

HUMAN RIGHTS BELONG TO ALL OF US

AN INFORMATION LEAFLET FOR PROFESSIONALS

As part of the *Do the Right Thing* Local Project

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INTRODUCTION TO OUR APPROACH

In the course of this *Do the Right Thing* Local Project we want to be clear about 'where we are coming from'. This paper gives a bit of history, considers the legal context and importantly for us focuses on how we might create a culture in our public and private services – as well as in our communities and in families- which are consistent with the intuitive idea of human dignity. We intend then, through this project, to make the case that:

- Human rights belong to all of us, all of the time, equally.
- Through strong and mutually respectful relationships, children will flourish with adult guidance and encouragement. An awareness, understanding and commitment to children's human rights provide a foundation for such relationships.
- Children's human rights help us do these things: keep children safe, provide a framework for our approach to providing services and allow children to have their say.
- As human beings we need to care about each other, we must help others lead decent and dignified lives, we must challenge injustice.
- Human rights apply in all areas of children and young people's lives: at home, at school and in other service provision contexts, and in the community.
- A *rights perspective* views all people, including children and young people, not as passive or weak but as equal and active members of society who should be a part of decisions which are made about them or which affect them.
- It is important to consider what children and young people *need* – but we need to go further and recognise that some needs require the recognition and power which a *right* brings them (for example children don't just need to be safe they benefit from the *right* to protection from harm and the state has an *obligation* to respect this right and provide protection).
- If we think about children's human rights as non-negotiable entitlements (in the realm of economic, social, cultural, civil, political and environmental rights) we begin to recognise the scale of the challenge which faces us as adults, professionals and as a society committed to their best interests.
- Public and voluntary sector agencies in receipt of public funding have an obligation to protect children's human rights, to prevent abuse of these rights and take action when there is a perceived abuse.
- As UNICEF reminds us: "The true measure of a nation's standing is how well it attends to its children – their health and safety, their material security, their education and socialization, and their sense of being loved, valued, and included in the families and societies into which they are born." From UNICEF at http://www.unicef-irc.org/publications/pdf/rc7_eng.pdf

A SHORT STORY ABOUT HUMAN RIGHTS... AND THE CHALLENGES THEY POSE

Philosopher Martha Nussbaum¹ states that “the language of rights is well established” but that “the idea of rights is by no means a crystal clear idea”. When it comes to contemporary understandings of what human rights mean these are most likely rooted in the establishment of the **United Nations** in the shadow of the human rights abuses of World War 2. The UN promotes its purposes in terms of human rights and freedoms through various instruments, primarily the 1948 **Universal Declaration of Human Rights** which affirmed that every human is born free and equal in dignity and in rights. The rights enshrined in the Declaration are often described as inalienable, and reflect all aspects of life; civil, political, economic, social and cultural. In turn each of these rights is argued to be indivisible and interdependent. However over the last 60 years there has been an increasing awareness that for the most part such a universal declaration may not have been enough to protect and promote the rights of specific populations, including children and young people.

As a result of the recognised need to both protect and support individuals and groups who may be vulnerable to denial of their rights further UN declarations have followed. In terms of children and young people the **UN Convention on the Rights of the Child** (UNCRC) reaffirmed commitments, this time for those under 18, to live a life with “inherent dignity” and continued to focus on a belief that “the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”. The **UN Convention on the Rights of Persons with Disabilities** also includes articles about children’s rights.

While this leaflet cannot offer a detailed history of human rights their importance can be traced to earlier ideas from philosophy that there is a natural or moral order which is in fact independent of human laws or traditions; such an order demands that laws and so the rights of the individual should be concerned with goodness, happiness, sociability, respect, doing to others as you would have done to yourself and ultimately with justice. However, challenging the perspective of such natural law is the view that human rights are formed in a set of rules to which the individual agrees because in turn the society to which they belong offers security and the means by which life can be lived; such a perspective sees human rights formed as a *social contract* between individuals. Some people challenge this idea of a social contract because it implies that human rights need to be negotiated and that those doing so need to be equal and bring something to the table – which in many ways can exclude the young or vulnerable.

The history of human rights is one of questioning what we mean by fairness, respect, equality, dignity and autonomy and how such notions might apply to populations which have often been disadvantaged, peripheral or excluded, including children and young people. In particular the intuitive idea of **human dignity** helps to think about *what people are able to do* (including children and young people) and *how they live their life*. In this way we can think about human rights as having an interest in *outcomes* – in other words **what does it actually mean if we secure a right for someone?**

¹ Nussbaum M. (2000) ‘Women and Human Development’ Cambridge University Press page 97

HUMAN RIGHTS LEGISLATION

Here we mention the **European Convention on Human Rights**, the **Human Rights Act (1998)** and the **Scotland Act (1998)**.

