

Human Rights in a Health Care Setting: Making it Work for Everyone

An evaluation of a human rights-based approach
at The State Hospital

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Introduction

Eleven years on from the introduction of the Human Rights Act 1998 many public authorities are faced with the challenge of putting human rights at the heart of their day-to-day operations. This year the Scottish Human Rights Commission (the Commission) undertook an independent evaluation of the experience of a Special NHS Health Board which has sought to adopt a human rights culture. The results provide practical lessons for other public authorities.

The State Hospital, located in Lanarkshire, is the high security forensic mental health hospital for Scotland and Northern Ireland. It provides psychiatric care in conditions of high security, for persons with mental illness who are compulsorily detained under mental health or criminal law.

In 2000, a critical report by the Mental Welfare Commission into the treatment and care of a particular patient, allied with the NHS Board's drive to build on the changing culture throughout the 90s, prompted The State Hospital to conduct a fundamental examination of its human rights practice. A decision was taken to use the Human Rights Act as a vehicle for cultural change, to put the human rights of everyone – staff, patients, carers and family members – at the heart of The State Hospital's services.

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What is a Human Rights-Based Approach?

A human rights-based approach (HRBA) means putting human rights considerations at the centre of all policies and practices. In this way human rights are seen as both a means (a way of doing things), driven by human rights standards and principles, as well as an end to be achieved. The Commission promotes a HRBA which emphasises the following principles:

- P** Participation: everyone has the right to participate in decisions which affect their human rights.
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- A** Accountability of duty-bearers to rights-holders: this requires both effective monitoring and effective remedies.
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- N** Non-discrimination and equality: all forms of discrimination in the realisation of rights must be prohibited, prevented and eliminated.
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- E** Empowerment of rights holders: everyone should know their rights and be supported to participate in decision making, and to claim their rights where necessary.
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- L** Legality: public authorities should expressly apply the Human Rights Act and link to international and regional rights standards.
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What The State Hospital did to adopt a HRBA

Following a decision by the Board to adopt a HRBA, The State Hospital established a Human Rights Working Group led by senior management and involving clinical and non-clinical members of staff. The Group underwent training in human rights with a human rights expert who helped them to identify specific human rights which were relevant to The State Hospital. Through discussions with around 100 staff and patients, the Group assessed all policies and practices using a Traffic Light assessment tool:

Red – policy/ practice is not human rights compliant;

Amber – policy/ practice has significant risk of non-compliance;

Green – policy/ practice is human rights compliant.

No policy was given the red light and many were given a green light. However, some policies and practices, such as those related to seclusion and restraint, were given an amber light and further policy development and training needs were identified accordingly.

The Group worked with a human rights expert to develop human rights training for staff and tools for the assessment of future policy and practice. Other steps taken included the creation of a forum for staff, patient, and carer involvement in decisions, and ultimately the creation of an Equality, Diversity and Human Rights Group to ensure a human rights approach to the delivery of equality duties.

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Why we undertook this evaluation

The Commission's general duty is to promote human rights and best practice in relation to human rights in Scotland. To deliver on this duty we have made the promotion and protection of human dignity in care through a HRBA our main priority for 2008-2012. This independent evaluation of one of the most advanced efforts to put human rights into the day-to-day practice of a Scottish public authority is part of that work.

We wanted to know: did the human rights-based approach work? Why? What benefits did it bring? What challenges remain?

With these lessons we hope to work with other public authorities in the health and social care sectors as well as others to support them to take a human rights approach.

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How we undertook the evaluation

Following approval from The State Hospital research committee the Commission worked with national and international experts on mental health, human rights and research methodology, as well as a research consultant, to develop a methodology for the evaluation which was based on human rights law. The research included a review of documents related to the adoption of a human rights-based approach including internal policies; one to one interviews and focus groups with staff, patients and carers and a comparison with other human rights based approach projects and evaluations.

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What we found:

A Human Rights Based Approach is better for everyone

The adoption of a HRBA was successful in supporting a cultural change from an institution where rights were largely “left at the door”, and with a “them and us” culture, towards an organisation with a more positive and constructive atmosphere with mutual respect between staff and patients. This had led to increased staff and patient engagement, increased work-related satisfaction amongst staff and increased satisfaction amongst patients over their care and treatment.

