

# Something for Everyone

## Executive Summary

### Introduction

The British Institute of Human Rights (BIHR) believes that the 1998 Human Rights Act was a major development for the protection and promotion of human rights in the UK. The Act has the potential to impact significantly on the lives of vulnerable people in our society, in particular through the framework it offers to shape the provision of public services. Supported by a grant from Comic Relief BIHR commissioned this report to assess the impact of the Act to date on parts of the voluntary sector, and see what further steps, including the creation of a Human Rights Commission, might be necessary if this potential is to be realised and a human rights culture is to take root.

The evidence from participants in the research across all sectors indicated that there is no serious attempt from either government or the voluntary sector to use the Human Rights Act to create a human rights culture that could in turn lead to systemic change in the provision of services by public authorities. The Act has simply not had an impact in the areas that this project considered, leaving many vulnerable people open to abuses of their rights. Yet without an independent body of some kind to promote the Human Rights Act and the principles that it upholds this situation is unlikely to change.

During this research project, the Prime Minister spoke at the Labour Party Conference of the importance of public services meeting individual needs, rather than the “one size fits all” model which is increasingly inadequate for modern Britain. The framework of the Human Rights Act can help those who make decisions about service provision to consider how best to meet the needs of vulnerable people: how to achieve systemic change and put the individual back at the heart of the service.

### Findings and recommendation

There is a single recommendation arising from the report’s findings:

- **that the government should establish an independent body capable of effectively promoting and protecting human rights, and should seize the opportunity presented by the single equality body project to do this by creating an Equalities and Human Rights Commission.**

#### *The need for a Human Rights Commission*

The project’s findings show:

- **Overwhelming support for the establishment of a Human Rights Commission – or for a similar sort of body that could promote and protect human rights.** This would meet the need that currently exists for good quality advice, guidance and training on the Act itself. But as importantly it would be able to promote the principles that underlie the legislation in a way that everyone can understand.

*I think one thing is that people – the whole community – aren't aware of human rights as anything that's good for them. It needs some publicity, it needs somebody to take it forward: it needs the dissemination of knowledge so that people realise what it's good for – and it's good for them. I think it's really important for them to know that they can use human rights. You know, it's something for everyone; it's for the good of the people. (Cheryl Monteith, Refugee Support Centre).*

This support is driven by the report's other main findings.

- **Awareness of the Act has not in general spread outside the legal field.** The absence of a human rights culture – or of even the first green shoots which might grow into a human rights culture – leaves a void. The Act is considered to be the domain of lawyers and legal policy staff: very few organisations used it systematically in their parliamentary lobbying or in their work with civil servants for example. Without more attention paid to the promotion of the Human Rights Act and the principles which lie behind it in a way that makes it accessible to lay people the vicious circle of unresponsive public services which lead to legal challenges cannot be broken.

*I really can't say to you that one of the options that we feel able to put forward to people is the Human Rights Act, because of the link with the need to take legal action in order to get redress. We use equal opportunities legislation in that context, so there probably isn't any reason other than, for some reason, the Human Rights Act doesn't appear to have come across in the same way as being a tool, a mechanism for change. (Gary Fitzgerald, Action on Elder Abuse).*

- **Individual members of staff in public services have no understanding of their responsibilities under the Human Rights Act.** The lack of any ongoing concerted promotional strategy for the Act means that staff who provide public services – particularly front line staff – fail to understand what the Act is, the rights that it contains, and the responsibilities that they have to uphold it. A Commission could have a key role, working in partnership with regulatory, training, and industry bodies, to demonstrate that the Act is not simply about legal challenges; rather, it gives all staff in the public sector a responsibility to promote and uphold human rights.

*An agency worker told us about going into a residential care home for older people at breakfast time. She was instructed to get the residents up and onto their commode. She was then told to feed them breakfast. When she started to get the residents off their commodes first she was stopped. The routine of the home was that residents ate their*

*breakfast while sitting on the commode and the ordinary men and women who worked there had come to accept this as normal. (Showing Restraint: challenging the use of restraint in care homes: Alison Clarke and Les Bright, Counsel & Care, January 2002)*

- **There is little or no understanding of the Act as a useful framework for public service providers within which problems can be solved and risks assessed, and within which the needs of individuals in the provision of services can be considered.** This may be particularly useful for areas where the rights of one individual may need to be balanced against the rights of others, perhaps leading to restrictions on rights which can be justified using the Act's concept of proportionality. Such a framework could enable public service workers to make difficult decisions about allocation of resources, or protection of vulnerable children or adults, with more confidence.