The **European Convention on Human Rights (ECHR)** is a treaty to protect human rights and fundamental freedoms in Europe. Drafted in 1950 by the Council of Europe the convention entered into force on 3 September 1953. All Council of Europe member states are party to the Convention and new members are expected to ratify the convention. The Convention established the European Court of Human Rights.

The **Human Rights Act 1998** is described in a guide to the act as follows:

There are some rights and freedoms that are so important and so fundamental that many countries have written them down in a special form, and have made safeguarding and promoting them a fundamental aim for Government.

The UK does not have a written **Constitution** as part of its national law. People here had long enjoyed a strong tradition of individual liberties but it has not always been easy to say precisely what was involved – or what to do when unwritten liberties conflict with other laws.

The 1950 **European Convention on Human Rights (ECHR)** is a binding international agreement that the UK helped draft and has sought to comply with for over half a century. The Convention enshrines fundamental civil and political rights, but for many years it was not a full part of our own law. Using the Convention usually meant taking a case to the **European Court of Human Rights** in Strasbourg. This was often time consuming and expensive.

Full guide at: <http://www.justice.gov.uk/guidance/docs/act-studyguide.pdf>

The State's compliance with the ECHR is a legal duty under S6 of the Human Rights Act 1998. The Government said the Human Rights Act would "... *help change the way people think and behave and create an atmosphere in which decisions and policies are discussed and understood.*" (Page 12, Human Rights Act: An Introduction)

Within the **Scotland Act 1998**, domestic implementation of the ECHR was partially early due to s29(2)(d) relating to actions of the Scottish Parliament and s57(2) which cover Scottish Ministers (apart from certain acts of the Lord Advocate). These specific provisions within the Scotland Act have also resulted in a distinct approach to human rights protection and arguably we have a more powerful framework in Scotland so that individuals can choose whether to use S57 of Scotland Act or S6 of Human Rights Act;

THE UNCRC

While both adults and children have rights enshrined in the European Convention on Human Rights (ECHR) and the Human Rights Act (1998) children and young people up to the age of 18 (or up to 21 if the young person is 'looked after') are also viewed as requiring special protection and so in addition the rights of the child are laid out in The **United Nations Convention on the Rights of the Child (UNCRC)**.

The UK government signed up to the Convention on December 6th 1991. Part of the responsibility of being a signatory to the Convention means that governments, and the public bodies or agencies they fund, should ensure full compliance with the articles of the Convention. This means that the UK government has to make sure that every child has all the rights in the Convention. With devolution the Scottish Government must do what it can to implement the Convention here in Scotland.

The UK report to the UN on a 5 year cycle about implementation of the UNCRC. The latest report from Scotland on implementation of the Convention from 2007 is available on line here <http://www.scotland.gov.uk/Publications/2007/07/30114126/0>

The UNCRC is made up of 54 articles; articles 1 – 42 set out the rights of the child. While broad in its scope the main principles of the UNCRC are that:

- All the rights guaranteed by the Convention must be available to *all* children and young people without discrimination.
- In making decisions about a child or young person *their* best interests must be a primary consideration.
- Children and young people's views must be considered and taken into account in all matters affecting them.
- All children and young people have the right to life, survival and development.

Whilst not incorporated into UK domestic law² UNCRC implementation is non-negotiable, indeed the UK Government has stated: "*The United Kingdom will not ratify a treaty unless the Government is satisfied that domestic law and practice enable it to comply.*" (UK National Report to the UN Human Rights Council, March 2008, para18).

Having the UNCRC means making a commitment to learning about it and to delivering services and developing adult:child relationships which reflect its principles. The UN Committee on Rights of the Child (General Comment No 1 2001) has clarified that "*... children should also learn about human rights by seeing human rights standards implemented in practice whether at home, in school or within the community. Human rights education should be a comprehensive, lifelong process and start with the reflection of human rights values in the daily life and experiences of children.*"

² Having said this, under the Government of Wales Act 2006, the Wales UNCRC Monitoring Group working with partners in 2010 successfully lobbied for a legal duty to be imposed on Welsh Ministers to have due regard to the rights and obligations in the United Nations Convention on the Rights of the Child (UNCRC) and its Optional Protocols in exercising any of their functions. More here: <http://www.childrensrightswales.org.uk/uncrc-rights.aspx>

PROGRESS ON IMPLEMENTING HUMAN RIGHTS TREATIES AND LEGISLATION

Some would argue there has been a lack of progress in mainstreaming human rights across public services and moving to a human rights culture within organisations. This has been evidenced by several reports.