This coincided with staff reporting a reduction in stress and anxiety. Staff told us that the explicit, proactive adoption of a human rights based approach reduced their “fear” of human rights, increased their understanding of how to make choices and take decisions in a rights respecting manner as well as understanding the meaning and benefit of their own human rights.

The HRBA saw a reduction in “blanket” policies and an increased focus on individual patient’s risks. It also saw an increased focus on the rights of every member of staff, patient and carer. Applying this in all decisions, related to treatment and care, restrictions of freedoms, employment practice and other areas had led to a fairer environment and better relations between staff and patients. As one member of staff said, “Patients have increasingly recognised their responsibilities as well as their rights”.

Patients too generally noted significant and sustained improvements in their care and treatment and in the overall culture at The State Hospital. Procedures to manage violence and aggression were now seen as proportionate, seclusion was not routinely used as a punishment and patients actively engaged in decisions that affect them.

Taking a rights based approach reduces risks

By proactively adopting a human rights based approach an organisation can reduce its risks of having to react to critical media comment, negative public perceptions or legal proceedings, when its policy and practice is shown to breach human rights. Prior to the adoption of a rights based approach The State Hospital was concerned about the potential for negative publicity and the expense associated with individual cases. Clarity and predictability on limitations of rights through use of simple tests introduced by the HRBA (“Is it legal? Is it necessary? Is it proportionate?”) can lead to a greater understanding amongst everyone.

Starting with the support of tailored human rights expertise to audit policy and practice and using a “traffic light” warning system linked to these simple tests makes human rights user friendly, and reduces human and organisational risks.

Human rights are the foundation for other duties

Since the Human Rights Act all relevant legislation has to be read through the lens of human rights. Taking a human rights based approach at The State Hospital made delivering on other duties a less daunting process. It laid the foundations for the integration of new equality, freedom of information and mental health duties. In particular The State Hospital experience demonstrates that human rights can provide a bedrock for implementing equality duties. The evaluation also shows the importance of maintaining a clear link to the Human Rights Act in practice.

Why it worked

The experience of The State Hospital provides clear lessons for the integration of human rights into other public authorities in the health and social care sectors as well as others. The following elements were seen as crucial to its success:

- Top level buy-in and vision from the Board, Chief Executive and senior management;
- Clear executive leadership in implementation by a senior management team;
- Involvement from an early stage of human rights expertise to support the development and tailoring of a HRBA;
- A participatory diagnostic process, 'the human rights audit', involving staff and stakeholders of an organisation;
- Investment of appropriate time and resources;
- A proportionate approach, consistent with human rights principles itself, so that the HRBA effort reflects the significance of the issues;
- An approach which focuses on the rights of everyone affected: staff as well as patients and their carers;
- The HRBA promoted understanding of everybody's rights, and how to balance one person's rights against those of another, as well as how to justify limitations of rights.

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There is no room for complacency

Crucial to the success of The State Hospital HRBA was the involvement of staff, and the reflection of their rights throughout the process. There is a need to regularly refresh the HRBA to respond to changes in personnel and in circumstances for example through periodic training, as well as continual assessment and evaluation of policy and practice. Likewise whilst taking the HRBA allowed for the straightforward incorporation of specific equality duties, there is a need to ensure that a focus on equality duties does not result in a shift of focus in some cases away from human rights. Explicit linking of human rights and The Human Rights Act to other duties such as those under equality or mental health laws will help to ensure the sustainability of a HRBA.

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Next steps

We would like to work with the Scottish Government and Scottish Public Authorities to:

- Promote the experience and lessons from the evaluation of The State Hospital HRBA to see how the human rights based approach can be applied elsewhere;
- Support the lessons from this being taken forward in other key health initiatives including the Patients' Rights Bill and the review of the Mental Health (Care and Treatment) (Scotland) Act 2003;
- Develop clear guidance on how all Scottish public authorities should take human rights into account in delivering equality duties, including in the context of the new specific duties under the forthcoming Equality Act;
- Develop human rights impact assessment tools, and other mechanisms for integrating human rights into the culture of health and social care institutions.

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Reference for the main report:

SHRC, 2009: Human Rights in a Health Care Setting: Making it Work for Everyone, an evaluation of a human rights-based approach at The State Hospital. Glasgow: SHRC.