



Delivering Human Rights in Scotland

A report on Scottish Public Authorities



About Amnesty International

Amnesty International's vision is of a world in which every person enjoys all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

In pursuit of this vision, Amnesty International's mission is to undertake research and action focussed on preventing and ending grave abuses of the rights to physical and mental integrity, freedom of conscience and expression, and freedom from discrimination, within the context of its work to promote all human rights.

One key area of this work is the monitoring of compliance with human rights laws and instruments. In 2003, Amnesty International Scotland published "On the Record: Human Rights Audit of Scotland's Parliament, the first four years". This report looked at the Scottish Executive's work plan in relation to 5 international human rights instruments and made recommendations on how compliance with these instruments could be achieved. The present report attempts to monitor the compliance of a variety of public authorities in Scotland with Section 6 the Human Rights Act 1998.

What do human rights mean in practice to all of us who are served by public authorities in Scotland? It means having your wheelie bin uplifted if you cannot do it yourself. It means having a genuine ability to choose your child's school. It means having a hospital A & E department which you can access. It means being able to get home by public transport whatever your age, stage or level of physical fitness. It means being able to have a real chance of influencing planning decisions or protesting about the establishment of a landfill site or mobile phone mast in your neighbourhood.

These are all functions of public authorities in Scotland. We wanted to find out how they regard their duties under the Human Rights Act – do they regard it as a tool to help their interface with their customers, or do they regard it as a hurdle to jump over?

We hope you find our researches interesting.

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1. Introduction

This report analyses the results of a survey on human rights and public authorities in Scotland. The survey was conducted by Amnesty International from April to August 2006 in response to the debate in Scotland as to whether or not Scotland requires a human rights commission.

The survey has demonstrated that public authorities require a better understanding of what human rights actually are and then to more rigorously apply their principles in decision making, in policy and in service design and delivery. We have been perplexed and concerned that too many regard human rights as confined to equal opportunities, physical impairment and cultural diversity. The survey has, therefore, clearly demonstrated the need for a Commission to promote human rights, drive up standards and prevent abuses.

In 2005, the Scottish Executive published its Scottish Commissioner for Human Rights Bill. Despite two consultations by the Scottish Executive and a positive MORI opinion poll for the Justice 1 Committee in 2005¹, there began an extensive debate as to the 'added value' of Scotland having its own Commission or Commissioner. The Justice 1 Committee of the Scottish Parliament even posed the question:

"In a country where breaches of human rights are extremely rare and in a country with open, independent and robust legislative and judicial systems, do we need to create a public body charged with promoting best practice in human rights?"²

More positively, the Justice 1 Committee pointed out:

"that a statutory body has the potential to make a difference through assisting public authorities in ensuring compliance with the European Convention on Human Rights and other international instruments in the delivery of public services. If such a body can successfully deliver a core promotional and awareness raising role which will embed an awareness of human rights in the provision of services by all public authorities in Scotland then all Members of the Committee consider that the Executive's public policy goal will have been achieved."³

The Committee was also concerned to establish "whether this gap could not be bridged by a means other than the Commissioner?"⁴

In fact the Scottish Human Rights Forum⁵, which is serviced by Amnesty International Scotland, shared some of the Committee's concerns most notably that a Commission rather than a Commissioner should be established and that we did not wish to move to a more litigious society.

Despite the Scottish Commissioner for Human Rights Bill making history as the first Bill where the general principles were not to be endorsed by the lead Committee, Justice 1, the Bill has now passed Stage 1 and will commence Stage 2 proceedings in September 2006. You can visit the Bill by going to <http://www.scottish.parliament.uk/business/committees/justice1/ScottishCommissionerforHumanRightsBillhomepage.htm>

As a result of the survey responses received, we have decided not to name the worst offenders but we do attribute praise to named public authorities – see Section 5. This is a short-term

tactic for long-term gain. The purpose of this report is to drive up standards and application and we are giving public authorities a year in which to do so. This survey exercise will be repeated in 2007 and Amnesty expects to see improvements where they are needed.

This survey confirms the clear need for a Scottish Commission on Human Rights to generate an understanding of what human rights are, to promote respect and compliance as well as prevent abuses.

¹ A quota sample of 1,018 adults were interviewed across Scotland between 27th Oct and 2nd Nov 2005.

² News Release CJ1001/2006, 23rd February 2006

³ Para 88 and 89, *ibid*

⁴ Para 85 Justice 1 Committee report on the SCHR Bill.

⁵ The SHRF is a coalition of organisations, professionals and individuals with an interest in human rights which, in 2002, issued a statement of support for a Scottish Human Rights Commission.

2. What are Human Rights?

According to the Oxford Dictionary, human rights are rights which are believed to belong, justifiably, to every person. Human rights are at the foundation of any democratic society, they provide minimum standards that have to be respected by States at all times. Human rights embrace economic, social, cultural, civil and political rights. Human rights also cover a variety of specific subjects such as privacy, dignity and safety. They cannot be brushed aside by Governments or public authorities when they become inconvenient.

