



**Institute for Public Policy Research**

***Improving Public Services: Using a Human Rights Approach***

**Strategies for Wider Implementation of the Human Rights Act  
Within Public Authorities**

Report for the Department for Constitutional Affairs from IPPR Trading Ltd

*By Frances Butler*

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## Executive Summary

- 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
- The Department for Constitutional Affairs, which has responsibility for the Act, is considering mechanisms for achieving the aim of ensuring respect for human rights in the provision of public services
- One of the functions of the new Commission for Equality and Human Rights (to be established in 2007) will be to support public authorities in complying with the Human Rights Act and this work is intended to inform that responsibility
- This report analyses opportunities for implementing human rights principles more effectively among public authorities with a view to improving the provision of public services and the ways in which such developments could be measured and encouraged
- Comprising a literature review and discussion with experts at a seminar and individually, the report's context is public services in the fields of local government, social services, housing, health and social care (Chapter 1)
- The principles of public service reform, particularly the focus on service users and the drive to improve standards, are underpinned by human rights values even though there is little reference to the Human Rights Act. Policy-makers within Government should set an example by making a more explicit connection between the adoption of a human rights approach and better public services
- The Audit Commission, among others, have revealed through research that a human rights approach can lead to improved outcomes for service users and this lends support to the DCA's project (Chapter 2)
- The priority, however is to provide the right kind of information and guidance on human rights to public authorities. In particular, there is little understanding that the Convention articles are based on what we have described as the "Fred" principles (fairness, respect, equality and dignity) which already underpin the public service ethos

- Nor is there sufficient awareness of the legal principle of “positive obligations” to protect human rights which requires public authorities to adopt a pro-active approach to human rights
- The current confusion about which private and voluntary organisations constitute public authorities for the purpose of legal liability under the Human Rights Act is not contributing to an effective compliance regime. It is also perpetuating an injustice particularly experienced by vulnerable people (Chapter 3)
- This report considers implementation of equality legislation for comparative purposes. Equality is on a firmer footing with the “positive duty” regime and equality commissions to support and investigate compliance. Despite these advantages and although progress, particularly on race equality, is being made within public authorities, there is a lack of hard evidence of qualitative improvements for service users
- Equality law is also important illustratively, since equality is a fundamental human right and there would be benefits, as the Audit Commission has noted, in public authorities integrating their procedures for delivering equality and human rights requirements (Chapter 4)
- Both the Audit Commission and the Healthcare Commission are proposing to inspect public authorities for adherence to human rights and equality standards
- It would be advantageous for the inspectorates to adopt a common approach in this respect and for there to be consultation between the DCA, the CEHR when it is set up and the inspectorates on the most appropriate mechanisms for measuring human rights compliance and implementation
- The recent report into the Police Service of Northern Ireland offers an interesting case study for evaluating human rights compliance (Chapter 5)
- Possible indicators of human rights compliance include: evidence of a corporate approach to human rights, the type and extent of training provided to staff, reviews of procedure and policy, changes in the way that services are delivered, human rights specifications in contracts between public authorities and contractors, information on human rights and equality standards to be

provided to the public and effective participation by users. In essence, public authorities need to give themselves a human rights brief.

- It is likely that indicators will be a mix of action and outcomes and quantitative and qualitative indicators and that the Holy Grail of qualitative outcome indicators will be the most difficult to achieve (Chapter 6)
- In order to encourage wider human rights implementation, the report recommends that human rights thinking infiltrate other existing initiatives across Whitehall and within regional public authorities (Chapter 7)
- It is recommended that primary research be undertaken among public authorities to test the points made in the report and to provide new data to inform future action to progress this agenda
- Users of public services should participate fully in all proposals to further implementation of a human rights approach within public authorities (Chapter 8)

## 1. Introduction

The Government and others have stated that a purpose of the Human Rights Act 1998 is to assist public authorities in improving public services. The explicit aim of the legislation is to prohibit action by public authorities which is incompatible with the European Convention on Human Rights and to avoid breaches of people's human rights. The Act thereby guarantees a certain if basic level of standards in relation to public services but the legal principles underpinning both the Convention rights themselves and the Act's implementation go further than the minimal compliance suggested by the bald statutory language. Firstly, the "positive obligations" doctrine, which is based on Article 1 of the Convention, requires public authorities to adopt a proactive approach to implementation of Convention rights. The effect is that the legislation provides a rights-based framework for designing policy and delivering services in accordance with Convention requirements. Secondly, the articles of the Convention, which have been incorporated by the Act into UK law, are based on the principles of fairness, equality, dignity and respect and these values are well-recognised as fundamental to ensuring the delivery of high quality public services.

The Act has been in force since 2000 but the policy of connecting human rights compliance with improvements in public services has not made much impact among public authorities. This is particularly the case with regional providers of public services in the fields of social services, health, social care and housing where a low understanding of the relevance of the Act to service provision combines with a consequent risk that vulnerable and marginalised people will experience breaches of their human rights. At the same time, there is potential for human rights principles to assist the improvement of those species of public services and this will benefit all service users. Available evidence reveals that most public authorities are struggling to implement a proactive human rights strategy and to achieve changes in practice and consequently the Act is not widely viewed as a tool to achieve better public services. There are, however, a sufficient number of examples where public services have been improved as a result of applying a human rights approach to make the case for the policy to be pursued. If a human rights approach can lead to better services and improved outcomes for users of those services, what action is necessary to encourage this to take place? This report considers the different approaches that have been taken and could be taken to make progress in this area.



This work is intended to inform the Department for Constitutional Affairs Human Rights Division's broader project of encouraging more effective implementation of the Human Rights Act and investigating the impact of human rights in public services. It is intended to complement the Strategy Directorate's Insight Project which is researching awareness, attitudes and expectations of public service delivery in the context of human rights principles among public service users. It should also complement the DCA's strategic review of arrangements for implementing the Act across central government departments particularly in their support of regional service providers. The report also aims to prepare the ground for work that the proposed Commission for Equality and Human Rights will do in supporting public sector organisations to gain a better understanding of their responsibilities under the Human Rights Act.

The report starts, in Chapter 2, by looking at central government policy on the reform of public services and its relationship with human rights thinking and outlines what public services informed by human rights thinking look like. Because of the difficulty that public authorities have in understanding the extent of their responsibilities under the Human Rights Act, Chapter 3 describes the nature of that responsibility and considers what guidance is needed. Chapter 4 reviews the implementation of comparable equality legislation and considers the merits of a combined approach. In Chapter 5, the incorporation of human rights and equalities factors into audit and inspection and how they are likely to be measured is reviewed together with the recently published report on the Police Service of Northern Ireland. With these considerations in mind, Chapter 6 looks at possible indicators of action and outcomes that could constitute measurements of wider human rights compliance. Chapter 7 describes some opportunities for encouraging wider human rights implementation. Our conclusions and recommendations are set out in Chapter 8.

This paper is based on a review of the existing literature on the impact of the Human Rights Act on public services in the UK and comparable studies on equalities legislation. It also reflects discussions with representatives from inspectorates, service providers, government departments, NGOs, academics and commentators with expertise both individually and also collectively at a seminar. Our inquiry recognised the significance of the devolution settlement both for human rights implementation and for the public services agenda and our approach has tended to be to consider developments outside England comparatively rather than illustratively. The report only scratches at the surface of evidence gathering and relies on existing

and ageing data. The next phase of inquiry will require both qualitative and quantitative research among public authorities to obtain evidence to test the matters discussed here.

## **2. What can Human Rights do for Public Services?**

The modernisation of public services is a priority for the current Government and for the main political parties. Plenty of thinking has been done and will continue to be done on how to effect the improvements needed. Little of this thinking, from the perspective of public service reformers as opposed to human rights experts, has made a conscious connection with the Human Rights Act, although, as will be seen it has been underpinned by human rights values. The conceptual links need to be made explicitly before the practical measures, set out in this report, can be pursued. It is those aspects of public service reform that are concerned with the way in which public services are designed and delivered, such as the emphasis on service users and improving the standards of public service delivery, that have relevance to human rights. Once these general connections are made, what particular contribution can a human rights approach make to achieving improvements in services?

### **2.1 Focus on the service user**

The Government has expressed its determination to “*put the citizen centre-stage*” in relation to the provision of public services. As the Prime Minister has said:

*We are proposing to put an entirely different dynamic in place to drive our public services: one where the service will be driven not by the managers but by the user – the patient, the parent, the pupil and law-abiding citizen (Blair, 2004).*

In an article for *The Guardian*, the former Health Secretary, John Reid MP explained the thinking further:

*Instead of a state that sees people as passive and uniform, our aim is to expand and support individual choice, to balance rights with responsibilities, to design policies and services that meet individual needs and that are*

*shaped and enhanced by the people themselves, as individuals, in families and in communities (Reid, The Guardian, 13.11.04).*

He also recognised that:

*In a civilised society we have a greater obligation to protect the weak, the vulnerable and the young.*

Dr Reid's statements encapsulate the foundation of human rights. The Universal Declaration of Human Rights expressed a determination to "*promote social progress and better standards of life in larger freedom.*" These are the goals and human rights principles provide both a set of values that guide their achievement and a safety net for those who need special protection. A human rights approach helps put the user of public services at the heart of their design and delivery. Users of services will have disparate and individual needs but in one sense they are uniform in that they are all, without exception, entitled to human rights protection. When services are designed with the user in mind, it encourages a recognition that people are entitled to be treated fairly and with dignity and respect. This entitlement has a legal basis under human rights legislation because if people are not treated in accordance with the principles of fairness, dignity, equality and respect, it is more likely that an unlawful act, such as degrading treatment, discrimination or breach of a protected right, will occur.

If individual users of public services became aware that these fundamental and more widely understood principles underlie the Act as well as the specific though less well-understood rights that are explicitly stated in the Convention, they may be better able to rely on their rights to call for improved public services. As a consequence, users would enjoy greater autonomy and empowerment. This process could contribute to what the Government has been describing as "*the enabling society.*" The attainment of greater respect for human rights in the provision of public services will also be likely to contribute to the present Government's third term objective of increasing respect throughout society.

