

3 The Evidence Base: Provider research findings

3.1 Methodology, objectives and scope

Three studies contributed to the 'Provider' strand of the project: two desk research studies and a qualitative research study. The first was a Phase 1 study, designed to parallel the desk research study that comprised Phase 1 of the 'Consumer' strand and to set the framework for the next step of the research. The second study was commissioned by DCA's Human Rights Division, outside the Human Rights Insight Project but in the expectation that the Project would draw on its conclusions. It advised on the psychological implications of policy options that could be adopted and refined to progress more effective implementation of the HRA within public services. Neither of these two studies used fieldwork to support their claims; their arguments were largely based on evidence from the extant literature.

The next step of the 'Providers' strand employed qualitative methodologies in order to obtain direct evidence from frontline staff and managers from the examined services. The detailed objectives of the qualitative research were:

- To gain an understanding of frontline staff/ managers' awareness/knowledge of, and attitudes towards, the HRA and human rights: in particular:
- understanding of what 'human rights' means to them and what are the most important elements of it to them.
- current awareness of human rights and the HRA
- awareness of how to deal with complaint procedures and alleged human rights breaches.
- To gain an understanding of whether awareness of human rights correlates with any views of the quality of public services or views on government/state bodies.
- To provide evidence and help gain an understanding of the current ethos that exists among public services in terms of their HRA obligations.
- To collect experiences – in the sense of direct and indirect evidence – of frontline staff and managers in the effect that implementing/ not implementing human rights makes to the quality of delivery of public services and the satisfaction of end-users.
- Comparative consumer satisfaction with public services in organisations with good human rights practices versus organisations with poorer practices.
- To gain an understanding of how often public services make information on the HRA and its underlying principles available to the general public.
- To identify whether there are any links/ overlaps between equality and human rights regulations and procedures already in place.
- Recommendations as to whether provider-focused policy initiatives around human rights are sensible; if so, what they might look like;

when and how to measure them; and recommendations on how to meet them.

The 'provider strand' of the Human Rights Insight Project was carried out bearing in mind the research and policy work done in this area by other government departments, including a Social Exclusion Unit (SEU) project entitled "Improving Services, Improving Lives". Although this had a specific focus on social exclusion and disadvantaged groups, its findings and action plan have wider implications. The project reported: "This Government has delivered a major programme of investment in our public services since 1997. That investment has gone hand-in-hand with a major programme of reform: putting the individual at the centre of high quality and flexible services, emphasising both rights and responsibilities, and making it clear that both people using services and the dedicated staff who deliver them should be treated with respect" (SEU 2005).

However, as the research phase of the SEU Project showed, both consumers and dedicated staff are not always treated with dignity and respect. For example, disabled people, people with long-term health conditions, people with low levels of literacy and people from certain minority groups have reported poor understanding and attitudes among some frontline workers. The report noted "poor experiences can lead to lower take-up of services"⁵. This may create a vicious circle whereby people in need of public services (such as health and social) stop using these services because of bad experiences with the ultimate result of exacerbating their already fragile and vulnerable state. At the same time, the report said, "Frontline staff face a range of constraints and pressures". The SEU study concludes, "To improve [frontline staff's] interactions with disadvantaged people, [they] need to be equipped with the right skills, and enabled to provide the kind of service they want to deliver."

3.2 Findings from the desk research of Phase 1

The Phase 1 desk research was commissioned by the Constitution Directorate from the Institute for Public Policy Research (IPPR); its author was Frances Butler. Its findings were based on a review of the extant literature on the impact of the HRA on public services in the UK and comparable studies on equalities legislation. They also reflected consultations – both individually and collectively, at a seminar – with various stakeholders such as government departments, service providers, NGOs, inspectorates, academics and other experts. A report of the findings is available from the IPPR.

⁵ The ODPM finding that poor experiences could lead to lower take-up of services seems to suggest that poor experiences lead to loss of consumer confidence in the services concerned. A Canadian study - the 'Citizens First 3' project, which looked at how citizens and clients of the Canadian public sector perceived the services they received from central and local government – has shown that service quality can also have a significant impact on confidence in government. (Institute for Citizen-Centred Service, 2003)

The findings set out in the Phase 1 Report can be divided into the following seven themes:

3.2.1 Low awareness, in public services, of the relevance of human rights/ the HRA

The report cited evidence to suggest that there is a lack of understanding within public authorities about their legal responsibilities (JCHR 2003, Audit Commission 2003). Most public authorities were not aware of the dual responsibility placed on them by the HRA: not only their duty to avoid acting incompatibly with Convention rights but also “a positive obligation” to adopt a proactive approach to implementing the Act, especially in relation to “those individuals and communities who may need specific human rights protection”. There had been no active policy to connect human rights compliance with improvements in public services and there appeared to be little understanding that the HRA articles are based on principles such as dignity and respect, fairness, involvement in decision-making and equality. The report suggested that the conceptual links between these principles and the HRA be made explicit to public authorities before other practical measures are pursued.

The report used evidence collected through other studies (e.g. IPPR 2004) to support the claim that the problem of low awareness about the practical application of the HRA extends beyond public service providers into the wider community of service users and voluntary organisations. The report described the rights enshrined in the HRA as “a baseline standard for the way in which public services are designed and delivered providing protection for those adversely affected by poor services...they do not need to be established in court”. It suggests that public authorities should proactively adopt the key underlying principles of human rights, which have a legal basis under human rights legislation, in both the design and delivery of public services. The report argued that the adoption of such an approach would improve standards and meet Government aspirations to put the user at the heart of service design and delivery.

The report referred to the principles of fairness, equality, dignity and respect (using the acronym FRED), on which the HRA Articles are founded and which it takes to be fundamental to ensuring the delivery of high quality public services. If users are not treated in accordance with these principles “it is more likely that an unlawful act, such as degrading treatment, discrimination or breach of a protected right, will occur”.

3.2.2 The need for guidance

The report presented evidence to suggest that most public authorities are struggling to implement a proactive human rights strategy and to achieve changes in practice. “Our research found repeated calls for clarity and uniformity in descriptions of what is required and also for more accessible information”. Examples where public services have been improved as a result of applying a human rights approach should be used as case studies to guide policy development. The report claims that assisting consumers of public services to make the link between the principles of fairness, respect, equality and dignity and the HRA would enable them to call for improved services.

The report recommended that the DCA update its guidance to public authorities and disseminate it, using other departments' existing distribution mechanisms where relevant. The guidance should include clear summaries of the practical implications of the HRA and its principles, together with an interpretation of the relevant case law illustrated with examples of the following:

- how the “positive obligations” doctrine operates in practice;
- 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 (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)” (IPPR/ Butler 2006).

3.2.3 Problems associated with the definition of a ‘public authority’

The report raised the problems surrounding the definition of a ‘public authority’. Following the *Leonard Cheshire* case⁶, for the purpose of legal liability under Section 6(3)(b) of the HRA, the meaning of ‘public authority’ has been interpreted by the courts more narrowly than the Government originally intended. As a result, “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 report concludes that there is an urgent need to resolve the definitional problem of what comes under the term ‘public authority’ for the purposes of Section 6. While doing so, however, guidance needs to be provided to public services when subcontracting their services to external bodies that are not covered by Section 6 of the HRA.

3.2.4 Human rights and equality: partners rediscovered

The report contrasted the “osmotic development through judicial decision-making” of positive obligations under the HRA with the greater progress made by public authorities in response to the direct positive duties imposed on them by the Disability Discrimination Act 2005, Race Relations Amendment Act 2000 and Northern Ireland Act 1998. Pointing out the conceptual links between human rights and equality, the report claimed that human rights can help fill gaps in equalities legislation such as the lack of protection for older people in relation to service provision. It suggested that there would be merit in implementing equality and human rights standards together, to avoid imposing new regulatory burdens.

⁶ R v Leonard Cheshire Foundation [2002] H.R.L.R.30.

3.2.5 The role of the inspectorates in encouraging the adoption of a human rights approach within public authorities

The report gave an account of the most recent developments in the human rights work of the following regulatory and inspecting bodies:

- Audit Commission: Among the inspectorate bodies, the Audit Commission had pioneered work on the HRA with its 2003 report and had reportedly found some evidence of better decision-making and improvements in practice within those public authorities which had adopted a human rights strategy. The Commission had proposed that “user focus, diversity and human rights will be integral elements of the new corporate assessment” (Audit Commission 2004). A self-assessment tool specifically for human rights was being developed to enable public authorities to provide online answers.
- Healthcare Commission: After a 2004 consultation, the inspectorate had reviewed the way it assessed compliance by healthcare organisations. Their 2005 report stated that the new approach will include “promoting respect for human rights and diversity in the delivery of health care “(Healthcare Commission 2005).
- Commission for Social Care Inspection: The Commission was developing an ‘equalities and diversity’ framework and a delivery programme integrating its human rights activity. The report pointed out that inspections carried out by this body make no distinction between private and public care homes – highlighting the urgency with which the definitional issue (outlined at 5.1.4) needed to be resolved.

The report saw value in engaging the relevant inspectorates and regulators to encourage public authorities to mainstream human rights in their service delivery, through:

- the inspection process – where a common approach would be desirable;
- providing guidance, self-assessment tools and examples of best practice;
- undertaking evidence-based research;
- highlighting poor practice;
- identifying best practice;
- measuring change;
- pursuing a systematic picture of activity and outcomes that are informed by human rights thinking;
- providing an independent overview of service delivery through existing mechanisms without adding additional regulatory burdens.

3.2.6 Identifying the indicators of a mainstreamed human rights approach within public authorities

The report identified ‘human rights indicators’ that would demonstrate the mainstreaming of human rights in public authorities:

- 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
- effective arrangements for participation by users.

The report recommended that each public authority should be allowed to develop its own methodology for adopting these measures, in order to engender ownership and a greater likelihood of improved outcomes. Any targets associated with these measures should avoid creating additional burdens for public authorities.

3.2.7 Encouraging more effective human rights implementation in Whitehall and public authorities

The report concluded by identifying for consideration possible ways of encouraging the mainstreaming of human rights:

- reflecting human rights responsibilities in Whitehall and Local Public Service Agreements
- updating the Equality Standard framework document, which provides a common approach for local government in dealing with race, disability and gender, to include human rights.
- extending Codes of Conduct for local authority members with a reference to respect for human rights and introducing similar codes of conduct for local authority officers, with a requirement to treat all service users with dignity and respect
- giving a more explicit human rights emphasis to the Beacon Council scheme led by ODPM.
- introducing an explicit human rights emphasis to the Charter Mark scheme managed by the Prime Minister's Office for Public Services Reform.