While there are numerous legal obligations on our Government such as the United Nations' Convention on the Rights of the Child⁶ and the UN's Universal Declaration of Human Rights of 1948, this report is confined to the application of the European Convention on Human Rights (ECHR) in Scotland, incorporated into UK law by the Human Rights Act 1998.

Human rights are based on the desire to protect the inherent dignity of human beings. In practice, that has led to specific directives such as her Majesty's Chief Inspector of Prisons specifying that staff should never "use insulting nicknames, racial epithets or impersonal terms when addressing prisoners" and that visitors to prisons "are politely received"⁷. In terms of the wider public, being treated with dignity and respect is so important for people. In a recent poll undertaken by the Scottish Consumer Council on consumer satisfaction, consumers were asked to identify the things companies do that annoy them the most. In third place, at 31%, consumers identified "arrogant or condescending customer service attitudes"⁸.

So to the detail of the ECHR which awards everyone, without discrimination, to the following rights:

Article 2 – the right to life

Article 3 – prohibition of torture or degrading treatment

Article 4 – prohibition of slavery or forced labour

Article 5 – the right to liberty and security

Article 6 – everyone has the right to a fair trial

Article 7 – no punishment without the law

Article 8 – right to respect for private and family life

Article 9 – freedom of thought, conscience and religion

Article 10 – freedom of expression

Article 11 – freedom of assembly and association

Article 12 – the right to marry and found a family

Article 14 – freedom from discrimination (in access to other HRA articles)

1st Protocol to the ECHR

Article 1 – the right to the peaceful enjoyment of possessions

Article 2 – the right to education

Article 3 – the right to free elections

6th Protocol to the ECHR

Article 1—Abolition of the Death Penalty

Article 2—"A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war ..."

Human Rights often get a bad press for being all about individuals. That is unfair. Balancing individual rights with community rights is being increasingly understood particularly due to

Alleged terrorist activity in the UK. However other recent human rights dilemmas include anti-social behaviour strategies which require balancing the Article 8 right to respect for your private and family life, home and correspondence and people playing excessively noisy music in their home to the inconvenience of others. Also, the Article 6 right to a fair trial needs to properly balance the rights of the accused with the equal right of the witness, such as a child, to be treated with dignity and respect.⁹

There is a clear legal framework in Scotland for the delivery of and respect for, human rights. Policy and services are the vehicles for delivery to people and communities across Scotland. Whereas international treaties such as the European Convention on Human Rights talk about State's obligations, in reality people too are crucial as it is everyone's responsibility to respect and protect people's human rights. There is a fine tradition in Scotland of people standing up for human rights: globally such as marching in support of the 'Make Poverty History' campaign in July 2005; locally such as following the advice of Strathclyde Police to provide information on bogus callers to vulnerable neighbours.¹⁰

Some sectors of the business community are addressing the human rights agenda through corporate social responsibility. For other companies, the compliance is not voluntary as some private companies carry out public functions, such as hospitals and schools, so these types of activities require compliance with the Human Rights Act too.

However the demise of the Scottish Human Rights Centre in December 2005, due to lack of money and support, has left Scotland without an NGO dedicated to the promotion and protection of human rights. The survey has identified that a current lack of understanding as to the detail and practical application of the ECHR means that human rights delivery in Scotland by public authorities is patchy. In practice human rights compliance requires public authorities to review regularly their policies and practice in relation to staff, customers and how they operate and a body is required to drive forward that agenda.

⁶ In April 2004, Scotland's first Commissioner for Children and Young People was appointed with a specific remit to promote the UN Convention on the Rights of the Child amongst public authorities. For further information go to <http://www.sccyp.org.uk/>

⁷ Her Majesty Chief Inspector of Prisons "Standards Used for the Inspection of Prisons in Scotland" published in August 2006

<http://www.scotland.gov.uk/Publications/2006/08/03104351/0>

⁸ For further information go to www.scotconsumer.org.uk

⁹ Vulnerable witnesses (Scotland) 2004

¹⁰ <http://www.strathclyde.police.uk?index.asp?locID=67>

3. Delivering Human Rights in Scotland

Respecting human rights has been an increasing policy and legal priority across the UK in the last decade. That means a greater awareness of the legal obligations on public authorities as well as the legal rights of ordinary people. The Office of Public Sector Information¹¹ reveals that the Human Rights Act 1998 is the second most requested Act online after the data Protection Act 1998 and before the Disability Discrimination Act 1995. However human rights are just as much about practice and outcomes as they are law.

Section 6 of the Human Rights Act 1998 (HRA) came into force in 2000 and obliges all public authorities to act in a way which complies with the European Convention on Human Rights (ECHR). The definition of public authorities extends to private companies doing government work, such as those that run private prisons, and the ECHR compliance is limited to that specific public work. The Act provides for domestic redress. Guidance was made available to public authorities to prepare for implementation of the HRA.