Currently, however, there appears to be a very low level of public awareness about the practical application of the Human Rights Act to public services. Recent work done by ippr within the voluntary sector has revealed that few people understand the relevance of the Act (ippr, 2004). There is a failure to appreciate that the rights

provided for by the Act are guaranteed to everyone, that they represent a baseline standard for the way in which public services are designed and delivered providing protection for those adversely affected by poor services and that they do not need to be established in court. There is little understanding of the potential for citizens to use human rights language in every day life outside the courtroom to bring about an improved experience of public services. Within wider civil society, the purpose and value of “human rights” are contested rather than assumed.

There is a need to understand how to communicate with citizens about human rights to enable effective use of them to drive up standards in public services. In particular, information needs to be provided about common issues that are affected by human rights (e.g. the way in which an elderly relative is cared for) and how human rights principles might be used in practice (putting them at the centre of discussions about the quality of public services rather than only in relation to taking legal action). The Audit Commission has pioneered work in this area having seen how little progress there has been since the Act came into force. Its survey of public authorities in 2003 found that:

*... most organisations failed to see the benefits of using human rights as a vehicle for service improvement by making the principles of dignity and respect central to their policy agenda, which would place service users at the heart of what they do (Audit Commission, 2003).*

## **2.2 Improving standards**

The Office of Public Service Reform in the Cabinet Office sets out four principles of reform of which the first is:

*National standards of service, so that everyone has the right to the same outcomes wherever they live and whoever they are (Cabinet Office, 2003).*

The Prime Minister has already set these standards within a human rights framework. In the foreword to the White Paper on the Commission for Equality and Human Rights, he said:

*We cannot achieve our vision of high quality public services for all if those services do not respect individuals' rights to dignity, privacy and respect (DTI, 2004).*

As is evident from these statements, the Government believes that public services will be of the highest quality when they are designed with the user in mind, give special consideration to those who are vulnerable or socially-excluded and are delivered by staff that consciously treat users as people entitled to dignity and respect. There are two observations to be made here. Firstly, these principles of public service improvement are based on the values underlying the Human Rights Act (even though they may not say so expressly). Secondly, the fact that these principles are axiomatic demonstrates the centrality of human rights thinking to public service reform. To make the link expressly merely requires a reference to the legal basis provided by the Human Rights Act.

If public pronouncements from ministers and departments responsible for public services were to make this reference, its effects would permeate within regional public authorities which are engaged in delivering those services. Although there was leadership from the Government on this issue at the time that the Human Rights Act was passed in 1998, leadership needs to be renewed from the centre because it is an important pre-condition to achieving change on the ground.

### **2.3 Influencing public service outcomes**

In passing the Human Rights Act, the Government expressly intended that the Act would bring about reform in public services. Jack Straw, then Home Secretary talked about the *'ethical bottom line for public authorities ... a fairness guarantee for the citizen,'* which should *'help build greater confidence in our public authorities'* (Straw, 1999). The former Lord Chancellor, Lord Irvine, explained it in the following way:

*What I mean and I am sure what others mean when they talk of a culture of respect for human rights is to create a society in which our public institutions are habitually, automatically responsive to human rights considerations in relation to every procedure they follow, in relation to every practice they follow, in relation to every decision they take, in relation to every piece of legislation they sponsor (Irvine, 2001).*

Before the Act came into force, the Government provided guidance to public authorities amplifying their duty to support a positive attitude to human rights issues (Home Office, 2000). This ambitious requirement, however, was barely understood let alone implemented, as the parliamentary Joint Committee on Human Rights found during its inquiry into the case for a human rights commission (JCHR, 2003).

The proposition that a human rights approach can encourage public authorities to provide better services, however, is not simply theoretical. There are enough examples of changes that have occurred during this period to suggest that the proposition can be validated and to support the need to conduct further research. The most recent evidence comes from the Audit Commission's survey among 175 public bodies in 2003.

In its report, the inspectorate lists several examples of changes made by public bodies to their policies and practices as a result of assessing them for human rights compliance (Audit Commission, 2003). Several case studies are also provided which describe the proactive approach adopted by public authorities to implementing human rights requirements throughout their organisations. An example is provided in the papers prepared for a local council meeting when the drug action team's annual return was being considered. A human rights implications section was included. It could have offered a human rights analysis of the proposals in negative compliance terms along the lines of "we believe (or have been advised) that this policy will not breach the Human Rights Act": Instead, the implications were described in positive terms:

*The actions contained within the plan will aim to support in particular Article 8 – the right to privacy and respect for family life, home and correspondence (emphasis added) (Gateshead Council, 2002).*

The benefits of a proactive strategy towards human rights were summarised by the chairman of the Audit Commission in a recent speech:

*Time and again we observe in those public bodies, fast increasing in number, which have adopted and embedded human rights principles in their everyday operations, that they provide much higher levels of service to the public (Strachan, 2004).*

Voluntary organisations have reported productive engagement with public authorities on specific matters, leading to practices being reviewed and amended. These were referred to in our recent publication on using human rights in the voluntary sector. For example, following training by the British Institute of Human Rights, a voluntary organisation persuaded a provider of mental health services to review its blanket policy restricting patients from congregating in groups of more than two on the basis of Article 11(right to free association). Child Poverty Action Group reported using human rights arguments (Article 8) with schools to adjust the way in which free school meals were allocated to avoid stigmatising children (ippr, 2004).

Some of the changes have occurred as a result of legal proceedings and this has led to improvements in practice. A charity representing older people reported positive responses from care home providers as a result of the court decision that they establish procedures for consulting residents before closing care homes (ippr, 2004). Nursing guidelines for handling severely disabled people have had to be amended following a court finding that the automatic use of hoists was degrading (*East Sussex* case). Hindsight suggests that the public authorities concerned could have (and indeed should have) found ways of introducing human rights thinking at the stage when the policies were formulated. There could also have been more effective participation by those affected by the policies before they were implemented, which would probably have avoided the deleterious consequences that followed.

Several advantages flow from a proactive and preventative approach. The adoption of a corporate-wide strategy, which incorporates a human rights approach towards decision-making and includes participation by affected users, should lead to institutions making the necessary changes and the right decisions at the outset. The effect should be to reduce the need for “victims,” who are often vulnerable, to have to take legal action to achieve the same changes. Such a strategy is also likely to diminish defensive attitudes and promote positive cultural change within the institution.

Despite these examples of beneficial results, many public authorities are having difficulty in understanding how to implement human rights in their decision-making processes (Audit Commission, 2003). The implications (not least in terms of resources) of “*supporting a positive attitude to human rights issues*”, as the Core Guidance for public authorities proposed (Home Office, 2000), are not clear. Most public authorities have yet to fully appreciate that implementing the Human Rights

Act effectively involves leadership from the top and changes in management techniques throughout the organisation. It is not widely appreciated that human rights considerations apply not only to policy-making but to the way in which front-line staff make day-to-day decisions and deliver services. Before considering approaches that can be adopted to progress action on these questions, the next chapter reviews the poorly understood nature of the legal responsibilities.

### **3. Responsibilities under the Human Rights Act 1998**

Evidence suggests that there is a lack of understanding within public authorities about their legal responsibilities (JCHR, 2003). Neither the ambit of the Convention rights nor the way in which they require protection is properly understood. There is also a lack of understanding about the extent to which a human rights approach is based on legal requirements or on best practice standards. It is also necessary to address the confusion that surrounds the definition of “public authorities” which determines which organisations are subject to legal duties.

#### **3.1 The nature of the legal responsibilities**

The Human Rights Act 1998 came into force in 2000. By incorporating the European Convention on Human Rights (ECHR) into UK law, the Act gave statutory force domestically to a range of fundamental human rights such as: life, liberty, fair trial, private and family life, free speech, free assembly, religious expression and freedom from degrading treatment and discrimination (Convention rights). The concepts of fairness and equality are expressly set out in the Convention and are familiar legal principles.

By contrast, the concepts of dignity and respect are neither expressly stated nor widely understood to be subject to the protection of the law. The jurisprudence on the right to private and family life and freedom from degrading treatment does, however, make clear the centrality of the concept of dignity to the enjoyment of these human rights. In order for one person’s right to dignity to be meaningful, respect for that dignity is required from another person and human rights law guarantees protection of the right in the case of particular relationships. This is exemplified in cases where vulnerable people are in receipt of public services, such as health, housing or social



care, that affect the preservation of their dignity and that require respect on the part of the person providing the service.

The Act makes it unlawful for a “*public authority*” to “*act in a way which is incompatible with a Convention right*” and provides legal remedies in the case of a breach (HRA Sections 6 and 7). The Act’s purpose goes beyond its bald statement of negative compliance to avoid illegality. The Convention’s progressive nature is reflected in the requirement that Convention rights need to be “*secured to everyone*” (ECHR Article 1) and by the doctrine of “*positive obligations*” being developed by the Strasbourg court and, increasingly, by UK courts. The consequence is that public authorities are required as a matter of law to adopt a proactive rather than merely reactive approach to implementing the Human Rights Act. The Constitutional Affairs Secretary, Lord Falconer explained it recently:

*Now public authorities have to be proactive in their dealings with the public in order to ensure that all these basic rights are respected (Falconer, 2004).*

Public authorities therefore have a dual responsibility. They have to adopt human rights thinking in relation to all the services that they provide that may be affected by the Act and they also have, to use Dr Reid’s phrase, “*a greater obligation*” towards those individuals and communities who may need specific human rights protection.

Unlike comparable equality legislation, considered below, the “positive obligations” on public authorities is not expressly set out in the Human Rights Act (although such a development has been recommended by the Joint Committee on Human Rights among others). Instead, this duty is imposed through the common law as a consequence of court judgements interpreting the requirement in Article 1 of the ECHR. Although it is for the courts to give further clarity to the nature and extent of legal requirements, it is possible, based on the principles from decided cases, to attempt a fuller explanation of what they involve than that given on the face of the Act. It is clearly essential to do this in order to provide support to public bodies in meeting their legal duties.