3.3 Findings from the review of psychological perspectives on human rights approaches within public services

Although this work was not commissioned as part of the Insight Project, its recommendations need to be taken into account in the Project's own recommendations and are therefore briefly summarised below. The study was based on desk research and its recommendations were based on the findings and policy recommendations deriving from the Phase 1 study as well as on psychological science. It used the findings from a seminar, hosted by the British Psychological Society and attended by experts in applied psychology, academic social psychologists and human rights. The main findings of the study can conveniently be grouped under two themes as follows:

- how can human rights/the HRA be introduced in the hearts and minds of service providers; and
- how can the implementation of a human rights approach within public authorities be made sustainable?

3.3.1 How can human rights/the HRA be introduced in the hearts and minds of service providers?

The study's premise was that a central purpose of the Human Rights Act is to institutionalise human rights thinking in the provision of public services. A human rights approach would ensure that the human rights of service users were protected and would contribute to overall improvements in the delivery of services. The following six policy recommendations, based on evidence from the field of psychology, were put forward to assist in achieving these ends:

(i) Addressing the hostility and misunderstanding that exists in society at large in relation to human rights and the HRA

- Leading political figures with authority and media influence should promote the HRA as a corner-stone of our constitutional settlement. It should also be presented as a source that informs rather than hinders public policy, highlighting that disagreements about how it is implemented are healthy in a democratic, pluralistic society.
- The gap that seems to exist between the HRA's underlying principles of fairness, respect, equality and dignity and the controversies surrounding the HRA and human rights 'language' needs to be addressed. To achieve this, the Government needs to explain that these principles, which are fundamental to everyone's value systems, are the source of the legal rights in the HRA. It should also present human rights as tools to assist in improving public services and as a charter for the public to demand better services. Finally, human rights need to be promoted as justiciable entitlements that guarantee protection for all people where the law has been violated.

(ii) Preparing a 'business case' for human rights in public services

- The study recommends that providers should be informed that the human rights approach can assist in developing and improving the quality of public services and that human rights offer a useful framework when dealing with complex and challenging issues. The **expectation** that public service providers already act in accordance with public service ethos and the **need** for them to respect equality and diversity - reflecting human rights principles – should be emphasised. The study puts forward six principles that could form the core of a 'script' for use in persuading public authorities of the merits of a human rights approach:
 1. the HRA is a corner stone of the British constitutional settlement.
 2. the values of fairness, respect, equality and dignity (FRED) underpin the HRA.
 3. these human rights principles complement existing value systems such as the public service ethos and equality of opportunity.
 4. human rights principles can contribute to improving public services.
 5. the human rights framework is useful in addressing the challenges of public service provision and
 6. a human rights approach to public service delivery will constitute best practice at the same time as amounting to compliance with the law.

(iii) Providing human rights training

- The study argues that in order to incorporate the HRA's underlying values into public service delivery, individuals engaged in designing and delivering services to the public will have to receive more appropriate training on the Act. To make human rights training as effective and successful as possible, it was recommended that:
- training should be vocational and based on the six principles suggested for persuading providers of the merits of a human rights approach and explaining that it is underpinned by legal requirements
- live training is likely to be more effective than written guidance
- training should address the compatibility between people's belief systems and the key principles of fairness, respect, equality and dignity and should involve personal reflection on the trainees' own practices.
- training should employ interactive techniques allowing trainees to develop and test 'mental models' of the application of 'human rights' to their work and environment.
- where possible, human rights training should be integrated with ongoing, periodic training, frameworks of competencies and continuing professional development (CPD).
- training will have to be coherent and subtle enough to dispel any resistance to its messages, especially if it is provided on a compulsory basis.

(iv) Introducing human rights into codes of practice

- The study suggests that codes of practice incorporating human rights principles would be likely to increase the commitment of public sector workers to a human rights approach to service delivery.

(v) Judiciously applying rewards and sanctions

- The study suggests that the heavy-handed application of sanctions in retribution for poor observance of human rights could risk "a retrenchment of negative attitudes which would be completely counter-productive". Apparently 'soft' punishments can be effective, however: "For a public sector employee, working within the spirit of the public service ethos, criticism for delivering sub-optimum services is likely to constitute effective punishment for most people – without the need for tangible punishments".
- Rewards deserve careful consideration as a possible method of encouraging the spread of a human rights ethos, but they too should be approached with care: "People should not be rewarded just for doing their job". Existing award schemes such as the Beacon Council scheme (ODPM), the Charter Mark and the Guardian Public Services Awards could be adapted to reflect human rights principles, and a new award for Human Rights in Public Services could be considered.

(vi) Involving the user

- The study concludes that “Prejudicial behaviour and beliefs about other groups...can – pleasingly – be reduced by personal contact. User involvement should therefore be promoted as much as possible for psychological reasons”. From a psychological perspective, there would be advantages if users were to participate in the following:
 - training programmes;
 - the drafting or revision of codes of ethics;
 - award schemes;
 - service provision;
 - targets and inspections.

The second major theme addressed in the study was:

3.3.2 How can the implementation of a human rights approach within public authorities be made sustainable?

- The study said it is not only the introduction of a human rights approach in public authorities that poses a challenge; sustaining such an approach is also a challenge needing a proactive response. The study suggests that mechanisms be introduced to allow the monitoring of changes following the adoption of human rights policies, using both qualitative and quantitative methodologies:
- quantitative evaluation of progress towards outcome targets: This could, for example, include: (a) a decrease in the number of recorded complaints about poor treatment (b) an increase in number of commendations about services provided (c) improved service access.
- qualitative evaluation: This could include satisfaction surveys with users of public services about the treatment they have received (e.g. were they treated in accordance with the key principles underlying the HRA, such as dignity and respect?). The involvement of psychologists in designing and analysing such assessments is recommended.

3.4 Findings from the qualitative survey with front-line staff and managers of health and social services

The final stage of the ‘provider strand’ of the Project was carried out with qualitative⁷ fieldwork. The research was carried out with 76 frontline staff and managers of health and social services, aiming to:

- understand their awareness, knowledge and attitudes towards human rights and the Human Rights Act. What do these concepts

⁷ The suitability of qualitative vs. quantitative methods for different applications is discussed in Annex F.

mean to them? What are the most important elements? How do they deal with complaints and breaches?

- understand whether they believe that awareness of human rights (on the part of service providers or the public) influences how people perceive the quality of public services and/or government/state bodies
- paint a picture which will enable us to understand the current ethos in public services with regard to human rights
- collect evidence, in terms of experiences, to illustrate service providers' views
- compare consumer satisfaction with services in organisations which were and were not known to have taken action to introduce human rights in their policies and practices
- understand how and when public services communicate with the general public about human rights
- understand the extent to which certain human rights principles such as equality are already covered by existing regulations and procedures
- put forward for discussion some initial ideas on how DCA could help to promote human rights in public services.

The fieldwork was conducted with observations in various settings in, and interviews with the staff of:

- Local Authority Social Services Departments and NHS Trusts that were 'supposedly corporately aware' of human rights
- Local Authority Social Services Departments and NHS Trusts that were 'supposedly corporately unaware' of human rights.

The selection of the 'supposedly corporately aware' and 'supposedly corporately unaware' public authorities is explained in Section 1.2.3 and Annex E to this report, while the unreliability of the distinction is discussed in Section 1.3.2(i).

At this point, it will suffice to repeat that the qualitative study with providers identified no differences in attitudes, behaviour, policies or practices between staff employed in the two types of organisation, with three exceptions. These were three people - all from 'supposedly corporately aware' organisations - who had received specific human rights training from the British Institute of Human Rights and were able to describe the benefits this had brought to their perceptions and practices. Their accounts suggested direct and beneficial impacts on themselves, their employing organisations and their customers, from the human rights training they had received.

The main findings of the study can be summarised under the following five headings.

3.4.1 The cultural backdrop

The research identified two contrasting types of corporate culture, distinguished above all by how oriented respondents' employing organisations were perceived to be (or not) towards 'customer care'. This term is used to denote the consideration of service users' relational and human needs, over and above the provision of medical treatment or social care. The research found that this difference in culture, in turn, predicted how 'conducive to the protection of human rights' the attitudes of the two groups of staff were.

Broadly, the research suggested that the organisations to which the social services respondents belonged all had 'person-centred' cultures that prioritised customer care, but that most of the health services respondents perceived their organisations as emphasising efficiency – getting maximum throughput of users in minimum time – above customer care. Many of them appeared to feel obliged to prioritise the time and money considerations which they perceived to be demanded by the culture within their organisations.

The study noted that it appeared harder for staff in the NHS than for staff in social services to preserve the relational and human rights aspects of services to users because the NHS had:

- a more treatment and symptom-oriented culture
- shorter-term relationships, with little scope – other than in fields such as mental health – for the 'caseload' approach which usually operates within social services
- a more scientific and technological approach to solving problems
- a greater status differential between medical providers and users – leading to more formal relationships.

Among the social services staff they interviewed – to whose work the factors listed above did not apply – the researchers found evidence of a strong, countervailing and unifying 'person-centred' ethos. This ethos appeared to be well understood throughout the social services contingent of the sample, and the thinking that followed from it appeared to be naturally more conducive to protecting human rights. "Thus, values such as dignity, respect and inclusion in decision-making are embedded in their customary way of thinking and working – even though many do not know that these values have anything to do with human rights" (Promise 2006).

This person-centred culture appeared to be instilled and promoted in a number of ways:

- professional training focused on a 'person-centred' approach;
- there had been a change in the cultural focus of Social Services from 'dependency' to 'autonomy';
- personal relationships were *central* to the nature of their work;
- standards of 'customer care' were visibly a part of organisational policy, and were monitored;
- there was (in the case of those working with the learning-disabled), high-profile guidance (Valuing People White Paper, March 2001) which insists upon a client-centred, consultative way of working;

- the Charter Mark accreditation system recognised the desirability of the ‘person-centred’ approach.

3.4.2 Human rights awareness and understanding

Here their findings enabled the researchers to make a distinction between two types of knowledge: explicit and implicit. “By ‘explicit’ knowledge, we mean that users understand and behave according to the principles, and also know that they are human rights principles. By ‘implicit’ knowledge, we mean that users understand and behave according to the principles – but do not know that they have anything to do with human rights” (Promise 2006).