The Government said the Act would “... *help change the way people think and behave and create an atmosphere in which decisions and policies are discussed and understood. How far the Human Rights Act will improve the quality of life for all in the UK depends on how far we all respect the values it enshrines.*”¹²

With the Scotland Act 1998, implementation in Scotland was ahead in some respects:

- Section 29 (2) (d) which obliges the Scottish Parliament to pass only legislation which is compatible to the European Convention on Human Rights
- Section 57 (2) which obliges Scottish Ministers, apart from certain acts of the Lord Advocate, to act only in a way which is compatible with the ECHR.

Nationally, there has been a problem in enforcement. In 2005, the Institute of Public Policy Research (IPPR) published a report commissioned by the Department of Constitutional Affairs “Improving Public Services: Using a Human Rights Approach”, which examined strategies for wider implementation of the HRA and concluded that “*The Human Rights Act has not yet been of sufficiently demonstrable value in improving standards in public services as the Government had intended when the Act was passed*”. Other evidence in support of this argument includes “Human Rights Improving Public Service Delivery”, by the Audit Commission 2003.

In July 2006, the Lord Chancellor published a “Review of the Implementation of the Human Rights Act”¹¹ and concluded that “*The Government remains fully committed to the European Convention on Human Rights, and to the way in which it is given effect in UK law by the Human Rights Act*” but acknowledged a need for generic guidance and training for public authorities and to “debunk” myths which have developed in the minds of the public.¹³

Recommendations include the need for public authorities to act on corporate strategy, on training, to review policy and procedures and produce information for the public. One driver for that will be the Scottish Commissioner for Human Rights (SCHR) Bill that will begin the Stage 2 process in September 2006 at the Scottish Parliament. The Bill will establish a Scottish Commission on Human Rights to promote awareness, understanding and respect for human rights. Clause 5(1) (c) gives it the power to conduct inquiries into Scottish public authorities of a particular description.

Nationally, from October 2007, the Commission for Equality and Human Rights (CEHR) for Great Britain will assume the responsibilities of the existing statutory equality bodies such as the Equal Opportunities Commission, the Disability Rights Commission and by 2009, the Commission for Racial Equality. The new CEHR will have a new role of promoting human rights in relation to reserved human rights issues.

¹¹ <http://www.opsi.gov.uk>

¹² Page 12, Human Rights Act – An Introduction

¹³ Http://www.dca.gov.uk/peoples-rights/human-rights/pdf/full_review.pdf

4. The Case for a Scottish Human Rights Commission

Since the Scottish Executive announced its support for a Scottish Human Rights Commission in 2000, the establishment of such a Commission has enjoyed all-party support.

It is noted that the Justice 1 Committee identified many positive features of a Commission although it failed to endorse the general principles of the Bill. The benefits include:

- providing positive assistance to the Scottish Executive, Scottish Parliament and public authorities in ensuring compliance with Convention rights; and generally, proactively raising awareness of human rights and best practice in the public sector.
- helping promote a positive 'human rights culture' in Scottish society.
- monitoring compliance and highlighting deficiencies in current law and practice.
- helping individuals to assert their rights more effectively e.g. by providing advice to voluntary and community organisations who in turn could assist individuals.

There is broad support for such a Commission from people across Scotland and not just from members of campaign groups such as Amnesty International. The MORI Scotland poll conducted for Justice 1 confirmed the extent of public support: 62% of respondents agreed that Scotland would benefit from a body to inform the public about human rights and which could investigate public bodies on devolved matters. Younger people, women and working class people were "more likely to agree that such a body would be beneficial". (Para 74-78, Stage 1 report)

The proposed cost of this independent body is low. According to the 2001 Census, Scotland's population is 5,062,011 people. The budget for the SHRC is £1 million—20p per person. All publicly funded bodies should deliver a high quality service and provide value for money.

Specifically Amnesty International believes the effect of a Commission will be:

- People will be better aware of their rights, clearer on their responsibilities and understand the importance of respecting the rights of others.
- Deliver a fairer and more just society due to a change in practice and culture.
- Focus attention on and improve understanding amongst our 10,000 + public authorities in Scotland of their current duty under Section 6 of the Human Rights Act 1998 "It is unlawful for a public authority to act in a way which is incompatible with a Convention right." Convention rights include the right to respect for your private and family life (Article 8) and the right to a fair trial which includes rights for the victim as well as the accused (Article 6). The Scotland Act 1998 deals with the human rights duties of Parliament, Section 29 (2), and of Scottish Ministers, Section 57 (2).
- Deal with real issues of concern which would not fall within the remit of any existing Commissioners such as investigating people trafficking into Scotland for the sex trade.

