

# EVALUATING THE IMPACT OF HUMAN RIGHTS-BASED INTERVENTIONS IN HEALTHCARE

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## **Evaluating the impact of human rights-based interventions in healthcare**

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### **1. Introduction**

This paper examines the results of evaluations of interventions which have used human rights standards and principles to seek to improve the design and delivery of healthcare and other public services. The paper focuses on (i) the findings of evaluations and (ii) the lessons of previous experience in relation to the process and methods of evaluation. Put simply, what sorts of change have human rights-based interventions sought to bring about and how do we find out whether they have succeeded?

Section 2 examines why evaluation is an important part of implementing a 'human rights-based approach' (HRBA). Section 3 outlines the elements of a HRBA, in relation both to the principles that underpin it and the organisational dimension, i.e. the structures and processes that are developed in order to make the principles meaningful. Section 4 draws on previous evaluations to examine the impact of HRBAs to public services under three main headings: the 'business case' for a HRBA; the impact of service user and carer involvement and the impact in terms of organisational renewal. Section 5 explores some of the challenges that have been encountered by public authorities that have sought to implement a HRBA.

Sections 6 and 7 focus on the process of evaluation. Section 6 looks at what sorts of change have been evaluated and how they have been evaluated. Section 7 identifies some of the limitations of evaluation and how they can be mitigated.

### **2. Why does evaluation matter?**

Public authorities, including health bodies, have a legal<sup>1</sup> - and also a moral - obligation to respect and protect human rights. This requires them not only to refrain from breaching human rights ('negative' obligations) but also, in some circumstances, to take proactive steps to protect people from human rights abuses even if the harm is caused by private individuals rather than directly by the authority ('positive' obligations). For example, if there is evidence that a patient is being abused by relatives, NHS organisations have a positive obligation to investigate this and where necessary take steps to prevent it.

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<sup>1</sup> The Human Rights Act (HRA) 1998 gives further effect in UK law to the fundamental rights and freedoms in the European Convention on Human Rights. Section 6 of the HRA requires all public authorities to act in a way which is compatible with the Convention rights (unless primary legislation requires them to act otherwise). If a public authority is found to have breached human rights, the court has the discretion (as in other civil cases) to grant 'judicial review' relief, a process by which executive decisions are reviewed by judges to ensure that they are lawful.

**How** public authorities meet these obligations is likely to vary between institutions and professions with, for example, different targets, statutory and regulatory regimes, codes of ethics, and so on. There is no legal or moral obligation to adopt a 'human rights-based approach' (HRBA) as opposed to any other approach to getting to the desired outcome of (at least) human rights compliance. Therefore, interventions which choose explicitly to use human rights in preference to, or in combination with, other approaches to planning, policy and practice need to be backed up in terms of evidence and effectiveness. The question needs to be answered: is an intervention located within human rights preferable to an alternative that could be pursued with comparable resources and which at least aims to produce similar outcomes? If so, in what ways is it preferable?

The answer to these questions will involve identifying desired outcomes: using a human rights-based approach is not an end in itself but a means to achieving beneficial change for service users, carers and staff (and relationships between all these), as well as for the organisation as a whole. This, in turn, will entail – but not be limited to – consideration of the best use of resources to achieve the desired outcomes. This is sometimes described as making the 'business case' for human rights-based interventions. The business case also involves, for example, the use of human rights as a tool of risk management (see section 4) and not only the financial 'bottom line'. Indeed, making the business case may involve challenging and redefining from a human rights perspective existing notions of 'efficiency' and 'value for money'.

Underlying this discussion is a distinction between human rights as a set of legal and normative standards and human rights as a source of means and methods by which to realise those standards, i.e. using rights to achieve human rights. The distinction is important because it reminds us that human rights are both (i) a set of legal and normative standards and (ii) a set of principles that underpins **how** those standards are achieved. Both are important but we need to keep the distinction between the two clear in order to identify the added value of using human rights as a practical, everyday tool (the 'how' question).

Overall, evaluation matters because it is a means of establishing what works – identifying how HRBAs can be made more effective and the barriers to their implementation. In a larger sense, evaluations are a means of creating an evidence base for the value of human rights-based interventions. Without such an evidence base, we are left only with unsubstantiated claims or moral exhortations that are unlikely to be persuasive to decision-makers.

### **3. What does a human rights-based approach look like?**

This section outlines the elements of a HRBA, drawing upon the evidence of previous evaluations of HRBAs in different contexts. It is helpful to summarise this evidence in order to identify the types of change that HRBAs seek to bring about. It

should be emphasised that there is no fixed template for how to embed human rights thinking and practice into an organisation, service or team. The process is a creative rather than prescriptive one. For example, it has been likened to a magnet pulling policy, practice and organisational culture in a certain direction (Donald et al, 2009: 38). However, some common elements can be identified. We can usefully divide these into:

- (i) the **principles** of a HRBA
- (ii) the **organisational dimension**; i.e. the type of activity - made visible in structure and process - that needs to happen to make the principles meaningful.

### 3.1 Principles

There are five broad principles which are widely recognised as core elements of a HRBA (e.g. Scottish Human Rights Commission, 2009: 10-11). These are known as the PANEL principles: participation, accountability, non-discrimination, empowerment and legality.

