

Report of Responses to Our Consultation Human Rights in a Public Servant's Oath?

Overview

The Human Rights Consortium Scotland (HRCS) launched a consultation from March – April 2013 on the idea of introducing a Scottish public servants' oath which includes a commitment to respect human rights on a daily basis. Human rights belong to everyone, make a positive difference to our daily lives and are a vital safety net to protect us all.

The proposal was based on the grounds that as there are currently 581,300 public sector staff in Scotland, by taking such an oath, there would be a large number of people more aware about human rights and existing public sector legal duties to comply. Agreeing such an oath and the process of adopting it would achieve change fairly quickly by explaining and emphasising the importance of human rights to staff and encouraging the adoption of organisational systems to give them explicit effect.

The idea was prompted by complaints from members that we need to ensure culture and practice in public sector bodies mainstream human rights and the new oath of Scotland's national police force, which includes a duty to 'uphold human rights'.

The number and nature of the responses means that we need to reflect and explore both the problem and the solutions in more detail. This report is, therefore, designed to encourage informed discussion on the idea of an 'oath' and consider more broadly how Scotland may face the challenge of:

- Ensuring those who govern and manage public services, and those of a public nature, develop systems which mainstream human rights in decisions on design, delivery and funding.
- Encouraging decisions within organisations about training, information and capacity building for staff and contractors on the duty to respect, protect and fulfil human rights in their daily work.
- Integrate discussion on such an oath with action on the recommendations of 'The Christie Commission' and current deliberations on how best to give effect to the SHRC's Scotland's National Action Plan on Human Rights.

About the HRCS

The Human Rights Consortium Scotland (HRCS) is a network of over 70 organisations and individuals. The HRCS was established in January 2010 to address the gap in knowledge of human rights within NGOs and to build capacity on applying human rights principles and standards to the delivery of publicly funded services. The HRCS was borne out of an unmet need and in response to specific problems. It relies on volunteers to progress its agenda. Thanks to HRCS volunteers Alan Stewart for managing responses via our website and to Fiona Robertson for analysing the responses and help in drafting this report.

Background

A consistent complaint of HRCS members is that action is needed to ensure that human rights are mainstreamed and integrated across, our public services in Scotland. For example according to UNISON Scotland, which represents 160,000 public service workers, "members advise that they don't generally operate in a human rights culture"¹. The problem needs to be addressed and as a matter of urgency:

- We need leaders within public sector bodies to embed human rights in the design delivery, and funding of public services and those of a public nature
- We need to ensure staff have the knowledge and skill base to deliver whether it is the hospital porter or the chief executive of a social care provider.
- We need to genuine debate and targeted action on human rights compliance in Scotland especially with cuts in public services, where the most vulnerable may have particular need of human rights protection.

There are at least 10,000 public sector bodies in Scotland so if each staff member has to take such an oath, there will be a lot of people more aware about human rights and public sector legal duties to comply. Currently there are 581,300 public sector staff in Scotland² so an oath would make an immediate impact on lots of people. Additionally some bodies which are not considered to be public sector bodies are covered by the Human Rights Act 1998, eg housing associations

The idea has been prompted by the decision to include in the oath of Scotland's new National Police Force, a commitment to uphold "human rights" and not just those defined by the European Convention on Human Rights (ECHR): "I, do solemnly, sincerely and truly declare and affirm that I will faithfully discharge the duties of the office of constable with fairness, integrity, diligence and impartiality, and that I will uphold fundamental human rights and accord equal respect to all people, according to law."³

The Scottish Government has chosen to adopt a distinctive policy on human rights and it could develop that further by extending such an oath across the public sector: "The Scottish Government wishes to see Scotland reflected as a modern, responsible nation, with a commitment to protecting, respecting and realising human rights. Within the UK, Scotland takes a distinctive approach realising international human rights standards, and securing recognition at the UN level of this diversity is important."⁴

Human Rights – Knowledge and Attitudes

Section 6 of the Human Rights Act 1998 (HRA) requires all public authorities and those delivering services of a public nature to comply with the European Convention on Human Rights (ECHR). The duty under the HRA is placed on public authorities. Section 57 of the Scotland Act 1998 requires Scottish Government Ministers to

¹ UNISON Scotland Response to the Consultation

² National Statistics (2013) *Public Sector Employment in Scotland Statistics for 1st Quarter 2013*. available at: <http://www.scotland.gov.uk/Publications/2013/06/9041/281639> Accessed on: 14/08/2013

³ Police and Fire Reform (Scotland) Act 2012: Section 10: Constable's Declaration