It is useful to look at the work of other Human Rights Commissions to demonstrate the added value to Scotland:

- The development of a Human Rights Action Plan by the New Zealand HR Commission
- The study by the Northern Ireland HR Commission on 'Human rights, planning procedures and the installation of phone masts
- A study into how family relationships affect access to housing, employment and services by the Canadian Human Rights Commission
- The work of the New Zealand HR Commission in resolving the controversy over the cartoons of the Prophet Mohammed

- An online resource for secondary school students published by the Australian Human Rights Commission
- Papers on euthanasia and access to health care by rural communities, also by the Australian Human Rights Commission
- The Human Rights Medal awarded by the Australian Human Rights Commission, together with a Human Writes essay competition and a Rights in Perspective Arts competition

Amnesty International understands some of the concerns which have been articulated by the Justice 1 Committee and believes that they can be addressed.

Perpetuating popularly held misconceptions

Since one of the tasks of the Commissioner would be to create a human rights culture and to promote human rights in Scotland, the SHRF believes that rather than create confusion, the appointment of a Commissioner would help to create a true understanding of what constitutes a human rights culture. Popular misconceptions such as “It’s a criminal’s charter” and “It’s my right to smoke” would be dispelled.

A more litigious society

Realistically only those with money or who are eligible for legal aid, have the possibility of taking a human rights case before the courts. The experience of the Equal Opportunities Commission and the Disability Rights Commission shows that taking strategic, test cases can deliver changes in policy or practice, leading to potentially less litigation rather than more. A Commissioner with enforcement powers, can act as a powerful deterrent, as evidenced by the activities of the New Zealand Human Rights Commission.

Public confusion about complaints

The Glasgow office of the CEHR should also house the Scottish Commission for Human Rights to create a ‘one stop shop’. Their details could be added to the Audit Scotland easy-to-understand route map guide to complaining about public authorities in Scotland to address any ‘public confusion’ on human rights.

Financial accountability

It is right to ensure financial accountability as well as independence in the delivery of functions. Accountability is a strong obligation under the Act with Section 12 (1) – (2) obliging the Commissioner to lay a report before the Parliament annually. Parliament can direct the Commissioner on the content of this report - Section 12 (3). Schedule 1, Section 12 focuses on financial accountability and the Commissioner must send the annual accounts to the Auditor General for auditing (Schedule 1, 14 (1) (c)). The Parliament should commit to a debate on the Commissioner’s Annual Report to examine progress.

The Finance Committee can ensure that the Commissioner accounts for expenditure as well as ensuring that s/he is adequately resourced to perform the statutory duties. The efficiency and effectiveness of the functions can be determined by Audit Scotland. This arrangement will ensure accountability and ensure the independence of the Human Rights Commission.

Conclusion

The case for a Human Rights Commission in Scotland is overwhelming and the challenge now is to deliver human rights across the public sector.

5. The Survey

Context

In the Justice 1, Stage 1 Report on the Scottish Commissioner for Human Rights Bill, which was published in February 2006, it was stated that "...The evidence is that public bodies, in the main, successfully operate in a way which is compliant with Convention rights. This should be no surprise given that in doing so public authorities are merely acting in accordance with the law. It is simply what people would expect to be the case." (Paragraph 88)

Amnesty International knew about some of the work undertaken by a range of public authorities in Scotland to address human rights but decided to organise a small scale survey to get a better understanding of compliance and to gather evidence on good practice. It was also a test of the profile of human rights within a growing public sector.

Methodology

In May 2006, Amnesty International sent a letter to 56 local authorities, public authorities and all police services in Scotland, asking to be supplied with information or documentation about the steps taken to implement or put into practice, compliance with Section 6 of the Human Rights Act. The public authorities targeted were some of the biggest, in terms of resources, and quite deliberately were not the 'usual suspects'. Their remits include the arts, history, health, environment and heritage, tourism and education. The survey was not sent to the Scottish Executive or to the Scottish Parliament.

Although the number of surveys sent out was comparatively small, the intention was to assess the focus on human rights by some of the biggest and influential public services in Scotland.

The request was made under the Freedom of Information (Scotland) Act 2002 (The Act) in order to ensure a reply within 20 working days. To avoid incurring fees, the request sought information on implementation in the last three years. However it was understood that direction to the right documents would also be provided by the public authority as they have a duty to provide advice and assistance to those making a request, under Section 15 of The Act and detailed in the Section 60 Code.

Reminders were issued to those who had not responded and at the conclusion of this project, a total of 53 responses have been received which marks a 95% response. Two responses remain outstanding. A range of information was received including letters with just a couple of paragraphs right through to mounds of paperwork. Some public authorities also directed us to publications and documents older than three years as they set out the framework for current compliance. Some correspondence referred us to information on websites which was very helpful.

Freedom of Information

This report is not concerned about the operation of FoI legislation in Scotland but clearly some public authorities require to go some way to ensuring compliance with the principles as well as the detail of the law:

- No response was received in two cases. Amnesty recognises that they belong to the category of 'mute requests' which has been defined by the Scottish Information Commissioner.¹⁴ In his annual report he pointed out that "We do not know how many requests go unanswered in Scotland, but 17% of all FOI appeals and 27% of all EIR information appeals to my office are for mute and deemed refusals." He has announced that he requires an improvement by public authorities.