- **Participation:** People have a right to participate in decisions that affect their own lives. Moreover, a process of change is more likely to be effective if all relevant stakeholders are engaged – especially those whom it is meant to benefit. This principle underpins an important aspect of a HRBA, which is to identify and, where necessary, challenge power relationships and structures which determine who makes decisions and whose voice gets heard and acted upon.<sup>2</sup>
- **Accountability:** Once goals for respecting, protecting and fulfilling rights are set, clear mechanisms need to be created that allow people to hold to account those with responsibility for ensuring these goals are met.
- **Non-discrimination** and prioritisation of marginalised or vulnerable groups: This principle recognises that some people and groups in society, at different times and in different circumstances, face discrimination in the enjoyment of their human rights. Targeted action is needed to address these inequities. Underpinning this principle is the idea that human rights are universal: everyone has rights regardless of their identity or background and rights are not privileges to be ‘earned’ or a matter of discretion (see, e.g., brap, 2010: 43; Scottish Human Rights Commission, 2009: 24).
- **Empowerment** of rights holders and duty bearers to ensure that human rights are respected, protected and fulfilled. This principle recognises that rights can be

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<sup>2</sup> This approach is exemplified by the Participation and the Practice of Rights project in north Belfast, which supports disadvantaged groups to assert their right to participate in social and economic decisions which affect their lives. See <http://www.pprproject.org/>.

meaningless if we are not aware that we have them or lack the ability or means to claim them. Similarly, those with a responsibility to prevent or respond to human rights breaches (such as public servants) cannot reasonably be expected to undertake this role if they are not supported to embrace it.

- **Legality:** This principle refers to the express application of the principles and standards of human rights in policy and practice. This can be described as using a human rights 'lens' to view and reframe particular problems, experiences and relationships. For example, washing or dressing a person without regard to their dignity may in some circumstances amount to a breach of the right not to be subjected to inhuman or degrading treatment. Viewing what has happened through a human rights lens involves identifying (i) which human right/s is/are relevant, (ii) who they belong to (who is the 'rights holder') and (iii) who is responsible for protecting those right/s (who is the 'duty bearer'). Framing a situation in human rights terms may also involve a change in the use of language; for example, viewing service users as having 'rights' or 'entitlements' rather than 'needs'. It is important to remember that staff are not only duty bearers but also rights holders. In each situation, the explicit use of the human rights framework permits a balancing of the different interests, e.g. the rights of an individual patient with those of other patients, staff and/or the wider community.

### **3.2 Organisational dimension**

We noted above that there is no single blueprint for implementing these human rights principles in an organisation, department or team. However, evaluations of HRBAs in different public service settings identify a number of lessons in relation to implementation. These include lessons that relate to policies and procedures, as well as steps that aim to bring about changes in behaviour and organisational culture. These lessons are not unique to human rights implementation – they may apply equally to other processes of concerted institutional change. Generally, evaluations of HRBAs suggest that key elements are:

- **Leadership:** visible support from chief executives, board members and senior staff and clear executive leadership for the process of implementation (Ipsos MORI, 2010: 89-90). For example, an important leadership action is to demonstrate how human rights fit with, and reinforce, other corporate priorities and values - 'articulating what their particular organisation might look like and how it might operate if human rights were embedded into every aspect of its work' (Office of Public Management, 2009: 9).
- **Systematic participation of service users and carers** in their own care, the monitoring of service delivery and the planning of service improvement; for example, through involvement in recruiting staff; research, audit and evaluation of services; serious incident reviews; and the development of an information and

communications strategy to enable service users and carers to make informed decisions (Mersey Care NHS Trust, 2007).

- **Creating ‘champions’:** the creation of a network of committed 'champions' at different levels of seniority who can advocate for human rights among staff and stimulate interest. For example, NHS Trusts involved in the Human Rights in Healthcare Programme whose pilots focused on care homes had involved housekeeping and kitchen staff, as well as nursing and care staff, in human rights training and action planning (Ipsos MORI, 2010: 90). This approach has been described as creating a 'continuous cycle of reinforcement' of the HRBA from the top to the bottom of an organisation' (Donald et al, 2009: 50).
- **Behaviour change:** some evaluations (e.g. brap, 2010) place emphasis on the imperative to achieve behavioural change in the workplace at the level of everyday practice, as well as on more strategic issues like leadership, policies and procedures. An evaluation of a HRBA to cancer care notes that a focus on behaviour 'encourages self-reflection and self-regulation on the part of staff'. Moreover, behaviour helps to shape organisational culture – 'organisational culture change **is** behaviour change' (brap, 2010: 35).
- **Training,** especially that which has the active buy-in of senior managers; is tailored to the organisation and developed in partnership with staff, with immediate opportunities given to participants to put their learning into practice; and is integrated into core training programmes rather than being a one-off (GEN, The University of Bedfordshire and Queen Margaret University, 2011; Ipsos MORI, 2010: 93; Mental Health Act Commission/Collins, 2007: 7-8).
- **Integrating human rights into established practices:** for example, integrating human rights into existing equality and diversity mechanisms or care planning processes rather than viewing human rights as a 'bolt on' (Ipsos MORI, 2010: 90-91).
- **Informing people about their rights:** building pressure for change by informing service users and carers about their rights in accessible language and strengthening advocacy arrangements which help them to articulate their views and experiences in human rights terms (Ipsos MORI, 2010: 91-92).
- **Regular reviews of policies and procedures** for human rights compliance; this may take the form of a human rights 'audit', involving staff and other stakeholders. For example, this can take the form of a 'traffic light' system where red signals non-compliance with human rights and amber a risk of non-compliance (Scottish Human Rights Commission, 2009: 18-19).

- **Use of external human rights expertise**; for example, the British Institute of Human Rights has advised the Human Rights in Healthcare programme and The State Hospital involved external experts in its human rights audit.
- **Public commitment to human rights that is shared with staff and service users/carers**; for example, the inclusion of human rights principles and language in best practice guides or codes of ethics or development of a 'human rights charter'.<sup>3</sup>
- **Focusing on the rights of everyone affected** - staff as well as service users, carers and, where appropriate, the wider community, since all are rights holders.

