rights including:

- mandatory and optional training on equality, diversity and human rights
- staff bulletins and newsletters with updates on case law and casework
- human rights ‘surgeries’ where staff can obtain advice about particular issues.

3.8.3 In relation to staff bulletins the IPCC has developed a notable way of facilitating learning about human rights both within the organisation, and to public sector bodies, as shown in Figure 9.

Figure 9

The '**Learning the Lessons Committee**' is a multi-agency group comprising the **IPCC**, the Association of Chief Police Officers, the Association of Police Authorities, HM Inspectorate of Constabulary, the Home Office and National Policing Improvement Agency.

'The Committee receives reports and information on investigations from the IPCC on a regular basis. The Committee decides which of these reports are of use to the police service in helping to improve policies and practices. These are then included in a regular bulletin which will be circulated three times a year to police forces and other bodies with constabulary powers.'³¹

The bulletins are also made available to the public, via the Committee's website: <http://www.learningthelessons.org.uk/>

3.8.4 Respondents praised the seminar on human rights, delivered by the Ministry of Justice in March 2008, as a good example of an opportunity for inspectorates to share practice, discuss issues and develop their learning.

3.8.5 A strong message emerging from the interviewees was that providing training and guidance alone is insufficient, particularly where staff are less familiar with the language of human rights and/or with translating it into their day-to-day roles. A respondent said that *"it needs to be approached in a way that is not a burden – it should be exciting and attractive to people"*. Training and awareness-raising need to be focused on providing ongoing support, and reassurance, rather than being simply instructive. There can be a need to build confidence, making very clear the expectations of different staff, while also 'myth-busting' and providing specific, relevant examples of human rights in practice.

"... training doesn't get results – it is sitting down 'hand-holding' [with] people that is most effective." (Manager)

3.8.6 In relation to recruitment a minority of respondents talked about explicit awareness of human rights issues being a key part of the recruitment criteria for staff.

"The people we recruit will be tested against equality, diversity and human rights type issues. That's standard in our interviewing pack and in our competencies. We look for meaningful evidence of their understanding and embracing of equalities and human rights..." (Board-

31 IPCC (no date).

level respondent)

“[If an applicant’s] values are not compliant with the HRA, we would not employ them. We are up-front about who we are and what we do. All staff are safeguarding human rights [and] all buy-in to this.” (Middle manager)

“...every interview with a potential [inspector/assessor] focuses on human rights.” (Board-level respondent)

- 3.8.7 Raising awareness about human rights and equalities as part of recruitment and on-going training and development for staff was identified by respondents as important for instilling a human rights culture. As one respondent described it:

“The best way of sustaining human rights...is to embed the approach within the methodologies and functions of the organisation.” (Director-level respondent)

3.9 Keeping practice and knowledge up-to-date

- 3.9.1 There was considerable variation in the extent to which respondents feel they ought to be kept informed about case law, and in terms of how well they are able to find out this information. There seems to be a relationship here with the role, function and remit of the organisation. The majority of respondents would know who to ask in their organisation for information on human rights and many expressed preference for an ‘exception reporting’ approach to being updated: they only wanted to know about cases that had direct relevance to their work.
- 3.9.2 The structures and processes for communicating information about case law seem to vary, again, in part at least in accordance with the role and remit of the organisation. While there were notable examples of where communication about case law and/or case studies was proactive and multi-faceted, the majority of respondents in the sample did not have detailed awareness of the mechanics associated with feeding back changes in legislation and case law into organisational policy and practice and/or reviewing policies in respect of human rights in their organisation.

3.10 Conclusion

- 3.10.1 It is not surprising that overall approaches for integrating human rights into inspectorates everyday work do vary as they are often determined by the role and functions of the inspectorate and/or its existing legal frameworks. However, what is clear is that there are a number of criteria which make for a strong integrated approach. These include:

- **making explicit links to human rights within corporate strategies and plans.** Inspectorates which do this are better placed to create a corporate realisation of human rights. This also is important for emphasising their role and accountability in relation to the HRA. This is further strengthened if accompanied by an integrated approach to equality, diversity and human rights as set out in equality and diversity strategies.
- **having strong and visible leadership for human rights.** Evidence suggests good practice includes clear leadership from the top, filtered down through the organisation through clear structures with a focus on shared ownership. This seemed to be important for getting shared ownership and accountability for human rights in inspectorates.
- **having processes in place for the systematic review of policies and procedures against the HRA and emerging case law.** A number of respondents were able to point to aspects of policy and/or procedure review. Where human rights or the rights of the individual and/or distinct aspects of the HRA are made clear in policies and strategies, this is likely to be advantageous in terms of developing a culture in which human rights relate to every day practice.
- **training and development is critical for embedding human rights.** All respondents said that they had received some form of training on human rights, although these varied in quality. Respondents identified that training in this area is most beneficial when it is ongoing rather than discrete; comprising 'on-the-job' support as well as 'one-off' sessions. If this is not the case, training is seen as an additional burden with little direct relevance to everyday work.

3.10.2 While most inspectorates have some elements of these criteria, it is clear from the research that no one inspectorate meets all of the criteria as set out above. Many respondents felt that a lot of progress still needed to be made.

3.10.3 Finally, there does not appear to be consensus amongst respondents about what it means to have a 'human rights culture', although responses from people who think human rights are embedded well within their organisation suggested that a human rights culture might be one in which human rights are referenced in the rhetoric, practice and ongoing prioritisation work of the organisation, and are well-understood by those working in the inspectorate.

4. HOW ARE HUMAN RIGHTS INTEGRATED INTO THE INSPECTION FRAMEWORKS?

This section discusses more specifically how human rights have been integrated into the inspection frameworks and complaints-handling procedures. It seeks to:

- set out the current state of play
- discuss the variety of inspection frameworks currently in use for human rights
- outline how inspections for human rights are put into practice
- describe how human rights are reported
- review the new innovations and developments for the inspection of human rights.

4.1 Current state of play

4.1.1 The drivers and challenges for integrating human rights into inspection come from the legal framework which each inspectorate operates within. For example, the inspection of prisons has always been based on human rights principles driven by international human rights instruments, which requires the regular inspection of places of detention.³² Therefore, the HRA, if anything, has provided additional validation to an approach already adopted by the inspectorate. Drivers and challenges also come from the regulatory policy environment and the inspectorates' overall approach for embedding human rights as discussed in Section 6.

4.1.2 Overall, the research team found a lot of activity going on in most inspectorates to integrate human rights into inspection frameworks and complaints-handling procedures. However, one respondent described the pace of change for integrating human rights as:

“A slow creep rather than a big bang.” (Specialist)

4.1.3 It's of no surprise that the ways in which human rights are included in inspection are highly diverse. However, it is sometimes difficult to find where human rights feature within them because some do not make explicit reference to human rights. Criteria relating to human rights issues is clearly there, such as patient safety, safe custody, dignity and respect, but they are

³² Optional Protocol to the UN Convention against Torture came into effect in July 2006. It requires states to have in place an independent expert preventive mechanism for regularly visiting and inspecting places of detention.

not couched it in terms of human rights. The research team identified three simple categories:

- inspection frameworks which make explicit reference to the human rights and/or where inspection criteria has been checked against the HRA
- inspection frameworks which include the principles of human rights, but do not explicitly reference the HRA, and
- inspection frameworks which don't attempt to make reference to human rights, but do allow for equality.

4.1.4 Most inspectorates will also produce individual inspection reports for the public bodies they audit and inspect. The research team found few examples of reports which made direct reference to human rights issues or good practice. However, some inspectorates may argue that although direct reference was not made in individual inspection reports, human rights type issues were addressed, for example issues such as patient safety, fair treatment, dignity and respect.

4.1.5 As well as reporting on individual inspections, inspectorates also publish research in the form of national reports. National reports specifically addressing human rights issues were scarce although there was one exception, the Audit Commission's 2003 report.

4.1.5 Some inspectorates also produce self-assessment tools for the public bodies they inspect which help to promote human rights together with the six equality strands. The Audit Commission has produced a self-assessment tool '*Knowing your Communities*'. New developments for assessing human rights appear to be the exception rather than the rule.

4.2 Inspection frameworks currently used for human rights

4.2.1 There are a number of examples of inspectorates which have checked their inspection frameworks for assessing public bodies against the HRA and/or make direct reference to the HRA within inspection criteria. The research team has drawn out the best examples below. The approaches taken are diverse, which is a reflection of the inspectorates role and functions together with whether or not they see human rights as a priority in the context of other policy initiatives.

4.2.2 The Mental Health Act Commission is the first of a number of examples for integrating human rights into its criteria for inspecting mental health services. It has a number of statutory duties, under the Mental Health Act 1983, namely to safeguard the interests of all people detained under the Mental Health Act 1983. Obvious and direct links can be made between the HRA and its key purpose. It has embedded human rights into a 'Quick Cross Reference' tool for use primarily on monitoring visits to mental health trusts.

An excerpt of this tool is reproduced, with permission, in Figure 10. The relevant Articles of the HRA have been used to strengthen and inform what inspectors should consider when reviewing aspects of mental health service provision.

Figure 10

Criteria for assessing mental health services used by the Mental Health Act Commission

| ARTICLE | MHA REF. | KEY CONSIDERATIONS | OTHER COMMENTS |
|--|--|--|--|
| Article 2 – the right to life | Para 19 CoP | Preventing death of those detained Preventing self-harm Management strategy of violent patients who pose a risk to others (patients and staff) | There is a positive obligation to protect this right. In other words, reasonable steps should be taken to protect life. |
| Article 6 – the right to a fair trial | s132 patient rights s23 managers hearings MHRT (part V of MHA) | This covers all aspects of procedural fairness. Particularly relevant when other rights, such as the right to liberty or right to respect for private life, are in play. | A limited right. Includes the right to participate effectively in proceedings and in some cases a public hearing, right to legal representation |
| Article 9 – the right to respect for freedom of thought, conscience and religion | CoP Para 1.1 guiding principles | Lack of facility for celebrating own religion Having a particular food diet (e.g. kosher) which expresses a religion or belief. | Freedom to manifest/carry out religious belief is a qualified right. Freedom of thought, conscience and religion is an absolute right. |
| Article 10 – the right to respect for freedom of expression | s134 (power to withhold mail) | The rights entitles people to hold opinions and receive and impart information and ideas including pornography | A qualified right allowing a balance to be struck between an individual's right and the wider public interest. |

4.2.3 Similar to the Mental Health Act Commission, HMI Prisons is another example of how inspectorates can work in a way which is linked explicitly and obviously with HRA, by nature of their functions and roles (Figure 11). Within both inspectorates, there is a strong view that the HRA poses no significant additional challenge to them, given that their role and remit was determined by laws that encompassed protection of human rights in the first instance.

The HRA has generally been positively received and has strengthened their role, or enabled them to re-visit their work to ensure they are addressing all aspects of their human rights obligations appropriately.

Figure 11

HMI Prisons: Inspection framework

In relation to prisons, 'the four levels of inspection are: the local monitoring boards; the National Prison Inspectorate; the National Prison Ombudsman; and the European Committee for the Prevention of Torture'.³³

At level two (the national level), HMI Prisons' statutory duties under Section 5A of the 'Prison Act 1952' as inserted by section 57 of the Criminal Justice Act 1982 include its obligation to '*inspect or arrange for the inspection of prisons in England and Wales and report to the government on the results*'.³⁴ Under the Optional Protocol to the UN Convention on Inhuman and Degrading Treatment and Torture³⁵, ratified in the UK in 2003, there is a legal obligation for states to have in place a system of independent visiting and monitoring of prisons.

The terms of reference of HMI Prisons includes its responsibility to report to government 'in particular... on the treatment of prisoners and conditions in prisons'.³⁶

While, clearly, the whole HRA is relevant to the function of the inspectorate, there is very obvious read-across to: Article 5 of the HRA (Right to Liberty) which identifies conditions for lawful detention; Article 3 (Inhuman treatment) and Article 6 (Right to a fair trial).

4.2.4 Another example is the IPCC which makes explicit references to the HRA in carrying out its work as a complaints-handling body (Figure 12) Human rights is referenced throughout its case work manuals, protocols and processes. For example, the IPCC has a 'Referrals' manual which contains details of the IPCC's process and protocol for deciding its mode of investigation, A key part of this is a risk assessment process is determining whether or not the 'complaint or recordable event'³⁷ involves a potential breach of the HRA.

Figure 12

33 Kissane (2005).

34 HM Inspectorate of Prisons (no date)a.

35 Office of the United Nations High Commissioner for Human Rights (2002).

36 HM Inspectorate of Prisons (no date)a.

37 IPCC (2004)

IPCC's key principles that underpin investigations

The **IPCC** has the authority to perform its obligations under the Police Reform Act 2002 'in the manner it considers best for the purpose of securing the proper carrying out of its functions'.³⁸ It sets out how decision-making regarding investigations is informed in its 'Criteria for Investigations'³⁹, the introduction of which makes clear that when 'considering both the selection and the re-selection of the mode of investigation the IPCC will have regard to its core values'. As aforesaid, the first of the IPCC's core values is 'Justice and respect for human rights'.

There are four key principles that underpin the Criteria for Investigations, one of which relates expressly to the IPCC's duties under the HRA.

'The IPCC is a public authority for the purposes of the Human Rights Act 1998. The IPCC must apply the principles of the European Convention on Human Rights in accordance with the Act.'