- Some responses were sent beyond the 20 working date response time (Section 10 of The Act)
- Some responses failed to point out the right to review of how the request had been dealt with and how to appeal to the Commissioner (Section 19 of The Act)
- Some responses failed to include copies of documents cited and did not direct us to where we might get a copy (Section 1 of The Act) For example one response stated there was an action plan but did not send a copy or direct us to a website.

A number of responses combined several of the above failures yet were signed off by dedicated FoI staff such as ‘Corporate Freedom of Information Officer’.

The enforcement mechanisms for FoI in Scotland are, realistically, far more robust than those which exist or are proposed for human rights e.g. the Human Rights Commission/er could not take up individual cases. Even so, public authorities are still not able to deal with their obligations under FoI appropriately. Clearly even when the Office of the Scottish Information Commissioner has the power to review individual cases and issue decisions against public authorities, compliance remains a problem.

The recent Scottish Executive review of the operation of the FOI Act in Scotland resulted in a number of organisations arguing that no change is currently necessary, apart from increasing the number of public authorities covered by the Act, until the Act has had a chance to settle down. In a few years it will be more appropriate to undertake a review.¹⁵

Influence of a Growing Public Sector

Government statistics confirm that public sector employment in 2006 has increased by 58,800 (11.2%) since 1999 and the largest increase was within Local Government (31,000) including education services, social work services and fire and police services. Developing a better understanding of human rights within the public sector does, therefore, impact on a lot of employees. According to the Scottish Executive the public sector currently accounts for 23.8 % of employment in Scotland which has increased from 23.1% in 1999.¹⁶

There have also been a number of legislative changes which have impacted on the public sector as well as on local authority responsibilities on policy, services and way of working e.g. to put partnership working on a statutory basis through community planning partnerships. Some examples include:

- Building (Scotland) Act 2003
- Dog Fouling (Scotland) Act 2003
- Education (School Meals) (Scotland) Act 2003
- Homelessness etc. (Scotland) Act 2003
- Local Government in Scotland Act 2003
- Mental Health (Care and Treatment) (Scotland) Act 2003
- Protection of Children (Scotland) Act 2003
- Public Appointments and Public Bodies etc. (Scotland) Act 2003
- Water Environment and Water Services (Scotland) Act 2003

Such new laws and practices will have implications for human rights compliance. Similarly UK domestic and European Case law have developed giving new ways to interpret fundamental rights. One respondee clearly showed its understanding of the changing legal environment as it pointed out that a briefing on human rights dated January 2006 could now have been superseded by developments in case law. Another respondee recognised the impact of new

by developments in case law. Another respondent recognised the impact of new technology on policy and compliance. It pointed out current compliance with Article 8 of the ECHR in Codes of Conduct governing ‘covert surveillance’ and ‘the use of covert human intelligence sources’ but acknowledged that the Codes “may be updated in the future to take account of future technological developments.”

No Naming and Shaming - Yet

Amnesty International Scotland has decided that this report is not about exposing individual deficiencies in culture, practice, service delivery and monitoring of human rights in public authorities in Scotland. Instead it will highlight the problems and provide further evidence of the need for an independent body to focus on human rights delivery for ordinary people in Scotland.

This strategy has been agreed as the best way to promote human rights compliance in Scotland. Amnesty has not been influenced by some public authorities which reminded us that ‘the council holds copyrights for the material provided and it may be reproduced free of charge in any format or media without requiring specific permission ... subject to the material not being used in a derogatory manner...’.

The Framework

According to the Government ¹⁷ the Human Rights Act means that:

- Convention rights and responsibilities form a common set of binding values among public bodies and the public, right across the UK
- Public bodies must have human rights principles in mind when they make decisions about people’s rights
- Human rights must be part of all policy

The survey therefore set out to evaluate responses in the context of these criteria. Given the nature of the responses, it is reasonable to conclude that the overall impact of The Human Rights Act has been disappointing in Scotland. Almost 31% of respondents confused their obligations under the Human Rights Act 1998 with their obligations under the Equal Opportunities Act 1975. A further 34.5% declared that they had no policy or other evidence of compliance with the Human Rights Act 1998. So 65.5% - well over half of all the public authorities surveyed - either did not understand the meaning of the Act or could not provide evidence of steps taken to ensure compliance with the Act.

Set of Binding Values

Public authorities have a wide range of policies to cover topics and themes so we expected that human rights would be no different. In order to understand the set of binding values on human rights, the survey was designed to elicit policy statements and documents on human rights aspirations and guiding principles.

However it quickly became apparent that many respondents were unclear as to what human rights are. Some responses were quite explicit and, for example, one respondent asked:

“We have been looking at your request and taken advice from our personnel department. We have many policies and procedures and I would be grateful if you could give me a little bit more detail of exactly what you require.”