⁴ Letter from Roseanna Cunningham to Lord McNally 29th August 2012
<http://www.togetherscotland.org.uk/pdfs/Scottish%20Government%20UPR%20response%2029-08-2012.pdf>

comply with human rights law too. So human rights principles and standards should apply in everyday situations in Scotland including:

- Article 3 – absolute protection from degrading treatment eg in hospital
- Article 6 - fair trial and fair process eg in disciplinary proceedings
- Article 8 - right to protection of the home, private and family life including the right to live with dignity
- Article 10 - right to hold opinions and the right to receive and impart information to help you form your opinion

In addition the UK Government has ratified UN Treaties and some from other European bodies which means that our rights should tally with those rights eg the right to enjoy the highest attainable standard of physical and mental health under the UN's International Covenant on Economic, Social and Cultural Rights.

In September 2013, the Equality and Diversity Forum (EDF) delivered a presentation to HRCS members on polling it has undertaken across the UK. If we accept that there is a cross section of the population employed by the public sector in Scotland, then there is a real need to develop a better understanding of human rights amongst staff and the duties which they have to respect and deliver. EDF's independent polling has concluded that: those who are pro human rights make up 22% of the population; those who are conflicted are 41%, uninterested 11% and anti 26%.

Context

Such an oath would be consistent with other examples of public servants who operate within a set of standards and ethics although it needs to be acknowledged that human rights are explicitly mentioned in only some including:

- Explicitly - The Social Work Code of Ethics produced by BASW Scotland in 2012 lists human rights as the first 'value' and principle 8 is "challenging the abuse of human rights". The reasoning is that "human rights and social justice serve as the motivation and justification for social work action".⁵
- Implicitly – the Scottish Government's version of the civil service code includes core values of: integrity, honesty, objectivity and impartiality⁶; MSPs swear an oath upon election to the Scottish Parliament⁷.
- Sector initiatives eg 'Common Core of Skills, Knowledge & Understanding and Values for the "Children's Workforce" In Scotland' produced by the Scottish Government.⁸

An oath may complement the context and detail in the Scottish Human Rights Commission's 'National Action Plan on Human Rights' (SNAP) which has been prompted by the need for "a more systematic approach to assure - and not assume - the realisation of human rights in our day to day lives."⁹

Also, the 'Christie Commission' which was a 'Commission on the Future Delivery of

⁵ The Code of Ethics for Social Workers, Statement of Principles
http://cdn.basw.co.uk/upload/basw_112315-7.pdf

⁶ (<http://www.scotland.gov.uk/About/People/Directorates/Services-Groups/HR/HR/policies-guidance/conduct/Civil-Service-Code>)

⁷ The Promissory Oaths Act 1868, and the corresponding affirmation, which may be taken instead, is set out in the Oaths Act 1978.

⁸ <http://www.scotland.gov.uk/Resource/0039/00395179.pdf>

⁹ <http://www.scottishhumanrights.com/actionplan>

Public Services¹⁰ made recommendations in 2011 for reform such as the importance of 'preventative spending'. A significant way to prevent costs caused by breaching the human rights of an individual or group of people is to develop strategies which respect and promote human rights. This is in line with the Scottish Government's Best Value Framework¹¹ which includes "Governance and Accountability" so preventing human rights abuses as well as preventing costly cases coming to court, sits well with this principle.

The introduction of an oath for all public sector employees and the explicit inclusion of human rights may also help give effect to a number of recommendations from UN Committees about the need to generate a better understanding of and information on, human rights to public servants in the UK and Scotland. The gap in knowledge about human rights and their practical applications has been a source of repeated concern by the UN over decades and includes:

- The UN Committee on Economic, Social and Cultural Rights complained in 2009 that "all levels are not sufficiently aware of the State party's Covenant obligations" in respect of the UN Convention on Economic, Social and Cultural Rights. "The Committee recommends that the State party undertake training programmes for doctors and health-care professionals about the State party's Covenant obligations, as well as with regard to the prevention and treatment of dementia and Alzheimer's diseases..."¹²
- The UN Committee on the Rights of the Child considered the UK's compliance with the UN Convention on the Rights of the Child in 2008 and recommended training on the UN Convention on the Rights of the Child including "the reinforcement of adequate and systematic training of all professional groups working for and with children, in particular law enforcement officials, immigration officials, media, teachers, health personnel, social workers and personnel of childcare institutions."¹³

Main Findings of Our Consultation

The consultation asked: 'Do you agree that a public servant's oath, including a commitment to respect human rights, is a good idea? What wording do you think should be used? Also, any other additional comments on the matter were invited. Eight responses to the consultation were received and have been analysed.