Human rights are referenced explicitly throughout its protocols for managing complaints and referrals. The IPCC has published its 'Casework Manual' which provides 'guidance to our Casework Managers who are responsible for handling important aspects of the complaints procedures. Casework Managers are expected to apply the guidelines in the Manuals'.⁴⁰ The Manual comes in seven sections and human rights are referenced explicitly in the decision-making process. An example follows – in the form of excerpts taken from the 'Referrals' manual.⁴¹

For example, the 'Referrals' manual, contains details of the IPCC's process and protocol for deciding the Mode of Investigation (MOI), a key part of which is a risk assessment. Central to the risk assessment process is determining whether or not the 'complaint or recordable event'⁴² involves a potential breach of the HRA. In cases 'thought to engage Article 2 or Article 3 of the European Convention on Human Rights', there is 'a strong expectation that legal advice will be sought' and the referral 'must be copied to the Directorate of Legal Services' in the IPCC.⁴³ The 'Mode of Investigation Minute' is 'intended to capture the important characteristics that a case exhibits at the point it is referred'. It makes clear the factors that 'require a particular treatment in terms of MOI' which include engagement of Article 2 or Article 3 of the HRA.⁴⁴

Commissioners are expected to have due regard for human rights in all of their work for the IPCC. This is made clear in the Commissioners' Code of Conduct where it is stipulated that commissioners must 'act justly and respect human rights'⁴⁵.

38 IPCC (2004).

39 IPCC (2004).

40 IPCC (no date)f.

41 IPCC (2008)a.

42 IPCC (2004).

4.2.5 Links to the HRA for the Audit Commission are less obvious than for HMI Prisons, the IPCC and the Mental Health Act Commission, but nonetheless the Audit Commission has helped to raise the game in relation to human rights by making explicit reference to human rights in its Comprehensive Performance Assessment (CPA) framework for single tier and county councils.⁴⁶ The same criteria are also used for district councils. An extract from the Key Lines of Enquiry (KLOEs) for councils are set out in Figure 13 below. The assessment criteria is used by inspectors to judge how effectively councils are addressing human rights. If they can demonstrate that they have strategies and integrated plans which accommodate human rights they will be deemed by the Audit Commission to be performing effectively in this area.

Figure 13

Audit Commission Key Lines of Enquiry (KLOEs) for the assessment of councils.

What is the capacity of the council, including its work with partners, to deliver what it is trying to achieve?

3. Capacity

Key Question

3.1 Is there clear accountability and decision making to support service delivery and continuous improvement?

Criteria for Judgement

Level 3

The council has integrated the code of conduct into its diversity policies and its duties under the Disability Discrimination and Race Relations Acts. Linkages have been made between the Human Rights Act, the Freedom of Information Act, the Sex Discrimination Act and the code of conduct. The leader, chief executive, standards committee and monitoring officer actively promote the importance of the ethical agenda.

Systems are in place to deliver integrated information about services for the Community. The council has a published service strategy that addresses diversity, human rights and the needs of its users and customers. The council provides integrated information about its and its partner's services for the community. The

43 IPCC (2008)a.

44 IPCC (2008)a.

45 IPCC (2005).

46 Audit Commission, CPA 2005, Corporate Assessment (KLOEs) for single tier councils, 2005.

council is implementing a published service and access strategy that addresses diversity, human rights and the needs of its users and customers, including vulnerable people.

- 4.2.6 Also, in relation to CSCI the values of individual choice, empowerment and personalised care have always been fundamental to their inspections and it was relatively easy to establish the links between human rights and their core work. CSCI inspectors assess performance against a range of Department of Health service-area specific National Minimum Standards (NMS) framework and regulations (summarised in section 2.2.2). The inspectors' use Key Lines of Inquiry Regulatory Assessment framework (KLORA) to them to make judgements about services.
- 4.2.7 KLORA contains 'outcome descriptors' aimed at supporting judgements made by inspectors about 'how well a provider delivers outcomes for the people using the service, rating them as Excellent, Good, Adequate or Poor...based on the standards looked at during the inspection process'.⁴⁷ In undertaking the inspection process, CSCI provides 'Key equality, diversity and human rights prompts' for each area. Figure 14 shows how human rights is interwoven in standards for Adult Care Homes. These standards are expected to be met by Adult Care Homes.
- 4.2.8 The table below provides illustrative excerpts from the NMS, KLORA guidance related to scores of 'Excellent' and 'Poor' and equality, diversity and human rights 'prompt sheet'.

Figure 14

An example of key lines of enquiry used by CSCI for the inspection of care homes for adults.

⁴⁷ CSCI (2007).

| | | | |
|--|--|---|---|
| <p>Example Standards relevant to human rights legislation within the NMS Care Homes for Adults⁴⁸.</p> | <p>KLORA GUIDANCE</p> <p>‘Lifestyle’ Outcome Group (incorporating standards 11-17)</p> <p>‘People who use services are able to make choices about their lifestyle, and supported to develop their life skills. Social, educational, cultural and recreational activities meet individuals’ expectations.’</p> | | <p>Sample of equality, diversity and human rights prompts in relation to ‘Lifestyle’ outcome group⁴⁹.</p> |
| | <p>Excerpts from KLORA guidance - Rating of ‘Excellent’.</p> | <p>Excerpts from KLORA guidance - Rating of ‘Poor’.</p> | |
| <p>Standard 15 – Relationships</p> <p>15.1 ‘Staff support users to maintain family links and friendships inside and outside the home, subject to restrictions agreed in the Individual Plan and Contract...’.</p> <p>Standard 16 –</p> | <p>‘...promotion of the individual’s right to live an ordinary and meaningful life, appropriate to their peer group, in both the home and the community, and to enjoy all the rights and responsibilities of citizenship.’</p> <p>‘The service understands and actively promotes</p> | <p>‘Routines in the home are rigid and staff are not prepared to change their way of working to meet individual choices and wishes... The service is not person centred in its approach to supporting people that use the service.’</p> | <p>Is there freedom to follow different lifestyles, or are people all expected to live the same way of life?</p> <p>Does the home make sure that people are not stereotyped? For example by putting football on the television for men or encouraging only women to do their own laundry.</p> <p>Does the home make</p> |

48 Department of Health (2003)b.

49 CSCI (2008).

| | | | |
|--|---|--|---|
| <p>Daily routines</p> <p>16.1 'The daily routines and house rules promote independence, individual choice and freedom of movement, subject to restrictions agreed in the Individual Plan and Contract...'</p> | <p>the importance of respecting the human rights of people using the service, with fairness, equality, dignity, respect and autonomy all being seen as central to the care and support being provided.'</p> <p>The routines, activities and plans are person centred, individualised and reflect diverse needs in the six strands of diversity: gender (including gender identity), age, sexual orientation, race, religion or belief, and disability. They are regularly reviewed and are very responsive to individuals changing needs, choices and wishes.</p> | <p>'The service has no, or a very limited, understanding of human rights and how this impacts on people using the service. There is a lack of commitment being shown in the areas of respect, dignity and fairness and there could be evidence that people's human rights are not being respected.'</p> <p>'Little consideration is given to supporting people's individuality or social preferences. Their wishes to develop or maintain personal relationships with privacy for intimate contact</p> | <p>sure that people are given equal support to develop friendships and intimate relationships?</p> <p>Can all people who use the service have visitors to stay overnight or invite and entertain a group of people of their choosing? For example, can a disabled or LGB or T resident invite their partner to stay the night?</p> <p>Does the home's visiting policy restrict anyone unfairly? For example, people from some cultures may prefer to have their extended families visiting all together as opposed to one or two people at a time?</p> <p>Does the home take race, age, gender (including gender identity), sexual orientation, disability, religion or belief into</p> |
|--|---|--|---|

| | | | |
|--|--|---|---|
| | | are not respected. Staff do not talk to, or interact with, individual residents or respect their rights.' | consideration when assessing capacity and making decisions under Mental Capacity Act 2005 guidelines? |
|--|--|---|---|

4.2.9 There are also a number of inspectorates which do incorporate human rights principles into their inspection frameworks, but don't necessarily couch them in human rights terms. For example, HM Inspectorate of Probation works to the Government's ten principles of inspection in the public sector when undertaking inspection duties. Human rights are referenced implicitly within the principles which form part of the Inspectorate's Code of Practice⁵⁰ in that they state inspection should: *'have a user perspective'*, *'use impartial evidence'*, and, *'disclose the criteria used to form judgements'*.

4.2.10 While the language of 'human rights' may not be used in the Code of Conduct, the principles of human rights underpin the organisation's approach to fulfilling its duties.

4.2.11 However, in other areas of HMI Probation's work human rights are referenced explicitly. For example, in the National Offender Management Service (NOMS), standards inform the inspection criteria. NOMS Offender Management Standards stipulate that offender management:

*'... will be done with due regard to the human rights, dignity and safety of offenders, victims and partners, and that services will be respectful and responsive to the diverse needs and circumstances encountered in correctional work.'*⁵¹

4.2.12 In addition, HMI Probation has issued guidance on the Multi-Area Public Protection Arrangements (MAPPA) that each of the police and probation services in England and Wales has a statutory obligation to deliver.⁵² MAPPA guidance makes explicit reference to human rights and is referenced in the inspection criteria.

⁵⁰ HMI Probation (no date)d.

⁵¹ Ministry of Justice (2007).

⁵² HMI Probation (2003).

- 4.2.13 Human rights are, therefore, being addressed both explicitly and implicitly in the HMI Probation. The language of human rights is explicit in the standards to which the Inspectorate refers, and in the guidance it provides to the bodies it inspects. The provisions of the HRA are also implicit in that they are interwoven in the day-to-day functioning of the Inspectorate as a result of its statutory remit and in the protocols used for the work it undertakes.
- 4.2.14 There is clear leadership from the top in respect of the human rights agenda. Recognising that ‘in reality, each and every offender is individual and different’, the Chief Probation Officer (CPO) identified that there should be a focus on ensuring that for each offender, *“the right things [have] been done in the right way with the right person at the right time”*.⁵³ The CPO has also identified some of the particular challenges faced by those working in the criminal justice sector in implementing, and ensuring compliance with the HRA.
- 4.2.15 The Healthcare Commission is guided by the Department of Health standards with which the trusts it inspects and regulates are required to be compliant. The Annual Health Check (AHC) is the way that the Healthcare Commission inspects NHS trusts in England. Each trust is given a rating based on ‘Quality of Services’ and ‘Use of Resources’. The Quality of Services rating comprises assessment of performance against the Department of Health’s core standards and targets. Example core standards in which human rights are referenced explicitly or implicitly are included in Figure 15 Hospital trusts are assessed against these standards.

Figure 15

- C6 – *‘Healthcare organisations cooperate with each other and social care organisations to ensure that patients’ individual needs are properly managed and met.’*
- C7e – *‘Healthcare organisations challenge discrimination, promote equality and respect human rights.’*
- C13a – *‘Healthcare organisations have systems in place to ensure that staff treat patients, their relatives and carers with dignity and respect.’*
- C13b – *‘Healthcare organisations have systems in place to ensure that appropriate consent is obtained when required, for all contacts with patients and for the use of any confidential patient information.’*
- C13c – *‘Healthcare organisations have systems in place to ensure that staff*

53 Bridges (2007)a.

treat patients' information confidentially, except where authorised by legislation to the contrary.'

- *C18 – 'Healthcare organisations enable all members of the population to access services equally and offer choice in access to services and treatment equitably.'*
- *In the first instance, NHS Trusts rate their level of compliance against each standard (in terms of whether it has been 'met', 'almost met' or 'not met'). Following submission of the self-assessment, the Healthcare Commission will inspect a proportion of trusts randomly and a proportion based on a risk assessment process. During inspection, inspectors complete a standard template that provides more detail about the level of compliance with the standards of focus.*

4.2.16 In evidence provided to the Joint Parliamentary Committee on Human Rights (JCHR) the Healthcare Commission reported that where it has assessed services for people with learning disabilities against the C7e standard above and found a continuing poor quality service provision and inadequate commissioning services for learning disabilities. The Commission concluded, after its widespread audit, that it could not 'be sure that the rights of people with learning difficulties are always upheld'.⁵⁴

4.2.17 The Healthcare Inspectorate Wales inspects against the National Framework for Care Standards. Firstly, it is a framework for all and although no direct reference is made to the HRA, clearly some principles are there as set out in an extract (Figure 16)

Figure 16

National Framework for Care Standards

54 Joint Parliamentary Committee on Human Rights, Seventh Report, A life like any other? Human rights of adults with learning disabilities (March 2008).

Standard 4

Healthcare premises are well-designed and appropriate in order to:

- a) promote patient and staff wellbeing;*
- b) respect different patient's needs, privacy and confidentiality;*
- c) have regard for the safety of patients, users and staff; and*
- d) provide a safe and secure environment which protects patients, staff, visitors and their property, and the physical assets of the organisation.*

4.2.18 In undertaking its duties – investigation and resolution of complaints – the Parliamentary and Health Services Ombudsman works to the ‘Six Principles of Good Administration in Public Services’.⁵⁵ The rights of the individual are referenced explicitly in the first of these, ‘Getting it right’, as set out in Figure 17.

Figure 17

Parliamentary and Health Services Ombudsman’s six principles of good administration in public services

Principle 1 – Acting in accordance with the law and with due regard for the rights of those concerned.

Principle 2 – ‘**Being customer focused**’, includes:

- ‘Ensuring people can access services easily’;
- ‘Dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances’; and,
- ‘Responding to customers’ needs flexibly, including, where appropriate, coordinating a response with other service providers’.

Principle 3 – ‘**Being open and accountable**’, includes: ‘Handling information properly and appropriately’.

Principle 4 – ‘**Acting fairly and proportionately**’, includes:

55 PHSO (2007)b.

- ‘Treating people impartially, with respect and courtesy.
- Treating people without unlawful discrimination or prejudice, and ensuring no conflict of interests.
- Dealing with people and issues objectively and consistently.
- Ensuring that decisions and actions are proportionate, appropriate and fair.’