In its recent consultation on assessment of healthcare standards, the Healthcare Commission recognised the need for fuller guidance on the extent of legal obligations under the Act. It gave the following information in relation to its intention to assess

compliance with human rights and equality legislation as part of its inspection processes:

*Under the Human Rights Act 1998, public bodies have a positive duty to have regard to the rights enshrined in the European Convention on Human Rights (emphasis added)(Healthcare Commission, 2004).*

We propose the following summary of legal responsibilities under the Human Rights Act in order to provide a starting point for considering and measuring public authority compliance:

*Human Rights Act Responsibilities: A Summary*

*“Human Rights”:*        *the Convention rights and the underlying principles of fairness, respect, equality and dignity (FRED)*

*Public authorities have a legal duty to:*

- *Avoid acting incompatibly with Convention rights (minimal obligation)*
- *Have due regard to the need to protect people’s Human Rights (positive obligation)*

The first limb of the legal duty requires an assessment of risk, typically undertaken by lawyers whereas the second part requires a corporate strategy to adopt human rights thinking throughout the organisation, sometimes described as requiring a change in culture. The human rights experts at the seminar that we held to discuss ideas arising from the research felt that these “*positive and negative*” human rights duties can be clearly articulated and explained to public authorities. We suggest that there is a sound legal foundation for the policy of encouraging a proactive human rights approach but that it has not been made sufficiently clear or disseminated properly.

### **3.2 Guidance needed**

The challenge is to provide adequate and sufficient guidance to public authorities on the law and its ramifications. Our research found repeated calls for clarity and uniformity in descriptions of what is required and also for more accessible information. The recently published Equality Bill makes clear that one of the principal

functions of the new Commission for Equality and Human Rights will be to provide support to the public sector on this issue.

In the meantime, there is a gap that the DCA Human Rights Division is well placed to fill by updating its guidance to public authorities and disseminating it through existing distribution mechanisms used by other departments, particularly ODPM and the Department of Health. Without more explicit information on what the implications are, it will remain difficult for public authorities to take appropriate action. The support that the Commission for Racial Equality provides on the race equality duty is a useful model. A departmental cross-cutting approach to human rights would also be productive and it is to be hoped that this will emerge from the strategic review initiated by the DCA.

It will be necessary to interpret the relevant case law in order to provide public authorities with clear summaries of the practical implications, illustrated with examples, of:

- the “positive obligations” doctrine,
- how Convention rights like “private and family life” have been interpreted by the UK courts and the European Court of Human Rights,
- the underlying concepts of fairness, respect, equality and dignity (FRED) (and how these have addressed by the courts),
- applying the test of “proportionality” to the “qualified” rights (Articles 8 – 11), and
- balancing competing rights (such as private and family life as against the right to free association in noisy neighbourhoods)

The NHS Litigation Authority’s online human rights information service offers a useful template for provision of this kind of information. Underlying the detail about decided cases is a different legislative and conceptual approach which also needs to be understood. The European Convention on Human Rights provides a framework for considering policy and practice and potentially affects all aspects of public services. This contrasts with the more familiar and precise tradition of domestic legislation, which specifies the compliance required and is therefore easier to implement. Publicly available guidance is therefore not only needed on how to apply the precise

legal principles but also on how to develop an entire corporate approach, which is the concern of this report.

### **3.3 Meaning of “public authority”**

It is unclear, however, to whom the guidance needs to be given. The courts have interpreted the meaning of “public authority” for the purpose of legal liability under Section 6(3)(b) of the Human Rights Act more narrowly than the Government intended and in ways that do not make it easy to determine whether a private or voluntary sector provider of public services will be included. The law currently provides protection on the basis of the status of the organisation rather than in relation to the nature of the public service provided. This means that people who are similarly situated and receiving similar services do not enjoy equal protection under the law. The effect is to perpetuate an injustice that is disproportionately experienced by vulnerable people.

The problem is exacerbated by the increase in private provision of public services (for example, housing associations, residential care homes and private healthcare providers). The policy of encouraging a human rights approach to the design and delivery of public services will be undermined if providers of those services are excluded from the scope of the Act. For example, around 90% of residential care homes for elderly people are run by private or voluntary organisations and, as a result of the *Leonard Cheshire* case, these are probably not subject to the legal requirements (Help the Aged, 2005). The issue requires urgent resolution to ensure that legal liability under the Human Rights Act attaches to the delivery of public services regardless of the status of the organisation providing it and that direct remedies under the Act are provided to users of those services. For present purposes, we have considered below what action statutory public bodies should take when commissioning the delivery of public services by private or voluntary organisations.

## **4. Equality Legislation: A Comparison**

As outlined above, the Human Rights Act’s purpose is to be transformative as well as remedial. The most useful comparison when considering how to move from the latter

to the former is to be made with recent developments in equalities legislation. This chapter looks at the lessons learned from implementing public sector “positive duties” in relation to equality. It also considers the merits of a unified strategy in relation to equality and diversity and human rights.

#### **4.1 Implementing equality duties**

The first generation of anti-discrimination legislation concentrated enforcement efforts on tackling discrimination that could be identified and proved in particular cases on specified grounds. As has been frequently noted, this model has its limitations since its effectiveness relies on individuals taking legal action and its scope is restricted to isolated incidents, the effect of which is to encourage “*passive compliance*” by public authorities. The legislation only provides for equal treatment, which can be a blunt tool in discrimination terms (particularly in the field of disability). (O’Cinneide, 2004; Age Concern, 2004).

The new generation of equalities legislation, known as “positive duties”, by contrast requires public authorities to adopt a comprehensive approach to promoting equality of opportunity as well as safeguarding equal treatment. As Age Concern have recently described it:

*It means enabling the equal participation in society of all, based on respect for the dignity of each individual. This richer understanding of equality goes beyond treating people equally and should include taking proactive steps to overcome entrenched disadvantage and acknowledging people’s different identities, needs and aspirations (Age Concern, 2004).*

Positive duties under equalities legislation apply to particular equality “strands” (currently for race, recently achieved for disability and, within the Equality Bill, for gender) and to devolved administrations (Northern Ireland, Wales, London and Scotland, where it is cast as a power). (For a summary of each of these statutory duties see the report by Colm O’Cinneide.)

Section 75 Northern Ireland Act 1998 imposes a duty on specified public authorities to “*have due regard to the need to promote equality of opportunity*” across the nine equality “strands” and “*to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group*”. Similarly, the

Race Relations (Amendment) Act 2000 (amending Section 71 Race Relations Act 1976) imposes a duty on specified public sector bodies to “*have due regard to the need to promote equality of opportunity and good relations between persons of different racial groups.*”

The comparable provision in the recently enacted Disability Discrimination Act 2005 stresses in addition the rebalancing that positive duties require by imposing a duty on public authorities to:

*... have due regard to the need to ...*

- *take steps to take account of disabled persons' disabilities, even where that involves treating disabled persons more favourably than other persons;*
- *promote positive attitudes towards disabled persons; and*
- *encourage participation by disabled persons in public life* (DDA 2005, section 3 (d) – (f))

In each of these three pieces of legislation, the “general duty” has been supplemented by “specific duties” on certain public authorities to take specified action including the production of “equality schemes” setting out the steps that will be taken to meet the equality objectives. Under the Race Equality Scheme, public authorities have to:

- assess whether their functions and policies are relevant to race equality
- monitor their policies to see how they affect race equality
- assess and consult on policies they are proposing to introduce
- publish the results of their consultations, monitoring and assessments
- make sure that the public have access to the information and services they provide
- train their staff on the new duties (CRE, 2002)

As the independent evaluation of the first year of the race equality duty revealed, these compulsory processes have ensured, in the majority of cases, that action is taken and the result has been more emphasis within public authorities on proactive promotion of race equality. The evaluation found that nearly 70% of respondent public authorities felt that:

*... their work to date on the public duty had produced positive benefits...The positive result most often cited was increased awareness of race equality in policy making and service delivery (CRE / Schneider Ross, 2003).*

There has however been considerable inconsistency in mainstreaming race equality with nearly a third of respondents described as “*not responding effectively to the legislation*”. In particular, there was a need to “*move on from preparing ‘infrastructure’ to a focus on outcomes, action plans and public accountability*” (CRE / Schneider Ross, 2003). The report noted that some elements of the race duty required clarification before compliance could be achieved. This problem is likely to be replicated in seeking to achieve wider human rights implementation, especially in the absence of a statutory positive duty, unless clear guidance is provided.

The overall experience of public sector duties in relation to equality has reportedly been positive particularly where the general duties are reinforced by specific duties (O’Cinneide, 2004). They are said to have provided:

*...a legal backbone to mainstreaming and equal opportunities policies, both strengthening their ‘internal’ development and ensuring an ‘external’ compliance standard .... The experience ... thus far has been that they are highly effective motors of change ... They can also serve to improve service delivery to all, contributing not just to the well-being of disadvantaged groups alone but to the community at large, by enhancing service delivery and employment diversity (O’Cinneide, 2004).*

The lessons from implementing the equality duties from the research conducted so far are that, to be effective, certain basic principles need to be adhered to. These include:

- a clear positive statutory duty across all areas of government policy and activities,
- the participation of affected groups in determining how this should be achieved and a transparent assessment of the impact on affected groups,
- a continuing focus on outcomes rather than bureaucratic processes,
- adequate guidance and support to public bodies,
- training for all levels of staff, and
- fully functioning auditing and enforcement mechanisms.

To achieve the outcomes sought requires sustained rather than periodic commitment from political leaders and management and genuine user participation (O’Cinneide, 2004, CRE, 2003 and NIEC, 2003).

## **4.2 Equality Commissions**

The Commission for Racial Equality and the Equality Commission of Northern Ireland (NIEC) have played a significant role in monitoring the effectiveness of the positive duties. The CRE has published a statutory code of conduct which gives guidance to public authorities and its website contains more useful information such as a step-by-step guide to implementing race equality impact assessments. The NIEC has a duty to approve all equality schemes submitted by public authorities and therefore has oversight of the degree of implementation and effectiveness of the statutory duty. It has also recently published an operational review of the Section 75 duty (NIEC, 2004). The Disability Rights Commission is currently considering responses to its consultation on a proposed code of conduct to accompany the new disability duty. These duties and powers are backed up by enforcement powers in the case of non-compliance. In addition, the existing equality and human rights commissions within the UK have a duty to keep the relevant legislation under review.

