



# Human rights

Improving public service delivery

*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. Our work covers local government, housing, health and criminal justice services.*

*As an independent watchdog, we provide important information on the quality of public services. As a driving force for improvement in those services, we provide practical recommendations and spread best practice. As an independent auditor, we monitor spending to ensure public services are good value for money.*

- 1 The Human Rights Act (the Act) was a clear statement of rights that need to be taken into account in the delivery of public services. Since its introduction, public service providers' awareness of the rights of an individual have increased and there is an increased risk of legal challenge by service users. The Act's influence encompasses all areas of public service provision. For example, new case law is positively affecting service delivery:
  - Mental health tribunal cases must be dealt with expeditiously and heard within a reasonable time.
  - Public bodies that fail to consider human rights implications in their consultation processes have been ordered by the courts to remedy this by repeating the process.
  - Housing authorities must recognise that same sex partners will have the same right to take over a deceased partner's housing tenancy.
  - A local authority, in certain circumstances, has a duty to take positive steps to secure a disabled person's physical integrity and dignity.
- 2 Yet, three years on, the response to this piece of legislation by public bodies is patchy. Public bodies continue to be subject to a host of new legislation such as the Race Relations (Amendment) Act 2000, the Freedom of Information Act 2000 and the Employment Directives for age, religion and sexual orientation, but it is often the case that the latter pieces of legislation are seen as more important and warrant an appropriate response.

## The impact of human rights on services

- 3 Human rights issues are increasingly being referred to the courts and judicial review process – legal costs and penalties can cost as much as £320,000 to pursue a single challenge. The costs of defending a case – whether successful or not – will almost certainly be many times greater than the damages awarded. But even more important is the damage to an organisation's reputation and its affect on public perception and morale.
- 4 An empirical research study looking at the impact of the Act on judicial review highlighted that 'the Act is cited in just under half of all judicial review claims made'.<sup>1</sup> It also concluded 'that decision makers in public bodies have yet to absorb and incorporate in their decision-making processes the values inherent in the Human Rights Act'.

## The challenge for public service providers

- 5 The challenge for public services is to adopt a systemic approach to complying with the Act. This should start by raising awareness of frontline staff and building human rights considerations into the decision-making processes. Reacting to complaints and case law when they happen is not an appropriate response and will not bring about service improvement, particularly for those who are most vulnerable and are heavily dependent upon public services.

<sup>1</sup> Public Law Project (June 2003) *The Impact of the Human Rights Act on Judicial Review*.

- 6 However, negative compliance with the Act continues to be the norm. Over half of the public bodies surveyed still have not adopted a clear corporate approach – no improvement on last year’s findings. In many local authorities the Act has not left the desks of the lawyers. In the health sector the picture was worse, the new strategic health authorities are not monitoring the performance of health trusts in this area and neither have primary care trusts the capacity or resources to respond to the implications of the Act. Mental health trusts are better prepared because of developing case law.
- 7 The Courts have suggested that in the future public authorities that contract out services should require an undertaking from private sector providers that they will recognise the rights guaranteed by the Act. Although the biggest risk to public bodies is their lack of arrangements for ensuring their contractors and partners are taking reasonable steps to comply with the Act, 61 per cent of public bodies have not taken any action.
- 8 The complexity and difficulty experienced by public bodies in ensuring contractors comply with the Act cannot be underestimated. If public bodies negotiate contracts with service providers that ensure that the human rights of service users will be protected, this should lead to improved services.

## Improving links between equalities and human rights

- 9 Although equalities legislation is complementary to human rights, it is the exception rather than the rule that links are made when reviewing policies and practices by public bodies. It is often the case that public bodies will review the same policies and practices not once but twice for both sets of legislation and will probably do so again for the new Employment Directives. There is scope to improve service delivery if better linkages are made between the various pieces of legislation. Although this has not been helped by the complexities of the current equalities structure and legislative framework.