- 4 of the respondents did not believe that a public servant's oath, including a commitment to respect human rights, was a good idea although one thought it should be included in an employee's contract of employment.
- 3 believed it was a good idea to have a public servant's oath put in place;
- 1 was equivocal seeing benefits and challenges.

¹⁰ Scottish Government website <http://www.scotland.gov.uk/About/Review/publicservicescommission>

¹¹ For more information see the Scottish Government website

<http://www.scotland.gov.uk/Topics/Government/PublicServiceReform/14838/564>

¹² Concluding observations of the Committee on Economic, Social and Cultural Rights United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories pub 12th June 2008 para 34

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGBR%2fCO%2f5&Lang=en

¹³ Third and fourth periodic report of the United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/4) para 21 pub in October 2008

<http://www.togetherscotland.org.uk/pdfs/3rd%20and%204th%20Concluding%20Observations%202008.pdf>

- 2 respondents provided wording which they believed should be used when introducing a public servant's oath, including a commitment to respect human rights. Suggestions for the wording were:
"I promise to uphold human rights legislation in all I do and to ensure individuals are aware of these rights" or to have the same wording as the oath of Scotland's new National Police Force but replacing the word "*constable*" for *public servant* or *public office* .
- There were also questions posed such as operationally, are there easier ways to embed human rights across the public sector? For example BIHR, having listened to staff in health and social care in England and Wales, suggested some kind of pledge or "kite-mark" to which both individuals and/or agencies could sign up.

Although there was overall support for the principle for the improvement in the knowledge held by employees in regard to human rights, there remained several concerns as to how an oath would work in practice. The concerns raised were:

- The Scottish Government may not want to direct a Scotland wide oath as, for example, health boards and local authorities may wish to decide such matters for themselves. The police oath was possible as it was in an Act of the Scottish Parliament which centralised regional forces.
- The oath may be seen as superficial and as a result may not provoke sustainable change in attitudes and behaviour towards human rights within public sector organisations and amongst public servants.
- Employers may pass the responsibility to employees, resulting in a 'blame culture' and a lack of accountability for organisational failings.
- How the impact of the oath will be measured.

Issues to Consider

1. Process

Public sector employers need to support the idea of introducing an oath, which includes an undertaking on human rights, as employees are then more likely to support the change also. The benefits for employers of having such an oath would include that helps reflect the core mission and values of the organisation and highlights the importance of human rights in the role of each employee and to those who use services.

Even if there is no oath, already, those responsible for dealing with contracts of employment within the workplace must ensure that the organisation, its staff, contractors and any volunteers must comply with the law such as the Human Rights Act 1998, the Data Protection Act 1998, health and safety legislation etc. Consequently employers should ensure that staff have the necessary training and resources to fulfil existing, legal duties.

As there will be contract staff eg from the private and voluntary sectors, existing human rights duties need to be explicitly acknowledged in contracts for service delivery too.

2. Accountability

When introducing an oath it would be important to be explicit that it is the organisation that is responsible for human rights duties and its agents are its staff.

Those who govern and manage the public sector are accountable for having the systems in place and to ensure that employers and employees are following the oath in practice. This will deal with the concern from respondents that responsibility will be passed down to staff and then the issue forgotten. Already in the workplace there are designated people for health and safety law, for freedom of information compliance duties, for data protection etc. The argument has been won that although such issues are the duties of everyone there is still a need for designated staff to ensure compliance within and across organisations. Those accountable for human rights could work alongside those who deal with equality and diversity policies in the organisation as although the human rights oath is separate to these areas they do intertwine with one another. By working together an integrated framework can be constructed enabling human rights to fit in with existing policies.

Accountability can be evidenced by the creation of learning opportunities and the provision of training for employees so that they can gain full knowledge, understand the practical application of human rights within their workplace and be kept up to date on developments.

3. Compliance

Compliance is a key issue in ensuring that the oath is not just a 'tick box' exercise. As recommended in a report 'Delivering Human Rights in Scotland' by Amnesty International in 2006 *"Every two years, public authorities should be required to produce an audit of human rights compliance across their range of functions."*¹⁴

The first audit could be used to describe what steps the public authority has taken, which could include putting an oath in place, to mainstream human rights across all its functions. Subsequent audits could then be conducted to evidence impact on staff, services and service users eg what methods are deployed to ensure that employees are informed of and are up to date with, human rights developments.

By continuing to discuss human rights in the workplace through regular staff meetings, employers can evidence the importance of the matter and to make sure that human rights are adhered to in the organisation. Staff meetings, questionnaires and appraisals are all ways in which employers can get feedback on employees' opinions eg on how beneficial an oath has been. Asking service users too is also key.