#### 4. The impact of using a HRBA – lessons from previous evaluations

Evaluations of HRBAs in public service or community settings present a rich but still fragmentary array of evidence as to their outcomes and impact.<sup>4</sup> In some cases the evidence is largely anecdotal; in others it is more systematically analysed.

Evaluations to date have tended to focus on tracking progress against planned activities rather than measuring the impact of that activity in terms of changes in knowledge, behaviour, experience or outcomes for service users or staff. Generally, where impacts have been identified, they are at the level of an individual public authority or service. Benefits on a larger scale have yet to be demonstrated or measured; however, impacts identified within a single public authority or service demonstrate the **potential** for such impact to be felt.<sup>5</sup> This section draws on previous evaluations to present the emerging evidence that exists for the impact of human rights-based interventions (or potential impacts) under three broad headings, with some illustrative examples.

##### 4.1 The 'business case' for human rights

Human rights are sometimes perceived as a 'soft' area without a core financial or business purpose. However, evaluations of human rights-based interventions (and, for example, guidance which is based on the human rights framework) suggest that

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<sup>3</sup> See, for example, the Dignity Charter of the Royal College of Nursing: [http://www.rcn.org.uk/data/assets/pdf\\_file/0006/318633/003587.pdf](http://www.rcn.org.uk/data/assets/pdf_file/0006/318633/003587.pdf)

<sup>4</sup> Ipsos MORI (2010: 16) distinguishes between 'outcomes', which are short- and medium-term changes that occur as a result of a HRBA (over, say, 3-12 months) and 'impact', which is longer-term and relates to the sustainability of the HRBA and its larger purpose. This is a helpful distinction in the context of the implementation and evaluation of an HRBA. For brevity, this section refers to impact to mean any changes brought about the HRBA. It should also be noted that not all evaluation documents make the distinction between outcomes and impact; for example, the evaluation of the HRBA at The State Hospital in Scotland appears to use the terms interchangeably (Scottish Human Rights Commission, 2009).

<sup>5</sup> See generally Department of Health/British Institute of Human Rights (2008: 16).

this is not the case. No document sets out a comprehensive or explicit business case for a HRBA. However, we can extract from evaluations and other reports elements of what such a business case might consist of.

- **Finding objective and balanced solutions to complex problems.** How well public services operate depends on decisions made every day by hundreds of thousands of staff. Frequently, these decisions are based on little more than individual judgement. There is evidence that a human rights framework helps staff to reach objective, balanced and proportionate solutions to problems and to be more confident in their decision-making. For example, an analysis of the impact of adopting a HRBA in five public authorities in the UK found that: 'a focus on ... the HRA and the principles underpinning the Act can strengthen decision-making at both corporate and service levels and help to prevent service failure. Human rights can provide a useful "lens" through which to explore difficult issues, helping to shed light on the different, sometimes competing or conflicting, interests of different parties' (Office of Public Management, 2009: 10).

Staff involved in implementing the HRBA at The State Hospital, a high security forensic mental health hospital in Carstairs, Scotland, noted that, as the hospital set about transforming a 'custodial and punitive' regime into one in which staff 'weave the human rights dimension into the fabric of daily decision-making', human rights had provided 'an immensely practical framework which with to consider the very difficult decisions to be made each day' (Donald et al, 2009: 81). An evaluation of the Care About Rights training and awareness raising programme which aims to embed a human rights based approach in the delivery of care for older people in Scotland found evidence that using human rights as a 'clear rationale for decision making ... is instrumental in increasing the confidence of care workers, and outreach participants to speak out and challenge in cases where they feel rights are being infringed' (GEN, The University of Bedfordshire and Queen Margaret University, 2011: 62). Access to human rights as a tool for decision-making was also considered 'significant in bringing about delivery of more effective person-centred care'.

The principle of proportionality is central to the human rights based-approach. It is an important mechanism for ensuring that the infringement of rights is kept to a minimum and is always reasonable, as well as for balancing competing interests, e.g. the rights of individuals with those of other service users, staff or the wider community.<sup>6</sup>

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<sup>6</sup> For more on using human rights as a framework for everyday decision-making, see <http://www.equalityhumanrights.com/human-rights/human-rights-practical-guidance/key-messages/>.

- **Providing a sophisticated tool for managing risk:** Public authorities are legally bound to comply with the HRA. If they do not do so, individuals can challenge and seek remedies for instances of poor practice. Moreover, poor risk management (including both neglect of risk and excessive risk aversion) can have a detrimental effect on the quality of a service. The evaluation of the HRBA at The State Hospital, found that 'Taking a human rights-based approach ... can ... help organisations to avoid the risks of having to react to critical media comment, negative public perceptions or legal proceedings, as well as complaints when its policy and practice is shown to breach human rights' (Scottish Human Rights Commission, 2009: 71-72).<sup>7</sup> In this case, The State Hospital had audited policy and practice, in part using a 'traffic light' warning system; this had made human rights at the hospital 'user friendly, and helped to reduce human and organisational risks'; for example, through an increased focus on the individual patient's circumstances and risks to themselves and others as opposed to the use of 'blanket' policies in areas such as restraint and seclusion.

