



**Middlesex  
University  
London**

# **IDENTIFYING HUMAN RIGHTS STORIES: A SCOPING STUDY**

**Funded by the Thomas Paine Initiative**

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## **Abbreviations**

BIHR	British Institute of Human Rights
CRAE	Children’s Rights Alliance for England
CRPD	Convention on the Rights of Persons with Disabilities
DPP	Director of Public Prosecutions
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EDF	Equality and Diversity Forum
EHRC	Equality and Human Rights Commission
FREDA	Fairness, respect, equality, dignity and autonomy (the ‘FREDA’ principles)
HRA	Human Rights Act 1998
JCHR	Joint Committee on Human Rights
LGBT	Lesbian, gay, bisexual or transgender
NIHRC	Northern Ireland Human Rights Commission
NHRI	National human rights institution
NICCY	Northern Ireland Commissioner for Children and Young People
SHRC	Scottish Human Rights Commission
SPSO	Scottish Public Services Ombudsman

## **Executive summary**

### **Introduction**

This report explores ways of generating stories that show how the Human Rights Act (HRA) 1998 affects the lives of people in the UK. By human rights ‘stories’ we mean instances in which arguments based on human rights law, whether alone or alongside other arguments, achieve beneficial outcomes for individuals or groups, whether procedural or substantive, by means of:

- litigation;
- decisions taken by public authorities; or
- public advocacy, lobbying and campaigning.

Our premise is that the HRA is often misrepresented as benefiting litigious individuals at the expense of the public interest. Consequently, there is a need to bring more systematically into the public domain human rights stories that concern everyday scenarios affecting many people, and that reflect the impact of human rights standards and principles both inside and outside the courts. This imperative was overwhelmingly endorsed by our interviewees.

### **Determining the impact of the Human Rights Act**

The HRA requires public authorities to act compatibly with the rights contained in the European Convention on Human Rights. This includes a positive obligation to act to preventively to protect people’s human rights in some circumstances.

Human rights stories may be generated in many different contexts and by many different actors. In some instances, the protagonist of a human rights story is the person whose rights are at stake; in others, it is an advocate, advice-giver, public servant, lawyer or campaigner who uses human rights to achieve beneficial outcomes for others.

Just as there is variation between human rights stories in the types of impact, there are also differences in the scale of impact. Sometimes, the impact of the HRA lends itself to being captured in the form of personal narratives; in others, stories demand to be painted on a bigger canvas. The most powerful stories are likely to be those that work simultaneously at both levels, ensuring that individual stories are not isolated and de-contextualised.

In order to avoid the risk of ‘over-claiming’, it is necessary in each instance to demonstrate, rather than merely assume, the impact of the HRA.

## **Where to look for human rights stories**

Considerable evidence exists as to the impact of the HRA on the lives of people in the UK: some - but not all - has already been captured in story form.

Personal stories form part of a larger narrative about the HRA. We identify several broad areas within which individual stories might be contextualised. These are: protection from violence and coercion; protection of those whose rights are especially vulnerable to abuse; justice for bereaved families; protection of individual liberties; and ensuring fairness in decision-making. These broader narratives are not exhaustive but, taken together, they tell a story about the HRA which is fundamentally different from that propounded in public discourse.

There is no single UK human rights story. Rather, each nation of the UK presents particular opportunities and challenges to capturing stories which relate the impact of the HRA. While differences should not be exaggerated, the devolved nations appear to provide a more favourable climate than England (and certainly Westminster) for generating and communicating human rights stories.

## **The elements of a human rights story**

This report identifies questions that human rights story-tellers need to consider. Whose story is it? What happens? And how is the story told? Our interviewees did not advocate a prescriptive approach to these questions but, rather, one which is sensitive to context in respect of the purpose of the story and its intended audience.

Some general principles can be extracted as to how to tell stories that convey both the legal and moral force of the human rights framework. One is to communicate not only human rights values and principles but also what the HRA achieves practically for individuals, whether in terms of procedure ('having your voice heard') or substantive outcomes. Another is to provoke empathy for the subject of the story through the use of compelling detail and by conveying the universal implications of their predicament. A story can also be made more persuasive by creating a feeling of jeopardy - identifying who or what is under threat. Human rights can be made explicit in a story without resort to legalistic or technical language.

In addition to people whose own rights are at stake, specialist NGOs and advocacy organisations are considered to be particularly persuasive messengers.

## **Finding human rights stories: barriers and solutions**

Low awareness and negative perceptions about human rights inhibit organisations from using or referring to them, creating a negative cycle. Conversely, a positive cycle can be established, whereby human rights stories raise awareness and encourage implementation, thereby generating more stories.