Another public authority which deals with health wrote back seeking clarification and asked if we were seeking information on Article 6 which is the Right to a Fair Trial. The subsequent response was more focused.

One Council replied, in a one page letter, that it ‘does not have a formal policy document to ensure compliance with the provisions of Section 6 of the Human Rights Act 1998’ although it had examined all its procedures and practices to ensure compliance when the Act was introduced. Given the range of legal changes, policy development and service decisions which have since happened, then an audit of compliance when the Act was first passed and introduced is insufficient.

One consistent theme is that human rights are perceived to be about Human Resources which may be explained as the abbreviation for human rights is the same. Some public authorities have given some information about human resource issues for staff without evidence of consideration for customers. Examples include:

“The council has not implemented any new employment policies or procedures directly as a result of s6 of the Human Rights Act 1998, but the Act was taken into account in the development and review of council policies and procedures. “

A list of human resource policies then ensued including whistleblowing and ‘leave for family care purposes’. On further examination of the latter policy, it was clearly set out in terms of the council’s commitment to ‘equal opportunities’ rather than part of the council’s human rights values e.g. delivering the Article 8 obligation on ‘everyone has the right to respect for their private and family life, home and correspondence’.

Others interpreted the request as looking for documents relating only to Article 14 of the Human Rights Act - freedom from discrimination in access to other rights in the Act.

Application of Human Rights in Decision Making

One resposdee managed to catalogue the entire activity of a multi-million pound public authority in just three paragraphs one of which stated:

“We have no information or documentation within the scope of your request as none of it specifically addresses compliance with the Human Rights Act. Like other public bodies, we are obliged to comply with all relevant legislation and guidance...”

Although other public authorities offered similar arguments, nonetheless many provided information to evidence compliance. For example one public authority provided documents to evidence a formula approach has been adopted whereby each decision on operational standards must be assessed for ECHR compliance. The formula requires an examination of the ECHR principles of legality, necessity, justification and proportionality. The aims and the objective also have to be listed and examples include:

- The Statement on Standards in Firearms and Explosive Licensing’ declares that the aim of the policy is to balance individual rights with community safety.
- The Statement on Standards in Demonstrations and Processions declares the aims of the policy are ‘to protect the right to peaceful assembly whilst ensuring public safety and the prevention of crime and disorder.’ It then goes on to explain that the objectives of the policy by ‘effective planning and resource deployment’.
- The Statement on Standards in CCTV states that the policy is to maintain public safety and prevent and detect crime through the use of CCTV systems’. As a policy objective, there has to be “comprehensive staff training” including on ECHR.

One local authority pointed out that policies and practices require regular review and are part of Best Value. It was therefore recommended, in a Report to the Council in 2001, that ‘each Service’s Service Plan should include an indication of the work being carried out in order to meet the challenges of the Act.’ However only one document was provided to illustrate compliance

with this recommendation and it did not cover an entire service but covered 'policy and action' in just one area.

In some cases, there was clear evidence of The Act influencing decision making. For example, in one police service, guidance was issued which related specific staff functions to ECHR on applying for warrants which impact on the Article 5 right to liberty and security of person and to Article 8, the right to respect for private and family life, home and correspondence.

This exercise has served as a reminder that public authorities were not isolated in their implementation of The Act. For example the response from some police services were based on the ACPOS¹⁸ guidelines to the Human Rights Act 1998. Other responses referred to guidance from central government, revealing that a range of assistance was open to public authorities to assist with the application of the Human Rights Act 1998.

Human Rights In Policy

Some respondees were quite explicit about the framework in which they delivered their public functions although it was not always backed up by a paper trail and which could be evidenced: *"We strive to ensure that all our procedures and actings are compatible with the Act and have drawn policies with this in mind"*

One police service described the process which had to be completed to ensure human rights compliance

'... all Force Policies are assessed, as a matter of course, to ensure their compliance with the key principles of Human Rights legislation and prevent discrimination. When a new Force Policy is formulated, a Policy Impact Assessment Form, relative to that policy, is completed and only when it has been through the decision making process thus ensuring that it complies with Human Rights Legislation can it be introduced to the Force.'

The form lists the Convention rights and requires further information as to the proportionality of the policy proposed.

One respondee also illustrated the point made by many public authorities that human rights was just another area of law in which it had a duty to comply:

"It is one of hundreds if not thousands of pieces of legislation that the Council implements and complies with in the daily exercise of its functions. In terms of conducting a search for policy items pertaining specifically to the "Human Rights Act" covering the last three years and including policy documents or emails, no items match you request."

However it is clear from respondents that many local authorities have policies to meet a variety of needs, such as one respondent who sent 20 policy documents, but were not able to produce one which specifically directed at human rights.

¹⁴ 2005 Annual Report: Page 7

¹⁵ For example, some organisations such as the Campaign for Freedom of Information in Scotland argued that public authorities should include housing associations.

¹⁶ Surveys are carried out by the Scottish Executive and the Office for National Statistics and published in June 2006

¹⁷ The Study Guide: Human Rights Act 1998, 2nd edition produced by the Department of Constitutional Affairs and the Bar Council of England and Wales.