Principle 5 – ‘Putting things right’ includes: ‘Providing clear and timely information on how and when to appeal or complain’.

Principle 6 – ‘Seeking continuous improvement’ is focused on the internal practices of review and service improvement that should stem from complaints.

4.2.19 The PHSO has also developed the ‘Principles for Remedy’, based on the Principles of Good Administration, which details for ‘complainants and bodies within the Ombudsman’s jurisdiction how... public bodies should put things right when they have gone wrong’.⁵⁶

4.2.20 Whilst a number of interesting examples of inspection and complaints-handling frameworks have been cited above, some respondents were keen to point out that putting them into practice had also a number of challenges, as discussed below.

4.3 Putting into practice the inspection of human rights

4.3.1 The research provided a good reflection of what activity has taken place in relation to integrating human rights into the inspection and complaints-handling frameworks. It was also positive to note that many respondents could readily contextualise their day-to-day activities, in respect of delivering inspections or dealing with complaints, in terms of human rights:

- **positive obligation and inclusivity** – ‘representing and projecting minority views’
- **protecting the rights of individuals by addressing specific provisions contained within the HRA** – ‘we always looked at respect and dignity and access to services’; ‘we have the legal power to say this person has the right to see their family’, and
- **managing potential tensions between the rights of the individual and the rights of the public**, particularly in relation to criminal justice sector work.

56 PHSO (2007)c.

- 4.3.2 A number of inspectors also indicated that where their day-to-day work involves protecting the rights of individuals they find it easier to make the connection between what they do and the HRA than those who are more distanced. It would appear that where a role involves ongoing referral to the HRA, or to a framework that references human rights, this leads to a better understanding of how to implement human rights in the way organisational functions are delivered.
- 4.3.3 However, even within inspectorates where the link to human rights was explicit, it was thought by some respondents to be important not to assume that all staff can make those links easily, particularly given that people's day-to-day duties might not involve those undertaking inspections.
- 4.3.4 Many respondents expressed that they found it sometimes problematic when putting the inspection of human rights into practice. A number of respondents raised issues of staff confidence around human rights, both in inspectorates as they perform their duties and in public bodies they inspect. There is some evidence of concern among front-line workers stemming from lack of clarity about what they are legally able to include in reference to human rights through their correspondence and inspection. Particular needs were identified by respondents around building up confidence at the front line to tackle emotive and difficult discussions about human rights, and providing front line inspectors with the experience to be able to apply the concepts of 'dignity' and 'respect' to more concrete, work-based tasks.
- 4.3.5 A number of respondents said that they were aware that inspectorates are doing human-rights-related work, but they carry out their inspections without actually using the term 'human rights'. For example, inspectors will assess what processes a housing authority has in place to ensure the fair treatment of its tenants, but it will not be reported in human rights terms.
- 4.3.6 Several respondents also demonstrated understanding human rights principles and stated that these were implicit in their inspectorate's work, but expressed in terms of dignity, respect, freedom from discrimination and protecting the rights of the individual. A respondent said that *"Inspectorates such as CSCI have had these principles built into its core work for some time, so it is of little surprise that inspectors don't talk explicitly about the HRA"*.
- 4.3.7 In some cases, respondents talked about deliberately avoiding the use of 'human rights' language and that this is a strategic decision, borne of concern about: negative associations with the terminology of human rights; worrying or confusing internal and external stakeholders unnecessarily; and/or the need to make human rights meaningful in terms of the day-to-day activities of staff, using language with which they are familiar. A summary of

quotes which captures the diversity of respondents' views is presented in Figure 18.

Figure 18

“HR is generally talked about by stealth, a lot of people talk about not wanting to ‘frighten the horses.’” (Manager)

“We don’t tend to use the language of human rights, it’s more about equality and diversity. Those are the terms more readily understood in the institutions we inspect... We touch on themes, but not explicitly.” (Front line worker)

“We have moved from not using [the words] ‘human rights’ explicitly to using it ‘in lower case’...one of the debates for us is how explicit we need to make it.” (Director-level respondent)

“ [Using the terminology ‘human rights’] can get away from an effective dialogue of the customer experience...it is not uncommon to get a ‘frozen in the headlights’ approach.” (Director-level respondent)

“The Human Rights Act led us to think we should develop beyond equality and diversity...we saw human rights as fundamental, not just an ‘add-on’.” (Manager)

“[There is a need for] a better understanding of human rights, and, equality and diversity. The two get merged very easily.” (Manager)

“I want to know, what is the difference between human rights and diversity? I wouldn’t separate the two out.” (Manager)

“Our approach is inclusive...we look at diversity as a whole; everyone of any type may have issues with their human rights...” (Specialist lead)

4.3.8 The benefits of the inclusive approach referred to by the specialist lead in the final quote above, have been highlighted by the findings of recent research commissioned by the Mental Health Act Commission which highlighted that ‘the link between equality and human rights is not merely theoretical. The two reinforce each other both in terms of values and practical impact’.⁵⁷

57 Collins (2007).

4.3.9 The evidence set out in Figure above, suggests that the differences in understanding occur at the individual level more than at the organisational level. A number of possible explanations were offered including: the language of equalities having been made more explicit and more deeply embedded within the rhetoric of public service than has the language of human rights; and/or variation in the way in which inspection frameworks reference human rights.

4.4 Reporting on human rights

4.4.1 There are few inspection reports for public bodies that directly refer to the HRA, even despite it being referenced to in a number of inspection frameworks. This appears to be consistent across all inspectorates with one or two exceptions. However, arguably this does not mean that inspection reports have not raised concerns relating to human rights issues they have just not been explicitly reported as human rights. This point is illustrated in Figure 19, figure 20 and Figure 21.

Figure 19

A respondent highlighted a case of where they were investigating supported living environments under the responsibility of the NHS trust. A patient was clearly restrained in a wheelchair with hands tied down. Investigators asked why this was done, was it recorded and who did they involve in making the decision, and how often this was done. The outcome of the investigators interventions was that the practice was stopped and procedures tightened up. Although connections can clearly be made in relation to breaches of Convention Rights 2 – the right to life, and 3 –prohibition of torture, it was not reported in this way to the trust.

Figure 20

“We do set out the Convention articles for inspectors to consider, for example Article 6 – the right to a fair hearing – and what this means in terms for say housing and inspection. However, we won’t report on failures as a human rights issue. It would be reported as a procedural or systems failure.”

Figure 21

“There won’t be any reporting of the HRA or infringements against it, but the principles are implicit in everything we do are reported against. However, two inspection reports ‘HM Prison Albany’ and ‘Brockhill’ have reported on where basic human rights standards have not been met.”

4.4.2 The above examples are interesting, which perhaps demonstrate why explicit reference to human rights are not being made and widely reported. However, that said, one respondent felt that:

“The direction is coming that we should record our views on human rights with more gusto.” (Inspector)

4.4.3 It was also pointed out by respondents that the lack of referencing by the HRA does little to:

- increase awareness of human rights internally and amongst service providers so that the role of service providers in promoting and fulfilling people’s human rights can be better developed
- reverse the negative attitudes towards human rights by demonstrating how human rights can lead to the improvement of services, and
- demonstrate that inspectorates take the promotion of human rights seriously, and will use them to challenge services.

4.4.4 A recent exception to the trend was the recent joint report of the PHSO and the Local Government Ombudsman on ‘Injustice in residential care (2007-08).⁵⁸ Although the report’s finding did not determine that there had been breaches of specific Articles as this was a matter for the courts it did conclude the following as set out in Figure 22.

Figure 22

58 A joint report by the Local Government Ombudsman and the Health Service Ombudsman for the Health Service Ombudsman for England, Investigations into complaints against Buckinghamshire County Council and against Oxfordshire & Buckinghamshire Mental Health Partnership, Second report 2007-08.

We have concluded that Article 3 (which includes inhuman or degrading treatment), Article 8 (which includes the right to respect for private and family life and home) and Article 14 (prohibition of discrimination) were engaged in Frank's case, and that the council and the trust both neglected to give those issues proper or timely consideration. Not all the relevant issues were properly taken into account in Frank's case (nor, evidently, in the case of other residents in the home). This failure was so significant as also to amount to maladministration and contributed to the injustice suffered by both Frank and his parents. A proper consideration of human rights issues at any point would have led to improvements in Frank's and his parents' situation.

4.4.5 Arguably, this sends a clear message to public service providers that people who are in receipt of health and social care services should have their human rights taken in to account when plans and provisions are made. If service providers don't consider human rights, it will be reported publicly, which may damage an organisation's reputation.

4.4.6 National reports produced by inspectorates specifically on the implementation of the HRA are scarce. The last notable example was the Audit Commission's Report (2003).⁵⁹ There would appear to be no current appetite to follow up specific pieces of work on how human rights have been implemented in public services by inspectorates. However, it could be argued again that human rights issues are being picked up in other national research or other reports, but just aren't reported as human rights issues. For example, the Healthcare Commission and CSCI's investigations into the serious service failing for people with learning disabilities at Cornwall Partnership Trust⁶⁰ and Sutton and Merton Primary Care Trust⁶¹ highlighted clear human rights violations, but they weren't reported specifically as human rights issues.

4.5 Innovations and developments for the inspection of human rights

4.5.1 There have been some interesting recent developments such as the Audit Commission's self-assessment toolkits for public sector organisations to assess how well they are performing in relation to human rights. The Audit Commission's toolkit 'Knowing Your Communities' is an innovative project on

59 Audit Commission, Human rights: improving public services (2003).

60 Healthcare Commission, CSCI, Joint investigation into the provision of services for people with learning disabilities at Cornwall partnership Trust, 2006.

61 Healthcare Commission, Investigation into the service for people with learning disabilities provided by Sutton and Merton Primary Care Trust (January 2007).

how local authorities can benchmark themselves against human rights as well as equalities standards.⁶²

4.6 Conclusion

- 4.6.1 Most inspectorates appear to be working actively to integrate the HRA in their inspection work. The degree to which they have achieved this is variable. The most significant factors determining the extent to which human rights are integrated into the process of inspection seems to be the role and remit of the inspectorate together with the impact of the regulatory environment.
- 4.6.2 Some inspectorates have been tasked specifically, on a statutory basis, to protect human rights, in which case the HRA has strengthened their remit rather than led them to do anything new. Others make either an explicit or implicit reference to human rights. Also, frameworks typically link with other legislation or government standards which may or may not make explicit reference to human rights. It is also the case that human rights principles evident in frameworks have not always been directly derived from the HRA.
- 4.6.3 Respondents reported different experiences when putting inspections for human rights into practice. The degree to which they felt confident to be able to talk and be knowledgeable about human rights seemed to dictate how they inspected for human rights.
- 4.6.4 Given the variety of ways in which human rights has been incorporated into inspection frameworks it is interesting how little direct reference has been made to the HRA in inspection and/or national research reports. There are a couple of recent exceptions to the rule. There are some interesting developments such as self-assessment tools for equalities and human rights, but the take-up of these tools, respondents reported, hasn't been as widespread as the inspectorate would like.

62 Audit Commission, knowing your communities (2007).

5. INSPECTORATES' KNOWLEDGE OF HOW PUBLIC BODIES HAVE RESPONDED TO THE HRA

This section outlines inspectorates knowledge of how public bodies have responded to the HRA, it includes:

- an overview of how public bodies have responded to the HRA as perceived by the inspectorates
- what public bodies are doing and the issues they face, and
- good practice in public bodies identified by inspectorates.

5.1 Overview

- 5.1.1 In organisations where inspection processes, frameworks and guidance make reference to human rights – and/or where the organisation has some level of explicit duty to protect individual rights – respondents seemed to have greater awareness of human rights practice in inspected bodies.
- 5.1.2 However, despite this, the evidence in this section is particularly sparse because a number of respondents felt unable to provide any (or significant) relevant comment for a variety of reasons, for example, a typical reason put forward was that “...it’s hard to talk about ‘public bodies’ as they are so different”.
- 5.1.3 There was a range of different view expressed by respondents, but no one could give an overall picture on how human rights had been integrated into specific public sectors such as health and local government. Nor could they provide examples of good practice. The problem seemed to stem from the lack of understanding by respondents of what human rights means for public bodies or a gap in their local knowledge of how human rights has been implemented in public services within their remit.
- 5.1.4 However, there were one or two exceptions of notable practice. For example, one respondent identified a ‘Human Rights in Health Care’ project currently being undertaken by the Department of Health and the British Institute of Human Rights.⁶³ The project is being undertaken in conjunction with five health care trusts and is focused on supporting the use of human rights based approaches to improve health and social care.

63 <http://www.bihhr.org.uk/projects/human-rights-in-healthcare-project>.

5.2 What public bodies are doing and the issues they face

- 5.2.1 Some respondents perceived that it was unlikely public service bodies would be referring to 'human rights'. It was more likely that they would use terminology familiar to the public body which generally meant more of a focus on equality and diversity.