- Among the staff they interviewed, the researchers found explicit knowledge to be generally low, with some exceptions among social services staff. These included the three staff who had had specific training on human rights from the British Institute of Human Rights. ‘Implicit’ understanding of human rights was also quite low among health service respondents, although some – in particular, the younger doctors interviewed – were more likely to talk about such concepts as dignity for patients. In comparison, ‘implicit’ understanding of human rights principles was quite high among the social services contingent. “The social workers we interviewed turned out, in general, to be quite ‘aware’ and informed with regard to human rights – whether they were consciously aware of it or not, and regardless of the ‘supposedly corporately aware’ or ‘supposedly corporately unaware’ status of their employing organisation...A way of thinking that is conducive to the protection of human rights sprang more naturally from their ethos, and social services workers tended to use the language of human rights principles – often without being explicitly aware that these were indeed connected to human rights. Thus, they would often spontaneously mention such things as: ‘respect’, ‘treating users as you want to be treated yourself’, ‘right to be heard’, ‘right to make decisions’, ‘right to the same facilities as everyone else’, ‘right for equal treatment’, ‘non-discrimination’, ‘giving people choice and autonomy’, ‘right to your religion’, ‘dignity’, ‘confidentiality’.” (Promise, 2006)
- A number of reasons were suggested for the differences in awareness and understanding of human rights between the social services and NHS staff interviewed in the research:
 - different priorities in the organisations (in line with the differences in culture outlined at 3.3.1 above)
 - the longer time the social services staff had to spend with their clients, which helped create personal relationships which in turn promoted behaviour that was conducive to the protection of human rights
 - the operation in social services of a ‘partnership model’, as opposed to an ‘expert model’ in the health service

- a possibly greater propensity among health service staff to maintain a distance from patients in order to cope with the failure of treatments, suffering and death
- a greater propensity among some of the NHS staff interviewed to perceive a risk of unreasonable demands and expectations from their patients. “However, one of the Social Services managers we interviewed provided an interesting counterpoint to this point of view. His service had recently implemented a strategy of being more consultative with users. Before embarking on this strategy, his providers had feared that users would become unreasonably demanding, and would not understand the limitations of what was possible. However, their subsequent experience showed that users in fact became more ‘reasonable’ and easier to deal with as a result of being involved in designing services.” (Promise, 2006)
- Finally with regard to understanding, the research uncovered some perceptions of dilemmas and conflicts around human rights – for example, as to how human rights should be applied in the case of sectioning mentally ill patients or where one person’s interests or wishes conflicted with those of another. The perspectives of those interviewees who had attended a human rights training course run by the British Institute of Human Rights suggested that targeted training, covering issues such as proportionality and balancing of rights in context relevant to the trainees, played a major role in dispelling such perceptions: “You realise you must protect the rights of people who do not have a voice....like children....the risk is you listen to what parents want and assume that’s what the children want. Human rights thinking is a key driver in setting that right.” (Senior Manager, quoted by Promise, 2006)

3.4.3 Reported human rights practice

Although many of the respondents in the study were reluctant to discuss instances where human rights may have been breached, it was reported that behaviour that was not conducive to protecting human rights (from neglect to abuse or outright breaches) did sometimes occur. There appeared to be a particular risk of this where ‘customer care’ was less of a priority. This tallied with the conclusion from the consumer qualitative study that the way one was treated in the NHS could be very inconsistent. The provider research “highlighted a possible reason for this: the apparent lack of a clear, unifying ethos on customer care in the NHS” (CSD/ Promise 2006). The study found this to be so despite the shift towards a ‘patient-centred’ philosophy that is reported to be under way in the NHS, which finds expression, for example, in the Core Principles published on the NHS website:

“The NHS will shape its services around the needs and preferences of individual patients, their families and carers. The NHS of the 21st century must be responsive to the needs of different groups and individuals within society and challenge discrimination on the grounds of age, gender, ethnicity, religion, disability and sexuality. The NHS will treat patients as individuals, with respect for their dignity. Patients and citizens will have a greater say in the NHS and

the provision of services will be centred on patients' needs." (NHS Core Principles, 2000)

The consumer research had indicated that particular groups of consumers were exposed to greater human rights risks. The provider research confirmed this finding: "Particularly vulnerable groups were: older people, disabled people, those with learning disabilities, those with communication difficulties, those with mental health problems and children. Risky settings included hospitals and care homes. This suggests that it will be important to target these users and settings in implementing an applied human rights strategy." (Promise 2006)

3.4.4 Communication with the public about human rights

The Audit Commission's report on the implementation of human rights in public authorities in 2003 had indicated that only one of the 178 surveyed authorities made information on the HRA available to the public. The provider strand of the Human Rights Insight Project found no evidence that any of the public authorities included in the study ever communicated explicitly about human rights with the public. In line with this finding, there were no reports of user complaints on specific human rights grounds. (It should be noted, however, that some respondents in the quantitative research with service users reported having received information on human rights from health or social services providers. A very small number, furthermore, reported having made a complaint under the Human Rights Act.)

The provider research found that some institutions, such as care homes, had made available to the public codes of practice or mission statements; and that some of these might express values that were connected to human rights principles. This had been the case in a care home which the researchers had visited for the consumer study. Similarly, the researchers found examples – especially within GP practices – of initiatives designed to raise standards of care, in which values connected to human rights principles could well be included implicitly. These included focus groups, questionnaires and patient / practice 'contracts'.

3.4.5 Relationship between human rights awareness and perceived quality of service

The findings under this heading could prove particularly useful for the construction of a business case for human rights.

- The research found that "low awareness of human rights...does correlate with some poor perceptions and experiences" (CSD/ Promise 2006). The findings were not necessarily sufficient to allow the researchers to point to low awareness of human rights as the cause, nor to higher awareness as the solution. The evidence from the provider study did suggest, however, that "a broader, person-centred ethos and a clearer organisational commitment to prioritising 'customer care' (however that might be characterised) could help to foster attitudes and behaviour that would be conducive to the protection of human rights...Providers felt that users were more

satisfied if their treatment conformed to particular (human rights) principles – i.e. when their views were taken into account, and their dignity respected. They also commented that user 'unreasonableness' was diffused when users were consulted and involved more in the design of their care. When consulted in this way, Social Services providers reported that – far from being over-demanding – users were realistic in their suggestions and did not propose budget-busting initiatives. Furthermore, amongst Social Services providers there were fewer reports of tension and conflict on the 'front line' i.e. at the interface between the provider and user systems. Thus, behaviour on the part of Social Services staff that was more conducive to the protection of human rights appeared to result in more satisfied users and in less tension and conflict between providers and users." (Promise, 2006)

4 The Evidence Base: ‘International’ research findings

4.1 Methodology, objectives and scope

This Section reports on the findings of a preliminary desk research study carried out to inform the Human Rights Insight Project. The aim of the desk research was to gather and synthesise existing published and unpublished material on steps that have been taken in a limited number of other jurisdictions to spread a human rights culture in public authorities and beyond, with a view to identifying useful learning points for the Ministry of Justice. The analysis followed a case-study approach, focusing on three common-law countries that, like the UK, are signatories to the main regional and international treaties in this field, and on Northern Ireland – a part of the UK that has adopted a number of notable human rights initiatives. All four jurisdictions included – Northern Ireland, Ireland, Australia and Canada – have set up Human Rights Commissions. The paper also reported on desk research investigating the relevance of some of the latest legislative and policy steps taken by Europe’s two most influential regional bodies: the Council of Europe and the European Union (EU).

The desk research focused on work carried out with the aim of:

- mainstreaming human rights in public services and/or
- increasing public awareness of human rights and human rights legislation.

The study surveyed the ideas from the four jurisdictions studied, and some of the obligations arising from the UK’s membership of the Council of Europe and the EU, that appeared most relevant to the promotion of a human rights approach in this country. Although health and social care services in England have been the primary focus of the other research carried out for the Human Rights Insight Project, many of the initiatives examined in the ‘Other Jurisdictions’ study bear on public services more generally. Some focus on a specific service, such as the Police Service of Northern Ireland, while others are directed towards users of public services and/or towards the public at large.

In each case, the potential impact of domestic cultural, historical, economic and social factors on legal and policy transplants from abroad needs to be considered. Furthermore, many of the initiatives discussed have not been formally evaluated for their effectiveness. The ideas are not intended, therefore, as blueprints to be copied, but as a starting point for imaginative consideration of their possible application to this country.

The most relevant common, or broadly applicable, features are summarised below, with the paper’s conclusions on their potential relevance to this country.

4.2 Ideas from other jurisdictions

- Human Rights Awareness Campaigns: All four of the case study jurisdictions have adopted awareness campaigns to promote the understanding and usage of human rights legislation and human rights more generally. They are largely based on their Bills of Rights and have two main target groups. The first is the public at large while the second comprises specific groups such as young people, students, older people, disabled people and people from Black and Minority Ethnic groups. Different types of promotional and informative material have been produced (e.g. posters, postcards, websites, leaflets, badges, logos and slogans), which could inspire domestic awareness campaigns. Evaluation data on the outcome of some of these measures (e.g. from the Canadian Human Rights Commission) could prove useful in the preparation of similar campaigns. Events such as the International Human Rights Day and Human Rights Week (Northern Ireland) may also be worth considering as the focus for an awareness campaign.
- Human Rights Commissions: One of the most significant developments in the protection of human rights since World War II has been the rapid growth in the number of national human rights institutions. The establishment of national Human Rights Commissions has been encouraged by the Council of Europe (Recommendation No R(97)14 and Resolution (97)11) and the United Nations (UN Paris Principles). The Commonwealth Secretariat has similarly encouraged this development. The growing support for the establishment of these institutions reflects a recognition of the limits to what can be achieved by the international human rights machinery created after World War II and by domestic courts. The UK's Equality Act 2006 provided for the establishment of a Commission for Equality and Human Rights. In developing the new Commission's strategies it could be beneficial if experiences from other jurisdictions were taken into consideration (e.g. a comparison of performance indicators relating to public awareness of human rights). Appropriate preparations also need to be made, in the period leading up to the establishment of the Commission in October 2007, for its assumption of its duties relating to public awareness of human rights and the HRA, education and legal compliance.
- Human Rights Education: The examined jurisdictions have all taken proactive steps in encouraging and promoting Human Rights education (HRE) in schools and beyond, with initiatives involving not only the curriculum but also whole school activities, skills based initiatives and community engagement. The four case studies illustrate the extent of the work that needs to be done in this area. In addition, the UK has to consider the wider implications of being a member of an international community. The United Nations acknowledged the importance of HRE by designating 1995-2004 as the "Decade for Human Rights Education". The Council of Europe has also established special Steering Committees and

Directorates, treaties and recommendations to promote this work across the 46 Member States.

- Human Rights Training: The case studies suggest that human rights training can be extremely beneficial if targeted at specific groups. The examples of the Police Service for Northern Ireland and the Council of Europe's programme for teacher training deserve particular consideration.
- Equality and human rights: It is clear from the examined case studies and particularly from the policy work and case law of the Council of Europe that there is a tendency for a linkage of human rights and equality legislation. The Northern Ireland Act 1998, for example, which formalises this link, has proved to be an extremely important tool for cultural change both in public services and the NI community.
- Initiatives from members of the public: People from the examined jurisdictions have often come together in the form of coalitions or consortiums: to organise events including conferences and marches, to inspire other members of the public and to inform decision makers about what matters the most to those who need help and protection. Examples include the Equality Coalition in Northern Ireland, the Irish Congress of Trade Unions and the Canadian Rights, Responsibilities and Respect project. These initiatives are seen to have been extremely useful, particularly in relation to promoting accurate awareness of human rights and human rights legislation. Similar 'bottom-up' initiatives could be encouraged in England and/or more widely in the UK, especially if instigated by voluntary and community organisations.
- Collaboration and co-ordination between Government Departments: The examined initiatives illustrate that human rights are cross-cutting, affecting the work of almost all government departments. Effective human rights implementation is therefore not the domain of any one department on its own; a co-ordinated network can significantly enhance the effectiveness of Government policy on human rights. The example of the Canadian Human Rights Programme is particularly illuminating in this respect.
- Government programmes targeted at specific vulnerable groups: The examples from Canada of the Social Union Framework Agreement, 'In Unison' and the National Framework for Ageing demonstrate that targeted reform policies can have considerable impact.