The proposed Commission for Equality and Human Rights will have monitoring and review functions in relation to human rights which will require it to identify both outcomes and indicators by reference to the aim of creating a society in which there is, among other desirable attributes, “*respect for and protection of each individual’s human rights*” (Equality Bill, 2005). The CEHR will not, however, have the power to issue codes of conduct or enforcement notices in the case of non-compliance with the Human Rights Act. The equality positive duties, therefore, not only benefit from a



clearer statutory definition but also enjoy more rigorous attention from their respective commissions, and this feature will be inherited by the CEHR in relation to the equality “strands”.

### **4.3 Human rights and equality: legal duties compared**

The “passive compliance” regime suggested by Section 6 Human Rights Act is redolent of the old anti-discrimination legislation but the “positive obligations” doctrine provides a vehicle to leap-frog the limitations of that approach and ally itself with the “positive duty” equality scheme. But the “positive obligations” doctrine under the ECHR does not enjoy the same clarity of statutory language domestically as the equality public sector duties. This deficiency should be borne in mind when considering the way that equality duties are implemented, since they have the advantage of being set out clearly in the relevant legislation.

This report does not address the case for a statutory positive duty in relation to human rights but there is no doubt as the existing equality experience shows, that clear statutory requirements are preferable to osmotic development through judicial decision-making. Because of its focus on the particular circumstances of the case under consideration, common law jurisprudence can be both ambiguous in its reach and difficult to apply. This is the current fate of the “positive obligations” doctrine. Accordingly, as outlined above, in our summary of Human Rights Act responsibilities we have deliberately used, as has the Healthcare Commission, the more familiar equality duty language requiring public authorities to “have due regard to” achieving the relevant objective.

### **4.4 An integrated approach?**

It is not, however, only in terms of their legal frameworks that equality and human rights are comparable. Although the UK’s equalities laws have not traditionally been described in human rights terms, equalities and human rights are closely linked conceptually because, as the international human rights instruments make clear, equal treatment and equality of opportunity are fundamental human rights. Human rights principles can also help fill gaps in equalities legislation, for example the lack of protection for older people in relation to provision of goods and services.

Experience has shown that it is often people who are already marginalised and discriminated against who suffer human rights violations. Examples include: abuse of disabled people or the elderly in residential institutions (degrading treatment), high mortality among traveller children (right to life) and attacks on women wearing the hijab (right to religious expression). Also, as was recognised by a local authority representative at the seminar, a human rights framework can assist in resolving conflicts between different strands of equality. By proposing a rights-based and balanced approach which upholds equality and recognises diversity, more considered deliberation of, for example, religious views about sexual orientation can be made.

Equality issues of course are often not the same as human rights ones (e.g., degrading treatment may be experienced without discrimination) and the risk of oversimplification if the concepts are merged substantively has to be avoided. This means that specific expertise on both equality and human rights will have to be available. The two fields are, however, sufficiently related that the same mechanisms for implementing them can be applied. Because equality is a fundamental human rights goal, an improvement in equality will qualify as a human rights outcome. For example, access for disabled people is required under disability legislation but it is also required by ECHR Article 8 which protects the dignity of the person.

Although they may differ in substance, there would appear to be merit in implementing equality and human rights standards together. There has been a comparable debate among the different “strands” of equality as to whether an integrated approach to equality can deliver better results or whether this results in dilution of focus and the loss of specialist knowledge. It is noticeable that public authorities are now moving towards a combined equalities and diversity strategy housing the infrastructure needed to support it outside the human resources department, its traditional home where it was applied primarily to employment discrimination issues. The next step, as the Audit Commission among others has suggested, is for public authorities to integrate their equality and human rights strategies. But could this result in a dilution of anti-discrimination efforts or could it be argued that human rights work will never be properly implemented if it is always subsumed within the equality agenda? The consensus at the seminar was that combining the processes was a common sense approach towards a common goal and was the obvious way forward for public authorities.

There are clearly advantages for public authorities in piggybacking these comparable concepts onto existing legislative requirements. Equality responsibilities offer well-worn entry points for encouraging wider implementation of the Human Rights Act. There is a good case for arguing that human rights compliance should not be tackled separately. It is important to avoid new regulatory processes for public authorities because of the burdens involved. To set up new systems for dealing with human rights on their own would be likely to meet resistance because of the resources required. There are an increasing number of models of an integrated approach within public authorities to draw on, for example the proposed Commission for Equality and Human Rights, the Equality and Human Rights Group at the Department of Health and the NHS Centre for Equality and Human Rights in Wales. This question would benefit from research among public authorities. In the push for better equality and human rights outcomes rather than merely more processes, it would appear that the combined experience could offer mutual benefits.

## **5. Human Rights in Statutory Inspections**

The Audit Commission and the Healthcare Commission have taken a keen interest in the effect of the Human Rights Act on the services subject to their inspection procedures. Although prompted by the Government's HRA task force when the Act came into force and subsequently by the JCHR, these and other inspectorates have developed their thinking independently and this fact underlines the significance of human rights for the provision of public services. It is likely that the principal contribution that inspectorates can make to achieving change in public services through the use of human rights will be through the inspection process. They also fulfil a valuable role in providing guidance, self-assessment tools and examples of best practice and through undertaking evidence-based research. The effect of highlighting poor practice is often to encourage changes to be made.

Inspections also offer the most potential for measuring change. Because all public authorities are subject to inspection procedures under applicable legislation, a systematic picture of activity and outcomes informed by human rights thinking could become available. The new policy of Strategic Regulation that allows a more sophisticated approach in order to reduce the inspection burden for high performing authorities may, however, affect the comprehensiveness of the information that can be obtained. Even so, the evidence obtained through inspections is still likely to be

superior in terms of sample size than evidence-based research which can only offer representative information. When considering the options for measuring the impact of the human rights legislation on public services, pre-existing statutory inspection regimes are the most attractive. Frequency of information is guaranteed because assessments are periodic and importantly, there is no increase in the regulatory burden because the inspections are happening anyway.

Because inspectorates are independent, if Government were to seek to engage them in developing its approach to human rights, discussions will need to be had to find the optimal ways of sharing working methods and combining objectives.

Inspectorates are also not necessarily experts on equality and human rights and opportunities for sharing knowledge should be pursued. Some understanding of respective responsibilities would be helpful. Although inspectorates are not obliged to inspect on equality and human rights under their own applicable statutes, it was suggested at the seminar that, as public authorities under the Human Rights Act, they might have a legal duty to include human rights in their inspections. It is probable that the position of the inspectorates will be that they have a legal duty to comply with the Act themselves but they do not have a legal duty to ensure that other public authorities comply. That duty is with the public bodies themselves. It is likely that inspectorates would be prepared to make a judgement on arrangements made by public authorities for complying with the Act rather than a judgement on whether or not they did comply.

In the next sections we look at recent developments at the Audit Commission, the Healthcare Commission and the Commission for Social Care Inspection towards including human rights in inspection procedures and measuring compliance. The present inquiry is timely because these inspectorates are at the initial stages of formulating their policy in regard to human rights and there is an opportunity to share thinking more widely. Further research needs to be conducted into what is happening at other inspectorates, for example, the Health Inspectorate in Wales where equality and human rights standards are being integrated and included in inspection procedures. The recently published report of the Northern Ireland Police Board on the monitoring of the Police Service's compliance with the Human Rights Act is a valuable source of techniques for evaluating human rights implementation. Its principal findings are referred to in this chapter for comparative purposes

## **5.1 Audit Commission**

The Audit Commission is an independent body responsible for ensuring that public money is spent economically, efficiently and effectively, to achieve high-quality local and national services for the public. It has a watchdog function to provide information on the quality of existing services and an advisory function to provide recommendations for service improvement and spread best practice. Among the inspectorate bodies, the Audit Commission has pioneered work on the Human Rights Act. Reportedly, the Audit Commission initially regarded the impact of the Human Rights Act on public authorities from a risk-based compliance perspective. Increasingly, however, the inspectorate is said to have come across evidence of better decision-making and improvements in practice within those public authorities which had adopted a human rights strategy and so it began to regard the Human Rights Act as a potential tool for positive change.

The Audit Commission is currently considering the responses to its consultation on proposals for comprehensive performance assessment (CPA) for local government from 2005. The purpose of CPA is to measure how well local authorities are delivering services while reducing the overall burden on them. The emphasis is on outcomes for local people and value for money (Audit Commission, 2004). Any attempt to introduce new factors, such as human rights promotion, needs to complement the more refined approach introduced by the Strategic Regulation initiative.

One of the Audit Commission's proposed changes is that "*user focus, diversity and human rights will be integral elements of the new corporate assessment*" underlining the importance the inspectorate attaches to "*ensuring that the diverse needs of communities are reflected in the way that services are designed and delivered with and for local people*". In its 2003 report, the Audit Commission noted that it "*was often the case*" that public bodies would review the same policies and practices separately for different pieces of equalities legislation, though it recognised the difficulties that public bodies have with responding to "*the complexities of the current equalities legislative framework*." The inspectorate makes it clear that human rights and equality requirements will be considered together proposing that inspections:

*... should challenge service providers to promote and outline their approach to equality, diversity and human rights (Audit Commission, 2004).*

Specifically:

*The corporate assessment will include consideration of whether councils are meeting statutory requirements on human rights, race, age, sexual orientation, gender, disability and religion (ibid).*

Unlike the Healthcare Commission, the Audit Commission does not apparently offer an explanation of what it means by “*meeting statutory requirements on human rights*” though the accompanying ‘key lines of enquiry’ explicitly set out the criteria that the inspectorate intends to use for assessing compliance. Proposed level 2 constitutes “*a service that delivers only minimum requirements for users*” while a proposed score of 3 represents “*a service that consistently delivers above minimum requirements for users.*”

Indicative of the minimum that the Audit Commission is looking for to satisfy level 2 is evidence that:

*The diversity, user focus and human rights implications of proposed decisions or actions are considered before action is taken. The council monitors its performance in relation to key equalities and other relevant legislation and shares the information internally. The council recognises and welcomes the benefits of a diverse workforce and community but reacts to legislation and other external pressures rather than actively promoting them.*

The Audit Commission suggests that a well-performing authority, in order to satisfy level 3, would resemble the following:

*The council has a strategic and integrated approach to diversity, user focus and human rights issues which is fully demonstrated in its policy development, employment practices and service delivery. The council champions and promotes these issues both to its staff, and to partners and to the wider community. It has invested widely to achieve improvements in services and regularly reports on progress against key objectives in these areas.*

The Audit Commission’s 2003 report provides case studies of action that councils and other public bodies have taken in relation to human rights. It would be fruitful to

conduct further research among public authorities to establish what is happening currently. The Audit Commission's four steps methodology in relation to race equality (resisting, intending, starting, achieving) might be a useful model to use (Audit Commission, 2004, *Journey to Race Equality*). The inspectorate is also developing a self-assessment tool specifically for human rights which takes public authorities from risk-assessment to more proactive implementation and enables them to provide online answers.