"It doesn't feel helpful to start talking about certain Articles in the HRA to providers. It's not a language they understand, and it may come across as being confrontational." (Senior manager)

"If you ask someone about human rights, you'd get a very limited answer. They would be likely to go on a tangent and talk about equality and diversity." (Manager)

- 5.2.2 Respondents felt that this seems to stem not only from the varying practice within public service bodies, but also from the nervousness among those working in public bodies about human rights issues. Respondents said they *'are aware of fears and concerns within public bodies, and therefore can be reluctant to use the language of human rights'*. These concerns appear to come from a lack of understanding of the HRA and how to apply it to their everyday work, it is something they consider that their legal departments will handle, and/or there is no political will to embed it beyond compliance.
- 5.2.3 In terms of the extent to which public bodies understand human rights, respondents expressed contradictory views. Most seemed to think that understanding was limited with some agreeing that there has *'not [been] a great deal of difference in public bodies since the HRA came into force'*. A minority, however, were under the impression that, generally, there was reasonable understanding of the HRA by public bodies.
- 5.2.4 There was agreement that understanding can be patchy – a minority of public service bodies have *'got to grips with human rights'* while others have not. It is not possible to do a cross-sector qualitative analysis given the small sample size, but the illustrative quotes in Figure 23 highlight some of the contradictory views.

Figure 23

“They don’t come back and say ‘What is the Human Rights Act?’ but it’s not uncommon to get a ‘frozen in the headlights’ approach when the issues are raised...Local government is ahead of NHS, on all of that at the moment, but neither of them are doing this as a way of life.” (Board-level respondent)

“I think the NHS certainly has a grasp of HRA...” (Specialist lead)

“Understanding about human rights fluctuates massively within inspected bodies – there are a few that know what they are doing, but not many”. (Senior manager)

“...very few people have been able to say ‘Here, on this paper, is how we deal with human rights issues.’ (Inspector)

“Most of them don’t have a way of interpreting [the HRA]; it is very haphazard. It is reactionary to incidents [for example] if they are challenged or sued...” (Specialist lead)

- 5.2.5 Similar to the inspectorates themselves, respondents also identified that strong leadership of the human rights within public service bodies was important for building the shared ownership that is a critical factor in embedding a human rights culture. However, no specific examples were provided of public bodies which exhibited strong leadership on human rights.
- 5.2.6 There was some agreement that the people most likely to understand human rights issues are the more senior people in a public sector body, but that middle management tiers are also critical. A respondent said that this was because *“they are in contact with the front line staff and they influence the ethos of the service which is provided”*. Indeed, there was agreement by respondents that a key challenge facing public sector bodies is *“getting front line staff to understand and appreciate and apply the principles of the HRA”*. Again, no examples of good practice were highlighted.
- 5.2.7 At the national level, the leadership of the Welsh Assembly Government was highlighted by a couple of respondents as being helpful in raising awareness and understanding of the HRA in public sector organisations.

“As far as Wales in concerned... for lots of organisations, there is a national focus – creating a clear drive and enthusiasm from organisations; if it’s on their agenda/list of priorities they will respond in a more positive way.” (Manager)

- 5.2.8 In England as well as Wales, it was suggested that it can be hard to pinpoint whether changes made in organisations come from HRA or as a result of the many and varied drivers of improvements to care acting on inspected bodies.

“Not sure if it is a response to the HRA, but another area of good practice has been to have advocacy organisations for disadvantaged people....I’m not sure if this is to do with the legislation or if there is a broader sense of rights and more awareness because of the culture of human rights.” (Senior manager)

“I do think there is more awareness of privacy, dignity and rights... There have been a change but it is difficult to say this is because of the HRA. I think it is an unknown influence.” (Board level respondent)

- 5.2.9 A number of respondents also identified that, while human rights is on the agenda of most inspectorates, public bodies cannot be blamed for not ‘speaking the language’ or knowing how to reference their human rights activities if they are not being asked to present that information using the language of human rights.

5.3 Identifying good practice in public service bodies

- 5.3.1 Respondents were asked to identify evidence of good practice in inspected bodies delivering services in a human rights based way or embedding human rights into their organisations. Looking across the sample, overall, the data was sparse. Possible explanations include: data not being collected in a way that references human rights explicitly – i.e. there is good practice happening, but it is not being recorded in a way that raises its profile as a ‘human rights’ example – and, related to this, variations in, and limits to the way good practice information is captured.
- 5.3.2 Hardly any information was provided about how good practice examples are captured. A small number of respondents noted that their inspectorates provided signposts to good practice examples within published reports, for example, HMI Probation and MHAC both provide such detail in inspection reports which are then publicly available via their websites.
- 5.3.3 Overall, the limited evidence available indicated that an ad hoc approach was taken in this respect, in some cases, and it may be that this is due to limitations stemming from the process of inspection.

“We adhere to very tight word limits on reports. It would be good to have specific good practice [examples] around meeting specific agendas...I tend to fill up 6-8 notebook full of observations but distilled into 2000 words: lots of lovely evidence may well get lost. A database ... made available online would be good.” (Front line worker)

"[There are] loads of examples of good practice but we seldom write them up." (Front line worker)

- 5.3.4 The few concrete examples that were provided were done so, typically, by front-line workers who seemed to be recalling 'top-of-mind' cases. Other examples cited below in Figure 24 and Figure 25 have been identified through signposting or desk-research.

Figure 24

Published examples from: HM Inspectorate of Probation's Offender Management Inspections Programme 2003-2006⁶⁴

Northamptonshire

'The Pharmacy project involved a partnership with Boots The Chemist where a private room was provided for probation staff at chemists across the county one day a week, to allow the supervision and drug testing of offenders on a DRR when they were collecting their medication. This was an innovative idea designed to improve compliance with a challenging group of offenders.'

Leicester & Rutland

'Mohammed challenged his offender manager, Sally, about her youth and the fact that she was not married, which she dealt with very well. He also excused his actions by quoting his religion and culture as allowing him to 'slap' his wife. The offender manager took the time to look more into Islamic culture and read some of the Koran. She also contacted an Imam to seek advice about what she had read and had been told. This enabled her to challenge his attitude and his minimisation of the seriousness of what he was doing.'

Figure 25

64 HM Inspectorate of Probation (no date)e.

Published example cited by both the British Psychological Society and Department of Health

Sheffield Care Trust and Sheffield Social Services

This has been cited as a good practice example both by the British Psychological Society⁶⁵ and on the Department of Health's 'Valuing People' site⁶⁶.

*'Many authorities have policies and procedures to reduce the risk of inappropriate use of restraints on adults with learning disabilities. One such is the Joint Learning Disability Service in Sheffield which has developed a city-wide policy to support people in ways that prevent the inappropriate use of all types of restraints. This includes a policy that has been adopted by all agencies, a central register of 'restraints' that are deemed necessary, with a process for regular reviews, and a structure to respond to requests for advice and support.'*⁶⁷

The policy itself references the HRA and human rights explicitly.

*'The use of restraint causes a lot of anxiety for carers and professionals because it often impinges on a person's human rights.'*⁶⁸

Sheffield's approach included the establishment of an 'Alternatives to Restraint Team' has been established to which staff refer individual clients:

*'By using a standardised proforma indicating what type of restraint is being used accompanied by risk assessments. The Alternatives to Restraint Team then considers each respective case and either sanctions the current course of action or makes other recommendations using a person centred approach to care.'*⁶⁹

The Joint Learning Disability Service has also produced an easy-read booklet for users of the service that explains the restraints policy, again, referencing the HRA and emphasising users' individual rights⁷⁰.

Figure 26

Example highlighted through interview.

65 British Psychological Society (2007).

66 Department of Health (no date).

67 British Psychological Society (2007).

68 Sheffield Care Trust and Sheffield Social Services (no date).

69 Sheffield Care Trust and Sheffield Social Services (no date).

70 Signpost Sheffield (2006).

'Storybook Dads'

Storybook Dads is a registered charity, based in Dartmoor prison but working across a large number of prisons. It uses technology to enable fathers and mothers separated from their children by imprisonment to record stories for their children. Its aim is to:

*'Maintain family ties and facilitate learning for prisoners and their children through the provision of story CDs. The children love these stories because they can hear their parent's voice whenever they want and the feedback from prisoners and their families is overwhelming. The dads feel that they are doing something for their children and this goes a long way towards strengthening family ties.'*⁷¹

This is linked, clearly, to Article 8 of the HRA (Right to respect for private and family life).

Figure 27

Example highlighted through interview.

Taff Housing Association

*'The Association was able to provide a wide range of examples where it was tailoring its housing services to meet the needs of tenants with particular needs. This ranged from tailoring arrangements at Red Sea House to include a link to the local mosque to relay the call to prayer and access to Arabic TV and Somali radio; arrangements for resident involvement which were tailored to encourage and support involvement by supported housing tenants; and redecoration for a visually impaired tenant that met RNIB standards.'*⁷²

5.4 Conclusion

- 5.4.1 In many cases, respondents felt that it was difficult, or impossible to talk about 'inspected bodies' generally given that the number of bodies involved could be significant and could also vary hugely in terms of, for example, their size, functions and purpose, and culture.
- 5.4.2 Overall, the primary research conducted for this project yielded limited amount of data in relation to public sector bodies, especially in terms of good practice examples on human rights. This should not be interpreted as a lack of activity in this respect; desk research shows clearly that there has been some work done evidenced, for example, in some inspection reports and in

71 Storybook Dads (2006).

72 Wales Audit Office (2007).

human-rights-specific documents, such as the studies published by the Audit Commission.⁷³ This seemed to relate to finding that data-gathering in respect of good practice in inspected bodies, overall, seems to be undertaken on an ad hoc basis rather than a systematic basis. For example, an inspectorate may be researching a particular topic, or compiling good practice for a report, and good practice data capture will form part of this.

- 5.4.3 As the elucidation of good practice examples is not a component of routine inspection process, inspectorates are limited in their ability to capture such information. Where referencing is more implicit than explicit – it is likely to make it harder for inspectorates to capture data in a way that allows for analysis of human-rights-specific examples.
- 5.4.4 Many of the issues that respondents perceived to be relevant to human rights practice within public sector bodies were similar to some of those identified in relation to inspectorates, for example, leadership of human rights.
- 5.4.5 Specifically, there are concerns among respondents about using the language of human rights with public sector bodies, different approaches to, or perceived confusion about the relationship between equality, diversity and human rights within public sector bodies; and lack of confidence in those working in inspected bodies in terms of their ability to deliver this agenda.

73 Audit Commission, Human rights: improving public services (2003).

6. KEY CHALLENGES

This section draws together some of the key challenges identified relating to the extent to which inspectorates successfully embed and promote human rights in inspections and investigations of public services.

6.1 Challenges and barriers

6.1.1 Inspectorates face a number of challenges and barriers in respect of understanding and responding to the HRA. Barriers are presented by: the perceived complexity and potentially 'legalistic' terminology surrounding human rights; the widespread reluctance to use explicit 'human rights' language – stemming particularly from concern about how this will be received in public bodies; and, limitations in capacity available to make human rights as explicit and embedded as possible.

6.2 Lack of clarity in the language and terminology used

6.2.1 As discussed, the extent to which the terminology of 'human rights' is made explicit varies. In some cases, this is a deliberate and strategic decision to avoid concern amongst employees or public bodies. Some respondents thought that 'forcing' the use of human rights language could be counter-productive, leading to public bodies feeling intimidated or defensive. 'Hard' messages about human rights are replaced by softer language related to the components of human rights practice, including, for example, dignity, respect and freedom from discrimination. The majority of human rights-based work within inspectorates is therefore not clearly reflected by the implicit language used to describe it.

"Some people are using Human rights and don't necessarily know about it.... more... use the currency of dignity." (Manager)

6.2.2 Also, the language of human rights was perceived by respondents as 'legalistic and byzantine'. This was exacerbated by the fact they were not always clear what it meant for their everyday work and there was a lack of strong and visible leadership on the issue at both the national level and from some inspectorates themselves. A key challenge is to:

"De-mystify people's perceptions of human rights... it is a bit like health and safety with the headlines about needing to wear goggles to do everyday tasks which led to accusations of health and safety gone mad!" (Inspector)

- 6.2.3 There are clear risks attached to the deliberate avoidance of human rights-based language, which may impede understanding, awareness and the prioritisation of issues relating to human rights. Some feel that a ‘drip feed’ approach is called for when introducing human rights language.

“There is a current trend towards approaching human rights with a small ‘h’ and a small ‘r’...the transition towards a capital ‘H’ and capital ‘R’ may take some time.” (Manager)

“The way you get public bodies to swallow human rights is the same way you get children to eat vegetables....cut them in different ways, cover them in sauce and do it by stealth.” (Board-level respondent)

6.3 Unhelpful media coverage of human rights issues

- 6.3.1 One explanation of the reluctance to use explicit language relating to human rights is the strongly held view that recent years have brought a ‘*savaging of human rights by the media*’. Many respondents feel that this has created a culture of disregard for human rights, or a lack of understanding about what human rights means, and, consequently, an uphill struggle for inspectorates working to relate human rights directly to people’s everyday working lives. Human rights is often thought to be portrayed, for example as a ‘*series of mad judgements*’, illustrated by media portrayal of ‘*daft*’ examples in which human rights is presented as focusing on the protection the rights of perpetrators of crime, rather than victims.

“The media makes it seem like the law is there to protect the guilty not the innocent...and that makes it difficult, people have a bad image of human rights because of this.” (Manager)

- 6.3.2 The British media is seen to present an additional barrier to raising awareness of and knowledge about the HRA, and is held accountable, at least in part, for stunting the growth in understanding of how human rights relates to the everyday functioning of inspectorates and public bodies. Inspectorates have a positive internal communication job to do on human rights. They need to find innovative ways to illustrate how human rights can lead to the improvement of public services, if human rights is to become part of the day job for inspectorates.

6.4 Confusion about differences between equality and human rights issues

- 6.4.1 There is evidence of confusion within both inspectorates and inspected bodies as to the key differences between equality and diversity and human rights, and the inter-relations between these different functions within the organisations. Terminology surrounding human rights and equality and diversity is often used interchangeably when discussing the existing systems

and ethos driving a human rights approach. This has been attributed, in some cases, to the language of equalities being more easily understood than human rights, and more embedded in the rhetoric of public service at a national level.