In 2005, the Institute for Public Policy Research published "Improving Public Services: Using a Human Rights Approach", commissioned by the Department of Constitutional Affairs, which examined strategies for wider implementation of the Human Rights Act and concluded "*The Human Rights Act has not yet been of sufficiently demonstrable value in improving standards in public services as the Government had intended when the Act was passed*".

In July 2006, the Lord Chancellor also published a "Review of the Implementation of the Human Rights Act" and concluded that "*The Government remains fully committed to the European Convention on Human Rights, and to the way in which it is given effect in UK law by the Human Rights Act*" but acknowledged a need for generic guidance and training for public authorities and to 'debunk' myths which have developed in the minds of the public.

A report published by Amnesty International on Scottish public authorities in September 2006 revealed that 65.5% of those surveyed either did not understand their duties under the Human Rights Act 1998 or could not provide evidence of steps taken to comply with those duties. This work was updated in 2010/11 and it was found that understanding remains poor, it remains difficult to evidence compliance and there is an absence of action plans to implement human rights in public bodies in Scotland.

When it comes to public authorities and their human rights obligations defining public authorities i.e. those bodies covered by the Human Rights Act (HRA) has become a contentious issue due to case law. This is an important point as public services for children are increasingly being delivered by the voluntary sector in Scotland, although less so by the private sector. The UN Committee on the Rights of the Child however is most clear that State's obligations to children to protect their human rights applies *regardless of who is delivering the services* (see General Comment No. 5) Across the UK there is a danger that human rights obligations may be regarded as more of a contractual issue than about individual holders of rights who have the power to take action when there is a perceived abuse. Such misunderstandings in respect of UNCRC need to be addressed.

References:

Review of the Implementation of the Human Rights Act

<http://webarchive.nationalarchives.gov.uk/+http://www.dca.gov.uk/peoples-rights/human-rights/publications.htm>

Institute for Public Policy Research: Improving Public Services: Using a Human Rights Approach

<http://www.edf.org.uk/news/ippr%20human%20rights%20report%20June%202005.doc>

Amnesty International: Delivering Human Rights in Scotland: A report on Scottish Public Authorities http://www.amnesty.org.uk/actions_details.asp?ActionID=182

Delivering Human Rights in Scotland – an Update on Scottish Public Authorities in 2010 (February 2010) http://www.amnesty.org.uk/uploads/documents/doc_21312.pdf

USING THE ECHR TO PROTECT CHILDREN'S RIGHTS AND HUMAN DIGNITY – AN EXAMPLE

It is important to understand the potential of cases which individuals may take when they feel their rights have been breached in terms of the European Convention on Human Rights. Here is one example:

Many people in Scotland know about the impact of the Campbell and Cosans 1982 victory at the European Court of Human Rights in 1982 as it led to the banning of the belt in schools. However the actual detail of the case is far more powerful and can be used to argue that public authorities have an obligation to ensure that children access and enjoy a positive educational environment. It is appropriate to argue that failing to address problems which they know exist, such as bullying, are a human rights compliance matter.

Mrs Campbell and Mrs Cosans maintained that the use of corporal punishment as a disciplinary measure in the school attended by their children constituted treatment contrary to Article 3 of the ECHR and also failed to respect their right, as a parent, to ensure their son's education and teaching in conformity with philosophical convictions, as guaranteed by the second sentence of Article 2 of Protocol No. 1 (P1-2). Mrs. Cosans further contended that Jeffrey's suspension from school violated his right to education, protected by the first sentence of the last-mentioned Article (P1-2). While the Court found no breach of Article 3, the Court's focused on Protocol 1, Article 2 of the ECHR and stated: *"No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religions and philosophical convictions."*

The Court held by six votes to one that there had been, with respect to Mrs. Campbell and Mrs. Cosans, breach of the second sentence of Article 2 of Protocol No. 1 (P1-2) and by six votes to one that there has been, as regards Jeffrey Cosans, breach of the first sentence of the last-mentioned Article (P1-2). The Court's logic on the rights of Jeffrey Cosans is instructive: *"The suspension of Jeffrey Cosans - which remained in force for nearly a whole school year - was motivated by his and his parents' refusal to accept that he receive or be liable to corporal chastisement (see paragraphs 10-11 above). His return to school could have been secured only if his parents had acted contrary to their convictions, convictions which the United Kingdom is obliged to respect under the second sentence of Article 2 (P1-2). A condition of access to an educational establishment that conflicts in this way with another right enshrined in Protocol No. 1 cannot be described as reasonable and in any event falls outside the State's power of regulation under Article 2 (P1-2)."*

Beyond use of the belt in Scotland's schools, if we agree for example that bullying or shouting at children in school inhibits children's capacity to learn, then human rights law may offer a new and positive way forward for children, parents and carers. Education providers need to consider the implications of any failure to stop individuals being bullied due to the negative impact on a child's education. The focus of human rights arguments is, therefore, on the failing of the State to act to protect the right of the child to education.