## **5.2 Healthcare Commission**

The Healthcare Commission's role is to monitor and support improvements in the quality of health care against the Department of Health's Standards for Better Health. Following consultation in 2004, the inspectorate has recently published the approach it intends to adopt in assessing compliance by healthcare organisations. Like the Audit Commission, the Healthcare Commission refers to human rights and equality together and states that its approach includes "*promoting respect for human rights and diversity in the delivery of health care*" (Healthcare Commission, 2005). Among the criteria for assessing whether the standards have been met, the following are particularly relevant:

*Healthcare organisations challenge discrimination, promote equality and respect human rights in accordance with current legislation and guidance, with particular regard to the Human Rights Act and [listed equality legislation and guidance from existing equality commissions]*

*Healthcare organisations have systems in place to ensure that staff treat patients, their relatives and carers with dignity and respect* (Healthcare Commission, 2005)

The Healthcare Commission consulted on its draft guidance which had included some suggested "prompts" to assist organisations in assessing their compliance. Following comments received during the consultation, however, the inspectorate has decided not to publish these but has said that it will use them for internal guidance purposes. Because they flesh out the thinking behind the inspectorate's requirements and provide detail on what to look for when measuring compliance, they are worth stating here:

- *Is there a policy that sets out the required practices and the healthcare organisation's expectations for treating people with dignity and respect?*
- *Are staff given training to ensure that all patients, carers and relatives are treated with dignity and respect? Is attendance monitored?*
- *Does the healthcare organisation make appropriate provision to meet the specific needs and rights of different patient groups with regard to dignity and respect (e.g. multi-faith rooms, disabled access)? In doing so, does the organisation take account of equalities legislation, including the Disability Discrimination Act, Human Rights Act and Race Relations Amendment Act?*
- *Has the healthcare organisation made arrangements to ensure that staff behaviour takes into account different interpretations of dignity and respect to people from different faiths, cultures, generations and genders?*
- *Does the healthcare organisation ensure that dignity and respect is maintained for patients, carers and relatives in relation to end of life care and death? (Healthcare Commission, 2004)*

### **5.3 Commission for Social Care Inspection**

The Commission for Social Care Inspection (CSCI) is currently the single, independent inspectorate for all social care services in England. As announced in the Chancellor's Budget of March 2005, the commission is to be split and merged with the Healthcare Commission and Ofsted. CSCI's remit includes private and voluntary care services as well as local council social services departments. No distinction is made in regulatory terms between private, voluntary and public bodies and this contrasts with the legal liability regime under the Human Rights Act to which reference has already been made.

According to information received, the Commission is currently working to develop an equalities and diversity framework and delivery programme which will integrate its human rights activity. By a commitment to a rights based approach, the Commission's expressed aim is to reflect its responsibility to uphold human rights through the exercise of its statutory functions, particularly as the regulator and inspector of social care services, as an expert voice and in its primary focus on encouraging improvement in social care. The inspectorate will seek to ensure that the services being regulated and inspected themselves recognise and uphold the human rights of those who use and work in them. Since the Commission is engaged



in developing its policy in this area, information on the details is not yet publicly available and it looks likely that it will coordinate its future strategy with the Healthcare Commission.

#### **5.4 Common approaches among inspectorates**

Information on these inspectorates is descriptive rather than analytical because they have not yet implemented the outlined plans. The inspectorates are clearly also at different stages of developing their approaches to equality and human rights issues. The ideal outcome would be both clarity and uniformity over the meaning of “statutory duties” under the Human Rights Act and a unified approach to inspection requirements on human rights and equality standards. The concordat being established by the Healthcare Commission between bodies inspecting, regulating and auditing healthcare would provide an opportunity to achieve consistency and coherence at least in that field.

#### **5.5 Monitoring human rights compliance within the Police Service of Northern Ireland**

The Police (Northern Ireland) Act 2000 requires the Policing Board to monitor the performance of the Police Service of Northern Ireland (PSNI) in complying with the Human Rights Act. This statutory monitoring duty is supported by the Patten Recommendations, which require the Police Service *“to focus policing in Northern Ireland on a human rights approach”* (Patten, 1999). The first report of the Policing Board (conducted by independent evaluators) has recently been published and because of its comprehensive methodology is likely to represent the gold standard in terms of monitoring human rights compliance (NIPB, 2005). Although there are several factors which make the situation for the police service in Northern Ireland different from other public services across the UK, there are sufficient similarities in the evaluation techniques employed to make the report a useful resource when considering how to measure human rights implementation among public authorities in general.

For example, the PSNI has adopted a code of ethics (NIPB, 2003) which the Report described as *“unique as a police disciplinary code [being] based entirely on human rights principles”* noting that the PSNI is *“the first police service anywhere in Europe to have adopted such an overtly human rights based approach to conduct and*

*discipline*” (NIPB, 2005). As a salutary reminder of the need to connect words and action, the Policing Board, however, report that although many police officers appear to be reasonably familiar with the human rights principles underpinning the code, they were “*vague*” about the code’s contents and requirements and few were able to demonstrate that they had read or understood it. The Board’s recommendation was for the chief constable to take steps to redress this.

In accordance with the Patten Recommendations, the Police Service has published a human rights programme of action with the express purpose of ensuring that the police act within the law and respect human rights “*both in the technical sense and in the behavioural sense*” (Patten, 1999). The programme of action is divided into seven sections dealing with basic values, staff, training, management practice, operational policing, structure and accountability with reference under each section to initiatives that are ongoing or completed. The Police Board has also set a monitoring framework which includes four performance indicators requiring evidence of:

- Assignment of responsibility for implementation to a named officer
- Responsibility includes planning and continual monitoring
- Human rights plan to include schedule for achievement of constituent parts
- “Best practice” drawn from other departments concerning contents of the plan

The independent evaluators considered and reported on achievement of these performance indicators as well as conducting their own investigation of compliance by reference to the sections included in the programme of action. They also assessed overall awareness of human rights within the Police Service through responses to a detailed questionnaire. Much of the work that has been conducted within the Northern Ireland Police Service merits further scrutiny because of its potential as a model for encouraging human rights compliance within public authorities operating in other public service areas.

Having outlined the equalities and human rights landscape in the context of public service reform, implementation of legal duties and the potential to use inspection and monitoring procedures, we now consider options for measuring human rights implementation.

## **6. Measuring Human Rights Implementation**

The discussion so far has identified a number of factors that are likely to affect the success of the policy of encouraging respect for human rights in the provision of public services. These are:

- Public authorities will need guidance both on the legal basis that underpins any action that may be required and on the relationship between a human rights approach and improved public services,
- The present confusion about which private and voluntary providers of public services have legal responsibilities under the Act needs to be resolved,
- Although the DCA does not have responsibility for equality legislation, it should be recognised that public authorities are being encouraged to address human rights and equalities requirements together. Therefore any action they are asked to take to meet human rights targets should complement what they are expected to do on the equalities front, and
- Discussions should be had with the relevant inspectorates into the extent to which DCA's objectives can be met through existing inspection procedures, which will have the advantage of not increasing the regulatory load for public authorities.

If the DCA were to pursue any target-setting measures, for example through a departmental public service agreement, it would have to engage with the other Whitehall departments that have responsibility for public authorities, such as local authorities and NHS trusts, that would be likely to be affected.

The DCA Strategy Directorate has commissioned independent research on the extent to which user experience can amount to measurement of improvement in services through human rights. Evidence can, however, also be adduced from written material and surveys of staff within public authorities to assess the effectiveness of the human rights approach and more specifically the fulfilment of any specific targets that may be introduced.

### **6.1 Human rights indicators**

The rest of this chapter will look more closely at what activity might indicate achievement of the aim of improved public services as a result of a human rights approach. What follows consists of a mix of action, improvements and outcomes that are both quantitative and qualitative. Evidence of any of the matters outlined could constitute approved positive steps for public authorities to take and would indicate that the changes being sought were happening. The objective, however, is to find indicators of improvements in people's lives as a result of the activities undertaken. These are the ultimate goals and may be measured quantitatively (e.g., % increase in number of Afro-Caribbean boys achieving five GCSEs or % reduction in instances of suicide and self-harming among incarcerated women and young offenders).

It is more of a challenge to measure change qualitatively (e.g., all care provided in residential institutions meets high standards or housing decisions meet the needs of disabled tenants). Qualitative indicators involve subjective judgements, on the part of the person receiving the service (the user), the person providing the service (public authority employee) and the person assessing its quality (inspector). Analysis of perceptions should be treated with caution.

The CRE / Schneider Ross report on the race equality duty identified the following race equality outcomes that relate to public services:

- *Service user satisfaction*
- *Employee satisfaction / perception*
- *Changes in service outcomes*
- *Changes in public confidence*
- *Improvements in community relations* (CRE / Schneider Ross, 2003)

All of them (apart from some aspects of the third and fifth outcomes) require qualitative measurement. The first and fourth would seem to require surveys of users. The second and third outcomes can be evaluated from surveys of staff. The fifth would presumably also include a mix of race relations and human rights issues such as disputes between travellers and other residents over land use but could also be relevant to relations between neighbours or between other interest groups (residents and late licensing hours).