- 6.4.2 A further challenge is faced by organisations in deciding where to place responsibility for equality, diversity and human rights internally, with a balance required between an approach that is too fragmented – leaving responsibility to one group or committee alone – and an approach that is too broad, and therefore leads to a complete lack of ownership internally. A lack of visible responsibility and championing of human rights internally is apparent in organisations in which responsibility for human rights is ‘tacked on’ to existing equality and diversity functions and therefore viewed as an additional point on the equality and diversity agenda.

“[Responsibility for Human Rights] lies with the Equality and Diversity strategy board...made up of the champions from the directorate and regions.” (Senior manager)

6.5 Making human rights meaningful

- 6.5.1 Respondents highlighted the difficulties they and their colleagues experienced in relating the concepts of human rights to issues that arise in their working day. A lack of familiarity with the principles and specific articles contained within the HRA became clear during interviews, with an example of one respondent making reference to “*the right to make a living*”. There is a widely held perception of human rights principles as being too far removed from day-to-day work to be relevant, and ‘*too theoretical*’ to apply to the average working life of many employees within the UK:

*“People think it is about torture and is not the meat of office work.”
(Manager)*

- 6.5.2 The challenges faced by this perception, and the continued strive towards making human rights meaningful to everyday work, formed the subject of a speech by Ann Abraham⁷⁴ at the meeting and General Assembly of the International Ombudsman Institute in Europe in 2006⁷⁵. She drew attention to the relationship between good administration and human rights as one which is often misunderstood. She went to outline key challenges for Ombudsman “*if we in the UK and elsewhere in Europe are serious about*

74 United Kingdom Parliamentary Ombudsman and Health Service Ombudsman for England.

82 http://www.ombudsman.org.uk/about_us/FOI/whats_available/documents/speeches/constitution_unit_2008.html

creating a culture of human rights, if we are serious about deliberative democracy, serious about forms of public service delivery and public administration that give expression to human rights values, then we should expect the Ombudsmen who are involved every day in assessing public service and public administration to have an eye to human rights in their own deliberations”.

- 6.5.3 There is evidence that some people within inspectorates are still struggling to bridge the gap between perceptions of human rights and what it means for ‘the day job’.

6.6 Lack of confidence in ability to manage human rights issues

- 6.6.1 Data indicated a significant issue in relation to staff confidence around human rights, both in inspectorates as they perform their duties and in public bodies. There is some evidence of concern among front-line workers stemming from lack of clarity about what they are able to include in reference to human rights through their correspondence and inspection. Particular needs are highlighted around building up confidence at the front-line to tackle emotive and difficult discussions about human rights, and providing front-line inspectors with the experience to be able to apply the concepts of ‘dignity’ and ‘respect’ to more concrete, work-based tasks. Training with staff on the front-line is ongoing, but there is recognition that this will require considerable and continuous work in many cases:

“We still have a long way to go in training inspectors about human rights issues.” (Senior manager)

- 6.6.2 There is also evidence to suggest that many employees are over-whelmed by the perceived complexity of the HRA, and are concerned about their lack of understanding of the articles contained within it. However, in many of these cases, it seems that employees are using implicit language mentioned previously and referencing human rights without realising it. Understanding of the HRA may therefore be greater than it first appears, with perceptions of employee understanding about human rights compounded by a lack of confidence and experience in linking such principles to every day work situations.

“It is not that they don’t understand, it’s about the culture.” (Specialist lead)

“We have worked really hard to weave human rights into our inspection processes (our principles of administration) and people are now used to working within them...People are now growing in confidence.” (Senior manager)

6.7 Lack of a consistent message from Government

6.7.1 Both inspected bodies and inspectorates are perceived to be ‘bombed’ by information and policies from Government. Respondents note that new government initiatives and multiple structural changes including those aiming to reduce the ‘burden’ on inspection can mean that human rights can be ‘crowded out’ of inspection frameworks. A raft of expectations is placed on public bodies, of which the requirement to embed and sustain a human rights approach is just one. Organisations are therefore finding it challenging to ‘meet the Government’s changing whims’, and clearly there are limitations to staff capacity and resources available to dedicate to progressing the human rights agenda, even where the will to do so is strong.

“It is difficult for public servants doing this work in practice.” (Middle manager)

“Everyone is being bombarded with stuff from government – certainly with the complaints here I handled recently, the amount of guidance relevant to the complaint was huge, much of it was inspired by and consistent with legislation and human rights act, but it was very fragmentary. The whole thing creates a sense of ‘too much’ and it starts to become too much of a burden. The EHRC should have a role in trying to clarify that.” (Senior Manager)

6.8 Lack of time and capacity to address culture change issues

6.8.1 Following on from the point above, there is recognition that human rights can be a vast agenda to tackle, and in some cases requires a dedicated focus on implementing a change in culture and leadership around human rights. Aside from the MHAC/DCA/DH-funded project ‘Making it Real’ (which has been commended by the Joint Committee for Human Rights for its accessible and practical approach), there are few exemplars of government-funded human rights based projects within inspectorates. This is leading to a situation in which capacity within inspectorates to raise the internal presence of human rights, and explore practical ways to move forward, becomes squeezed. There is also not thought to be enough dedicated time for staff to commit to mainstreaming and sustaining a rights-based approach within inspectorates, once implemented.

“HR does get slightly watered down and lost...It is upsetting for those of who care about it because you can’t commit the time you want to... You don’t have dedicated time to attend meetings and that is the same for everyone working on the project management group and programme board... We are still doing the day job.” (Senior manager)

6.8.2 In addition, one of the biggest obstacles raised by respondents for fully integrating human rights into their work was the pressures put on time, capacity and resources. An inspector said that,

“To identify the public bodies that are doing particularly well in terms of human rights is likely to cause a challenge, as there will be resource implications from our end and it is not always easy to know what doing well looks like at this stage.”

6.8.3 A range of respondents also felt that there needed to be a change of attitude towards human rights, so rather than it being seen as an additional burden for people, it should be integrated into everyday practice.

7. SUPPORT

7.1.1 Inspectorate and regulatory bodies have an important role to play in promoting human rights in public services, not only through ensuring that public authorities take account of human rights, but also through providing guidance, disseminating best practice and involving service users in monitoring standards. To do this effectively this final section of the report discusses how this might be achieved and identifies a number of key areas in which action and/or support is needed in order to bring about progress.

7.2 Support required

7.2.1 There has been a number of specific support requirements identified that would be likely to aid inspectorates and public bodies in embedding human rights principles into their working processes. Support is required in the form of practical guidance, training, awareness raising from central government and EHRC and wider scale organisational development and culture change programmes.

7.2.2 We found some interesting developments centred around providing additional support for inspectorates. As part of the Insight project research sponsored by the Ministry of Justice, human rights guidance has been distributed to inspectorates and regulators and a number of bilateral meetings held with the main objectives to assess ways in which human rights principles could be applied in inspections and regulatory frameworks to ensure that public services are not only human rights compliant, but also embrace the underlying values of human rights and as a result reap multiple benefits. As a result inspectorates and regulators have identified a menu of options that range from the production of a short and punchy guide on the value of a human rights framework to the process of internal challenge. Other forms of support suggested by respondents are set out below.

7.3 Clearer, more targeted guidance

7.3.1 There are clear messages that guidance around human rights at a practical level is *'pretty limited at the moment'*. Clearer and more accessible guidance would be beneficial in explaining how human rights principles can be translated into practice for different sectors, types of organisation and roles (operational vs strategic responsibilities). This guidance needs to be targeted at specific sectors to address the sector-specific challenges in implementing 3.2.1 A notable example of practical guidance is the recent publication by the Department of Health and the British Institute of Human Rights *'Human Rights in Healthcare'*. This offers practical guidance and support for health

trusts seeking to embed a human rights approach.⁷⁶ Such support and guidance has been welcomed by the sector. Motivating messages and further guidance and support from relevant government departments would also help in presenting human rights as a productive opportunity rather than an administrative or personal burden.

- 7.3.2 There are a number of additional lessons for future guidance on human rights which have been highlighted below by a couple of respondents.

“Guidance needs to be written in ‘plain English’ and providing practical advice about case law.” (Manager)

“Guidance should not overly complex legal discussions about case law, but something more like ‘these are the principles, and here is how they operate in everyday life’.” (Senior manager)

7.4 Clearer definitions of terminology

- 7.4.1 Clearer guidance is required on the use of terminology relating to human rights principles and work within inspectorates and inspected bodies. Encouragement by the EHRC and government departments would be beneficial in starting to model the use the explicit language of human rights with more confidence in public speeches, external publications and interactions with public bodies. It would also be useful for language around dignity, respect and personal choice to be more clearly and publicly and linked to the articles of the HRA and threaded throughout inspectorate frameworks and methodologies.

7.5 Case studies showing human rights practice

- 7.5.1 The focus of this work has been on helping public authorities to learn from each other by identifying effective practice. There is a current dearth of good practice examples focused on the implementation, embedding and sustaining of human rights principles which can be shared amongst inspectorates and regularity bodies. Such information would also be of great benefit for sharing with inspected bodies in a structured and productive way. For example, there has been a wide range of evidence from inspectorates citing innovative approaches to effective user involvement in the design of their inspection methodology. This information should be captured and translated to other work settings.

76 Department of Health, British Institute of Human Rights, Human rights in healthcare, 2008.

7.6 More research into the benefits of human rights

- 7.6.1 There is a current lack of a compelling narrative around the direct positive impact of human rights on the delivery of public services and outcomes for local people. There is thus a need for research to be commissioned to provide more powerful evidence about the benefits of implementing a human rights approach on outcomes for the local population. Such evidence could be highly effective in providing a clear argument for why human rights should be prioritised, and making explicit the direct link between the investment of resources in human rights and the delivery of better outcomes across the spectrum. The publication of such research would also be likely to help in re-addressing the negative public view of human rights.

*“We could and should be doing more work on research into how local government bodies address human rights. Is there a link between respect for human rights and better outcomes for local people? If so can we prove it?”
(Board-level respondent)*

7.7 Awareness-raising activities around human rights

- 7.7.1 In the health sector, the Joint Committee on Human Rights asserted that ‘The connection between the provision of healthcare and human rights needs to be made more frequently and more publicly. Leadership is one part of it. Institutional change also needs to occur’⁷⁷. A continued strive towards more targeted awareness raising campaigns around examples of human rights are needed to keep human rights issues fresh and aid the transfer of learning between organisations.

“... it is key for them to make a reference to human rights, they have to raise it as an issue. Other legislation is more relevant to people, Councils and health bodies are much more thinking equalities is important and relevant, but they don’t seem to know about human rights. It needs to know how HR is relevant, that is, the right to respect, how does this link in to [different] policies that inspectorates work with...” (Board-level respondent)

- 7.7.2 An example of a recent and successful human rights campaign can be seen in the British Geriatrics Society’s campaign on privacy in toilet use, entitled ‘Behind Closed Doors: Using the Toilet in Private’⁷⁸, launched at Westminster in April 2007. This campaign made explicit the difference between ‘best practice which upholds human rights and promotes dignity’ and ‘poor practice which violates human rights and denies dignity’.

77 Ibid, p.42.

78 <http://www.bgs.org.uk/Publications/dignity/BehindClosedDoors.pdf>

7.8 Stronger leadership at national level

- 7.8.1 Stronger leadership on human rights is needed at a national level to begin the culture change required to develop a new reputation for human rights and how it applies to everyday life. The notable lack of leadership from key Government departments since the implementation of the HRA has been clearly and honestly acknowledged by the Joint Committee of Human Rights:

“We regret the failure of both the Department of Health and the Ministry of Justice to provide proper leadership and guidance to providers of health and residential care services on the implications of the Human Rights Act since it came into force.”⁷⁹

- 7.8.2 A national ‘reframing and rebranding’ of human rights is therefore needed to communicate a positive approach to move away from the perception of a ‘slightly nebulous and threatening set of articles’ as described by a respondent. Government departments, such as the Department of Health the Ministry of Justice, alongside the EHRC are seen as having a key role in providing this direction and leadership:

“These bodies need to lead on promoting to inspected bodies that HR is about culture and the treatment of people not about legislation.”

7.9 Support from the EHRC

- 7.9.1 The EHRC is seen as having a specific facilitative role in providing targeted support through resource centres, access to a library of speakers, trainers, and facilitators, creating and maintaining networks, and providing information about what has been done and worked before. It is also believed that the EHRC could support public authorities by ensuring that they are receiving the quality of guidance required to enable the effective implementation of the Human Rights Act and be fully aware of their positive obligations under human rights law. The EHRC is perfectly placed to fulfil its duty to ‘promote understanding and importance of human rights’ and ensure that such an understanding is widely disseminated.

“The EHRC is best placed to play facilitative role in this and to work with people at more practical level.” (Senior manager)

7.10 Organisational development support for culture change

- 7.10.1 A culture of respect for human rights in society is crucial. Several of the interviewees in this study referred to the need to develop a ‘culture of respect

79 The Human Rights of Older People in Healthcare’ Eighteenth Report of Session 2006-2007. Joint Committee on Human Rights, London. Viewable at: <http://www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/156/156i.pdf>

for human rights' at both a national level and within individual inspectorates and inspected bodies. There is clearly important promotional work which needs to be carried out in order to improve the image of human rights within the population generally. At an organisational level, however, the provision of additional staffing capacity and advice will be needed to support internal culture changes within inspectorates and to enable a human rights approach to be championed, embedded and sustained. The promotion of dedicated 'human rights leads' who have time ear-marked for driving the human rights agenda forward and holding the organisation to account, will serve to elevate human rights within inspectorates and avoid situations of shifted responsibility.