Respondents of the consultation highlighted the fact that any abuse of human rights is addressed through normal staff disciplinary proceedings or customer complaint mechanisms, It will be important to set up audit systems which identify problems so that the organisation can take preventative action to prevent further abuses. Such an audit will be able to evidence that potential problems have been averted and which are then incorporated into organisational learning.

¹⁴ 'Delivering Human Rights in Scotland – a report on Scottish Public Authorities' pub by Amnesty International Scotland September 2006, pg 18. This was one of eight recommendations several of which remain outstanding. A subsequent study report was published in 2011 'Delivering Human Rights in Scotland – an update on Scottish Public Authorities in 2010' pub by Amnesty International, Scottish Women's Aid, Scottish Refugee Council and Scottish Association for Mental Health <http://enf.org.uk/blog/?p=2364>

4. Help Deliver Existing Obligations

Employees and employers should explicitly mainstream human rights across their business as part of the Best Value framework. Adopting a new oath would be just one manifestation of that commitment.

There has been a lot of coverage recently about whistleblowing as one of the ways to ensure public services are safe eg in England in respect of the NHS and Metropolitan Police. According to the UK Government's website, "Whistleblowing is when a worker reports suspected wrongdoing at work. Officially this is called 'making a disclosure in the public interest'. A worker can report things that aren't right, are illegal or if anyone at work is neglecting their duties, including: someone's health and safety is in danger .."¹⁵. We all have the potential to benefit when people on the 'inside' make a disclosure.

An oath may encourage staff to recognise their individual responsibility to act as they have personally taken an oath. Training on human rights may also help staff to understand better what is expected of them and when they can complain about what is happening eg as a result of cuts in services and overworked staff.

Conclusions

From the feedback we have received there is no consensus on the introduction of a public servant's oath which includes a duty to uphold human rights. There are a range of factors which need to be considered when introducing a Scottish public servants' oath which includes a commitment to respect/uphold human rights on a daily basis. Both compliance and accountability are key factors which will strongly influence the effectiveness of such an oath.

There is a need for change in how the public sector explicitly mainstreams human rights across its business – at the moment there is a danger that human rights are not equally enjoyed as they are understood by some sections of the working population, often as a result of specific obligations set out in Scottish legislation eg the Adult Support and Protection (Scotland) Act 2007. Investment is required to adequately inform and train employees on the human rights which we should equally enjoy.

Recommendations

1. We call on employers, employees and service users to get together and discuss how to best mainstream human rights across public services and those of a public nature. Such discussions may be progressed at opportunities created by the SHRC's SNAP which may bring all parties together to progress the delivery of human rights in Scotland.
2. An oath could be of particular use to public sector employees eg in the care sector, who are concerned about what they experience/witness at work, to exercise their legal right and become a 'whistleblower' on human rights concerns. Further work on the idea of an oath should be considered by key actors in the public and voluntary sectors.

¹⁵ See UK Government website <https://www.gov.uk/whistleblowing>

3. The public sector may wish to consider, voluntarily, a "kite-mark" which both individuals and/or agencies could sign up to demonstrate a commitment in practice to meeting human rights duties.
4. Different departments in the organisation such as equality and diversity, should work alongside human rights to ensure that a clear, integrated framework with existing policies is achieved.
5. Audits should take place within organisations to assess the impact of retaining the current approach to human rights and to assess the impact of any change in approach eg staff training on human rights, adoption of an oath, or kitemark. Staff meetings, questionnaires and appraisals are all ways in which employers can get feedback on employees' opinions on how beneficial the implementation of any operational changes has been. The opinions of service users should be sought too.

Next Steps

We need to be realistic about what can be done to embed human rights across the public sector. An oath that includes human rights is only part of a broader strategy. We encourage trade unions, voluntary sector organisations and public authorities to consider this brief report. We also look forward to the implementation across Scotland of the SHRC's Scottish National Action Plan on Human Rights and how progress will be monitored and reported, regularly, across Scotland's public sector.

HRCS work to date includes

- Producing Manifestos for Holyrood and UK General Election (2011 & 2010)
- Call for the creation of a Human Rights Committee at the Scottish Parliament similar to the Joint Committee on Human Rights at the UK Parliament. (2011)
- Participation in the global conference at the Scottish Parliament on 'Business and Human Rights' (2010).
- Participation in the UN's Universal Periodic Review (UPR) of the UK's compliance with its duty to deliver human rights in the UK (2012) and arranging for UPR training in Scotland for NGOs in 2013.
- Hosting meetings and inviting speakers to build capacity and knowledge.
- Participating in the Scottish Constitutional Futures Forum initiatives over constitutional change in Scotland and the potential for human rights in 2013.

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