¹⁸ Association of Chief Police Officers

6. Examples of Best Practice

The survey did reveal a number of examples of best practice across values, decision making and policy.

Angus Council

Angus Council has produced two booklets explaining human rights to staff and to members of the public. The booklets are succinct and set the context. Guidelines for Staff is an 18 page small booklet which informs staff that they have a duty to ensure that Section 6 of The Act are complied with and that no decisions are made or actions taken by Angus Council which are in breach of Convention Rights. The booklets were the result of an audit of all the Council's practices and procedures and it identified the need for front line staff to have guidance available to ensure human rights compliance in their everyday work. The booklet then goes on to point out that the first step is for staff to be made aware of the articles of the ECHR to take them into account during the course of their daily work.

In terms of sustaining attention on human rights, Angus Council has inserted a standard heading to all Committee reports which highlights to elected members any human rights implications of approving the Report. This means that consideration of the implications needs to be made on each issue by staff.

The State Hospital

The State Hospital provided a specific paper trail of activities and explained that it had embarked on a specific programme of work to:

- Audit compliance with the Human Rights legislation
- Develop rights based policies and practice
- Develop the reasoning capacity of staff
- Develop a rights based culture

As a result of this activity, the State Hospital concluded in respect of one area of business:

“We believe that our Human Rights Project, and the impact it has had on nursing practice at the Hospital, has given nurses and other clinical practitioners the confidence and enthusiasm to embrace the principles of the new Mental Health Act as a positive and dynamic catalyst for improving the experience of Mental Health service users”.

Renfrewshire Council

Renfrewshire Council created a new post of Senior Solicitor (Human Rights) to advise on human rights issues. The Council subsequently funded the solicitor to undertake an LLM in Human Rights Law at Strathclyde University to ensure in-house expertise in this field. “Whilst much of the Senior Solicitor's initial remit involved the audit of existing key Council policies, once this exercise had been completed, this naturally progressed to advising on potential human rights implications of new Council policies and procedures.”

South Lanarkshire Council

South Lanarkshire Council set up a Human Rights **Working Group** in 2000 to ensure that the Council would be HRA compliant. The group included officers ‘from every resource’ and met regularly to examine:

- Policies
- Decision making processes
- Composition of committees

- Procedures
- Relationships with external bodies

The Working Group set departments tasks to achieve including compiling an audit of decision making processes and policies affecting them, preparing a team Briefing for Staff, raising awareness of staff and Councillors and reviewing membership of committees for potential issues.

Tayside Police

Tayside Police sent a very detailed policy document which outlined the impact of ECHR on the operational functions of Tayside Police. At the outset, it pointed out that ‘the Convention does not seek to identify the most appropriate way to protect Human Rights, it does however identify the minimum standards which our legal system should attain’ (page 3) Key operational areas are set in the context of ECHR case law such as *Malone v UK* and *Halford v UK* on interception of communications.

There is also a checklist for officers in the conduct of their duty and advice about fulfilling that duty:

“The Act should not inhibit you from carrying out your duties in a professional and proactive manner. However if you resort to powers which infringe an individual’s rights then you will have to fully justify your actions.”

Four principles are then outlined: legality, necessity, proportionality and transparency.

Tayside Police has a section on human rights in its Force Procedures Manual. It covers a range of matters including ‘Disclosure of Victim’s Details to the Media’. While it is accepted that there should be a free flow of information between the police service and the media, it acknowledges the duty to protect privacy and rights under human rights legislation. The advice is that in seeking a person’s consent, it is important that staff ask a balanced question.

Tayside Police also have general Order 22/99 to give detailed guidance to all staff regarding the impact of the Human Rights Act on Force Procedures.

7. Conclusions & Recommendations

Conclusions

In the preamble to the European Convention on Human Rights, State parties reaffirmed “their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the human rights upon which they depend”.

Scotland has a new Parliament which was designed to be ‘open, accessible and accountable’.¹⁹ Like other democracies around the world, it is entirely appropriate and reasonable to establish an independent body charged with promoting better understanding of human rights. Such a body would be established to address an unmet need. It is important that the functions of this body are not confused and cluttered with other responsibilities.

At present, there is no statutory person or body whose express purpose is to promote human rights and help ensure that human rights are respected across the whole range of public sector activities in Scotland. The situation must change so that all people in Scotland benefit.

Amnesty International agrees with the Justice 1 Committee that a Scottish Commission for Human Rights must “... successfully deliver a core promotional and awareness raising role which will embed an awareness of human rights in the provision of services by all public authorities in Scotland.”²⁰

However this survey has demonstrated that over half the public authorities surveyed do not understand what compliance with the Human Rights Act means. Promotional work and adopting policies and practices, whilst essential does not actually mean that there will be a change in how decisions are implemented and therefore how people perceive that their human rights are respected. That requires training and understanding right down the management train to people who are in face to face contact. Values, decision making about rights and decisions on policy and services need to be regularly audited for compliance.