7.11 Training sessions/development courses

7.11.1 In its 2003 report on human rights in public services, the Audit Commission recommended that human rights training should be provided for all front line staff involved in the delivery of services to the public (such as social care, health, education, housing and asylum) and that it should be ongoing and integrated with existing training programmes. There is no evidence to suggest that this recommendation has been universally implemented. There is a wide range of training needs that need to be addressed through more targeted and focused training both within inspectorates and inspected bodies themselves. Particular training needs raised through these interviews include:

- confidence building around raising and discussing emotive and human rights issues
- ongoing support and reassurance around the delivery of a rights-based approach
- support in translating and applying human rights principles to specific organisational functions and staff roles within that⁸⁰, and
- the provision of a methodology to assist staff in making judgements and decisions relating to human rights cases.

7.11.2 It is also suggested by respondents that it may also be beneficial for inspectorates to make training mandatory for employees, to ensure a level understanding across the organisation and ensure awareness of human rights is maintained throughout staff turnover. A number of respondents were aware that the British Institute of Human Rights (BIHR) had delivered some

80 Particular reference was made to a seminar on human rights delivered by the Ministry of Justice in March 2008 and was praised as a good example of an opportunity for inspectorates to share practice, develop learning and discuss issues.

training to individual public bodies and where this had taken place it was perceived as highly beneficial. The focus of the training was on action learning and making human rights real for every-day work through the use of case studies, guidance and support. This type of training is likely to require support from the EHRC in terms of future funding and signposting to training providers of the quality of the BIHR.

APPENDIX 1: REFERENCES

- Audit Commission (no date) a *about us* [online] Available at: <http://www.audit-commission.gov.uk/aboutus/> (Accessed: 17.08.08) Crown Copyright
- Audit Commission (no date) b *what we do* [online] Available at: <http://www.audit-commission.gov.uk/aboutus/whatwedo/> (Accessed: 17.08.08) Crown Copyright
- Audit Commission (2003) *Human Rights. Improving public service delivery* London: Audit Commission. Crown Copyright
- Audit Commission (2006) a *Making equality and diversity a reality. Our diversity scheme 2006-2009* London: Audit Commission
- Audit Commission (2007) *Strategic Plan 2004-07* [online] Available at: <http://www.audit-commission.gov.uk/Products/NATIONAL-REPORT/A4FB85C8-CB73-42e1-9608-71ED60424BAB/StrategicPlan2004-07.pdf> (Accessed: 30.08.08)
- Audit Commission Act 1998* London: HMSO. Crown Copyright
- Bridges, A. (2007)a *Dangerous Offenders – What can be achieved?* All-Party Parliamentary Group on Penal Affairs 13 November [online] http://inspectors.homeoffice.gov.uk/hmiprobation/docs/13_11_07_Dangerous_Offender1.pdf?view=Binary (Accessed: 25.08.08)
- British Institute of Human Rights (2008)a *Health and Social Care Act passed by parliament* [online] Available at: <http://www.bihr.co.uk/news/health-and-social-care-act-passed-by-parliament> (Accessed: 23.08.08)
- British Psychological Society (2007) *British Psychological Society Submission to the Joint Committee on Human Rights inquiry into 'The human Rights of Adults with Learning Difficulties'* [online] Available at: http://www.bps.org.uk/downloadfile.cfm?file_uid=41211156-1143-DFD0-7E9E-4C8C2E360998&ext=pdf (Accessed: 30.08.08)
- Care Homes Regulations 2001* London: HMSO. Crown Copyright
- Care Standards Act 2000* London: HMSO. Crown Copyright
- Collins, C. (2007) *Human Rights: Making it Real*. A Report prepared for the Mental Health Act Commission by Dr Clare Collins, Elborough Consulting Ltd. Funded by Department for Constitutional Affairs and Department of Health. [online] Available at: <http://www.mhac.org.uk/files/short%20report%20-%20final%2015%20Jan%2007.pdf> (Accessed: 21.08.08)
- Commission for Healthcare Audit and Inspection (no date)a *Planning for inclusion policy. Equality impact assessment guidance* [online] Available at: http://www.healthcarecommission.org.uk/db/documents/Planning_for_inclusion_process_PIP_equality_impact_assessment_guidance.doc (Accessed: 22.08.08)

Commission for Healthcare Audit and Inspection (no date)b *PIP Assessment* [online] Available at:

http://www.healthcarecommission.org.uk/db/documents/Planning_for_inclusion_process_PIP_equality_impact_assessment_form.doc (Accessed: 22.08.08)

Commission for Healthcare Audit and Inspection (2005) Healthcare Commission: Statement of Intent: Promoting human rights and reductions in inequalities in health and healthcare [online] Available at:

<http://www.healthcarecommission.org.uk/db/documents/04015089.doc> (Accessed: 22.08.08)

Commission for Healthcare Audit and Inspection (2006) *Annual internal review of diversity* [online] Available at:

http://www.healthcarecommission.org.uk/db/documents/Internal_review_of_diversity_2006.pdf (Accessed: 22.08.08)

Commission for Healthcare Audit and Inspection (2008)a *Homepage* [online]

Available at: <http://www.healthcarecommission.org.uk/homepage.cfm> (Accessed: 17.08.08)

Commission for Healthcare Audit and Inspection, CHAI (2008)b *Annual report 2007/2008. Making healthcare safer for patients* London: CHAI

Commission for Healthcare Audit and Inspection, CHAI (2008)c *What is the Healthcare Commission and why do we exist?* Available at:

<http://www.healthcarecommission.org.uk/aboutus/whatisthehealthcarecommission.cfm> (Accessed: 17.08.08)

Commission for Healthcare Audit and Inspection, CHAI (2008)d *Equality, diversity and human rights* Available at:

<http://www.healthcarecommission.org.uk/aboutus/howdowework/equality,diversityandhumanrights.cfm> (Accessed: 22.08.08)

Commission for Healthcare Audit and Inspection, CHAI (2008)e *Inspection guides and the Department of Health's core standards* [online] Available at:

<http://www.healthcarecommission.org.uk/db/documents/04021535.pdf> (Accessed: 24.08.08)

Commission for Social Care Inspection (no date) *About the Commission for Social Care Inspection* [online] Available at:

http://www.csci.org.uk/PDF/about_csci_leaflet.pdf (Accessed: 18.08.08)

Commission for Social Care Inspection (2007)a *About us* [online] Available at:

http://www.csci.org.uk/about_csci.aspx (Accessed: 17.08.08)

Commission for Social Care Inspection (2007)b *Key lines of regulatory assessment (KLORA) Care homes for adults* [online] Available at:

http://www.csci.org.uk/professional/Docs/Klora_Care_Homes_020108.doc (Accessed: 24.08.08)

Commission for Social Care Inspection (2007)c *National Minimum Standards* [online] Available at:

http://www.csci.org.uk/choose_and_find_care/your_rights/national_minimum_standards.aspx (Accessed: 17.08.08)

Commission for Social Care Inspection (2008) *Guidance for inspectors: Key equality, diversity and human rights prompts. Care homes.* [online] Available at:

[http://www.csci.org.uk/professional/Docs/20080418%20%20Equality%20and%20%20Diversity%20%20prompts%20-%20Care%20Homes%20key%20v%200\[1\].12%20Guidance%20%20083-08.doc](http://www.csci.org.uk/professional/Docs/20080418%20%20Equality%20and%20%20Diversity%20%20prompts%20-%20Care%20Homes%20key%20v%200[1].12%20Guidance%20%20083-08.doc) (Accessed: 24.08.08)

Criminal Justice Act 1982 London: HMSO

CSCI (2007)b *Our people* [online] Available at:

http://www.csci.org.uk/about_us/how_we_are_run/our_people.aspx (Accessed: 17.08.08)

Criminal Justice and Court Services Act 2000 London: HMSO

Department of Health (no date) *Abuse in Services or at Home* [online] Available at:

<http://valuingpeople.gov.uk/dynamic/valuingpeople125.jsp?highlight=restraint> (Accessed: 30.08.08)

Department of Health (2003)a *Care Homes for Older People and The Care Homes Regulations 2001* Norwich: TSO

Department of Health (2003)b *National Minimum Standards for Care Homes for Adults (18–65) and Supplementary Standards for Care Homes Accommodating Young People Aged 16 and 17* Norwich: TSO

Department of Health (2003)c *Domiciliary Care. National Minimum Standards.* Regulations London: Department of Health. Crown Copyright

Department of Health (2003)d *Nurses Agencies. National Minimum Standards.* London: Department of Health. Crown Copyright

Department of Health (2004)a *National Minimum Standards for Adult Placement Schemes* London: Department of Health. Crown Copyright

Department of Health (2008)a *Health and Social Care Act* [online] Available at: <http://www.dh.gov.uk/en/Publicationsandstatistics/Legislation/Actsandbills/HealthandSocialCareBill/index.htm> (Accessed: 23.08.08)

Department of Health (2008)b *A consultation on the framework for the registration of health and adult social care providers* London: DH. Crown Copyright

Education Act 2005 London: HMSO Crown Copyright

Equality and Human Rights Commission (2007) *About us* [online] Available at: <http://www.equalityhumanrights.com/en/aboutus/pages/aboutus.aspx> (Accessed: 14.08.08)

Equality and Human Rights Group (2007) *Human Rights in Healthcare – A Framework for Local Action* London: DH. Crown Copyright

Estyn (2002)a *Estyn home page* [online] Available at: <http://www.estyn.gov.uk/home.asp> (Accessed: 17.08.08)

Estyn (2007)a *Estyn Ethnic Monitoring Report 2006/2007* [online] Available at: http://www.estyn.gov.uk/about_estyn/Ethnic_Monitoring_Data_narrative_2006_07.pdf (Accessed: 17.08.08)

Government of Wales Act 1998 London: HMSO

Hampton, P. (2005) *Reducing administrative burden: effective inspections and enforcement* London: HM Treasury. Crown Copyright.

Health and Social Care Act 2008 London: HMSO

Healthcare Inspectorate Wales (2007)a *Our role* [online] Available at: <http://www.hiw.org.uk/page.cfm?orgid=477&pid=13328> (Accessed: 18.08.08)

Healthcare Inspectorate Wales (2008) *Welcome to Healthcare Inspectorate Wales* [online] Available at: <http://www.hiw.org.uk/home.cfm?orgid=477> (Accessed: 18.08.08)

HM Inspectorate of Prisons (no date)a *About us About Us: HMI Prisons Statement of Purpose* [online] Available at: <http://inspectrates.homeoffice.gov.uk/hmiprisons/about-us/> (Accessed: 17.08.08)

HM Inspectorate of Prisons (2006) *Expectations. Criteria for assessing the conditions in prisons and the treatment of prisoners* London: HMIP

HM Inspectorate of Prisons (2008)a *Annual Report 06/07* London: TSO

HM Inspectorate of Probation (no date)a *About Us and Our Work. HM Probation* [online] Available at: <http://inspectrates.homeoffice.gov.uk/hmiprobation/about-us.html/> (Accessed: 17.08.08)

HM Inspectorate of Probation (no date)b *Statement of Purpose* [online] Available at: <http://inspectrates.homeoffice.gov.uk/hmiprobation/about-us.html/statement-purpose.html/?version=1> (Accessed: 17.08.08)

HM Inspectorate of Probation (no date)c *Race, Disability and Gender Equality Scheme 2007-2010* London: HMI Probation

HM Inspectorate of Probation (no date)d *How we conduct our work* [online] Available at: <http://inspectrates.homeoffice.gov.uk/hmiprobation/about-us.html/code-practice.html/?version=1> (Accessed: 25.08.08)

HM Inspectorate of Probation (no date)e *OMI Good Practice* [online] Available at: http://inspectrates.homeoffice.gov.uk/hmiprobation/docs/OMI_Good_Practice-amalgama1.pdf?view=Binary (Accessed: 28.08.08)

HM Inspectorate of Probation (2003) *MAPPA Guidance* [online] Available at:
<http://www.probation.homeoffice.gov.uk/files/pdf/MAPPA%20Guidance.pdf>
(Accessed: 25.08.08)

HM Inspectorate of Probation (2008) *Annual Report 2007-08* London: TSO
Human Rights Act 1998 London: HMSO

IPCC (no date)a *About the IPCC* [online] Available at:
http://www.ipcc.gov.uk/index/about_ipcc.htm (Accessed: 17.08.08)

IPCC (no date)b *What we do* [online] Available at:
http://www.ipcc.gov.uk/index/about_ipcc/what_do.htm (Accessed: 17.08.08)

IPCC (no date)c *Investigations* [online] Available at:
http://www.ipcc.gov.uk/index/about_ipcc/investigations.htm (Accessed: 17.08.08)

IPCC (no date)d *Our values* [online] Available at:
http://www.ipcc.gov.uk/index/about_ipcc/our_values.htm (Accessed: 22.08.08)

IPCC (no date)e *Learning the Lessons* [online] Available at:
http://www.ipcc.gov.uk/index/resources/ipcc_resources_learningthelessons.htm
(Accessed: 22.08.08)

IPCC (no date)f *IPCC guidelines and papers* [online] Available at:
http://www.ipcc.gov.uk/index/resources/evidence_reports/ipccguidelines_papers.htm
(Accessed: 24.08.08)

IPCC (2004) *Criteria for Investigations* [online] Available at:
http://www.ipcc.gov.uk/investigations_criteria.pdf (Accessed: 24.08.08)