Mersey Care NHS Trust has also used a HRBA as tool to support to support people with learning disabilities whose behaviour is constructed as presenting high levels of risk. An evaluation of this work found that a HRBA to risk management 'shows promise in its potential to "invert" traditional approaches to risk management and to support previous initiatives promoting community inclusion ... [T]his innovative way of working and more positive construction of the service user, improves the quality of care today and has the potential to reduce the likelihood of intervention tomorrow' (Mersey Care NHS Trust, 2010: 10).<sup>8</sup>

- **Transparency:** The use of human rights as a framework to support decision-making (for example, in the assessment and management of risk) helps public authorities to demonstrate, as they are required to by law, that the decisions they take are lawful, have a legitimate aim, and are necessary and proportionate. The

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<sup>7</sup> In addition, the Ministry of Justice (2008: 12-13) argues that, 'The fact that the Human Rights Act is law and that public authorities are legally bound to act in accordance with it will be the underlying bedrock for any business case for the promotion of human rights in public services'.

<sup>8</sup> See also Commission for Social Care Inspection (2007) which offers human rights-based guidance on risk and the use of restraint in the care of older people and explains why the 'least restrictive' approach has a beneficial impact. For example, it presents evidence to suggest that restraint does not necessarily keep people safer. Older people may become frustrated by restraints, so that those determined to move are likely to have worse accidents. They may become less mobile, less fit and more likely to develop pressure sores, or become incontinent or depressed.

human rights requirement for transparency provides a clear 'audit trail' to protect public authorities from potential legal challenge.<sup>9</sup>

- **The financial case:** Evaluations that have been conducted to date make no explicit or comprehensive financial case for a human rights-based approach at a corporate level. However, a financial case has been made for targeted human rights interventions which improved services at negligible cost. The experience of Mersey Care NHS Trust is pertinent. In 2008/9, Mersey Care had a total income of around £186.5 million, of which around £380,000 was spent on supporting user and carer involvement as part of its HRBA. Mersey Care noted that it was spending less than a quarter of 1 per cent of its income to ensure that it spent the other 99.75 per cent more effectively (Office of Public Management, 2009: 65) (the benefits of service user involvement are discussed below). The business case for a HRBA is also commonly framed in terms of the preventative, as opposed to curative, purpose of the Human Rights Act.<sup>10</sup> For example, a human rights-based intervention designed to protect mealtimes and use coloured trays to identify people in hospital who need help with eating cut waste and produced better outcomes for patients (Donald et al, 2009: 87-88). Overall, however, there is more to be done to demonstrate the financial case for the application of human rights; some of the challenges of doing so are discussed in section 6.

#### 4.2 The benefits of engaging service users to improve services

There is evidence to suggest that those public authorities which involve service users (and their families and carers) systematically in their work have a deeper engagement with human rights than those which do not. The integration of service users in designing and evaluating services is itself an indication of an organisational human rights approach and helps to ensure that such an approach is embedded throughout the organisation and sustained over time. Evaluations of this experience suggest that service user involvement has been used to (Donald et al, 2009: 56; Dyer, 2010; Ipsos MORI, 2010: 93-94):

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<sup>9</sup> For example, a UK government review of the Human Rights Act noted that human rights had underpinned a system whereby schools that conducted searches of pupils for knives or other weapons should develop recording systems to log the reasons for the search, implications for individuals, pupil responses and how they are managed, outcomes and follow up actions: 'The result will ... be a more balanced and robust response to the problem' (Department for Constitutional Affairs, 2006: 22).

<sup>10</sup> A rare example of a cost-benefit analysis of human rights is *At What Cost? The economics of Gypsy and Traveller encampments* (Morris and Clements, 2002). This demonstrates that the cost of providing authorised sites for Travelling people in accordance with human rights obligations is many times lower than the cost of repeatedly evicting them with the attendant legal and policing expenditure, as well as the cost of poor health resulting from diminished quality of medical treatment, and problems for children in later life caused by inadequate schooling.

- challenge entrenched and often prejudicial attitudes to service users as passive recipients of care or services, rather than as active participants in shaping and evaluating those services;
- make services more responsive to the people that use them;
- improve relationships between service users and staff and make them partners in finding shared solutions to problems, and
- erode stigma and mistrust between service users and professionals.

For example, in Mersey Care NHS Trust, service users and carers are involved in diverse activities, including recruitment and training of staff at all levels of seniority; initiatives to improve services and develop new ones; and reviews of serious incidents including homicide and suicide (Dyer, 2010). Among the findings of the most recent survey of senior managers, service users and carers at Mersey Care (consistent with surveys in 2005 and 2008) were that:

- 96 per cent of managers said that involving service users and carers had made a lot of or some positive difference to them as a person, with the figure for service users/carers being 94 per cent;
- 68 per cent of managers stated that service user/carer involvement had made a positive difference to their attitude and 74 per cent to their practice;
- 78 per cent of service users stated that involvement had made a positive impact upon their mental health recovery and well being. This was demonstrated through improved clinical and recovery outcomes; improved confidence and self esteem; engaging in purposeful activity; feeling valued; and using their skills.
- Service users and carers were asked what difference (if any) that involvement had made for them: 80 per cent responded that they felt valued; 69 per cent that they had gained in confidence; 68 per cent that they had meaningful things to do and 53 per cent that they had learned new skills (Service User Research and Evaluation, Mersey Care, 2011).<sup>11</sup>

Mersey Care (2010: 115-16) notes that during the course of the Human Rights in Healthcare programme it has embraced the principles of 'co-production'; that is, 'a partnership between citizens and public services to achieve a valued outcome' (Cabinet Office, 2009: 3). According to Mersey Care, the principles underpinning co-production and the philosophy of a HRBA are synonymous: 'co-production could be a potential vehicle for working towards an explicit HRBA. This, in essence will require the meaningful involvement of service users in all aspects of service design and

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<sup>11</sup> Lindsey Dyer, Director of Service Users and Carers at Mersey Care, notes that involving service users and their families has allowed the Trust to find innovative ways of improving their service; for example, when it was realised that young carers were scared to go onto mental health wards, the Trust had set up a family room for parental visits to take place (Donald et al, 2009: 59).

delivery. This will require a paradigm shift towards one of “power sharing” and organisational restructuring to enable this to happen’. This observation underlines that the human rights principle of participation may be one of the hardest to achieve but also the most transformational.