Some indicators will reveal that new procedures are being implemented (e.g., human rights considerations added to the impact assessment list for council deliberations). These indicators of action will be easily measured quantitatively. As the example referred to earlier from Gateshead Council shows, however, a proactive assessment of human rights implications will have a qualitative component. Other indicators of action may show that the public authority is doing the minimum to comply with legal requirements. These could reveal areas susceptible to challenge on human rights grounds although they have been met technically (e.g., a formulaic consultation with residents about plans to close a care home done in an attempt to comply with Article 8 requirements). Other more subtle indicators, measurable qualitatively, will show that the organisation is implementing “best practice” in relation to the same requirements and demonstrating its commitment to use a human rights approach to improve the services that it provides (e.g., early and meaningful participation from residents in proposal to close care home). Such a procedure could reveal improved outcomes for users as well as indicating the action taken.

Somewhere between the real outcomes for users of public services and the processes that public authorities undertake are other desirable consequences or improvements that may be achieved along the way and it is useful to measure these too. For example, as a result of action taken, the public may be better informed about the services to which they are entitled and the way that they should be delivered and this may lead to greater accountability. Improved partnership working with voluntary and community groups through mechanisms like local strategic partnerships will have similar effects. Likewise, within the public authority itself, there is likely to be an increased awareness and understanding of the purpose and application of human rights standards. This may lead to improved attitudes on the part of public sector employees and so bring about cultural reform within the whole institution.

If the DCA were to adopt a policy of target setting in relation to human rights and public services, a number of considerations would be brought into play. The process for gathering the evidence needed to evaluate whether the indicators of change existed and whether the targets were being met should avoid additional burdens for public authorities. Further research and analysis among public authorities would be needed into how many indicators there should be, and what the right balance would be between processes and outcomes and qualitative and quantitative measurement. Existing expertise on performance measurement in other contexts should also be drawn on. Consideration should be given to the level of response required of busy

public sector employees and likely costs involved. A caveat expressed at the seminar was that each public authority should be allowed to develop its own methodology in meeting any central government requirements so that there is “ownership” of the process and greater likelihood of improved outcomes. On the other hand, indicators need to be uniformly applied as much as possible though it will be difficult without clear guidance to apply “fair test” conditions for reviewing indicators of targets such as “user participation” or “staff training.” A balance between these competing principles would need to be found. What follows therefore explores possible options which should be tested with evidence from public authorities.

### **6.3 A corporate approach to human rights**

The Audit Commission’s survey of 2003 found that 58% of public bodies had “*not adopted a strategy for human rights*” and had “*no clear corporate approach.*” This demonstrated no improvement on the previous year’s findings. They also found that “*in many local authorities the Act has not left the desk of the lawyers*” and that 73% of the health trusts surveyed were reportedly “*not taking any action*” (Audit Commission, 2003). The objective with this target would be to find evidence of a corporate approach to human rights that was proactive and related to service improvement. The Audit Commission provides some examples, such as the approach adopted by Westminster Council (Audit Commission, 2003). A variety of indicators would be possible and these need to be investigated further.

It would be relatively easy to measure the percentage of public authorities which refer to human rights in their corporate plan. On its own, such a reference has limited value only indicating a minimal amount but it is a good place to start because it suggests a shift from bare legal compliance to overall corporate strategy. Caution, however, is always and rightly expressed about statements of good intention as the experience from the Northern Ireland Police Service in relation to its code of ethics shows.

A more qualitative assessment can be undertaken into how human rights are referred to in the corporate plan. Are they expressed in terms of the organisation meeting its “legal obligations” or “statutory responsibilities”? Is there evidence of awareness that human rights responsibilities go beyond assessment of likely areas at risk of legal challenge to an understanding of “positive obligations” and that human rights principles include both the Convention rights and the underlying principles of

fairness, respect, equality and dignity (FRED)? For example, Article 1 of the PSNI code of ethics states that, when carrying out their policing duties:

*... police officers shall protect human dignity and uphold the human rights of all persons as enshrined in the European Convention on Human Rights and other relevant international instruments (NIPB, 2003).*

Other evidence of deeper understanding might be statements like, “a culture of respect for human rights” or that “promotion of equality, diversity and human rights” are expressed to be core aims of the organisation. Best practice would be exemplified by evidence of a recognition and adoption of the idea that a human rights approach can lead to improvements in public services.

Evidence could be sought of statements about the organisation’s vision of respect for human rights and equality in meeting diverse needs of service users and in acquiring and maintaining public confidence. Some public authorities already do this without explicitly referencing human rights or the fact that these statements are underpinned by legal as well as moral responsibilities. An example is:

*We have also made a number of commitments about the way that we work.*

*These are [listing the first three]:*

- *to treat all people with equity and dignity*
- *to ensure accessible, high quality, value for money services which meet people's needs*
- *to involve local people in decisions which affect them and their communities (Lancashire CC, 2005)*

Arguably, the commitments should be refined by the reference to statutory equality and human rights responsibilities to demonstrate conscious recognition that the commitments are grounded in legal requirements. There may, however, be reluctance to include the term “human rights” within public statements about values on the part of local authorities if the Human Rights Act is regarded as politically controversial. Research will reveal the extent to which this is prevalent. A good example of blending values with legal responsibilities comes from the CRE report on the race duty:

*The council's race equality scheme has been developed to ensure that its vision and values are delivered for all people of the district – regardless of ethnic origin. The council recognises that it is not always appropriate to treat everyone the same and extra help will be provided to those who need support to gain equality of opportunity (CRE / Schneider Ross, 2003)*

A local authority representative at the seminar cautioned against any requirement for public authorities to develop independent human rights strategies *“that, like a student’s dissertation, could take two years to write.”* Instead, it has been argued, the better approach would be to introduce the human rights implications into existing strategic plans, for example on equality, race relations and community cohesion. Such a development could constitute an indicator of wider corporate understanding and an improvement on the Audit Commission’s findings that *“few links”* were made between these agendas. It would also demonstrate a level of preparedness for the way that the Commission for Equality and Human Rights is likely to provide support and guidance to public bodies.

All these statements are, however, only statements of intention and there should be more indications of a substantive corporate approach towards human rights. Matters that could indicate the qualitative nature and quantitative extent of more meaningful activity at the corporate level include:

- The source of leadership on equality and human rights (chief executive’s office, human resources or legal department)
- Including human rights analysis in the assessment of relevance and proportionality of response model used for the race equality duty
- Reference in policy documents, impact assessments and performance management processes
- Reports published on progress made in financial year towards achieving identified outcomes
- Publishing the results of assessments, consultation and monitoring (required for the race duty)
- Evidence of integration with comparable areas such as social inclusion strategy
- Monitoring and evaluation procedures to demonstrate ongoing commitment (required for race duty)



- Procedures for gathering feedback from front line staff
- Incorporation into induction and appraisals for staff

#### **6.4 Training**

At first glance, the extent of human rights training within public authorities seems high but this is deceptive. The Audit Commission found that 89% of local authorities had undertaken training with their staff which was an improvement on the 69% found the previous year (Audit Commission, 2003). But, as the inspectorate pointed out, the training was often undertaken as a one-off separate event for managers and executive boards. This finding mirrors results from a Local Government Association survey of half of all local authorities in England and Wales before the Act came into force. At that point, 98% of local authorities were providing specialist training for some officers falling to 6% offering training for all officers (LGA, 2000).

The Audit Commission's recommendation is that human rights training should be an ongoing and integrated part of service programmes and that it needs to be developed for front-line staff who are involved in the delivery of services directly to the public. The procedure adopted at Warrington Borough Council was included as a case study and comprised:

- *Ongoing response*
- *Cross-departmental training with front-line managers*
- *Specialist training to council members*
- *Induction training for new members along with ethical governance and equalities*
- *Newsletters (Audit Commission (2003))*

The content of the training should also be reviewed and measured qualitatively. Education needs to be provided not only on the meaning and application of Convention rights and the underlying FRED principles but on the implementation of the human rights approach discussed in this report. Training also has to be tailored to specific circumstances and some evidence of the development of tools that can be disseminated would be desirable. Further consultation should be had with organisations like the British Institute of Human Rights, which have experience of providing training on human rights to different departments in local authorities and to

health providers. High quality training could be, if measurable sufficiently, a valuable human rights indicator as it will improve employee performance in promoting human rights. This should have an effect on the quality of the services provided as described in the next section.

## **6.5 Impact on service delivery: procedure and practice**

This indicator has the most potential because it goes to the heart of the value that a human rights approach should add to public services. The two indicators already discussed will inform its achievement because a clear corporate strategy and high quality training are likely to have an impact on service delivery. The existence of a human rights framework for making or reviewing policy decisions, including processes for taking into account the perspective of users, may be readily identified. The human rights checklist developed by Lancashire County Council and set out in the Audit Commission report is a model (Audit Commission, 2003). There is, however, a distinction that may be magnified in practice between on the one hand amending procedures and on the other engendering institutional change in the way services are delivered.

Changes made by public bodies to their policies and procedures after taking into account the human rights implications will likely constitute improved services and better outcomes for users. The Audit Commission provides twelve examples of action taken by a range of public authorities to review policies on matters such as record keeping, consent to medical treatment, patient resuscitation, patient control and restraint, treatment of asylum seekers with special needs, housing allocation, nuisance neighbours, eviction and naming and shaming (Audit Commission, 2003). There should also be evidence of procedures to monitor and evaluate the impact of changes made.