IPCC (2005) *Commissioner Code of Conduct* [online] Available at:
http://www.ipcc.gov.uk/commissioner_code_of_conduct_30_march_2005_updated_august_2008_.pdf (Accessed:24.08.08)

IPCC (2007) *Corporate Plan 2007/08 – 2010/11* [online] Available at:
http://www.ipcc.gov.uk/ipcc_corporate_plan_2007_08_-_2010_11.pdf (Accessed:
30.08.08)

IPCC (2008)a *Casework Manual. Referrals* [online] Available at:
http://www.ipcc.gov.uk/referrals_section180808.pdf (Accessed: 24.08.08)

Kissane, J. (2005) 'Optional protocol to the United Nations Convention Against Torture' *Seminar on implementation in Latvia and other Baltic states*. Riga, Latvia (27-8 May 2005) [online] Available at:
http://www.humanrights.org.lv/upload_file/OPCAT/John%20KissaneENG.doc
(Accessed: 23.08.08)

Learning and Skills Act 2000 London: HMSO

Local Government Act 1999 London: HMSO

Mental Health Act 1983 London: HMSO

Mental Health Act Commission (2005) *Service User Involvement Strategy and User Reference Panel* [online] Available at:

<http://www.mhac.org.uk/files/Service%20User%20Involvement%20Strategy.pdf>

Mental Health Act Commission (2006) *Mental Health Act Commission Annual Report. Cheadle Royal Hospital, Affinity Healthcare* [online] Available at:

http://www.mhac.org.uk/files/176Cheadle_Royal_final_Annual_Report_October_2006.pdf (Accessed: 28.08.08)

Mental Health Act Commission (2007)a *Strategy on Equality and Human Rights* [online] Available at:

<http://www.mhac.org.uk/files/EHR1%20strategy%20updated%20Nov%2007.pdf> (Accessed: 21.08.08)

Mental Health Act Commission (2007)b *About us* [online] Available at:

<http://www.mhac.org.uk/?q=node/30> (Accessed: 17.08.08)

Mental Health Act Commission (2007)c *Welcome to the Mental Health Act Commission* [online] Available at: <http://www.mhac.org.uk/> (Accessed: 17.08.08)

Mental Health Act Commission (2007)d *About us. Second opinion service* [online] Available at: <http://www.mhac.org.uk/?q=node/7> (Accessed: 17.08.08)

Mental Health Act Commission (2007)e *Service Provider Reports* [online] Available at: <http://www.mhac.org.uk/?q=node/19> (Accessed: 28.08.08)

Mental Health Act Commission (2008)a *Business Plan 2008-09* [online] Available at: http://www.mhac.org.uk/files/Business%20Plan%2008-09%20May%2008_1.pdf (Accessed: 22.08.08)

Ministry of Justice (2007) *National Standards for the Management of Offenders. Standards and Implementation Guidance 2007* [online] Available at:

http://noms.justice.gov.uk/news-publications-events/publications/guidance/OM_National_Standards_0907?view=Binary

(Accessed: 25.08.08)

Nurses Agencies Regulations 2002 London: HMSO

Office of the United Nations High Commissioner for Human Rights (2002) *Optional Protocol to the UN Convention against Torture and other cruel, inhuman or degrading treatment or punishment* [online] Available at: <http://www2.ohchr.org/english/law/cat-one.htm> (Accessed: 17.08.08)

Parliamentary and Health Services Ombudsman (2007)a *Annual Report 2006/07* [online] Available at: http://www.ombudsman.org.uk/pdfs/ar_07.pdf (Accessed: 17.08.08)

Parliamentary and Health Services Ombudsman (2007)b *Principles of Good Administration* [online] Available at:

http://www.ombudsman.org.uk/improving_services/good_administration/principles.html#2 (Accessed: 25.08.08)

Parliamentary and Health Services Ombudsman (2007)c *Principles of Remedy* [online] Available at: http://www.ombudsman.org.uk/improving_services/remedy/principles_remedy.html (Accessed: 25.08.08)

Parliamentary and Health Services Ombudsman (2008)a *Home* [online] Available at: <http://www.ombudsman.org.uk/> (Accessed: 17.08.08)

Police Reform Act 2002 London: HMSO

Prison Act 1952 London: HMSO

Public Audit (Wales) Act 2004 London: HMSO

Public Bill Committee 8 January 2008 (Morning) Health and Social Care Bill.

Sheffield Care Trust and Sheffield Social Services (no date) *Joint Policy on the Prevention and Management of the Use of Restraint* Sheffield: Sheffield Care Trust and Sheffield Social Services

Signpost Sheffield (2006) *Restraint in Sheffield. Keep safe and know your rights* [online] Available at: <http://www.signpostsheffield.org.uk/index.asp?pgid=135090> (Accessed: 30.08.08)

Storybook Dads (2006) *Who we are* [online] Available at: <http://www.storybookdads.co.uk/Whoweare/Whoweare.html> (Accessed: 30.08.08)

The Health and Social Care (Community Health and Standards) Act 2003 London: HMSO

The Domiciliary Care Agencies Regulations 2002 London: HMSO

The Registration of Social Care and Independent Health Care (Wales) Regulations 2002 London: HMSO

UK Parliament (no date) *Health and Social Care Bill 2007-08* [online] Available at: <http://services.parliament.uk/bills/2007-08/healthandsocialcare.html> (Accessed: 23.08.08)

Wales Audit Office (no date)a *Wales Audit Office Brochure* [online] Available at: http://www.wao.gov.uk/assets/WAO_brochure_english.pdf (Accessed: 17.08.08)

Wales Audit Office (2007) *Taff Housing Association. Housing Inspection.* [online] Available at: http://www.wao.gov.uk/assets/Local_Reports/Taff_HA_inspection.pdf (Accessed: 30.08.08)

APPENDIX 2: SUMMARY DESCRIPTION OF ORGANISATIONS IN SAMPLE

Audit Commission

Established under the 'Audit Commission Act 1998', the Audit Commission is an 'independent watchdog, driving economy, efficiency and effectiveness in local public services'.⁸¹ Employing nearly 2000 people, the organisation has a regional structure and, as 'the primary auditor of local public services', it undertakes: audit and inspection in local government, health and criminal justice; performance assessment of local government and housing services; research; and, data-matching for the purposes of fraud detection.⁸² The Audit Commission can refer cases of serious under-performance to the Secretary of State, under the 'Local Government Act 1999'.⁸³

Commission for Social Care Inspection

The Commission for Social Care Inspection (CSCI) is an independent body, established by Government in 2004 under the 'Health and Social Care (Community Health and Standards) Act 2003' to 'regulate, inspect and review all adult social care services in the public, private and voluntary sectors in England'.⁸⁴ The organisation has three headquarters (London, Leeds and Newcastle) and a network of regional and local offices comprising approximately 2000 staff.⁸⁵

CSCI inspections gauge provider performance against a range of national minimum standards set by the Department of Health.⁸⁶ The standards themselves are not enforceable by law but are set within a regulatory framework that includes the 'Care Standards Act 2000', 'The Care Homes Regulations 2001', 'The Domiciliary Care Agencies Regulations 2002' and 'Nurses Agencies Regulations 2002'.⁸⁷ While the CSCI does not have the power to investigate individual complaints, they work to promote service improvement in the sector and to 'stamp out bad practice', through: registration of care homes; inspection against minimum standards; rating of councils'

81 Audit Commission (no date)a.

82 Ibid.

83 Audit Commission (no date)b.

84 CSCI (2007)a.

85 CSCI (2007)b.

86 Department of Health (2003)a; (2003)b; (2003)c; (2003)d; (2004)a.

87 CSCI (2007)c.

performance in respect of social care; and, regular reporting to Government and to Parliament.⁸⁸

In April 2009, CSCI will be merging with the Healthcare Commission and the Mental Health Act Commission to form the new Care Quality Commission, under the 'Health and Social Care Act 2008'.

Estyn

Estyn is the 'office of Her Majesty's Chief Inspector of Education and Training in Wales'.⁸⁹ The Welsh counterpart to 'Ofsted' in England, Estyn is an independent body with approximately one hundred staff⁹⁰, which is funded by the Welsh Assembly Government under section 104 of the 'Government of Wales Act 1998'. Estyn has a statutory duty to inspect the wide range of settings where education and training is provided, and report on inspection findings, in accordance with the *Education Act 2005* and the *Learning and Skills Act 2000*.

Inspection reports grade institutions in respect of performance in key areas and, where applicable, for different age groups, and also make recommendations to institutions about how they can improve the services they offer.

Healthcare Commission

Launched in 2004, under the 'Health and Social Care (Community Health and Standards) Act 2003', the Healthcare Commission is the 'independent watchdog' for healthcare. As such, it is responsible for assessing and reporting on the performance of healthcare organisations in England – as well as having some responsibilities in Wales – and, in addition, for promoting improvements in health services.⁹¹ It has a regional structure, with area-based teams and approximately 800 employees (whole time equivalent, during 2007-08)⁹².

The Commission has a statutory duty to: assess all NHS and independent sector providers in England; provide information on the findings of its assessment process; and use the information that it generates to promote improvement in health and healthcare. It also works to ensure that patients and the public with 'the best possible information about the provision of healthcare'.⁹³

In respect of the independent sector, the Healthcare Commission registers, inspects and regulates providers in accordance with its duties under the 'Care Standards Act

88 CSCI (no date).

89 Estyn (2002)a.

90 Estyn (2007)a.

91 Commission for Healthcare Audit and Inspection, CHAI (2008)a.

92 Commission for Healthcare Audit and Inspection, CHAI (2008)b.

93 Commission for Healthcare Audit and Inspection, CHAI (2008)c.

2000', as amended by the 'Health and Social Care (Community Health and Standards) Act 2003'⁹⁴.

Healthcare Inspectorate Wales

As is the case with its English counterpart (the Healthcare Commission), Healthcare Inspectorate Wales (HIW) has a duty to inspect and regulate NHS providers of healthcare in Wales under the 'Care Standards Act 2000', as amended by the 'Health and Social Care (Community Health and Standards) Act 2003' to ensure they are compliant with the Healthcare Standards for Wales. Since April 2006, it has also had full delegated authority for regulatory decision-making in respect of the independent sector, and for registering such providers in accordance with 'The Registration of Social Care and Independent Health Care (Wales) Regulations 2002' and inspecting and regulating their provision.

An independent body comprising approximately 40 staff, sitting within the Welsh Assembly Government, HIW works to 'promote continuous improvement in the quality and safety of patient care' and will also undertake investigative work, as required.⁹⁵ In undertaking investigative work, the HIW may carry out enforcement action itself by pursuing either criminal or civil proceedings, in accordance with relevant legislation, or refer on to other agencies.

In addition, HIW has responsibility for 'the statutory supervision of midwives and has entered an agreement with the Nursing & Midwifery Council (NMC) to conduct annual monitoring of higher education institutions in Wales which offer approved NMC programmes'.⁹⁶

HM Inspectorate of Prisons for England and Wales

HM Inspectorate of Prisons is an independent body, comprising approximately 50 staff⁹⁷ and funded by the Ministry of Justice, which 'reports on conditions for and treatment of those in prison, young offender institutions and immigration removal centres'.⁹⁸

The Inspectorate has a remit to promote 'the concept of 'healthy' prisons in which staff work effectively to support prisoners and detainees to reduce reoffending or achieve other agreed outcomes'⁹⁹ as well as statutory responsibilities, on behalf of the Immigration and Nationality Directorate, in respect of immigration detention and holding facilities. In addition to working in England and Wales, 'HM Chief Inspector of

94 The Health and Social Care (Community Health and Standards) Act 2003.

95 Healthcare Inspectorate Wales (2007)a.

96 Healthcare Inspectorate Wales (2008).

97 Ibid.

98 HM Inspectorate of Prisons (2008)a.

99 HM Inspectorate of Prisons (no date)a.

Prisons is invited to inspect prisons in Northern Ireland, the Channel Islands, the Isle of Man and some Commonwealth dependent territories.¹⁰⁰

The Inspectorate has a statutory duty to visit places of detention in accordance with the 'European Convention on Human Rights', specifically the 'Optional Protocol' which took effect from 2006.¹⁰¹ This has informed the Inspectorate's 'Expectations'¹⁰² – the criteria used for inspecting places of detention.

HM Inspectorate of Probation for England and Wales

HM Inspectorate of Probation is an independent body, funded by the Ministry of Justice, which assesses 'the effectiveness of work with individual offenders, children and young people aimed at reducing re-offending and protecting the public'.¹⁰³ Under 'The Criminal Justice and Court Services Act 2000', the Inspectorate reports directly to the Secretary of State.

HM Inspectorate of Probation for England and Wales has no responsibilities for regulation or complaint-handling; its statutory duty is to inspect probation and youth offending work 'whoever undertakes this work under the auspices of the National Offender Management Service or the Youth Justice Board'.¹⁰⁴ The Inspectorate is based in London and has approximately 70 staff¹⁰⁵.