### **4.3 The benefits of organisational renewal**

Some evaluations of HRBAs in public services identify a range of benefits that have accrued to the design and delivery of services and other areas such as staff morale. These include:

- **Improvements in the service:** at The State Hospital, there was a 'strongly attested shift in the culture ... from a prison to a hospital. The reduction in “blanket” policies and an increased focus on individual patient’s circumstances and risks to others, meant in turn that the care and treatment of patients was individualised. For example, procedures to manage violence and aggression were now seen as proportionate. Patients also noted a large and sustained increase in their ability to participate in decisions about their care and treatment’ (Scottish Human Rights Commission, 2009: 71).
- **Establishing non-negotiable service standards that apply to everyone:** human rights can establish a set of shared standards that apply to all. This emphasis on universality can be of particular value in underpinning in safeguarding vital services, particularly for the most vulnerable (Office of Public Management, 2009: 84).
- **Human rights as a foundation for other duties:** organisations that have sought to embed a HRBA have used human rights to embrace emerging policy imperatives - such as commissioning, partnership working, user choice or personalisation - while retaining a focus on the core values of equality, respect and dignity. Human rights can provide a focus over the longer term, as other policy agendas come and go (Office of Public Management, 2009: 84; Scottish Human Rights Commission, 2009: 28). At The State Hospital, taking a human rights-based approach had acted as the foundations for the smooth integration of other specific duties which must be compatible and build on human rights standards. This involved new equality, freedom of information and mental health duties. The initial emphasis on human rights helped the process of assimilating policies and practices on equality (including the single equality duty) because staff and patients already had a good basic understanding of 'rights for all' (Scottish Human Rights Commission, 2009: 72). An evaluation of the Hampshire ‘Rights, Respect and Responsibility Initiative’ (RRR, a whole school approach to human rights education) identified the utility of RRR in ‘providing a common values framework for the school – a means of integrating school policies, practices, and providing a common discourse’ (Covell and Howe, 2011: 17).

- **Strengthening work on equality and diversity:** the HRA and human rights principles have been described as adding weight to the arguments against discrimination in individual cases (Scottish Human Rights Commission, 2009: 28-29). Further, human rights can encourage a focus on individual flourishing rather than one based on particular 'protected characteristics' (Donald et al, 2009: 68-72). Human rights, equality and diversity are (or should be) complementary and reinforcing. However, there is evidence that organisations do not always know how to connect these imperatives in practice and may regard human rights as an 'add on' to more well-established equality policies and procedures.
- **Inspiring staff:** organisations have found that embedding human rights principles can have real benefits in terms of staff morale and enthusiasm - re-connecting staff with core public service values and the reasons why they originally chose to enter public service (see, e.g., brap, 2010: 36; JCHR, 2007: 61; Kinderman and Butler, 2006). Teachers and head teachers interviewed for the evaluation of the RRR initiative in Hampshire noted that the human rights approach to education had been 'revitalizing or inspirational, providing as one said "a new sense of direction and passion"' (Covell and Howe, 2011: 17).
- **Enhancing organisational reputation and distinctiveness:** human rights are perceived to have built public trust and confidence in services and legitimated particular actions and decisions (Office of Public Management, 2009: 86-87).

## 5. Challenges in implementing a HRBA

Human rights approaches to public services do not exist in a vacuum; there are organisational, cultural and systemic factors that may help or hinder efforts to embed them (see Donald et al, 2009: Chapter 4). Some evaluations have identified difficulties that were encountered by organisations as they sought to implement a HRBA.

- **Staff resistance:** Some staff, in some settings and at some times, find human rights challenging to embrace in their everyday practice and may be resistant to the implementation of a HRBA. This may be for a variety of reasons. These include a perception that human rights may 'place all the power in the relationship between staff and patients, with the patients' (Scottish Human Rights Commission, 2009: 25) or that they are emotionally demanding and evoke

feelings of anxiety lest staff 'get it wrong' and breach human rights standards.<sup>12</sup> Staff may not see the relevance of human rights to their service or their own role (Ipsos MORI, 2010: 91) or find the human rights framework difficult to navigate. These are not necessarily negative findings: reflexive practice can improve services and attitudinal barriers can be overcome. Nor is it necessarily a reaction unique to human rights practice, since organisational change of any kind may provoke anxiety or resistance. However, it may in some instances suggest the need for staff to be better supported or trained or to have safe spaces where negative feelings can be aired.

- **Different organisational cultures:** there is no single ethos binding all public services, but rather a variety of organisational cultures (i.e. predominating attitudes and behaviour that characterise the functioning of the organisation), each with its own ethos (see Donald et al, 2009: 92-97). A HRBA may therefore need to 'work with the grain' of the existing organisational culture and negotiate boundaries between different cultures. Participants in the evaluation of Mersey Care's Human Rights Joint Risk Assessment and Management Plan (HR-JRAMP) and Human Rights Benchmarking Tool said that, 'Boundary "bump up" with Social Services, staff care teams and family systems were ... fraught at times. There were strong feelings that the process would be easier if other services, especially Social Services adopted the same human rights based approach' (Mersey Care NHS Trust, 2010: 110). This evaluation also notes that in order for structural reform in services to be effective, there needs to be an understanding of its likely impact upon an organisation's informal 'grass roots' or 'canteen' culture.