4.3 International obligations

4.3.1 The Council of Europe

The Council of Europe is the oldest and largest regional body in Europe, comprising 46 member states. The UK was among the 10 countries that agreed in the aftermath of World War II to form the Council, whose influence on the way human rights are seen and applied in the domestic context has been immense. The Human Rights Act, for instance, is based on the

European Convention on Human Rights (ECHR), while the jurisprudence of the European Court of Human Rights has a direct impact on domestic case law and policymaking.

The Council of Europe has a specific human rights mandate “to achieve greater unity between its members”. The preamble of the ECHR states that “one of the methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms”.

The jurisprudence of the European Court of Human Rights has been key to the way human rights are applied and interpreted by member States. Due to the evolutionary nature of the ECHR and the semi-political dimension of human rights, the powers of the Court have been extended to include the power to identify incompatibilities of national law with the Convention, requiring States to make immediate legislative and policy amendments. In the development of future human rights policies in the domestic context, consideration will need to be given to the current and developing role of the Court and its influence on domestic case law.

The reports of the Commissioner for Human Rights and the Resolutions and Recommendations of the Council’s institutions – the Parliamentary Assembly, the Committee of Ministers and the Congress of Local and Regional Authorities – also need to be taken into account in domestic policy-making and delivery of public services. Among the most relevant of recent Resolutions and Recommendations are the following:

- Resolution 1460(2005) on Improving the response to mental health needs in Europe
- Recommendation 1742(2006) on Human rights of members of the armed forces
- Recommendation 1744(2006), which relates to the latest human rights policy work of the European Union and the proposal to establish an EU Fundamental Rights Agency
- Recommendation Rec(2006)5 on the Council’s action plan to promote the rights and full participation of people with disabilities in society
- Recommendation Rec(2006)2 on the Rights of prisoners
- Recommendation No R (97) 14 on the Establishment of independent human rights institutions
- Resolution (97) 11 on Co-operation between national human rights institutions of Member States and between them and the Council of Europe
- Recommendation 148(2004) on Gender mainstreaming at local and regional level: a strategy to promote equality between women and men in cities and regions
- Recommendation 154(2004) on Fighting severe poverty in towns: the role of local authorities.

Additionally, the Council of Europe’s work on education, under the auspices of the Steering Committee for Education (CDED), has engendered many ideas,

partnerships and materials to assist in education on human rights and citizenship across Europe and in individual member States.

4.3.2 The European Union

The European Union (EU) has grown from the European Coal and Steel Community launched in 1951, to its current manifestation as a partnership of 25 democratic countries, working together for the benefit of all their citizens. Article 6(1) of the Treaty on European Union says that the Union is ‘founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States’, while under article 49, ‘Any European State which respects the principles set out in article 6(1) may apply to be a member of the Union’. Thus a State’s accession to, and membership of, the Union are conditional on respect for human rights and fundamental freedoms.

It is a general principle that while legislating or producing policy, the EU respects the political, cultural and ideological diversity of its members, leaving them to regulate specific provisions independently. It is generally accepted that the promotion of human rights within the Member States of the Union is primarily a concern of the states themselves “with due regard to their own judicial systems and international obligations”. However, the EU is taking a growing interest in human rights, as outlined in the ‘Other Jurisdictions’ report. A number of overarching principles that should influence Member States when setting up their human rights policies were identified in the EU’s Annual Report on Human Rights for 2003:

- coherence and consistency between Community action and the Common Foreign and Security Policy (CFSP) as well as the development of policy through close co-operation and co-ordination between its competent bodies and with the Commission;
- mainstreaming of human rights and democratisation into EU policies and actions;
- openness of the EU’s human rights and democratisation policy through a strengthened dialogue with the European Parliament and civil society;
- regular identification and review of priority actions in the implementation of the human rights and democratisation policy.

The work not only of the five major EU institutions, but of the following EU bodies, needs to be taken into account in setting up new human rights policies within member states:

- the proposed EU Fundamental Rights Agency;
- the proposed EU Gender Institute;
- the network of independent experts in fundamental rights;
- the European Initiative for Democracy and Human Rights (EIDHR);
- the European Ombudsman;
- the European Data Protection Supervisor.

Specific EU initiatives for the promotion of equal opportunities for vulnerable groups, such as the *Phare* and *Tacis* democracy programmes, are also relevant to the promotion of human rights within Member States.

In addition, there are specific human rights issues where the European Community and European Law are competent (e.g. in the areas of discrimination, racism and xenophobia). Failure to respect them may result in severe penalties for member states.

5 Conclusions and suggested ways forward

Five key conclusions from the evidence base described in this report are listed below and analysed in detail in the remainder of this Section.

1. The Ministry of Justice should develop a communications strategy for human rights that builds on, and reinforces, the public's positive attitudes to human rights and their protection by law in this country, as identified by the Human Rights Insight Project, and addresses the need to correct public misunderstandings, including those arising from reporting of the impact of the Human Rights Act.
2. The Ministry of Justice should work with other Government Departments, public authorities, the key inspectorates and regulators, the voluntary sector and other interested parties to ensure that information on the application of human rights to public services is:
 - readily available to consumers who need it and
 - proactively supplied to vulnerable people or their representatives when they become dependent on public services.
3. The Ministry of Justice's human rights strategy in relation to Whitehall should make it a high priority, using 'business arguments' based on the Insight Project and related research, to co-ordinate, encourage and monitor the progress of Government Departments:
 - in adopting human rights strategies of their own which uphold and promote the standards and values in the Human Rights Act and recognise the importance of making customer care, based on human rights values, central to service design and delivery, and
 - in facilitating the adoption of equivalent human rights strategies in the public authorities they fund or sponsor.
4. Putting forward the case for Departments and public authorities to:
 - comply with the HRA and develop best practice standards based on a human rights framework
 - make customer care, based on human rights values, central to service delivery and ensure that this message is received and understood by all staff, and
 - provide to managers and decision-makers training and guidance on Human Rights and the HRA that is relevant to their work and demonstrates the application of the HRA in sound decision-making, including where a balance has to be found between rights (e.g. those of the individual and those of the community) and where proportionality has to be brought into play, should be a key element in the Ministry of Justice's human rights strategies in relation to Whitehall and public authorities. In implementing the strategies, the Ministry of Justice should give priority to those Departments and public authorities dealing face-to-face with the public that have yet to make effective arrangements in this field.

5. Supplying advice, guidance and tools to help Departments and public authorities cascade their human rights strategies to front-line staff, and working with other Government Departments and the key inspectorates and regulators to ensure that a range of incentives and disincentives is put in place to support the implementation of those strategies, should be key elements of the Ministry of Justice's human rights strategies in relation to Whitehall and public authorities.

Suggested ways forward

The remainder of this Section explains each of these conclusions in greater detail, with reference to the evidence – from the Insight Project and elsewhere – that supports them and with ideas on how they might be taken forward.

- 1. The Ministry of Justice should develop a communications strategy for human rights that builds on, and reinforces, the public's positive attitudes to human rights and their protection by law in this country, as identified by the Human Rights Insight Project, and addresses the need to correct public misapprehensions, including those arising from reporting of the impact of the Human Rights Act.**

Why?

The review of the relevance of psychological theory to human rights policy which was carried out in parallel to the Insight Project research drew attention to the role bad or confusing publicity plays in encouraging scepticism and resistance to 'values' messages. Persuading public authority managers and staff of the need to construct and implement effective human rights strategies will – at least in theory - be more difficult, therefore, if nothing is done to counter unfavourable media coverage.

This argument finds some support from both the qualitative and quantitative research carried out for the Project. People who attended the workshop carried out as part of the consumer study, and some of the staff interviewed for the provider study, saw value in knowing more about human rights principles. In a number of cases it appeared that the little they had learned about the principles underlying the HRA from the researchers had served to raise their awareness and even improve their opinions of human rights. This suggests that publicising the key principles underlying the HRA could help to 'rehabilitate' human rights in the opinion of those who see problems in the way the Act operates.

The Insight Project research has demonstrated the scope for human rights values to improve public service users' experiences; the Project has also revealed 'human rights' to be a relatively popular concept, particularly when associated with the values that underpin the HRA.

How?

The Ministry of Justice could use a range of methods to disseminate to the public the key message that values embodied by the Human Rights Act are now being used by Government and public authorities, proactively to improve standards of public service delivery (alongside their established uses, by individuals, minorities and their lawyers, to obtain legal redress). In particular,

- not only the Ministry of Justice's Ministers and Press Office, but those of OGDs, could publicly recognise, publicise and explain how the HRA and its underlying principles – applied in a proportionate and balanced way – can bring and are bringing improvements to public services – to include actual examples of action by public services in response to the Act
- consideration could be given to establishing a cross-Government 'rebuttal' capability to counter misinformation in the media about human rights – to include Ministers' letters to editors etc.

- 2. The Ministry of Justice should work with other Government Departments, public authorities, key inspectorates and regulators, the voluntary sector and other interested parties to ensure that information on the application of human rights to public services is:**
 - a) readily available to consumers who need it and**
 - b) proactively supplied to vulnerable people or their representatives when they become dependent on public services.**

Why?

The qualitative and quantitative research with consumers carried out for the Insight Project indicated that – while most people had at least heard of the HRA – few understood what it meant. Around 36% of the general public thought they knew (in the abstract) how to enforce their human rights; among those who had experienced possible human rights breaches in the delivery of health or social services, however, fewer than half had complained at all. Only 3% of these had complained with reference to human rights. Many had not complained because the matter seemed unimportant, but not knowing how to complain accounted for a significant proportion. 7% gave a fear of 'even worse treatment' as their reason for not having complained.

Although 32% of the public mentioned, without prompting, 'being treated with dignity and respect' (a higher proportion than for any other factor) as one of the most relevant factors when dealing with social and health service workers, the proportion mentioning human rights or the HRA specifically was much lower, at 3%. More people recognised human rights, the HRA and the ECHR as relevant when presented with a list in which those factors were included. Among those who regarded human rights and the HRA as not relevant at all, however, being treated with dignity and respect was still recognised as highly relevant. All of this suggests that the relevance of the HRA to public service delivery is not clearly understood by most members of the general public.