LINKING THE UNCRC TO SCOTTISH GOVERNMENT POLICY

In terms of key policy in Scotland the UNCRC and a rights perspective is a key influence. Although not incorporated into law in its entirety aspects of the UNCRC can be found in policy and legislation:

Getting it Right for every Child (GIRFEC)

Getting it right for every child is the foundation for work with all children and young people, including adult services where parents are involved. It builds on universal health and education services, and is embedded in the developing early years and youth frameworks. In describing GIRFEC the Scottish Government identify that the driving force behind the reform programme is a shared commitment to improving outcomes for children and young people, addressing their needs and promoting their rights, stating that GIRFEC "has at its heart an ethos that respects the voice of the child and their best interests."

<http://www.scotland.gov.uk/Topics/People/Young-People/childrenservices/girfec>

Curriculum for Excellence

The ethos and life of the school as a community is a focus for Curriculum for Excellence with the four capacities to be achieved by participation in learning in school and other learning environments as being that all learners are supported to become successful learners, confident individuals, effective contributors and responsible citizens. Citizenship is described as entailing respect for others and a commitment to participate in society with the associated skills, knowledge and understanding that participation requires. The experiences and outcomes which the curriculum should provide includes a commitment to teaching and learning about values such as fairness and equality and love, caring, sharing and human rights. (RME 2-05b)

<http://www.ltscotland.org.uk/understandingthecurriculum/index.asp>

The Standards in Scotland's Schools etc. Act 2000

The Act, for the first time, stated that: "It shall be the right of every child of school age to be provided with school education by, or by virtue of arrangements made, or entered into, by, an education authority." (S1) There is a presumption that children should be educated in mainstream settings. This legislation also gave children and young people additional rights to have their views heard in matters relating to their education. The Act means that children's views now hold statutory significance in education decisions and contains the general principle: "An education authority shall have due regard, so far as is reasonably practicable, to the views (if there is a wish to express them) of the child or young person in decisions that significantly affect that child or young person, taking account of the child or young person's age and maturity." (S2.2) In addition the Act placed specific duties on education authorities to take account of pupil's views in relation to the Education Improvement Objectives and the School Development Plan that form part of the Improvement Framework. It also gave pupils of age 12 and over the right to appeal against school exclusions whereas before this right only applied to those of 16 years or over or parents.

<http://www.legislation.gov.uk/asp/2000/6/contents>

Equally Well (2008) is the report of the Ministerial Task Force on Health Inequalities, recognising that health inequalities remain a significant challenge in Scotland. Health inequality is framed as unjust and so a human rights issue. One of the key priority areas for action is identified as being children, particularly in the early years with links to poverty and ill health during pregnancy. The report identifies that “Children's earliest experiences shape how their brains develop. Very young children need secure and consistent relationships with other people, or else they will not thrive, learn and adapt to their surroundings.” (Executive Summary)

<http://www.scotland.gov.uk/Publications/2008/06/25104032/0>

Achieving Our Potential (2008) is a framework to tackle poverty and income inequality in Scotland. Poverty is described as a blight on Scottish society. There is a concern for fairness and social justice. The framework states: “All the evidence tells us that reducing poverty and the gap between the richest and the poorest support increased economic participation, improved social cohesion and stronger communities. By reconnecting large numbers of people in disadvantaged groups and communities to the mainstream economy, and encouraging work that pays fairly, we will help more people in Scotland to fulfil their potential; increase economic growth and participation in our labour market; and create greater social equity across Scotland.”

<http://www.scotland.gov.uk/Publications/2008/11/20103815/0>

Early Years Framework (2009) is about giving all our children the best start in life and the steps the Scottish Government, local partners and practitioners in early years services need to take. The framework sits in the context of a commitment to the rights of the child. It states: “This framework starts from a series of vision statements that articulate what the best start in life looks like for children. Many of these reflect the rights of children enshrined in the UNCRC.” (S2) and that: “Early years policy will contribute strongly to a range of outcomes and also to quality of life in early childhood. Effective approaches to early years and early intervention policy will contribute strongly to promoting and upholding children’s rights as defined by the UN Convention on the Rights of the Child (UNCRC) and indeed those rights must underpin all policy for children.” (S1)