The *Human Rights Insight Project* identifies a variety of factors that may facilitate or obstruct the embedding human rights (Ministry of Justice, 2008: 92). For example, it suggests that 'target-driven' cultures are more likely to be inimical to the implementation of a HRBA, as are organisations with greater status differentials between providers and users of services. It has also been noted that a lack of autonomy among staff is unfavourable to human rights approaches; for example, where staff roles are defined as a set of functional requirements, without sufficient regard to the attributes required to make more proactive judgements, inspired by human rights values, when providing care or treatment (brap, 2010: 35; Donald et al, 2009: 97-98).

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<sup>12</sup> For example, Mersey Care's evaluation of its Human Rights Joint Risk Assessment and Management Plan and Human Rights Benchmarking Tool found that there was 'a definite sense that this [human rights] approach has the potential to invoke some negative feelings when working clinically, for example; 'anxiety' and 'panic' in ensuring that articles are adhered to, decision making as to rights and risks has the correct balance and any restrictions deemed required, are the least restrictive. When the right balance hasn't been achieved, clinicians describe an element of 'guilt' and of 'letting down' clients and families'.

- **Sustainability:** a question posed in relation to the Human Rights in Healthcare programme is whether the work of the pilot Trusts could be sustained in the case study setting beyond the pilot period and whether it could be rolled out to other settings (Ipsos MORI, 2010: Chapter 9). The evaluation of Phase III of the programme identifies several means of achieving sustainability. These include writing human rights into the 'operating framework' of a service; communicating successful outcomes to other parts of the organisation; and including human rights in regulatory frameworks. It was also noted that funding and resources for the HRBA may continue to be required until the approach is embedded and 'culture change is achieved' (Ipsos MORI, 2010: 101). However, it is debatable whether culture change can ever be said to have been finally 'achieved'. The evaluation of the HRBA at The State Hospital notes that 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'. Another important issue to be determined through evaluation is whether particular initiatives can survive a withdrawal of dedicated staff or external expertise; i.e. whether a HRBA can become part of the 'warp and weft' of a service such that it does not require such dedicated input. One finding of the Ipsos MORI evaluation of the Human Rights in Healthcare programme was the need for funding and resources to enable the project to be taken forward (Ipsos MORI, 2010: 101).
- **Defining realistic and concrete outcomes:** Ipsos MORI, in its evaluation of Phase III of the Human Rights in Healthcare programme, notes that some Trusts had experienced difficulty in defining their scope and objectives of their HRBA in a realistic manner (Ipsos MORI, 2010: 92-93). Some had adjusted their objectives part way through the project.

## 6. Approaches to evaluation

### 6.1 What sorts of change are being evaluated?

It is evident from the preceding sections that a HRBA may seek to effect change in a variety of ways. The emphasis will vary between different initiatives in different contexts and with varying levels of resources. HRBAs might seek to produce changes in the following ways (however, this list is not exhaustive).

#### Service users, carers and their advocates

- **knowledge and understanding** of human rights
- increased **claiming or invoking of rights**, e.g. accessing complaints systems, using human rights as the basis on which to argue for changes to care or treatment
- the **experience** of a service, e.g. how people perceive themselves to have been treated or cared for

- specific and measurable **outcomes**, e.g. improved clinical outcomes, reduced readmission rates.

### **Staff**

- **knowledge and understanding** of human rights, e.g. a demonstrable ability to use the human rights principle of proportionality as a basis for decision-making
- **decision-making processes**, e.g. systematic use of human rights principles as a framework for decision-making
- **attitudes**, e.g. towards service users, towards their own role or towards the HRBA itself
- **morale and well-being**, e.g. sickness and absence rates
- **behaviour** – also described as identifying 'actions rather than intentions' at the level of everyday practice (brap, 2010: 35).

### **The service or organisation as a whole**

- **relationships (and perceptions of relationships)**, e.g. between different groups of staff or between staff and service users/carers
- **the design and delivery of a service**, e.g. the extent to which it has become more 'person-centred' and individualised
- **service user involvement in a service**, e.g. the numbers involved and the quality of their involvement
- **structures, policies and processes** of the organisation – noting, however, that changes to policy will not necessarily produce changes in everyday practice
- **organisational culture**, both that which is 'corporately' articulated and the informal or 'grass roots' culture.

These potential types of change are not always discrete from each other. For example, changes in staff attitudes and behaviour may in turn affect relationships between staff and service users and the organisational culture as a whole, as has been demonstrated in settings such as Mersey Care and The State Hospital. Similarly, increased knowledge of human rights among service users may lead to increased claiming of rights. However, it is useful for projects to be aware of these different types of change when they are setting more closely defined objectives.

It should also be noted that, using a HRBA, identifying the desired changes is a process that should involve service users and carers, whose priorities may differ from those of the professional. For example, there may be a tension between identifying outcomes that make sense to the life of the service user ('what has changed in my own living room?') and the various targets and indicators that staff are obliged to report against.

## 6.2 How is change being evaluated?

This section summarises the process and methods that have been used to evaluate human rights-based interventions at different stages. This does not imply that implementation and the achievement of impact is necessarily a linear process.