Information on the application of human rights to public service delivery is not widely available at present, but it might be argued that this does not matter. Everyone in the UK has human rights, whether they know about them or not.

The duty to respect human rights is on public authorities; there is no reciprocal duty on the public themselves. Arguably, if all public authorities fully respect the human rights of their consumers, the public does not need to know about them.

Unless the public know about their human rights and/or have ready access to information on them when they need it, however, they lack the means to have any neglect or abuse of those rights put right. This removes any possible 'pull effect' from public expectations that might help raise standards of human rights observance by public authorities.

The consensus among the people who attended a day-long workshop conducted as part of the qualitative research for the Insight Project – once the principles underlying the HRA had been explained – was that it was these principles (rather than the Act itself) that should be more widely publicised. The Project has therefore demonstrated not only a case, in terms of current low awareness, but also a public appetite for accurate information on the relevance of human rights to public service delivery.

The case for making information available on the application of human rights principles to public service delivery is strongest in respect of vulnerable consumers who are heavily dependent on public services. The evidence from the Project suggests that these people are most at risk of abuses and least able, because of their vulnerability, to complain effectively.

How?

Measures the Ministry of Justice could put in place to ensure that information on the HRA and its underlying principles and on how to enforce one's human rights, is widely and easily available to anyone who needs it, include:

- revising and updating the Ministry of Justice website and written material on human rights, to include examples of how the courts have criticised and/or found unlawful treatment by public authorities that is not consistent with individuals' dignity etc; how public authorities have improved services in response; and how Government is working with public authorities, professional bodies and academics to produce new guidance to help public authorities abide by the spirit and letter of the HRA
- the Ministry of Justice website on human rights could include pointers to legal services that can advise consumers on human rights matters (or provide general advice on finding a suitable lawyer)
- other Governmental organisations and NGO that host websites, publish information or give advice on legal matters, particularly to vulnerable people (for example, Community Legal Service Direct and Citizens Advice Bureaux) could be invited to include basic information on human rights and links to the Ministry of Justice human rights website.

In addition, the Ministry could work with central Government Departments, key regulators and inspectorates and public authorities to produce appropriate information on human rights for vulnerable people and their representatives – for dissemination, in particular, when major service interventions begin and when part or all of the service user's autonomy is to be relinquished, e.g. on

entering residential care. Distributing relevant information to people receiving, or about to receive, domiciliary or residential care and/or to their families or legal representatives would be a possible way to target the most vulnerable. The Ministry of Justice could work, in particular, in conjunction with the Commission for Social Care Inspection, which advertises its services in relation to residential care homes.

Other possibilities include placing advertising or articles in publications of particular interest to vulnerable people and their families – such as newsletters of the Parkinson’s Disease Society and similar groups – or more generally of interest to potentially vulnerable groups, for example in the Saga magazine for people over 50. The Human Rights Division could obtain useful pointers from the Strategy Development Division’s Education, Information and Advice Strategy team on the best methods of delivering information and advice on human rights to those who need them.

In addition, the Ministry has already set in train work with DfES to support human rights education in schools as part of the citizenship curriculum. The proposals would encompass the provision of information on the Act’s implications for public authorities in the UK and the action Government and public authorities are taking in response, in line with the recommendations of the Ministry of Justice’s Education, Information and Advice strategy.

- 3. The Ministry of Justice’s human rights strategy in relation to Whitehall should make it a high priority, using ‘business arguments’ based on the Insight Project and related research, to co-ordinate, encourage and monitor the progress of Government Departments:**
- **in adopting human rights strategies of their own which uphold and promote the standards and values in the Human Rights Act and recognise the importance of making customer care, based on human rights values, central to service design and delivery, and**
 - **in facilitating the adoption of equivalent human rights strategies in the public authorities they fund or sponsor.**

Why?

The Human Rights Act (HRA) was passed in 1998 and has been in force since 2000. The evidence summarised in this report, however – from public service users, service providers, regulators and other commentators - suggests widespread ignorance and misunderstanding among public authority staff of what human rights and the Human Rights Act mean for public service design and delivery.

All public authorities are bound by the HRA and therefore need to understand the responsibilities it imposes, but most public authorities are not yet realising the benefits to be gained from mainstreaming human rights. As yet, little evidence exists of the effectiveness of **corporate strategies** on human rights in improving service delivery. The qualitative research undertaken for the Project has found some evidence to suggest, however, that wider adoption of human rights principles should increase consumer satisfaction; reduce complaints (as well as the risks of litigation and compensation under the HRA); reduce

tensions between service deliverers and users; increase job satisfaction for public services staff, and improve the ease and quality of decision-making by public service providers. The Ministry of Justice should be able to draw on this evidence to encourage Government Departments and public authorities, not only to meet their legal obligations under the HRA, but also to uphold and promote its standards and values.

So far, the Government has delivered and supported training and issued guidance – largely on a piecemeal basis (except to the legal professions and courts) – but there has been no major push from Government for comprehensive action to mainstream human rights throughout public authorities. Leaving human rights to be mainstreamed (or not) according to the decisions of local managers has been widely recognised as unsatisfactory, however – prompting, for example, the JCHR’s call for a new legal duty to promote human rights. The Ministry has an overall coordinating responsibility and could usefully devise a model or sample corporate strategy.

However, the Ministry is too far removed from the frontline services of other Departments to devise a universal, ‘one size fits all’ strategy – particularly since the Insight Project’s qualitative research with providers strongly suggests that training and other strategies need to be carefully tailored to the needs of staff in the relevant authorities, services and professions or workstreams. Finally, progress on the remaining recommendations of the Insight Project will be greatly facilitated if Government Departments and public authorities create and sustain their own strategies for mainstreaming human rights.

How?

The evidence gathered for the Insight Project suggests that the effectiveness of corporate Human Rights strategies would be maximised by adapting them to the particular circumstances of the relevant work setting. The ‘psychological perspective’ study reviewed in this report noted how most people tend to comply with authority, to abide by public declarations and commitments and to gain motivation from the monitoring and reinforcement of achievement in relation to goals. Corporate managers could effectively build these and other factors into corporate human rights strategies tailored to their own workplaces.

The Ministry could work with the relevant Government Departments, e.g via:

- the proposed Departmental HR Practitioners’ Network and its planned electronic bulletin
- the proposed quarterly Senior Managers’ Group
- bilateral discussions
- presentations to OGD audiences
- networking events such as conferences
- publicity in Departmental and wider Civil Service publications
- support for training in Departments and at the National School for Government.

4. **Putting forward the case for Departments and public authorities to:**
- **comply with the HRA and develop best practice standards based on a human rights framework**
 - **make customer care, based on human rights values, central to service delivery and ensure that this message is received and understood by all staff, and**
 - **provide to managers and decision-makers training and guidance on human rights and the HRA that is relevant to their work and demonstrates the application of the HRA in sound decision-making, including where a balance has to be found between rights (e.g. those of the individual and those of the community) and where proportionality has to be brought into play, should be a key element in the Ministry of Justice's human rights strategies in relation to Whitehall and public authorities. In implementing those strategies, the Ministry should give priority to those Departments and public authorities dealing face-to-face with the public that have yet to make effective arrangements in this field.**

Why?

Both the Insight Project evidence base, and expert opinion from desk research, the Steering Group and elsewhere, support the case for tailored, relevant training for those who need it. Only a few staff interviewed for the qualitative research with Providers carried out for the Insight Project had received training – from the British Institute for Human Rights or, in one case, from the public authority's solicitor – but all had found it helpful. In a number of instances, the training had helped these staff to make decisions that complied with the HRA or to challenge decisions by others that did not. In common with members of staff who had not received such training, they regarded it as essential for training on human rights to be relevant to their work and to situations they were likely to encounter.

The legal responsibilities imposed by the HRA have not, in themselves, been sufficient to lead most Departments and public authorities to train their staff on human rights. Participants in the qualitative research with providers readily recognised the potential for key human rights principles (as outlined to them by the researchers) to improve consumers' experiences and thereby their own working experiences. Appropriate training, tailored and relevant to individual public service providers, professions and workstreams, was most often proposed by staff interviewed for the qualitative study with providers as the way to convey the necessary knowledge. Evidence from the psychological review supports the efficacy of appropriate training and gives pointers to maximising its effectiveness. However, both the qualitative research findings and the constraints under which public services operate suggest that explicit human rights training – as opposed to customer care / care values training - would be best targeted at managers and others who make decisions on services to be delivered to people in need.

Training all public authority staff well on human rights may be a reasonable longer-term aspiration, but is unlikely, for financial and practical reasons, to be achievable in the short term. Some of the most problematic attitudes and behaviour reported to the Insight Project, both in the qualitative research with providers and consumers and in reports consulted as part of the desk research studies, arose among front-line staff who may have received little training on how to treat customers. Some, clearly, were unskilled junior staff, employed by agencies or on a temporary basis. Others may have been highly qualified professionals but trained in an era when service users tended to defer without question to professional opinion and behaviour. Finding time for additional training, away from their frontline delivery responsibilities, may also cause difficulties for staff at any level and for their employers.

Instead, the evidence from the qualitative research suggests that significant 'quick wins' would ensue if each public authority service provider were to adopt a simple, easily transmissible corporate message about customer care and customer service values. Effective corporate espousal and dissemination of an appropriate message would help to promulgate and sustain attitudes and behaviour that uphold human rights values, reducing the likelihood of all degrees of poor consumer experiences including human rights breaches.

How?

Where corporate human rights strategies are introduced, they could include strategies for conveying to all staff dealing directly with the public a corporate message of high expectations around individualised customer care. Such messages could reflect, although not necessarily draw specific attention to, the principles underlying the Human Rights Act to which reference was made in the Insight Project research:

- being treated with dignity and respect
- respect for private and family life (privacy)
- confidentiality
- fairness and involvement in personal decision-making
- right to life
- freedom of thought, conscience and religion
- freedom from discrimination.

To be effective, the customer care message needs to be conveyed to all staff in every workplace in which public authority staff deal directly with the public (whether their dealings are face-to-face, by telephone or in correspondence) and to be capable of being conveyed quickly and simply to new recruits and temporary staff. The Ministry of Justice and central Government Departments can advise, but local managers in public authorities and individual service providers (workplaces) could be invited to help identify the appropriate messages and methods of transmission for their profession or workstream within individual public authorities and workplaces.

Such messages would need to be sufficiently simple and central to service delivery, for local managers to be able to convey them immediately to staff new to the workplace. Though founded on key human rights principles,

including fairness, respect, confidentiality, equality and dignity, reference to the HRA would not be necessary. The appropriate message and the action needed to promulgate it could be a key element in the individual corporate human rights strategies of Departments and public authorities.