Independent Police Complaints Commission

The Independent Police Complaints Commission (IPCC) is a non-departmental public body that came into force as a result of the 'Police Reform Act 2002'. The IPCC has a statutory duty 'to oversee the whole of the police complaints system'¹⁰⁶ and to 'act as guardian to the police complaints system as a whole' with 'a duty to raise public confidence'¹⁰⁷. In its role, the IPCC can either investigate complaints itself or, manage or oversee police investigations into complaints.¹⁰⁸

The organisation has a regional structure, comprising 'teams of investigators headed by Regional Directors' who will 'assist with supervision and management of some

100 Ibid.

101 Office of the United Nations High Commissioner for Human Rights (2002).

102 HM Inspectorate of Prisons (2006).

103 HM Inspectorate of Probation (no date)a.

104 HM Inspectorate of Probation (no date)b.

105 HM Inspectorate of Probation (2008)a.

106 IPCC (no date)a.

107 IPCC (no date)b.

108 Ibid.

police investigations. They also carry out independent investigations into serious incidents or allegations of misconduct by persons serving with the police'.¹⁰⁹

Mental Health Act Commission

The Mental Health Act Commission (MHAC) is a monitoring organisation. It has no formal powers of regulation or inspection; rather, it is responsible for 'safeguarding the interests of all people detained under the Mental Health Act 1983'.¹¹⁰

The organisation, which comprises approximately 100 commissioners - including lay persons, lawyers, doctors, nurses, social workers, psychologists and other specialists - is concerned with 'the legality of detention and the protection of individuals' human rights'.¹¹¹ Members of the Commission, with the exception of the Chairman and Vice Chairman, work within Regional Teams. Each Regional Team undertakes the MHAC's visiting activity within a particular geographical area and is managed by a Regional Director responsible for arranging and monitoring the teams' activities.

The MHAC undertakes a programme of visits to people who have been detained under the Mental Health Act, in addition to delivering the 'Second Opinion Appointed Doctor Service' (under Sections 57 and 58 of the Mental Health Act) which seeks to safeguard patients in the event that they are non-consenting to treatment, or incapable of making decisions about their care.¹¹²

Parliamentary and Health Services Ombudsman

The Parliamentary and Health Services Ombudsman (PHSO) is responsible for undertaking 'independent investigations into complaints about UK government departments and their agencies, and the NHS in England' and working to 'improve public services' as a result.¹¹³ The organisation does not have legislative reach, duties or statutory functions; rather, it conducts investigations into complaints 'that government departments, a range of other public bodies in the UK, and the NHS in England, have not acted properly or fairly or have provided a poor service'. It aims to resolve complaints efficiently and to 'secure appropriate outcomes'.¹¹⁴

Wales Audit Office

Coming into force as a result of the 'Public Audit (Wales) Act 2004', the Wales Audit Office replaced the Audit Commission and National Audit Office in Wales. The independent organisation comprises 230 members of staff, led by the Auditor

109 IPCC (no date)c.

110 Mental Health Act Commission (2007)c.

111 Mental Health Act Commission (2007)b.

112 Mental Health Act Commission (2007)d.

113 PHSO (2008)a.

114 PHSO (2007).

General, and is 'responsible for auditing the National Assembly for Wales, its sponsored and related bodies and NHS organisations in Wales, as well as appointing auditors for local authorities.'¹¹⁵

The Wales Audit Office undertakes auditing, inspection and investigative duties, working to ensure that public funds are managed efficiently and effectively, and promoting value for money, and identifying instances of fraud, in public services.

115 Wales Audit Office (no date).

APPENDIX 3: INTERVIEW QUESTIONS

Background information

1) What is your role in your organisation?

Probes: Board Member, Chief Executive, Managing Director, Senior Manager, Middle Manager, Inspector, Auditor, Investigator

Understanding and embedding the Act

Within inspectorate

2)

- a. How much involvement have you had of working to ensure [*organisation name*] is compliant with the Act?
- b. What has the implementation of the Act meant to you in terms of the way you perform your role and responsibilities in the organisation?
- c. What do you think are the main challenges posed by the Act for the every-day functioning of your organisation?
- d. What strategies have been used to overcome these challenges?

3) What changes has your organisation had to make in order to take into account the positive obligations of the Act?

4) What changes do you think are still required in order to embed human rights within the organisation?

5)

- a. Where in your organisation does responsibility and accountability for HR currently lie?
- b. Do you feel this is clear to people working internally?
- c. What mechanisms are used to ensure that awareness of the Act, and of related organisational policy, is embedded within the different teams and departments?
- d. How are those working in regional teams made aware of changes?
- e. What factors facilitate the embedding of a human rights culture across the organisation?
- f. What are the particular challenges in this respect?
- g. What measures have been taken to overcome these challenges?

- 6) What practical support could be offered to help you to improve the way that a human rights perspective is disseminated across the organisation? Who would be best placed to offer this support?
- 7) What mechanisms are in place in the organisation to ensure that policies and practice related to human rights are sustained? How are these reviewed and updated?
- 8) To what extent does knowledge of relevant and recent human rights related case laws inform or impact on your inspection processes?

When undertaking inspection/regulation and complaints-handling duties

- 9)
 - a. How does your organisation meet the requirements of the Act in the way it inspects/investigates other organisations?
 - b. How does your organisation meet the requirements of the Act in the way it handles complaints?
 - c. How are human rights integrated into your inspection frameworks/processes?
 - d. Do you have any examples of good practice in terms of working with external stakeholders in a way that promotes human rights?
 - e. What are the key challenges faced in ensuring that human rights are integrated into inspection/audit processes?
 - f. What strategies have been used to overcome these challenges?
- 10) What practical support would be helpful for improving the integration of human rights into your inspection/audit processes and complaints handling procedures in the sector you are inspecting?
- 11) Where there is evidence of good practice in terms of delivering inspection with regard to human rights, what would need to happen to sustain this?

In inspected bodies

- 12) To what extent do you think that the bodies you inspect understand their requirements under the Act? (*Compliance with the legislation*)
 - a. What do you consider to be the key factors that determine understanding of the Act in the bodies you inspect?
 - b. What mechanisms are used to ensure that awareness of the Act, and of related organisational policy, is embedded within the inspected bodies?

- c. What do you feel would help inspected bodies to deepen their understanding?
 - d. Which agency/body/organisation do you feel is appropriate to provide this support?
- 13) To what extent do you think that the bodies you inspect have embedded human rights in their organisations?
- a. What differences, if any, have you noticed in how the bodies you inspect work since the Act came into force?
 - b. What sorts of changes have inspected bodies had to make to embed human rights into their organisations?
 - c. What do you think are the main challenges posed by the Act for the every-day functioning of the bodies you inspect or monitor?
 - d. What support do these inspected bodies need to overcome these challenges?
 - e. What actions do inspected bodies take to ensure that human rights continue to be part of their functioning?
- 14) How do you currently assess the extent to which human rights have been embedded within the bodies you inspect?
- a. What methods do you use to assess this?
 - b. What factors facilitate the embedding of human rights within these inspected bodies?
 - c. What are the characteristics of inspected bodies in which human rights have *not* been embedded?
 - d. What are the particular challenges in this respect?
 - e. What measures have been taken to overcome these challenges?
- 15) When have you observed good practice examples of approaches to embedding human rights within inspected bodies? Please give examples.
- a. What does your organisation currently do to support these bodies in embedding human rights internally?
 - b. What further support do you think your organisation could provide to help the bodies you inspect to embed human rights?
- 16) Have you identified any evidence of good practice in inspected bodies delivering services in a human rights based way? Please give examples.

Service user involvement

Within inspectorate

- 17) Are service users and other stakeholders involved in shaping the way you carry out your inspection work? If so, how?
- 18) Has your approach to user engagement been driven by human rights principles, if so how?
- 19) How is it ensured that you continue to engage with service users to shape the principles and methodology of inspection?
- 20) Can you highlight any areas of good practice in how your organisation engages service users to shape the principles and methodology of inspection?

When undertaking inspection duties

- 21) In what ways are service users involved in the audit and inspection processes?
- 22) Has human rights helped to develop your approach for involving service users in the inspection process, if so how?
- 23) Do service users highlight breaches in human rights to make a complaint and/or to strengthen their case? If so do you monitor and report on this?
- 24) How do you report on the progress made by inspected bodies in response to embedding human rights?

In inspected bodies

- 25) To what extent do inspected bodies engage with service users when making decisions regarding service provision?
 - a. Is the way in which inspected bodies engage service users when making decisions regarding service provision done in the context of a human rights approach?
 - b. Can you identify any areas of good practice in how inspected bodies engage with service users when making decisions regarding service provision?

Training and knowledge-sharing

- 26) To what extent are you able to access easily information about human rights-related case laws? To what extent is this information disseminated with inspected bodies?
- 27) What, if anything, could be done to help you remain informed about new and ongoing case laws, and landmark cases?
- 28) Is there anything that we haven't discussed during this interview that you feel is of importance to this piece of work?

APPENDIX 4: THE WIDER POLICY ENVIRONMENT

This is a time of change for many inspectorates. The Hampton Review¹¹⁶ called for improved efficiency in regulation and there have been, and continue to be, significant changes taking place in the regulatory environment to achieve this aim. The focus is now upon 'strategic regulation'. This will mean that high-performing organisations will be subject to less inspection and so the capacity to collect good practice in any policy area including human rights has the potential to be severely limited. It can also mean that human rights can be squeezed out of future inspection frameworks without some form of incentive to ensure it remains a priority. The research team has found no evidence in this research to show this has taken place. However, it is a point worth making because of the potential risk involved.

Government pressure to reduce the numbers of national performance indicators for public services may also mean that in the future it will be difficult to negotiate for new performance indicators to be introduced and/or be audited against. Given this is the case there is an argument for integrating any proposed new indicators on human rights into existing performance measures.

New models of inspection

The nature of inspection is changing for a number of organisations, not least that the Audit Commission and partner inspectorates¹¹⁷ will be working together from 1 April 2009 to deliver Comprehensive Area Assessments (CAA). This is a new inspection framework which is replacing Comprehensive Performance Assessment (CPA). The first round of assessments will be undertaken in 2009 and will cover the prospects for local areas and the quality of life for people who live there. The Audit Commission and its partner inspectorates are currently consulting upon and trialling assessment frameworks for CAA. With lots of policy interests competing to be included in the joint inspection framework it will be important to ensure that human rights remains a priority.

Organisational change

7.11.3 The Healthcare Commission, the Commission for Social Care Inspection and the Mental Health Care Act Commission are already grappling with post-merger joint working. The creation of the Care Quality Commission in 2009 is likely to pose further challenges to aligning ways of working and not losing existing good practice in the individual inspectorates.

116 Hampton (2005).

117 Partner Inspectors for CAA include the Healthcare Commission, Commission for Social Care Inspection, HM Inspectorate of Prisons for England and Wales, HM Inspectorate of Probation for England and Wales, HM Inspectorate of Constabulary, Ofsted).

7.11.4 The Health and Social Care Act (HSCA) received Royal assent in July 2008. It made provision for the establishment of the Care Quality Commission ‘the new integrated regulator for health and adult social care’.¹¹⁸ There has been considerable public debate about the human rights implications of the merger¹¹⁹ and the key issues identified were also reflected in respondent feedback from organisations involved in the merger. The majority of respondents for this research were interviewed prior to the publication of the HSCA.

While interview data and desk research highlights the view that the Care Quality Commission might provide a good opportunity to raise the profile of human rights in health and social care inspection, visiting and regulation, there seems to be a level of uncertainty about whether or not this will happen. Organisations are now in a transition period and the practical details of how the Care Quality Commission will perform its duties under the HSCA are still being decided. This seems to mean that, at present, there are more questions than answers about how human rights will feature in its work. The key issues raised are as follows:

- There remains a question about the extent to which the Care Quality Commission will prioritise human rights, taking into account the different needs of different groups of individuals. Chapter One of the HSCA identifies that the Care Quality Commission will ‘need to protect and promote the rights of people who use health and social care services’, and makes particular reference to children, patients detained under the Mental Health Act 1983 and other vulnerable adults, in this respect.¹²⁰ Interviewees expressed concern about the extent to which a rights-based approach, with explicit reference to human rights and protecting individuals, will be reflected in the Care Quality Commission’s structure, constitution and ways of working.
- There has been concern expressed about the potential for ‘losing’ good practice that has been built in the merged organisations. In the first public debate on the HSCB, Lord Patel of Bradford, the Chair of MHAC stated that the organisation was “a reluctant bride” in the merger¹²¹. MHAC was concerned that their *‘excellent expertise in one particular area...should not be lost’*¹²². Dame Denise Platt, Chair of CSCI, also voiced concern about this issue, highlighting the progress made by CSCI in its work to *“amplify people’s voices and make their concerns heard”* and the possibility of this

118 Department of Health (2008)a.

119 As document by: UK Parliament (no date).

120 Health and Social Care Act 2008, section 4.

121 Public Bill Committee 8 January 2008 Column number: 4.

122 Public Bill Committee 8 January 2008 Column number: 4.

being overshadowed by a focus on “*mainstream health services*”.¹²³

Interview data suggests that these concerns have not yet been allayed.

However, there are also some positive messages coming out of the proposed merger. For example, the Department of Health’s consultation on the framework for the registration of health and adult social care providers makes explicit reference to embedding human rights into the registration framework so that relatives and carers are treated with respect.¹²⁴ This will help ensure that they are able to express their needs and concerns, particularly where they need support to communicate effectively, and have them acted on in a timely manner. People’s privacy, autonomy and dignity will also be safeguarded and their human rights and equality will be respected.¹²⁵

Changes in the wider policy environment have the potential to impact on the degree to which human rights is embedded across inspectorates and the public bodies they inspect, particularly in relation to how human rights fit into inspection frameworks.

Given the challenges of strategic regulation, mergers and the introduction of new inspection frameworks such as CAA could have an adverse affect on how human rights is taken forward at inspection. Therefore, the research team believes it is an opportune time to ensure that human rights, and the engagement with service users that supports this, remain an area of focus, and to identify any support that may be required to deliver the requirements of the HRA.

123 Public Bill Committee 8 January 2008 Column number: 5.

124 Department of Health, Consultation on the framework for the registration of health and social care providers, 2007.

125 Department of Health (2008)b.

www.equalityhumanrights.com