### Stages at which evaluation may take place

- **Evaluation of the implementation of the HRBA itself:** this considers whether activities that are part of the HRBA have been delivered as planned and whether they are reaching the intended audience/s. Most commonly, this stage of evaluation includes assessment of the number of participants - staff or service users/carers - who have received human rights training (or another form of tailored human rights input). This may also include an assessment of the uptake and satisfaction with the training; for example, the extent to which it was considered helpful by participants, as well as the extent to which it produced changes in knowledge, understanding and/or attitudes. Mersey Care developed an evaluation questionnaire and human rights knowledge quiz for this purpose (Ipsos MORI, 2010: 39-40). This type of evaluation might take place early in the HRBA in order to identify improvements to the training; for example, in relation to the content, method of delivery or diversity of participants (Ipsos MORI, 2010: 46).
- **Evaluation of policy and practice:** this considers whether, as a result of the HRBA, human rights have been integrated into core areas of policy and practice. For example, Mersey Care assessed, via the means of a clinical audit, how effectively its Keeping Me Safe and Well Risk Screen had been integrated into the risk assessment work of its three Community Learning Disability Teams. One of the objectives of the evaluation of the HRBA at The State Hospital was to assess 'the extent to which the human rights-based approach is now applied in practice and the degree to which human rights have genuinely been embedded within the culture and are now respected in practice at The State Hospital', using the PANEL principles as a framework (Scottish Human Rights Commission, 2009: 11). It sought to do this by, among other means, a review of 'documentary process and implementation evidence'; a survey of existence of key policies and indicators of effective practice; and semi-structured Interviews with key stakeholders at the hospital.
- **Evaluation of short- and medium-term outcomes:** outcomes are described by Ipsos MORI (2010: 16) as short- and medium-term changes that occur as a result of the HRBA and changes that are anticipated to occur in the next 3-12 months. For example:
  - the evaluation of Mersey Care's Keeping Me Safe and Well Risk Screen identified that it had produced greater service user involvement in the risk

assessment and management process; and a shift from implicit to explicit discussion of human rights principles. Use of the screening tool had also resulted in 'a move from crisis intervention to early reactive intervention and more empathy and respect when discussing difficulties' (Ipsos MORI, 2010: 42). These changes to outcomes were identified by means of a clinical audit; thematic analysis of a sample of case notes; and focus groups to understand clinical staff's views.

- the evaluation of Mersey Care's HR-JRAMP and Human Rights Benchmarking Tool similarly deployed a 'three pronged' model which involved 'the measurement of outcomes, a rich description of process and the sampling of multiple stakeholder perspectives'. This involved a clinical audit; and semi-structured interviews and focus groups of staff which were thematically analysed to identify underlying ideas and assumptions. This enabled the evaluation team to understand what impact the introduction of the tools had had on 'the quality of service users' lives with respect to improved access to human rights' (Mersey Care NHS Trust, 2010: 23).
- the evaluation of the HRBA at The State Hospital also sought to assess 'the perceived impact of implementing a human rights-based approach, including benefits for patients, staff and carers from the perspectives of all involved and identifying the extent to which human rights outcomes were perceived to have changed as a result of the adoption of a human rights-based approach'. Again, it used a variety of methods. These included semi-structured interviews with key stakeholders at the hospital and external commentators; focus groups of staff (both those involved in the design of the HRBA and a cross section of front-line clinical and non-clinical staff); and focus groups with patients and carers.
- The evaluation of the implementation and effects of the Hampshire 'Rights Respect and Responsibility Initiative' used on-line surveys and small mixed-sex focus groups of pupils, as well as interviews with teaching staff.
- **Evaluation of longer-term impact:** Ipsos MORI (2010: 16) describes impact as 'the long term reason for the programme – what it is designed to bring about'. It notes that this includes measures put in place to ensure the sustainability of the HRBA. Some of the methods employed to determine impact may be similar to those used to determine outcomes (for example, interview and focus group methodologies and analysis of statistical data) but employed over a longer time-scale. Changes to attitudes and behaviour and to organisational culture are likely to be more evident over the longer term than at the implementation stage. Some changes to outcomes for service users may also become evident only over a longer time period, indicating that 'outcomes' and 'impact' are best viewed as a continuum than as different types of change. Some HRBAs are of relatively recent

origin, meaning that evaluations of impact are premature. The evaluation of the longer-established HRBA at The State Hospital provides rich data about the changes to patient and carer experience and relationships between patients/carers and staff and, consequently, to the culture of the organisation as a whole.

As noted above in relation to the 'business case' for HRBAs, there has been no comprehensive cost-benefit analysis for embedding human rights within public sector organisations. OPM (2009: 12) concludes that 'achieving this aspiration is still some way off, and is likely to prove challenging' since it requires systematic collection of data and assessment of beneficial impacts on a scale that has not thus far been achieved.

### **Tools and methods of evaluation**

As described above, evaluations reviewed in this paper have used a variety of qualitative and quantitative tools and methods to engage with service users, carers and/or staff. In summary, they are:

- semi-structured interviews
- focus groups
- quizzes to test knowledge
- written questionnaires to test knowledge and/or attitudes
- discussion of human rights-framed vignettes or scenarios
- documentary review e.g. of policy documents, complaints data
- analysis of sampled case notes
- analysis of statistical data

This list is not exhaustive and it should be emphasised that creative methods – such as the use of photography, video or social media – can be part both of a HRBA and the evaluation of its impact.

## **7. Limitations of evaluations of human rights-based interventions**

There are a number of limitations evident in the evaluations that have been conducted of human rights-based interventions. Some relate to the process of evaluation itself and others relate to the context in which the HRBA (and the evaluation) took place. Again, these limitations are not necessarily particular to the evaluation of an HRBA as opposed to any other process of organisational change. However, awareness of these limitations may assist the design of future evaluation processes.