As part of its strategy in relation to Whitehall and public authorities, the Ministry could encourage the incorporation of the customer care message, by way of service providers' corporate strategies, into basic training for all staff. The Insight Project's qualitative research with consumers and providers, as well as the psychological study, all suggest that basic training in this field should seek to elicit, encourage and uphold empathic and imaginative responses to people with difficulties of kinds that staff may encounter in their working lives, such as physical or communicational impairment. Films, role-play and other methods to encourage able-bodied staff to 'put themselves in the shoes' of vulnerable customers, such as spending part of their day in a wheelchair or wearing dark glasses, may be appropriate.

It would be desirable for as many staff as possible to receive interactive, face-to-face training in customer care, either during their professional training or as induction training or continuing professional development, or similar, within their public authorities. The Ministry and the funding/sponsoring Departments may wish to consult the professional bodies on including customer care modules in the relevant professional qualifications. Cross-discipline training by those with particular expertise may be appropriate in some cases.

Target-driven organisations that lack a unifying vision of customer care could be prioritised for attention. In organisations that already prioritise customer care and individual needs, arrangements for spreading the corporate message to all staff may already be in place. These could be reflected in any corporate human rights strategy.

Other possibilities in relation to customer care that might be considered for inclusion in corporate strategies include making it a key responsibility, in all professions and workstreams within public authorities, of managers at any level who deal, or whose staff deal, with the public, to champion, model and transmit the customer care message; and to monitor and applaud / reward competence in this area, e.g. by publicity in internal communications and those of the professional bodies.

Measures below the strategic level that the Ministry of Justice and the central Governmentfunding/ sponsoring Departments might consider encouraging public authorities to adopt, as symbols and measures of their adoption of the customer care ethos, include:

- ensuring that customers have ready access to statements of the services and standards they are entitled to expect – which might be in the form of reciprocal “Charters” (the Ministry of Justice may wish to refer to the example HM Courts Service has in preparation, on witness services)
- issuing such statements on an individual basis where appropriate, e.g. to customers receiving domiciliary care, so that the customer or his/her

representative can tell if services or standards are falling short and can make enquiries or complain

- ensuring that there is an avenue of complaints open to customers other than the direct line management of the service / member of staff concerned; that complaints are dealt with seriously, full explanations are given and no reprisals ensue
- replacing prohibition/ admonishment notices in public areas (e.g. “If you abuse our staff, we will...”) with messages recognising reciprocal rights and responsibilities (e.g. “We aim to treat you with respect; please respect us in return”), or at least using a less peremptory tone to promote co-operation (‘Please...’)
- providing information, regularly updated, in the event of any shortfall in services against customers’ reasonable expectations, e.g. about waiting times where staff are running behind schedule
- looking for opportunities to involve and consult customers and their representatives, and
- considering incorporating these or similar measures into their corporate human rights strategies.

Training for decision-makers and managers – though best taken forward in a person-centred, ‘customer care’ focused, context - needs to follow a different approach. The dilemmas raised by respondents in the qualitative research with providers, together with the opinions of academics and other experts consulted as part of the project, suggest that explicit human rights training for managers who deliver, or whose staff deliver, front-line services to the public should (among other things) help them to:

- recognise and understand the relevance of the HRA to the services they and their staff deliver and to the challenges they are likely to face in their work
- understand how the HRA can help them make sound decisions, e.g.:
 - where the human rights of one party have to be balanced against those of another or against the community, taking into account such issues as public safety (in human rights terms, others’ rights to life, liberty, security, freedom of expression etc)
 - where a balance needs to be reached between someone’s human rights and the requirements of other legislation such as the Mental Health Act, or
 - where proportionality has to be brought into play, e.g. because of an apparent clash between someone’s human rights and financial or other constraints on the public authority’s ability to accommodate those rights
- convey to staff the need to report back to them on situations where service delivery appears unsatisfactory, either in absolute terms or to the individual receiving it or their representatives, with a view to pre-empting human rights breaches or challenges
- know where to go for further information, advice and support on human rights issues.

- 5. Supplying advice, guidance and tools to help Departments and public authorities cascade their human rights strategies to front-line staff, and working with other Government Departments and the key inspectorates and regulators to ensure that a range of incentives and disincentives is put in place to support the implementation of those strategies, should be key elements of Ministry of Justice's human rights strategies in relation to Whitehall and public authorities.**

Why?

The Insight Project research and other sources indicate that the HRA is perceived as having had little influence over service delivery over the five years it has been in operation. Furthermore, many instances of service delivery in conflict with human rights principles have come to attention through the Insight Project, other research studies and media reports. Few, if any, staff interviewed for the qualitative provider study appeared to know whether their employer had a corporate strategy on human rights, and in some cases their understanding differed from that which had led to the inclusion in the study of the public authority concerned. The Project also found no evidence that any explicit corporate human rights strategies (other than training) have had any influence on the attitudes or behaviour of front-line staff. (As explained in section 1.4.2 of this report, however, this finding is extremely tentative owing to the uncertainties and imperfections of the selection for the research of public authorities believed to have put such strategies in place, together with the short period for which any such strategies could have been in operation.)

These considerations argue powerfully for every available means at the Government's disposal to be used to support the wider implementation of human rights principles by public authorities. In particular, guidance, which the Ministry of Justice is now well-placed to formulate from the evidence base supplied by the Insight Project and other research, is needed on the contents, methods and evaluation of human rights strategies. The qualitative research with providers suggested that most priority and attention is accorded to aspects of service delivery which are monitored and measured – particularly where achievement is recognised and rewarded. Monitoring performance and including human rights principles in a range of rewards and sanctions would be an obvious way of raising the profile and indicating the importance of human rights in service delivery.

How?

The Ministry of Justice could develop, in consultation with relevant organisations and experts, generic guidance to managers on the relevance of human rights to service delivery. This could, for example, be in the form of training materials or a basic toolkit / desk guide for managers, which could be made widely available through the Ministry's human rights website.

The evidence from the qualitative research with providers would suggest that Government Departments, public authorities and professional bodies should then use the proposed generic guidance from the Ministry of Justice as a basis for producing further material adapted to the needs of managers in

individual professions/workstreams and in individual public authorities/service providers, in consultation with the relevant regulators and inspectorates and professional bodies.

Another possibility that might be helpful to lawyers, managers and trainers in the relevant Government Departments and in public authorities is the provision of a source and means of ready access to relevant and regularly updated human rights case-law from the European Court of Human Rights and the higher UK courts. The Ministry may wish to explore the possibility of service-specific databases, along the lines of the NHS Litigation Authority website, linked to a central database that it could hold or sponsor.

Standards in most large-scale public services dealing face-to-face with the public are monitored by the Audit Commission and/or inspectorates or other regulators: the relevant bodies in the fields of health and social services are the Healthcare Commission, the Commission for Social Care Inspection, the Mental Health Act Commission and OFSTED (in respect of children's social and care services, as well as education). Specific Inspectorates monitor standards in other services such as the police, prisons, immigration and the courts.

The Audit Commission, the Healthcare Commission and the Commission for Social Care Inspection are already committed to monitoring compliance with human rights principles through their inspections. The Ministry of Justice could draw on their experiences, together with the evidence base from the Insight Project, to identify the most effective approaches and additional initiatives. Along with the central Government funding/sponsoring Departments, the Ministry could discuss with the relevant regulators and inspectorates the scope for increasing guidance on and monitoring (including by self-assessment) of standards of delivery by public authorities in relation to human rights and for the identification, dissemination and rewarding of good practice. Key to this would be the raising of awareness that human rights are fundamental to a quality service, alongside time and efficiency factors, rather than extras to be considered if time and efficiency allow.

In addition, consideration could be given to promoting good customer care (reflecting the principles underlying the HRA) as an essential element in professionalism by creating and promoting special awards and/or including it in existing award schemes such as the Charter Mark scheme (Cabinet Office 2004 Charter Mark Standard). Improving the recognition and professional standing of "gatekeepers" to services, such as receptionists, might also help to increase their motivation to ensure high standards of customer care.

Measuring customers' perceptions and recording the results could be an important aid to evaluating and improving customer care aspects of service delivery and, potentially, to rewarding good performance and identifying and disseminating good practice. Systems for obtaining feedback are already in place in some public services: for example, through national patient surveys in the NHS.

The review of psychological perspectives summarised at in Section 3.2 of this report recommended the involvement of psychological expertise in devising appropriate questions for customer surveys and analysing the results. The evidence gathered for the Insight Project would suggest the use of appropriate proxy language in questions to customers for this purpose, as identified in the research: a possible example might be “On a scale from 1 to 5... did you feel you were treated like a number, or as an individual?” Care would be needed to ensure that customers (or their representatives) from vulnerable groups such as older, disabled or communication-impaired people were fully represented when feedback is obtained. Opportunities for more detailed customer feedback of a qualitative nature might also be explored; this might help to assure customers that their individual needs and concerns are recognised and valued.

The Impetus for the Human Rights Insight Project

The Human Rights Act 1998 – intentions and potential

“Something is happening: a different Zeitgeist, a shift in the legal tectonic plates. The issue of human rights may once have been considered the eccentric preserve of activists monitoring abuses in countries considered to be less civilised than our own, but all that is now changing” (Helena Kennedy QC). When this statement was made, Helena Kennedy was referring to the introduction of the Human Rights Act 1998 and the shift that the Act was expected to make in the way the State interacts with its citizens. The passing of the Act clearly marked a new era, or at least the anticipation of a new era, in Britain, as “Rights [were] Brought Home”⁸.

The most obvious change brought about by the Act was that, for the first time, anyone who felt that their rights under the ECHR had been breached could look to a UK court or tribunal for redress, rather than taking their case to the European Court of Human Rights in Strasbourg. In addition, however, the HRA is different from all other laws on the statute book in that it influences all relevant legislation and policies whenever they were introduced⁹. Specifically, Section 3 of the Act requires all laws and regulations to be interpreted and given effect in a way that complies with the rights in the Act “so far as it is possible to do so”. Section 2 requires the courts, when making judgements on human rights issues, to take ECHR case law into account, and Section 4 allows them to make ‘declarations of incompatibility’ in relation to provisions of primary legislation which Government then has to decide how to rectify. Section 6 makes it unlawful for a public authority to act in a way that is incompatible with a Convention right. Ministers are also required by Section 19 to certify the compatibility of new Bills introduced to Parliament (or to certify, in the absence of a statement of compatibility, that the Government nevertheless wishes the Bill to proceed).

However, even in its very early days, the Human Rights Act was seen as much more than litigation. It was intended that its underlying principles would exert a persuasive influence on behaviour because it provides “an ethical language we can all recognise and sign up to, a ... language which doesn’t belong to any particular group or creed but to all of us. One that is based on principles of common humanity”. (Jack Straw 1999). The then Home Secretary also said: “The Human Rights Act will help us rediscover and renew the basic common values that hold us together. And those are the values which inform the duties of the good citizen. I believe that, in time, the Human Rights Act will help bring about a culture of rights and responsibilities across the UK” (Jack Straw 2000).