<http://www.scotland.gov.uk/Publications/2009/01/13095148/0>

Children’s Hearings (Scotland) Act 2011

The language and intent of key principles of children’s human rights – such as their best interests being paramount, ensuring their views and opinions are heard, gives children the right to see relevant papers and to give a fair hearing - continues to influence and underpin recent developments. For examples these principles are re-stated in the Children’s Hearings (Scotland) Act 2011

http://www.legislation.gov.uk/asp/2011/1/pdfs/asp_20110001_en.pdf

KEY HUMAN RIGHTS BODIES IN SCOTLAND

Scotland's Commissioner for Children and Young People (SCCYP)

To support Scotland's efforts to deliver on the promises made to children and young people by the UNCRC the Scottish Parliament established the office of Scotland's Commissioner for Children and Young People to act as an independent advocate for children and young people in Scotland, championing and protecting their rights. The office is required to engage and involve children and young people in its work.

<http://www.sccyp.org.uk>

Scottish Commission for Human Rights

One driver for changing culture and practice in Scotland is the independent Scottish Commission for Human Rights which was established by the Scottish Parliament in 2008. The Scottish Commission for Human Rights Act 2006 provides a general duty to promote human rights and in particular to encourage best practice in relation to devolved human rights issues. Human rights include the ECHR and "other human rights contained in any international convention, treaty or other international instrument ratified by the United Kingdom." (See Appendix 2) That includes the United Nations Convention on the Rights of the Child and could focus on adult obligations to children under the Convention. "Promote" means awareness and understanding of, and respect for, those rights. In deciding what action to take the Commission must have regard to the "human rights of those groups in society whose human rights are not, in the Commission's opinion, otherwise being sufficiently promoted." (S2)

<http://www.scottishhumanrights.com>

Equality and Human Rights Commission

From October 2007 the Equality and Human Rights Commission for Great Britain assumed the responsibilities of the existing statutory Equal Opportunities Commission, the Disability Rights Commission and the Commission for Racial Equality. The body has a wider brief for other strands of diversity and equalities such as promoting human rights in relation to reserved human rights issues. The CEHR has extensive powers and duties to tackle discrimination in society and promote equality and human rights practice and principles in private and public bodies. For example it can work on age discrimination.

<http://www.equalityhumanrights.com/scotland>

Scottish information Commissioner

Everyone has a legal right to see information from Scottish public authorities. It is also possible to challenge an authority's decision to keep information from you. The Commissioner is responsible for enforcing and promoting Scotland's freedom of information laws. Children have access rights from the age of 12.

<http://www.itspublicknowledge.info/home/ScottishInformationCommissioner.asp>

MORE INFORMATION

Note

This is an information briefing only. A lawyer should be consulted for an authoritative interpretation of legislation.

Thanks

The Children's Parliament would like to thank **Carole Ewart** of **Ewart Consultancy** for information and support in the writing of this information. **Ewart Consultancy** is a public policy and human rights consultancy service for the not for profit sector.

More about Carole's work at: <http://www.ewartcc.com>

The following sites/links provide more information.

Resources and information for children and young people

The UN main website is at: <http://www.un.org>

Information about the Secretary General is at <http://www.un.org/sg>

There is a teaching and learning project called **cyberschoolbus** at: <http://www.un.org/Pubs/CyberSchoolBus> In the left hand column there are links to a range of resources.

ChildLine on 0800 1111 and at www.childline.org.uk

The Scottish Child Law Centre

This is the only Law Centre in Scotland that works exclusively for children and young people, providing services throughout Scotland. The Centre helps children and young people, their families and carers, and professionals working for and with children by providing free expert legal advice and information through our advice line, email and text services. It also provides a wide range of training on the law and children's rights to groups and individuals across Scotland, and offers a range of leaflets and publications on various legal issues. Staff also do visits to schools and young people's organisations.

<http://www.sclc.org.uk>

Together

Together (formally the Scottish Alliance for Children's Rights) is an alliance of Scottish children's charities that works to improve the awareness, understanding and implementation of the United Nations Convention on the Rights of the Child (UNCRC).

<http://www.togetherscotland.org.uk>

Rights of the Child UK (ROCK): making the UNCRC part of UK law

ROCK, is an alliance of charities and individuals across the UK that wants to make the United Nations Convention on the Rights of the Child part of the law in the UK.

<http://www.crae.org.uk/assets/files/s%20Rights%20Bill.pdf>

The European Convention on Human Rights

<http://conventions.coe.int/treaty/en/Treaties/Html/005.htm>

The Human Rights Act 1998

<http://www.legislation.gov.uk/ukpga/1998/42/contents>