A human rights approach may often involve a refinement in the process of decision-making rather than a radical overhaul of all procedures. During research conducted by ippr on preparations made by public authorities in advance of the Act coming into force, one local education authority told us, “*we’ve discovered things needing to be tweaked rather than ripped up entirely*” (ippr, 2000). With the right kind of training, policy-makers should be able to incorporate a human rights framework into their decision-making. The director of corporate services at a unitary council in the South

West had already understood both what was required and the likely effects before the Act came into force. He explained in response to our survey:

*My advice [to colleagues] is: don't think that what you're currently doing is wrong; what you need to do is go through the issues and check that there is a balance between the interference [with a right] and the need for protection and ask: this is my power, is my action proportionate? (ibid)*

Changes in policy will result in changed procedures but a human rights approach goes beyond formal adherence to process because it involves the way that front-line staff deliver services in practice in accordance with procedures that on paper may be human rights compliant. These services may be delivered, for example through discretionary decision-making in individual cases (e.g. housing allocation decisions) or by hands-on care (e.g. health and social care).

Implementation beyond paper compliance to actual delivery is always the mountain that needs to be shifted and it is likely to require systematic planning and fundamental systemic reform led from the top. It may require expenditure of resources. The McPherson inquiry into the death of Stephen Lawrence found that there was “institutional racism” within the Metropolitan Police. Similarly, there is evidence emerging, particularly from the age and disability charities, of what can only be described as “institutional human rights breaches” committed against vulnerable people in the care of the state or comparable agencies. As the CRE / Schneider Ross report noted, *“it comes down to people thinking and behaving differently”* and when this is done successfully, it represents a human rights approach.

The quality of the services provided and the extent to which they absorb human rights principles or offend them will be dependent on factors such as the type and frequency of training received by front-line staff, how staff themselves are treated and the culture of the organisation as a whole. In well-run public authorities, the incorporation of human rights thinking should complement what the organisations are doing anyway. At a seminar held by the Audit Commission in June 2003, a former local authority chief executive reflecting on the significance of human rights for public authorities explained it as follows:

*If you adopt human rights thinking then you'll get service delivery right.*

Some public authorities will doubtless find this process easier to implement than others.

## **6.6 Contracts with the private and voluntary sector**

The Audit Commission found that 61% of public bodies had failed to take action to ensure that contractors complied with human rights legislation. This was described as “*the biggest risk to public bodies*” (Audit Commission, 2003). The inspectorate acknowledged, however, that the “*complexity and difficulty experienced by public bodies in ensuring that contractors comply cannot be underestimated.*” The 2003 report sets out guidance and a checklist to help public authorities ensure that contractors comply so that human rights can be “*successfully integrated into the community.*” The CRE report also recommended that public authorities use their procurement and partnership activities more widely as a way of communicating the values and standards expected with regard to racial equality (CRE / Schneider Ross, 2003).

Several people at our seminar regarded the incorporation of human rights compliance into arrangements with contractors as a priority. This issue is particularly pressing because, as described earlier, the courts have narrowed the range of private and voluntary bodies performing public services which fall within the scope of the Act. In response to recommendations by the JCHR in its report on *The Meaning of Public Authority* (JCHR, 2004), the ODPM is planning to issue guidance to public authorities on using specifications in contracts to ensure that contractors comply with human rights requirements. Such specifications in contracts between authorities and providers could be subject to inspection and thereby represent indicators of compliant human rights activity on the part of the public authority.

So far as the private and voluntary providers of public services are concerned, if they are not “public authorities” for the purposes of Section 6 Human Rights Act, they would not be obliged to meet any governmental human rights targets. Several people attending the seminar expressed concern that, for example, the majority of social care providers not be excluded from any target–setting scheme. It was proposed that they be included via the procurement contracts referred to above (though this procedure will not capture organisations providing public services directly to the public). Private and voluntary providers of public services may, as a matter of best practice, however, voluntarily incorporate human rights into their strategies and train

their staff. The fact that health and social care providers are subject to inspections is another route to achieving wider implementation of human rights standards.

## **6.7 Public service users: information and involvement**

The Audit Commission has stressed the relationship between healthy equality and human rights strategies with those focusing on the service user. Its findings so far on public involvement and human rights are bleak. Of the 175 bodies surveyed, only one council had made general information on the HRA available to the public.

Organisations were apparently reluctant to promote human rights with citizens and their communities because they feared increased legal action against them. This pusillanimous stance misunderstands that public bodies have a duty to provide public information not only about entitlement to services but also to certain standards in service delivery and that these are underpinned by human rights values. People have a right to hold public authorities accountable in this respect. As the experience of litigation since the Human Rights Act came into force shows, unjustifiable legal arguments based on the Act will have no more success in the courts than any other unjustifiable arguments. The sort of information that should be provided to users is likely to replicate that provided to staff. London's University College Hospital, for example, displays notices on the reception area walls to remind patients that *"all our staff are entitled to be treated with dignity and respect at all times."* The corollary should also be explicitly stated and such a requirement would appear to come within the criteria that the Healthcare Commission will apply in assessing compliance by healthcare organisations (see paragraph 5.2 above).

Race equality schemes require public authorities to consult those affected on the likely impact of their proposed policies on the promotion of race equality and to ensure public access to information about the services provided. The CRE / Schneider Ross report identifies several indicators of action that public authorities should take to meet the race duty such as publicly communicated and agreed outcomes and surveys and feedback from users. The Disability Rights Commission in its recent consultation on a code of practice for the new disability duty has set out the minimum requirements for user participation in producing disability equality schemes. These could be good models to test and follow in relation to human rights. Indicators could be applied to user participation in decisions and practices with a human rights component, such as housing for disabled people, conditions in mental health institutions, standards of social care or installation of CCTV cameras. User

forums should also be engaged in auditing and evaluating the services provided and these can in turn be inspected for effectiveness.

## **7. Encouraging Human Rights Implementation**

In order to make the aim of improved public services through respect for human rights more achievable, the introduction of human rights thinking into the wider public sector environment needs to be considered. As one of the seminar participants remarked, the focus must go beyond linking human rights, equalities and user participation to the broader context of related “*initiatives, frameworks, concepts and standards*” which already constitute “*such a clamour*” around public authority staff involved in service delivery.

In this chapter, we consider some opportunities for encouraging wider human rights implementation. As discussed earlier, the public service reform agenda is informed by human rights values but only implicitly. To widen understanding of the purpose of the Human Rights Act and to reach the destiny intended for it by ministerial forecasts will require more explicit references. We therefore looked in outline at some existing mechanisms that could provide opportunities for introducing human rights thinking to complement plans that may be proposed to set targets and to support public authorities in achieving them. Each of these areas will require further research to assess their viability and there are doubtless others that have not been mentioned that could also be relevant.

### **7.1 Whitehall public service agreements**

Some public service agreement targets, like the examples referred to below, are based on human rights values though they are not described in those terms. This section looks illustratively at some departmental PSAs that could be more expressly informed by Human Rights Act responsibilities in the next Spending Review. Such a development would complement the DCA’s work to deepen understanding within Whitehall of the relevance of human rights for public services

*Department for Constitutional Affairs*

The aim of the DCA's own PSA is "*upholding justice, rights and democracy*" and one of its objectives is:

*To ensure that the public, especially the socially excluded and vulnerable, have access to excellent services, which enable them to exercise their rights in law and understand, exercise and fulfil their responsibilities (DCA, Objective II).*

The public services provided by the DCA relate to advice and information on legal rights, techniques for resolution of disputes and access to justice in courts and tribunals. The DCA, however, also has responsibility for wider implementation of the Human Rights Act and as the department itself is propounding, this should be occurring beyond the legal justice system and across a range of public services. The phrase "*exercise their rights in law*" should not be restricted to legal proceedings but should mean access to justice in its wider sense of achieving redress.

As we argued in *Human Rights: who needs them?* service users should be able to hold public authorities accountable without having to resort to legal action (ippr, 2004). We also recommended that the Government take action to make this more likely. What is needed is an education campaign providing information to the public about the quality of the services that they are entitled to receive from public authorities and that this is underpinned by human rights standards. The information on human rights therefore would go beyond what is currently provided about the grounds on which people can initiate legal proceedings as "victims" of unlawful action.

*Office of the Deputy Prime Minister*

The ODPM aims to create "*sustainable communities*" by bringing, by 2010:

*... all social housing into a decent condition with most of this improvement taking place in deprived areas, and for vulnerable households in the private sector, including families with children, increase the proportion who live in homes that are in decent condition (ODPM, PSA 7).*

Public authorities providing social housing, particularly to those who are vulnerable, that is not in "*decent condition*" are at risk of challenge on human rights grounds such

as Article 8 (private and family life) and possibly Article 3 (degrading treatment) or even Article 2 (right to life). These human rights requirements should form the bottom line so far as improvements are concerned but the goal of “*decent condition*” could be explicitly phrased in terms of dignity and respect.

#### *Department of Health*

The independently validated surveys that are used to measure the objective of improving “*patient and user experience*” of NHS and social care services could include qualitative questions about dignity, respect, fairness and non-discrimination (DH, Objective 4). This could contribute to greater understanding about how to produce “*fairer services that deliver better health and tackle health inequalities*” which is the aim of the Department’s PSA.

#### *Department for Trade and Industry*

The DTI is required, by 2006, working with all departments, “*to bring about measurable improvements in gender equality across a range of indicators, as part of the Government’s objectives on equality and social inclusion*” (DTI). The Government’s objectives could expressly include human rights and more specific human rights reference could be made to the target on reducing domestic violence as well as including the provision of housing and other public services to women who have experienced violence in the home.

## **7.2 Local public service agreements**

Local public service agreements are voluntary agreements entered into by local authorities directly with the Office of the Deputy Prime Minister. Under these agreements, local authorities agree to meet certain defined targets in exchange for substantial payments (from ODPM’s budget). The rationale for LPSAs is to provide a financial incentive to encourage better delivery of public services by local councils. Unsurprisingly in view of the sums involved, the take up has been high; only three of the 150 upper tier local authorities have not negotiated a LPSA. Each council that has signed a LPSA has to audit its own progress and submit a report to the ODPM, which passes the report to other relevant government departments for approval. All of the signed agreements have now been completed. ODPM are encouraging innovation in many areas under the LPSA scheme for example using them to



promote implementation of race equality schemes. There is likely to be scope for more explicit compliance with positive obligations under human rights legislation.