⁸ “Rights Brought Home” is the title of the White Paper that introduced the Human Rights Bill.

⁹ The only close parallel is EU law although this applies only to areas where the EU has ‘competence’ (see establishing Treaties).

The HRA was introduced in the hope of gradually contributing to the development of a new framework where individuals' human rights would be better protected and respected. This new framework would allow human rights to be used as a code of conduct, while public authorities' decision-making would always be filtered through the principles underlying the HRA. During the Bill's passage through Parliament, the Parliamentary Under-Secretary of State for the Home Department said that one of the results of the new Act "would be the beginning of the strong development of a human rights culture" (O'Brien 1998).

The Parliamentary Joint Committee of Human Rights (JCHR) suggested that the desired 'culture of human rights' could be characterised as having three components:

- "First, a sense of entitlement. Citizens enjoy certain rights as an affirmation of their equal dignity and worth, and not as contingent gifts of the state.
- Second, a sense of personal responsibility. The rights of one person can easily impinge on the rights of another and each must therefore exercise his or her rights with care.
- Third, a sense of social obligation. The rights of one person can require positive obligations on the part of another and, in addition, a fair balance will frequently have to be struck between individual rights and the needs of a democratic society and the wider public interest" (JCHR 2002).

The reality

Three years ago, two authoritative reports suggested that the Government's intentions in relation to the establishment of a human rights culture had not been fulfilled.

The JCHR said: "The Act has not given birth to a culture of respect for human rights or made human rights a core activity of public authorities ... Too often human rights are looked upon as something from which the state needs to defend itself, rather than to promote as its core ethical values. There is a failure to recognise the part that they could play in promoting social justice and social inclusion and in the drive to improve public services. We have found widespread evidence of a lack of respect for the rights of those who use public services, especially the rights of those who are most vulnerable and in need of protection" (JCHR 2003).

A study carried out in 2003 by the Audit Commission with 175 bodies from the local government, health and criminal justice services reported that:

- three years on from implementation in 2000, the impact of the Act was in danger of stalling and the initial flurry of activity surrounding its introduction had waned;
- 58% of public bodies surveyed still had not adopted a strategy or a corporate approach to human rights. In many local authorities, the Act had not left the desks of the lawyers. Most local authorities

continued to review policies and practices on a piecemeal basis and to respond to case law. In the health sector, the picture was worse: the new strategic health authorities were not monitoring the performance of health trusts in this area and primary care trusts (PCTs) had neither the capacity nor resources to respond to the implications of the Act. Mental Health Trusts were better prepared because of developing case law.

- In health, 73% of trusts were not taking action. Health bodies consistently lagged behind other public services.
- The biggest risk to public bodies was their lack of arrangements for ensuring that their contractors and partners were taking reasonable steps to comply with the Act. 61% of public bodies had failed to act. Although some improvement had been made since May 2002, this continued to be a major area of weakness for public bodies.
- Of 175 public bodies surveyed, only one council had made general information on the Act available to the public. Organisations were reluctant to promote human rights with citizens and their communities because they feared an increase in the number of complaints raising human rights issues. Most 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.

These verdicts were reminiscent of the findings of a 2002 qualitative study carried out by the British Institute of Human Rights with questionnaires and interviews with members of the voluntary sector. This study reported that:

- "...there is little or no understanding of the HRA as a useful framework for public service providers within which problems can be resolved and risks assessed, and within which the needs of individuals in the provision of services can be considered..."
- "...individual members of staff in public services have no understanding of their responsibilities under the HRA..."
- "...awareness of the Act has not in general spread outside the legal field..." (BIHR 2002).

More recently, a 2004 qualitative study carried out by the Institute of Public Policy Research (IPPR) with voluntary sector bodies said that "the potential contribution that the HRA and its underlying principles could make to social justice is waiting to be realised" (IPPR 2004).

Reports on similar lines continue. In 2005 while the Insight Project was gathering its evidence, a Help the Aged report, "Rights at Risk" reported that, "At present, the Human Rights Act is not working effectively to protect older people. While the ideal is admirable, it is not matched by reality as far as older people are concerned." (Help the Aged, 2005)]

Many authoritative observers, therefore, are united in the view that more needs to be done to make a reality of the aspirations that were attached to the Human Rights Act in relation to public services.

The Government's response

Since 1998, the Government has taken the following major steps in promoting awareness and the right usage of the HRA.

- It set up a Human Rights Unit in the Home Office (moved to DCA and renamed the Human Rights Division in 2001).
- It set up a Human Rights Task Force in 1999 (dissolved in 2001) to help Departments and other public authorities to prepare for implementation of the Act and to increase awareness, especially among young people, so as to help build a human rights culture in the UK.
- It spent some £5.5 million to enable courts and tribunals to receive training in their responsibility for giving direct effect to the rights protected by the HRA.
- It publicised the Act by means of roadshows for public authority staff and by making guidance available on Government websites and in various guides and leaflets.

Responding to enquiries from the JCHR in 2003 about what further steps were proposed, the Lord Chancellor said: "...It is incredibly important that I take all the steps that I can, as a Minister, and through my Department, to promote a human rights culture right through Government and beyond. There are four things I can identify that indicate a strategic approach:

- The first...is the setting up of a commission...I think that is a very important signal, that the Government cannot do it alone;
- [second] it is making Government review how it is mainstreaming human rights;
- [third] it is making connections with outside bodies [e.g. Audit Commission]; and
- [fourth] it is making sure that the review of our obligations under various international instruments comes to an end as quickly as possible" (Lord Falconer, 2003).

DCA's Human Rights Division and Strategy Development Division, recognising the need for an evidence-based strategy to help Government take these four steps, set up the Human Rights Insight Project in December 2004.

The Project's findings and recommendations are intended to be of help to the Government as it enters a new phase in the development of its human rights work and policy, leading up to the establishment of the Commission on Equality and Human Rights in 2007. The then Minister for Human Rights, the Rt Hon Harriet Harman QC MP, explained to the Parliamentary Joint Committee on Human Rights in an Evidence Session on 16 January 2006 that the Government was currently embarking, in its third term, on phase 3 of its human rights programme.

As the Minister explained, phase 1 had begun with a detailed examination of laws and procedures for compatibility with Convention rights, followed by a

substantial programme of training for judges and lawyers and the passing of the Human Rights Act in 1998 and its coming into force in October 2000.

In its second term the Government undertook phase 2, assimilating the Human Rights Act into the workings of the courts, the legal systems and public authorities and establishing a Ministerial Forum on Human Rights where the principal non-Governmental organisations and pressure groups can put their concerns directly to Ministers.

For phase 3, the Minister explained, "What we are intending to do...is take the human rights issue beyond policymakers, lawyers and the courts. The acknowledgement of and respect for human rights should not be just in police stations and prisons but also in care homes, in hospitals, social services departments. Human rights protection is important for all who are vulnerable, not just where they are so by virtue of being a suspect in a police station or a criminal in prison but also if they are vulnerable because they are elderly or because they are elderly in a care home. We will be providing guidance to managers and staff across our public authorities about how to put these values into practice. That is very much part of our third phase."
(Harman 2006)

Objectives of the Project

The detailed objectives of the Project were:

1. To help develop proposals for realistic policy initiatives that the DCA could adopt to drive forward improvements in the application of human rights principles by public services, in a way that delivers tangible and measurable benefits to the DCA's consumers and potential consumers.
2. To gain an understanding of public awareness of, and attitudes towards, their human rights, in particular:
 - understanding of what 'human rights' means to people and what are the most important elements of it to them.
 - current awareness of their human rights.
 - awareness of where to find out about their rights if there was a problem.
 - understanding of whether awareness of human rights correlates with any views of the quality of public services or views on government/state bodies.
3. To understand the above, particularly in relation to:
 - those segments of the population most likely to use public services and
 - those segments of the population who are particularly vulnerable to breaches of their human rights and/or are less able to assert their rights/access public services.
4. To gain an understanding of the current ethos that exists among public services in terms of their HRA obligations and of frontline staff/managers' awareness/knowledge of, and attitudes towards, the HRA and human rights:
 - understanding of what 'human rights' means to them and what are the most important elements of it to them;
 - current awareness of human rights and the HRA;
 - awareness of how to deal with complaint procedures and alleged human rights breaches;
 - understanding of whether awareness of human rights correlates with any views of the quality of public services or views on government/state bodies;
 - any links/overlaps between equality and human rights regulations and procedures already in place;
 - how often public services make information on the HRA and its underlying principles available to the general public.
5. To gain evidence and understanding of the effect that introducing human rights has on the quality of delivery of public services, the satisfaction of end-users and job satisfaction for deliverers.

The relationship between human rights and customer satisfaction factors

Specifically raising awareness among providers might feed through into more satisfactory and HRA-compliant service provision (a 'push' effect), regardless of whether consumers knew in any detail about their rights. Raising awareness among consumers, on the other hand, might engender a 'pull' effect if it gave them sufficient knowledge to expect or demand their rights.

The Phase 1 report of the Project reviewed evidence from the extant literature suggesting that the significance of various customer satisfaction factors is not the same. For instance, the absence of some factors (e.g. reliability) can have a strong impact on dissatisfaction levels, while the presence of the same factors may sometimes be taken for granted. In this case, increased performance may not lead to higher satisfaction levels. Moreover, people may be willing to tolerate small movements in some of these factors without any impact upon their satisfaction with a service (PIU 2001). The following Table provides a more thorough explanation of the different types of factors that may influence customers' satisfaction with services.

Types of Factors	Description
Dissatisfying factors	If such factors are perceived to be inadequate then dissatisfaction will result, but any increase in performance above adequacy has little effect on perceptions. For example, the presence of a dirty fork is likely to make customers dissatisfied, but a very clean fork is unlikely to add to satisfaction.
Satisfying factors	When improved beyond adequacy, these factors can have a positive effect on perceptions. When these factors are present though there is little effect on satisfaction. For example, if a waiter does not remember a customer from a last visit to the restaurant, then it is unlikely that this will create dissatisfaction. However, if the waiter does remember the customer then it is likely that he will be delighted.
Critical Factors	These are factors where changes in performance affect both satisfaction and dissatisfaction ratings. In the example of a restaurant, slow service can cause dissatisfaction, while speedy service can increase satisfaction.
Neutral factors	Here satisfaction is not responsive to changes in performance.

Types of customer satisfaction factors

Phase 1 (Consumers) concluded that human rights most often fall under the first category of dissatisfying factors. This means that dissatisfaction will result if they are perceived to be inadequate, but any increase in performance above adequacy will have little effect on perceptions. For example, a breach of the human rights principle of respect for dignity is likely to decrease satisfaction

significantly. However, compliance with the same principle is unlikely to increase satisfaction as the right is taken for granted. Thus any measurement of improvement is likely to be difficult, as users may not recognise the improvement.

