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Dear John Wadham,

HUMAN RIGHTS INQUIRY – CONSULTATION ON THE TERMS OF REFERENCE

Thank you for asking me to submit my views on the Terms of Reference of the EHRC's Human Rights Inquiry. As the UK is about to celebrate the Human Rights Act's 10th anniversary, this Inquiry comes at a critical point in finding out what has been done in realising the promise that was made in Parliament in 1998 for a "human rights culture" in Britain.

Are the Terms of Reference and aims and objectives too broad or too narrow?

As they stand, the Terms of Reference appear to be too broad. Although this allows a certain degree of flexibility, it is important that the Inquiry does not merely reproduce evidence on public attitudes and perceptions of human rights and human rights legislation. This is an exercise that has already been carried out by government at a grant scale and by voluntary and community sector organisations at a smaller scale.

In particular, "the effectiveness and enjoyment of a culture of respect for human rights" gains meaning only if put in the context of public service providers and other organisations covered by human rights legislation. As this is the first inquiry of the EHRC, it may be ambitious to believe that robust and reliable evidence can be collected for all public authorities and organisations with obligations under the Human Rights Act.

The following example is relevant. From December 2004 – May 2006, the Department for Constitutional Affairs (now Ministry of Justice) carried out 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 Government could encourage and facilitate this. Although the project focused only on health and social services, it took almost two years to collect robust and usable evidence. This is despite the fact that adequate resources and staff were made available for this inquiry. I was the Human Rights Advisor of the Project, and I would be happy to provide you with more information should you need it.

It is crucial that the EHRC's Inquiry remains **focused, effective and realistic**. A general inquiry into "the enjoyment of a culture of respect for human rights" appears ambitious and would require time and resources that could make the inquiry too cumbersome for the newly established Commission. The findings may also prove to be too "academic" for bringing about a change in practices, policy making and legislation. For instance, it is recommended that right from the outset the Terms of Reference direct the Inquiry into areas of service delivery affecting **the most vulnerable in society**.

Do the Terms of Reference and aims and objectives explore key issues about the Human Rights Act?

The first two questions posed by the Inquiry have already been answered by other studies. In particular, the aforementioned project by the DCA assessed:

- awareness of and attitudes towards human rights, the Human Rights Act 1998 and the key principles underlying the Act, among the general public and among staff in specified public services;
- the extent to which those key human rights principles are reflected in the delivery of certain major public services;
- how much this matters to the public in general and to frequent users of the specified services;
- ways of encouraging public authorities to improve customer satisfaction and/or promote a culture of respect for human rights by incorporating human rights principles in the delivery of services, and
- the potential for wider strategies to implement the principles underlying the Human Rights Act.

The Human Rights Insight Project carried out thorough qualitative and quantitative studies with both consumers and providers of public health and social services and the general public. Therefore, evidence on “public attitudes to the Human Rights Act” and on “how the Human Rights Act is working” is available through this project but also through other studies such as:

- Audit Commission (2003) Human Rights: Improving Public Service Delivery, London: Audit Commission
- Audit Commission (2004) A self-assessment tool for human rights, London: Audit Commission
- British Institute of Human Rights (2002) Something for Everyone, London: BIHR and Comic Relief
- IPPR/ Butler F (2005), Improving Public Services: Using a human rights approach, London: IPPR
- JCHR (2002) Culture of human rights, London: The Stationery Office

In Theo Gavrielides (2008) “Human rights and customer satisfaction with public services: a relationship discovered”, 12:2 International Journal of Human Rights, pp. 187-202, I recommended the following which are also relevant to the EHRC’s Inquiry:

“It is suggested that public authorities are presented with a **strong, evidence based ‘business case’ for mainstreaming human rights**. It is important that pockets of examples where steps have been taken by certain public authorities to mainstream human rights are identified. By focusing on these case studies, it will become easier to test whether the mainstreaming of human rights has had any positive impact on consumers and providers of public services. These findings could then be contrasted with data from public services that are known not to have proactively taken any steps to introduce human rights principles in their thinking and decision-making. The role of the inspectorates and auditors will be critical in this exercise. Subsequently, public authorities could be presented with a list of benefits which could show them ‘what’s in it for them’ if human rights are mainstreamed. The business case should also address the following questions:

- Is there evidence to suggest that where human rights are mainstreamed, customer satisfaction is increased?
- Is there evidence to suggest that where human rights are mainstreamed, consumer outcomes are improved? (e.g., wellbeing, improved health, quicker recovery).
- Is there evidence to suggest that where human rights are mainstreamed, staff become more satisfied with their job? (e.g., less stress, lower turnover, sickness absence, reminded why they chose the given profession in the first place).
- Is there evidence to suggest that where human rights are mainstreamed, decision making becomes easier and of better quality? (e.g., compatible with HRA and other legislation, staff find it easier to apply the law)".

Are there significant issues which have been omitted from the Terms of Reference and aims and objectives?

Since 2003, evidence has been collected to inform future policies and strategies that would make both human rights and the Human Rights Act relevant to people and their everyday lives. In 2003, the JCHR criticised the government's human rights policy work: "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".

A 2003 Audit Commission survey of 175 public authorities concluded: "The Human Rights Act can help to improve public services, as it seeks to ensure the delivery of quality services that meet the needs of individual service users . . . [However] three years on, the impact of the Act is in danger of stalling ... Most [public authorities] 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".

Therefore, **the debate has moved on** from "how the Human Rights Act is working" to "what can be done to mainstream human rights into public services". The DCA's Human Rights Insight Project has identified several levers and obstacles in mainstreaming human rights in public authorities. Admittedly, public services such as health and social are already under a lot of pressure to meet targets and performance indicators. The scrutiny to which they are subjected by bodies such as the Healthcare Commission, the Commission for Social Care Inspection and the Audit Commission is already onerous enough. Some may even argue that standards inspected by these bodies may well cover some of the principles underlying the Human Rights Act. On the other hand, the introduction of new standards will be linked with a demand for more resources when the government has already been criticised for spending too much public money on reforming public services.

Concluding Remarks

To conclude, the Inquiry is timely and necessary, but should focus on taking the debate forward and avoid going over evidence that is already available. The Inquiry could benefit from Terms of Reference that are **narrow, focused and realistic** and aim to produce evidence that will **enable public authorities to mainstream human rights**. There is clearly a failure of public

service providers to respect, protect and promote human rights. No additional evidence is needed. **The Inquiry should look into what can be done to convince public authorities, and effectively help them to cascade human rights both as legal instruments and as values in their services.**

On a separate note, I would encourage the Commission to make the findings of this consultation, and indeed of all future consultations, public. Feedback would also be extremely welcomed as well as a list of organisations and individuals who submitted their views. As we engage in a long overdue constructive dialogue to bring about the promised “human rights culture”, it is important that this is not done from an elevated platform, but as a two way process that informs and respects all participants.

I hope you find this submission helpful. I look forward to hearing from you.

Yours sincerely,



Dr. Theo Gavrielides
Director IARS
Head of Policy, ROTA