### **7.3 Equality Standard for Local Government**

The Equality Standard has been developed as a tool to enable local authorities to mainstream gender, race and disability into council policy and practice. It was developed by the Employers' Organisation for Local Government with the Equal Opportunities Commission, the Commission for Racial Equality and the Disability Rights Commission. The Standard has been produced as a framework document to provide a common approach for dealing with race, disability and gender. The idea is that the same framework can be used for addressing all disadvantaged groups and that the additional equality "strands" of age, sexual orientation and religion and belief will be incorporated "*as required*" (EOLG).

As a result of discussion with the Audit Commission, local authorities are required to report against the Equality Standard as a "corporate health performance indicator" (BVPI2). Following our survey in 2000 on the readiness of public authorities for the coming into force of the Human Rights Act, we recommended that human rights compliance be included as a best value performance indicator (ippr, 2000). Subject to further investigation among local authorities as to their view of the effectiveness of the Equality Standard, it would appear that it needs updating to include the new equality strands and human rights.

### **7.4 Ethical standards**

The regulation of ethical standards within local government offers an opportunity to introduce good human rights practice among councillors not only in relation to each other but also in relation to the general public. The Standards Board is a non-governmental regulatory body set up under the Local Government Act 2000 and sponsored by the ODPM. Its function is to help "*build confidence in local democracy ... by promoting ethical behaviour*" (Standards Board, 2005).

Local authorities are obliged to adopt a code of conduct to be approved by the Standards Board and based on its 'model code'. Local authorities are also required to set up a standards committee (which includes external people) whose function is to

promote and monitor ethical standards within the authority. The Code of Conduct requires local authority members, in their capacity as councillors, to:

*promote equality by not discriminating unlawfully against any person [and] treat others with respect* (Standards Board, 2001).

This provision principally applies to regulate behaviour among council members. It also operates to protect the public from being discriminated against or treated without respect by their local councillors (as the recent row between the Mayor of London and an Evening Standard journalist has demonstrated). The Standards Board investigates breaches of the code of conduct by members which are registered in writing by any member of the public or other local authority member and has the power to disqualify members from office. The purpose is to provide a mechanism for accountability for the public with their local councillors. As well as the investigation function, the Standards Board has an advisory role for local government.

Although the Code is restricted to the behaviour of a council's political leaders, ODPM have been considering the introduction of something similar for council officers as well. Nothing has emerged so far. The Standards Board have commissioned Manchester University to undertake research to identify the components of an ethical council, looking generally at good governance. It is intended that the researchers design an ethical framework for all aspects of a local authority management. A code of conduct for local authority officers, which would oblige them to treat all users with dignity and respect would offer more accountability for members of the public and increase awareness of the relationship between ethical standards and human rights principles.

The Standards Board is currently consulting on proposals to review the Code of Conduct. One of the suggested changes is to expand the guiding principles on the behaviour that is expected of local councillors to include reference to treating others with respect "*regardless of their race, age, religion, gender, sexual orientation or disability.*" This amendment is being made in line with recent developments in equalities laws and could be further enhanced by reference in the guiding principles to, for example, "*respect for their human rights.*"

## **7.5 Beacon Councils**

The Beacon Council scheme is an ODPM initiative for encouraging and sharing good practice in service delivery across local government. Each year ODPM selects a theme for the awards and then any local authority can apply to be considered. Six of the candidates are chosen by ODPM together with the Improvement and Development Agency (IDeA). The beacon award lasts for a year and has a theme focusing on one area of good practice. The six councils which are awarded the Beacon status then have a responsibility to share the good practice that they have been identified as having with other councils. The IDeA organises conferences and produces publications and a website with good practice case studies and guidelines.

For 2004/5 the Beacon theme was 'services for older people'. The basis for selecting the winners was described as follows:

*They have all developed services for older people that promote independence and choice, are accessible, promote active citizenship, and treat all older people with dignity, by respecting individual cultures and lifestyles. The Beacons' strategic approach to services for older people includes forging strong partnerships with local statutory, voluntary and private sector bodies, providing high quality information on services and developing staff programmes that create understanding and commitment to the values that underpin customer-focused services for older people (IDeA, 2004).*

As is evident from that statement, the human rights and equality values of "dignity" and "respect [for] individual cultures and lifestyles" are built into the requirements for achieving Beacon Council status within that year's theme. These values will then be disseminated to other councils via the IDeA programme of sharing good practice that accompanies the award. The next Beacon round includes themes on racial equality, affordable housing and environmental health and these could be given a more explicit human rights emphasis by the ODPM.

Warwick Business School Local Government Centre concluded after carrying out an evaluation of the effect on public services of Beacon status that "*authorities improve their services as a result of working with a Beacon*" (Hartley, 2001). Anecdotal evidence such as comments like "*we don't want to lose our Beacon council status on this*" suggest these awards are treasured by those awarded them and that it would be worth considering the introduction of more conspicuous human rights considerations.

## 7.6 Charter Mark

The Charter Mark is an initiative of the Cabinet Office and managed by the Prime Minister's Office for Public Services Reform. Any public service organisation can apply to be externally evaluated for the award. The award is paid for by the public service body and is seen as a mark of good practice as well as a tool for raising the profile and morale of staff. The Charter Mark is held for 4 years. There are 500 current holders although applications can now be made in a group so the result will be fewer Charter Marks being awarded but more public bodies receiving them. The success rate of completing the evaluation process is 80% (which suggests that about 630 public service institutions have applied).

The Charter Mark criteria have been set by the OPSR and include some that could be enhanced by reference to equality and human rights standards. For example, Criterion 3 requires the *"public service to be fair and accessible to everyone and promote choice"* and that the public body:

*treats everyone fairly in access to services and service delivery, and pays particular attention to people with special needs (Cabinet Office, 2004).*

Criterion 6 looks for evidence that the public body has contributed *"to improving opportunities and quality of life in the communities [it] serve[s]"* by demonstrating that it:

*has reviewed and is aware of its impact and potential usefulness in the local and national communities [it] serve[s]; and*

*has made some contribution to enriching the social or economic life or the physical life of those communities, beyond the strict requirement of excellent service delivery, through positive, discretionary initiatives and imaginative use of resources (ibid).*

Similarly with Beacon councils, it would be worth investigating whether an explicit human rights emphasis could be introduced into the Charter Mark scheme.

## **8. Conclusions and Recommendations**

Although this report has been commissioned by the DCA, it has been written with two other distinct audiences in mind, with whom the DCA needs to engage. Firstly, there are the public authorities (which include Government), which are required by law to act compatibly with Convention rights. The emphasis here, however, is on public authorities as providers of services to the public (local authorities, health trusts, providers of housing and social care) because the way in which these services are planned and delivered is subject to the Human Rights Act. Although the majority of public authorities are aware of the need to comply with the Act at a minimum, many lack sufficient understanding of the nature and extent of their human rights responsibilities. As a consequence, the systemic organisational changes that are needed have hardly taken place and the risk of human rights breaches, particularly in relation to private and family life, degrading treatment and discrimination, remain. These breaches are most likely to be experienced by the most vulnerable and marginalised people in society even though these are the same people in relation to whom public authorities have a greater obligation. It is important therefore not to lose sight of the reason why this report has considered approaches to encouraging better understanding of the relationship between human rights and improved public services. The bottom line is a protection guarantee and the top line is better public services for all.

The second principal audience is policy-makers within Whitehall, particularly those engaged in public service reform. Even though the Act has been in force since 2000 and there has been a clear line from cabinet ministers with responsibility for its implementation about the need for public authorities to adopt a human rights approach, there is still too little recognition of this imperative across the rest of government. Until the policy-making on the modernisation of public services itself adopts a human rights approach, there is little chance that real changes will occur within the public authorities delivering services. Any target-setting proposals on human rights therefore would have the twin merit of raising awareness of this agenda across government and encouraging wider implementation across the regions.

As this report shows, there are a number of things that need to be done as well as things that need to be investigated and researched to support more effective implementation of a human rights approach in the provision of public services. In particular, there should be consultation with the inspectorates on their own proposals

for inspecting on equality and human rights standards and opportunities for harmonisation of effort. At the same time, initiatives like those referred to in Chapter 7 should be pursued to complement target-setting and to increase the likelihood of its success.

The proposition that a human rights approach will lead to better public services and tangible improvements for users needs more of an empirical basis than exists at present. Information is needed on the current levels of understanding among public authorities of the nature of human rights concepts (particularly the underlying “Fred” values) and the extent of their legal responsibilities (particularly “positive obligations”). Clarity about which organisations have legal responsibilities under the Human Rights Act, however, is likely to be a pre-condition to effective compliance. The effects of combining the delivery of equality and human rights requirements within public authorities and the consequent changes to infrastructure and procedures needs to be investigated.

Primary research among a range of public authorities delivering services should be undertaken to test the points made in this report and to gather evidence about what works and what does not. The research should seek evidence of best practice and any consequent improvements in services and to identify mechanisms to help develop them further. The results of the research will provide necessary data to inform any proposal to measure the impact of human rights on public services as well as reveal what sort of guidance needs to be provided to public authorities.

Guidance to public authorities is clearly a priority. Subject to research findings, it appears that public authorities need a toolkit setting out the concepts and requirements described in this report. Specificity needs to be given to what is meant by promoting a “positive approach” to human rights. Excellent guidance already exists on compliance with human rights law but more practical information designed for service providers would usefully complement the texts available for lawyers.

So far as any target-setting proposals are concerned, there would inevitably be more early success in measuring the processes undertaken by public authorities than in identifying outcomes for users. In terms of measuring qualitative service improvements, human rights would be likely to be in the same boat as the race relations legislation. There is an inherent difficulty with designing and measuring outcomes in these areas. One should not, however, be too critical of process in the

early stages, provided its limitations are recognised, as at least it is a start. Healthy indicators of action taken and procedures changed in any event tend to demonstrate a tendency towards better outcomes.

The effectiveness of much of the activity proposed in this report depends on one final matter. Since the objective of this inquiry is the achievement of improvements in public services through the adoption of a human rights approach, users and voluntary groups should be involved in all proposals that are made to further its implementation.

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