*Sometimes you have a situation where a person doesn't want any help, and wants the person who's caring for them to do everything. The person who cares does round the clock care, incontinence, all those kinds of things. In terms of the balance of one individual against the other, if you discard the Human Rights Act, the law at present favours the disabled person's rights for example over the carer's rights. It is an enormously difficult and complex situation, and at some point there needs to be a compromise of rights. So that's where the Human Rights Act is useful. (Emily Holzhausen, Carers UK).*

- **There is no single authoritative source of advice and information that could help to shape the development of a human rights culture in the absence of a Human Rights Commission.** Important principles captured in case law are not, at present, applied across a wider area of work. This prevents the development of good practice. A Commission's interpretation of case law is of course open to debate, particularly by others who have an interest in this field. But it would also be able to give a lead – a visible lead – which is badly needed.

*I definitely think there's a need for a Human Rights Commission. Having thought about the other commissions and having worked through the lifetime of seeing the Disability Rights Commission being set up, there is nowhere for an individual to go. There's so much misinformation about the Human Rights Act, and that's why we've been very careful about publicising it, because if you just look at the basic words of the Human Rights Act, you could read anything into that. You'd end up with overuse of the Human Rights Act which wouldn't necessarily be very helpful. (Emily Holzhausen, Carers UK).*

## ***Elements of a Human Rights Commission***

The following emerged as common themes that could function as some sort of success criteria for a new body if it is to command support and confidence.

## Essential success criteria

- **It should be independent from government, with clear terms of reference.** Most respondents assumed that the body would be similar to the existing equality commissions. They wanted its remit to be set out in a way that could be easily understood by a wide range of stakeholders.
- **It should promote human rights.** This would include a focus on the principles and values that lie behind case law, and which support the application of the legislation. It could include producing guides to good practice, working with the media to raise awareness of human rights, running advertising campaigns, and working in partnership with other interested bodies to raise the Act's awareness. It could also include producing materials for the citizenship aspect of the national curriculum.
- **It should have the ability to take test cases.** Many organisations referred to areas of their work which they felt could benefit from a test case to see how the Human Rights Act might impact, but they lack the resources to take the case themselves. In addition a sensible test case strategy could save service providers time and money since they will face fewer individual challenges.
- **It should provide advice and information about the Human Rights Act.** Advice might be provided both to individuals and to public authorities affected by the Act – as well as to private companies that could be considered to be public authorities for the purposes of the Act.

## Desirable success criteria

- **It could provide training.** Training could be provided by the Commission alone, or in partnership with a range of other bodies. Importantly it should include training for front-line staff, and be designed to engage their interest.
- **It could provide a mediation service.** The Human Rights Act framework with its emphasis on resolving conflicts between competing rights might lend itself quite naturally to such a service.
- **It could research the implementation of the Human Rights Act.** This could include audits of public authorities as well as summaries of case law in relevant areas to learn more about trends and enable people to improve good practice.

## *The relationship between equality and human rights*

The project took place in the context of a growing debate about the creation of a single equality body, suggested by the government in February 2002, and currently under consultation. The findings show that:

- **The majority of respondents were positive about the idea of an Equalities and Human Rights Commission.** Many respondents felt strongly that equality and human rights should be located together. They believed such a body was less likely to create a hierarchy of oppression, and would be better able to deal with multiple discrimination by treating people as whole human beings.

*It brings together the perception of equality, of justice in a way that the individual commissions under the individual Acts don't. When we're talking about human rights or equality, we're invariably talking about a spectrum of abuse, or a spectrum of disadvantage. You're talking about whole individuals, and it doesn't feel that we're dealing with people as whole individuals if you have to exclusively categorise it, "this is an issue to do with race, and this is an issue to do with gender, and this is an issue to do with disability". It doesn't make sense. The logic screams for it being one single body. (Gary Fitzgerald, Action on Elder Abuse.)*

- **The debate about the place of human rights in our society and the form which infrastructure to protect and promote the Human Rights Act takes cannot develop in an informed way without more dialogue between those working in the spheres of equalities and human rights.**

*I do think that people who work in non-discrimination need to see the holistic approach of human rights. They often don't, and they get sucked into the legalistic trap. (Rachel Hurst: Disability Awareness in Action).*

- **There is an urgent need for evidence-based research to enable public policy makers as well as equalities and human rights practitioners understand more about the gaps in protection for people's rights that will exist if a single equality body does not include a human rights dimension.**

*We continue to hear of DNR notices on the hospital beds of disabled people where it may be perceived that they [non-disabled people] have a more valuable life than somebody with a chronic health condition for example. We also know of a disproportionate amount of disabled people on trolley waits within hospitals. We know of individual disabled people who have died as a result of being on a trolley wait. (Kate Nash, RADAR).*

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