Amnesty International agrees with the Paris Principles which provide that: “The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the government and not be subject to financial control which might affect this independence.”²¹

This survey reveals a lack of focus in public authorities in Scotland which reflects a UK wide picture. The status quo is no longer an option as there must be a body to encourage awareness and drive up standards. As more and more people understand and are trained in human rights delivery, the richer Scotland will be.

Statistics published by the Government ²² “Public and Private Sector Employment in Scotland (Headcount) confirm that in 2006, there were 586,400 people employed in the public sector and 1,878,600 people employed in the private sector in Scotland.²³ Public sector employment in Scotland consists of Local Government including police and fire and related services (55.3%), NHS (25.6 %), Civil Service (8.8 %), Public Corporations (4.9 %), Non Departmental Public Bodies (2.4 %) and Armed Forces (2.3%). So it is reasonable to expect that all key public servants and a quarter of the population of Scotland should have an operational understanding of

rights means in Scotland and apply those value and principles every working day. This survey shows that is not happening. Currently, there is a drive to reform the delivery of public services in Scotland and human rights delivery clearly has a role to play in the future. “Transforming Public Services: The Next Phase of Reform” is a consultation²⁴ by the Scottish Executive which sets out the vision:

“Our public services form **an integral part of modern Scotland**. They enable our communities to be safer and stronger; our young people to be educated and inspired; our citizens to be cared for at different stages in their lives; and they protect the most vulnerable in society.”²⁵

Delivering human rights in the public sector requires leadership and must form part of the audit and accountability frameworks. Generating a better understanding of human rights through information and practice also empowers people through all of life’s stages.

Recommendations

1. There requires to be a rigorous application of human rights values at all levels in public authorities in Scotland as a matter of priority.
2. Best Value criteria should include human rights promotion and compliance. This will also enable human rights activity to be sustained.
3. Delivering and respecting human rights should be a key plank of public sector reform in Scotland.
4. All public authorities should adopt a Human Rights Policy which is publicly available and which clearly sets out: a set of binding values, how human rights will inform decisions about people’s rights and their influence in all policy development. It should also make explicit that people have human rights and that culture should be effectively respected and implemented by staff.
5. Public authorities should designate particular members of staff to drive forward the human rights agenda within departments as well as mainstream human rights so that, like racial and sexual equality, the duty is a core part of everyone’s job and is explicitly stated in the job description.
6. Staff should be offered more training, which is reviewed and updated to take account of case law and practice.
7. Every two years, public authorities should be required to produce an audit of human rights compliance across their range of functions.
8. Civic Society should actively promote human rights culture and values in its work with those delivering public services in Scotland.

¹⁹ Principles set by the Consultative Steering Group

²⁰ Para 89 Justice 1 report, Volume 1

²¹ Fact Sheet no 19, National Institutions for the Promotion and Protection of Human Rights <http://www.unhcr.ch/html/menu6/2/fs19.htm> and go to <http://nhri.net/>

²² Surveys are carried out by the Scottish Executive and the Office for National Statistics and published in June 2006

²³ Figures relate to first quarter

²⁴ Closing date for responses is 30th September 2006

²⁵ Forward by Tom McCabe, Minister for Finance and Public Service Reform

Appendix 1

Public Authorities Surveyed

Angus Council
Argyll and Bute Council
Caledonian MacBrayne Ltd
Caledonian MacBrayne (Hebridean & Clyde Ferries)
Central Scotland Police
Clackmannanshire Council
Dumfries & Galloway Constabulary
Dumfries and Galloway Council
Dundee City Council
East Ayrshire Council
East Dunbartonshire Council
East Lothian Council
East Renfrewshire Council
Edinburgh City Council
Falkirk Council
Fife Constabulary
Fife Council
Grampian Police
Inverclyde Council
Lothian and Borders Police
Midlothian Council
Moray Council
National Galleries of Scotland
National Library of Scotland
National Museums of Scotland
National Waiting Times Centre Board
NHS 24
NHS Education for Scotland
NHS National Services Scotland
North Ayrshire Council
North Lanarkshire Council
Northern Constabulary
Orkney Isles Council
Perth & Kinross Council
Renfrewshire Council
Scottish Ambulance Service
Scottish Borders Council
Scottish Enterprise
Scottish Environmental Protection Agency
Scottish Funding Council
Scottish Legal Aid Board
Scottish Natural Heritage
Scottish Prison Service
Scottish Qualifications Agency
Scottish Water
Shetland Islands Council
South Lanarkshire Council
State Hospitals Board for Scotland
Stirling Council
Strathclyde Police
Tayside Council
Visit Scotland
West Dunbartonshire Council
West Lothian Council
Western Isles Council

**Amnesty International's vision is of a world
in which every person enjoys all of the
human rights enshrined in the Universal
Declaration of Human Rights and other
international standards**

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