## Making the most of monitoring new developments

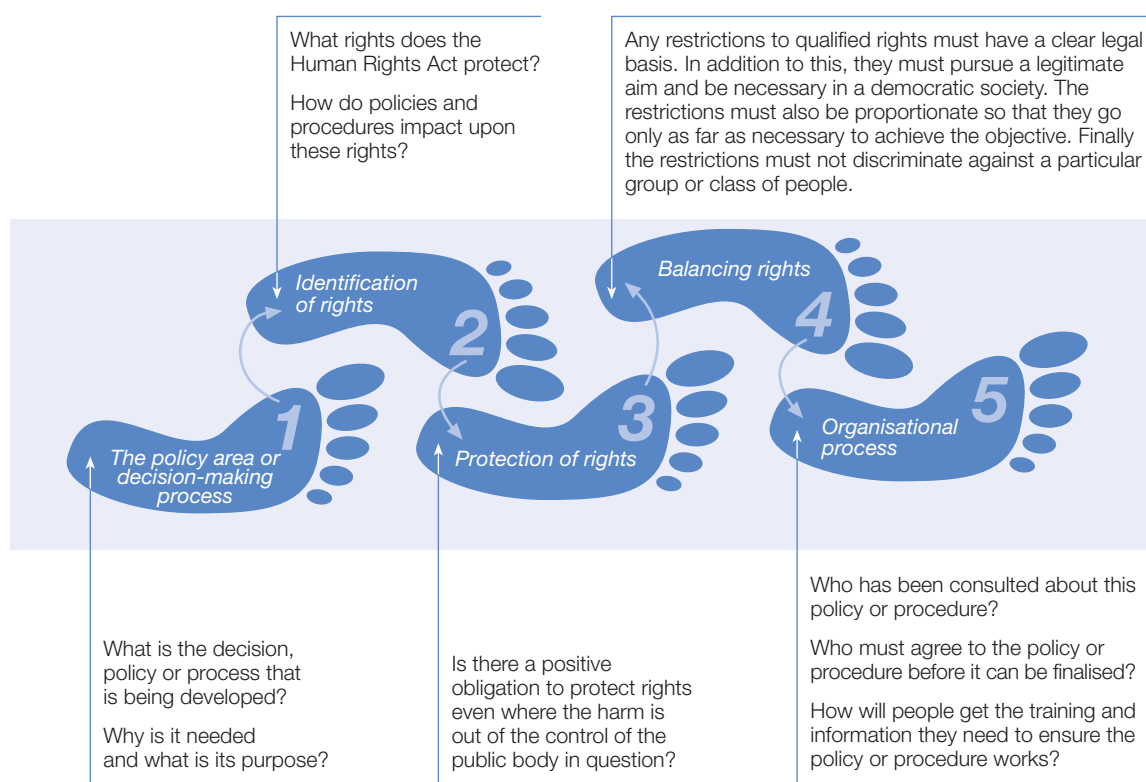
- 10 There have been frequent successful legal actions brought by individuals against public bodies using the Act, which have forced service providers to change the way they act. The challenge for public bodies is to learn the lessons from case law because in a number of instances the legal challenge could have been avoided had the right steps been taken. If the judgements from cases are applied properly they can help to improve services for the service user. For example:
- In circumstances where, for financial reasons, a council must move elderly residents of a care home, great care must be taken to ensure that these residents’ rights under Article 8 are not breached.
  - If a tribunal had considered mental health patients’ cases within the time limits stipulated by the Mental Health Act and European Article 5 case law, not only would they have avoided a costly legal challenge that culminated in the award of significant damages but the patients themselves would have received a better service.

## Next steps

- 11 Despite the slow response by public bodies some have begun to put arrangements in place for complying with the Act. These have included mainstreaming human rights into decision-making processes and adopting tailored approaches to the review of their services for human rights implications. For example, the Legal Action Group decision-making model can help managers to understand the implications of human rights on service decisions (**Exhibit 1**).

### Exhibit 1

#### Decision-making model for non executives and service managers



Source: Legal Action Group Human Rights Act Toolkit (2003)

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- 12 The Audit Commission's report highlights a number of similar examples of arrangements that could be easily applied in local government, health and criminal justice services which focus on 'prevention not cure' and minimise the need for public services to re-invent the wheel.

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