### **7.1 Determining cause and effect: base-line data and objective setting**

The evaluation of the HRBA at The State Hospital notes that 'an ideal evaluation would involve an evaluation team undertaking a **base-line study** prior to the human

rights-based approach intervention in order to have a high degree of casual probability that an intervention has resulted in certain outcomes or improvements' (Scottish Human Rights Commission, 2009: 76). No base-line study was done in this case, and therefore the evaluation had to rely on documentary evidence, limited statistical data and a range of qualitative testimony to present a comparative picture of what the policy, culture and day-to-day practice was like at The State Hospital before and after the introduction of the HRBA. The evaluators combined (or 'triangulated') the different sources of data, especially the testimony of the key stakeholders about what was said to have happened with the 'fairly consistent' views of staff, patients and carers about what they feel actually happened, in order to assert 'a degree of reliability' in the data collected (Scottish Human Rights Commission, 2009: 76).

Another factor hampering the identification of cause and effect was the failure to set **concrete objectives** at the start, over and above the 'largely aspirational' target of producing an 'improvement in the working culture' at the hospital. The evaluators suggest that the human rights principles of participation, accountability, non-discrimination, empowerment and legality (or PANEL) (see section 3 above) could have provided a framework within which to set such objectives and permit the 'evidencing [of] this cultural change quantitatively as well as qualitatively'. For example, statistical mechanisms could have been set up whereby, over time, it would have been possible to explore for example: increases in participation rates of patients in patient-staff forums; an increase in the number of policies made available to staff, patients and carers in alternative formats; a decrease in violent incidents; a decrease in sick leave as result of work stress; a decrease in the use of seclusion as a means of dealing with violent patients, and so on. In practice, some of this data was available retrospectively but in some cases the collection methods had changed and so data was not directly comparable.

Overall, the The State Hospital evaluation suggests that 'A robust evaluation depends on a systematic policy and practice development process at the outset, to observe and calibrate the base-line situation and to set objectives for the change' (Scottish Human Rights Commission, 2009: 76). Such an approach will permit evaluations to move beyond the 'implementation stage' to examine outcomes and impacts with more confidence. Moreover, using such an evaluation framework should not only be viewed as a development and evaluation tool, but also as a means of monitoring the progress of an initiative as it unfolds (Scottish Human Rights Commission, 2009: 77).

As noted in section 6.1, it should be noted that the setting of objectives will invariably involve service users and carers.

## **7.2 Determining cause and effect: the wider context**

Other factors that may hinder the determination of cause and effect relate to the context of the service (and therefore of the evaluation). For example, it may be easier to identify causal effects in settings which are relatively closed and/or have relatively long-term, stable populations (e.g. prisons, secure wards) than in more open environments such as schools, hospitals or social care services. In these more open services, observed changes to (say) attitudes and behaviour or outcomes may be due to a wide variety of factors, including decisions taken by other services which are not implementing a HRBA. The longer the time frame, the more difficult it may become to isolate the direct causal impact of the HRBA from impacts caused by other factors. These limitations may also make it harder to compare the impact of one HRBA with that of another (Ipsos MORI, 2010: 102). As with any evaluation of change, there is also the challenge of identifying the counter-factual; that is, identifying what **would** have happened had the HRBA not been implemented and had resources been deployed differently.

Similarly, any attempt to make a comprehensive business case for a HRBA is likely to be bedevilled by the 'silos' through which public services are delivered. A cost in one department or service may yield a saving elsewhere which may never be identified. This suggests the need to develop methodologies to show how spending in one area to protect or promote individuals' human rights has (or might potentially) deliver savings in another.

### **7.3 The risk of bias**

The team which evaluated Mersey care's HR-JRAMP noted that there is a risk of bias where those conducting evaluations have a vested interest in the success of the HRBA (Mersey Care NHS Trust, 2010: 110). For example, it was noted that analysis of focus group discussions 'was in no doubt a construction of the reality' of the evaluator and the participants that contributed their views 'for the benefit of the project'. This observation does not suggest that external evaluation is always necessary – or itself always free of the pressure to produce positive findings. However, awareness of this risk will assist the design of evaluation processes; for example, by the use of mixed methods to prevent reliance on a single source of data or interpretation.

### **7.4 The need for a HRBA to evaluation**

Examples of public authorities in the UK adopting a HRBA are still relatively rare. However, human rights-based approaches to development (i.e. strategies to ensure an adequate standard of living for people in the developing world) are longer-established. The evaluation of HRBAs in the domestic context may therefore be able to learn from evaluations of HRBAs to development. Addressing this topic, Gready (2009: 399) suggests that evaluation must be the servant, not the master of human rights practice:

[I]t is imperative that human rights work is driven by a set of strategic and legal/moral priorities, not by evaluation targets and associated funding incentives. In other words, we need evaluation frameworks that reflect and help to deliver and develop the strategic priorities of human rights; we do not need evaluation formats that independently determine or skew these priorities.

Gready adds that the methodologies required are likely to be complex – combining quantitative and qualitative strategies; what works (evidence) and what is right (law/morals). These methodologies need to span both the outputs delivered and the impacts on factors as diverse as law and policy on the one hand and behaviour on the other. At the same time, they must involve, and be accessible to, those whose rights are most at stake. Participatory approaches to evaluation (as adopted by Mersey Care NHS Trust) are therefore an integral part of the HRBA.

Overall, such practice ‘needs to craft a balanced approach that addresses the challenges of discourse, implementation, ambition, and strategy: the balance between outcomes and processes; between human rights as an exercise in monitoring and critique on the one hand, and as a mode of delivery and empowerment on the other’ (Gready, 2009: 399).

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