This does not mean that standards cannot or should not be improved. On the contrary, human rights are factors that are taken for granted because consumers assume that they are already applied. Failure to respect human rights – even if only rarely or occasionally - is likely to result, not only in dissatisfaction, but in great disappointment; it can also infringe the law. Consistency in respecting human rights is therefore likely to be an important factor in customer satisfaction as well as a legal and ethical requirement.

The concepts and advantages of mainstreaming human rights and establishing a 'business case'

The concept of 'mainstreaming human rights', as used in this report, draws on the definition in the Council of Europe 1998 Equality report. It encompasses the reorganisation, improvement, development and evaluation of policy processes, so that a human rights perspective is incorporated in all policies at all levels and at all stages by the actors normally involved in policymaking (Council of Europe 1998).

The inclusion in the HRA of a mechanism whereby Ministers would be required to identify whether or not proposed legislation was in compliance with the Act when measures were presented to Parliament can be seen as mainstreaming human rights within central Government – a function in which the Parliamentary JCHR plays a significant role. However, mainstreaming is not just about legislation, nor litigation. Mainstreaming strategies would require government and public authorities to consider human rights in a proactive rather than a reactive or remedial way.

Effective mainstreaming strategies would need to take into account the perspectives of users as well as those of the providers of services, and to be capable of being integrated into the activities of those primarily involved in policymaking. They would aim, not at replacing legal compliance mechanisms, but at complementing them. They would help public authorities move away from the legalistic way of understanding and protecting human rights and bring them closer to the ethos and the principles of the HRA. Potentially and in theory, they would also reduce the risk of human rights breaches and therefore human rights claims.

It is useful to consider the following typology of different State obligations that may arise in the human rights context. This account will facilitate a clearer understanding of 'mainstreaming'.

First obligation: the duty to respect

The first obligation human rights put on the State and its public authorities is to refrain from infringing a human right directly through its own actions. To give an example, it would be both legally and morally problematic for the State (e.g. a public service such as an NHS trust) to subject an individual to degrading treatment. This obligation is clearly stated in Section 6 of the HRA, which makes it unlawful for a public authority to act in a manner that is incompatible with the rights contained in the European Convention on Human Rights. To conclude, there is a direct legal requirement that public authorities themselves make sure that their own actions are in compliance with HRA rights.

Second obligation: the duty to protect

This obligation places the state under a duty to prevent a right from being infringed by actors other than the state. In the UK context, this obligation is often described as involving the ‘horizontal’ effect of the HRA. For example, the right not to be intentionally deprived of life, provided in Article 2 of the HRA, has been interpreted as imposing an obligation on the State to protect people against threats in some circumstances and to ensure that those responsible can be made legally accountable¹⁰.

Third obligation: the duty to fulfil

The last obligation requires the State to facilitate access to human rights or to provide these rights directly through the use of state power. In the UK context this obligation is referred to as “positive obligations”. For example, Article 3, which protects freedom from inhuman or degrading treatment, has been interpreted to include a duty on the State to continue to permit an individual suffering from AIDS to reside in the UK and not to be deported to a country that was unable to provide effective medical treatment¹¹.

At present, enforcement of these three obligations is largely in the hands of the courts acting on complaints by victims of alleged violations of convention rights. These allegations have to be based on legal grounds and cannot extend beyond what is clearly stated in the Act – although the ECHR and the HRA are purposive pieces of legislation. This explains why legal compliance has so far been only within the context of the first obligation: duty to respect.

To encourage the fulfilment of all three State duties (respect, protect, fulfil), human rights will have to be approached both within and outside courts. The latter can be achieved by mainstreaming them in public authorities.

It becomes apparent that the role that ‘mainstreaming’ could play in the future implementation of human rights and the promotion of a ‘human rights culture’ is partly dependent upon the extent to which the State and public authorities accept all three types of obligations: to respect, to protect and to fulfil human rights. However, one major uncertainty involved in this process lies in the extent to which the last two obligations (duties to protect and to fulfil) are seen by public authorities as sufficiently important to stand alone without judicial back up. In the absence of a clear legal requirement for these two types of duties, the need for a mechanism particularly suited to ensuring governmental compliance with them becomes apparent. The question is whether public authorities can be convinced to take up such mechanisms, particularly since they will be seen as additional to their statutory duty to respect. In order to convince them, a business case will be required, with strong arguments based on potential advantages to providers rather than on morality.

¹⁰ See for example *Osman v UK*, 5 BHRC 293, ECtHR (1998); *Z v UK* (2002) 34 EHRR 3.

¹¹ *D v UK* (1997) 24 EHRR 423

The comparative element of the Project: selection of public authorities for Phase 2 research with providers and vulnerable consumers

For the “Providers” strand of Phase 2 of the Project:

The “supposedly corporately aware” group of Social Services Departments belonged to Local Authorities that were known to have taken some positive action to introduce human rights: specifically, they had *either* undergone training in human rights from the British Institute of Human Rights *or* were mentioned favourably in the Audit Commission’s 2003 report on human rights as having introduced human rights in their corporate planning, policies or procedures. In some cases, both of these applied.

In addition, regard had to be paid to the 2004 star ratings (the latest available when the study began) of Social Services Departments by the Commission for Social Care Inspection (CSCI). Although the CSCI ratings relate only partially and indirectly to human rights, introducing an external measure of Social Services’ performance was necessary because of the reliance that had to be placed on star ratings in the selection of ‘supposedly corporately unaware’ Social Services Departments, and of both ‘supposedly corporately aware’ and ‘supposedly corporately unaware’ NHS Trusts (as explained below). To maximise the likelihood of discernible differences in attitudes and behaviour between the ‘supposedly corporately aware’ group of Social Services Departments and their comparators, only those that had been allocated two, or the maximum of three, stars in the 2004 CSCI ratings were included as ‘supposedly corporately aware’.

The selection of the ‘supposedly corporately aware’ group of NHS Trusts hinged on the ‘supposedly corporately aware’ status of the relevant Local Authority Social Services Departments. In the absence of any reliable information on the extent to which individual NHS Trusts had introduced human rights, the 2005 star ratings (again the latest available when the study began) of the Healthcare Commission (HCC) were key to the selection of ‘supposedly corporately aware’ and ‘supposedly corporately unaware’ Trusts. When an area’s Local Authority Social Services Department qualified as ‘supposedly corporately aware’ under the criteria set out above, any NHS Acute, Mental Health or Primary Care Trust serving that area also qualified as ‘supposedly corporately aware’ provided it had been awarded two, or the maximum of three, stars in the HCC’s 2005 ratings

‘Supposedly corporately unaware’ NHS Trusts were Acute, Mental Health and Primary Care Trusts which had obtained zero or only one star in the HCC’s 2005 rankings. None of these was known to have taken positive action to introduce human rights.

'Supposedly corporately unaware' Social Services Departments were those which, similarly, had been awarded zero or only one star by the CSCI in 2004 – excluding any that were believed to have taken positive action to introduce human rights. (One of these Social Services Departments was understood to have undertaken human rights training, and was therefore excluded from the study.)

* After considerable effort on the part of the research agency and recruiters, it proved impossible to recruit certain categories of staff from certain 'supposedly corporately aware' and 'supposedly corporately unaware' Social Services Departments and NHS Trusts in the North of England to fit the original sample design. Since, by this stage, it was apparent that there were no significant differences detectable between staff from 'supposedly corporately aware' and 'supposedly corporately unaware' public authorities, it was agreed that staff could be recruited from any comparable Social Services Department or Trust in the North or Midlands (i.e. without reference to whether their employer fitted the criteria for 'supposedly corporately aware' or 'supposedly corporately unaware' authorities).

For the “Consumers” strand of Phase 2:

Only the quantitative research with vulnerable groups attempted to contrast the experiences etc of people living in areas where the main providers of health and social services qualified as either 'supposedly corporately aware' or 'supposedly corporately unaware' under the above criteria. (The quantitative research with the general population was conducted by means of omnibus surveys, for which people were recruited on a random basis across Great Britain.)

For ease and clarity of comparison, only those areas where both the Local Authority Social Services Department and the key NHS Trusts (normally, Acute and Primary Care Trusts) both qualified as either 'supposedly corporately aware' or 'supposedly corporately unaware' were included. Areas where the provider of either health or social services failed to match the 'supposedly corporately aware' or 'supposedly corporately unaware' status of the provider of the other service were excluded from the study.

The 'supposedly corporately aware' and 'supposedly corporately unaware' areas thus chosen for the quantitative research with vulnerable groups were known, for convenience, as 'informed' and 'uninformed' areas respectively.

Factors determining the relative suitability of qualitative and quantitative research methods

Qualitative methodologies enable researchers to start with open minds and find out, by asking respondents, what they see as the values that underlie their behaviour; to reach a wide and deep understanding of the issues and attitudes that affect people; to search for patterns and themes; and to adapt their approach in response to what they find. Qualitative methodologies are also especially appropriate when the issues under consideration are difficult for respondents to understand, and where there is likely to be a strong emotional component to people's responses.

Qualitative research samples are generally far smaller than is the case for quantitative research, where the findings are required to be statistically representative. Smaller samples allow the full exploration with participants of themes, ideas and connections. It is the job of the qualitative researcher to guide the discussions with participants, keep full records, analyse them in detail and draw out, in their report, the themes, ideas and conclusions that will assist the client in understanding the areas which the research was required to illuminate. Where appropriate, quotations from respondents are used verbatim in qualitative research reports, to illustrate these ideas and conclusions.

Quantitative research methodologies, by contrast, are employed in representative studies where the conclusions need to be numerically based and demonstrably representative of a wide population. The questions put in quantitative surveys normally need to be specific so that the answers can be classified into numerically significant categories, from which broad generalisations – which lend themselves to diagrammatic representations in graphs and pie-charts - can be made. The ideas and comments of individuals are often neither recorded, nor included in reports of quantitative research studies. Adjustments are usually ruled out during quantitative research, as they risk invalidating portions of the results. Since quantitative methodologies exclude a broader range of response, they are usually less suitable for research of an exploratory nature.

In the case of the Human Rights Insight Project, qualitative research was initially necessary in order to explore issues around human rights that are not well understood, such as: what people understand by the term 'human rights'; where human rights impact on their receipt or, for providers, delivery of public services and whether they recognise this; what kinds of thinking and behaviour are conducive to the protection of human rights and what kinds of thinking and behaviour risk breaching human rights. Qualitative research with public service users identified themes in these and other areas which were then explored further in quantitative research with the general public and more vulnerable, frequent users of public services.

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Human Rights Insight Project

This report presents the findings from the Human Rights Insight Project, which set out to establish whether human rights could be used empirically as a tool to improve the public's experiences of public services and if so, how we in Government could encourage and facilitate this.

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