Capturing human rights stories requires persistence and can be demanding of resources. Public authorities rarely promote, or even recognise, the human rights dimension of what they do. There is a need to find willing and knowledgeable interlocutors; weave a coherent narrative from disparate sources of information; and surmount problems of low awareness or antipathy to human rights. There may also be a need to do extensive fact-checking and to determine questions of causality in order that the human rights dimension of a story can be told authentically.

Relationships of trust – between organisations, and between individuals whose rights are at stake and their advocates – are the wellspring of human rights stories. Peer-to-peer communication within the public and voluntary sectors can generate stories away from the ‘white noise’ of negative media commentary.

Many human rights stories are ‘buried’, in the sense that individuals whose rights are vulnerable to being breached are effectively stranded from sources of advice or legal remedy. Those that do seek redress may not invoke their human rights as such – and where individuals have benefitted from the use of human rights, they may not want to tell their story, even anonymously. An exception is bereaved families whose loved ones have died at the hands of or in the care of the state, who are often highly motivated to speak out.

Individuals almost invariably require intensive support to tell their human rights story. Specialist NGOs, which in the view of our interviewees are trusted both by their client groups and the public, are viewed by many as ideally placed to fulfil this role – and to provide the human rights ‘meta-narrative’ needed to contextualise personal testimonies. Helplines, advice services and existing efforts to gather case studies for other purposes are all potential sources of human rights stories. In order to realise this potential, such organisations need to be incentivised to identify the human rights dimension of what they do, including the outcomes of human rights-based advice. There is appetite among NGOs for collaborative initiatives that support them to generate human rights stories by making minor adjustments to their existing activities.

Oversight and complaints-handling bodies have rarely generated human rights stories. Even where human rights are pertinent, they are rarely referred to in case commentaries. There is potential to generate stories among bodies that have embedded human rights into their operational frameworks in a more thoroughgoing way.

Human rights judgments require a sensitive process of ‘translation’ in order to produce narratives that convey their meaning and significance, as well as applicants’

personal experience. Some judgments do not lend themselves readily to advocacy or campaigning imperatives, such as those that are complex or arcane; judgments that concern the proportionality of the restrictions on a qualified right or the balancing of competing rights may require considerable explanation for their import to be understood. Yet others involve stark and compelling narratives that are immediately 'translatable' into human rights stories.

Cases from lower instance courts and tribunals that are not recorded, and claims that are settled in the early stages, are a vast untapped reservoir of potential human rights stories. Both these categories of cases are likely to contain persuasive human rights stories. Capturing them requires face-to-face contact with selected law firms or barristers' chambers which specialise in public law and human rights. They are a gateway to information and, potentially, contact with successful claimants. Our study suggests that there are some members of the legal profession who are ready and willing to play this role. However, understandably, lawyers do not generally appear to view it as their role proactively to disseminate human rights stories. Indeed, there is concern that outside metropolitan centres, lawyers have not embraced the use of human rights, with obvious consequences for the potential to generate human rights stories.

### **Next steps**

The final section of this report suggests several steps that could be taken to increase the supply of persuasive human rights stories:

- targeted, preferably face-to-face, work with lawyers to capture human rights stories, especially cases from lower instance courts and tribunals that are not recorded, and claims that are settled in the early stages;
- engagement with story-telling initiatives beyond the human rights field;
- collaborative initiatives that support NGOs to generate human rights stories by making minor adjustments to, or capturing the impact of, their existing activities; and targeted investment in story-gathering exercises with such organisations;
- support for peer-to-peer communication within the public and voluntary sectors aimed at generating stories;
- developing more extensive and creative use of social media to tell human rights stories;
- targeted work with oversight and complaints-handling bodies that have adopted an overt human rights-based approach to their service; and
- more systematic 'mining' of repositories of information about the impact of the HRA that have not been comprehensively analysed for human rights stories, such as evidence contained in submissions to the Commission on a Bill of Rights.

## 1. Introduction

This report presents the findings of a scoping study funded by the Thomas Paine Initiative in 2013-14. The Thomas Paine Initiative is a collaborative funding initiative that aims to help promote greater respect for the importance of human rights by ensuring a better understanding of the true scope of the obligations and liberties deriving from domestic and international human rights law.

The study explored ways of generating stories that show how the Human Rights Act (HRA) 1998 affects the lives of people in the UK. By human rights 'stories' we mean instances in which arguments based on human rights law, whether alone or alongside other arguments, achieve beneficial outcomes for individuals or groups, whether procedural or substantive, by means of:

- litigation;
- decisions taken by public authorities as a result of their obligations under the HRA; or
- public advocacy, lobbying and campaigning.

Thus, the study examines how we may identify the impact of the HRA and the way in which this impact has been, or could be, captured in story form by different types of organisation.

It addresses the following specific questions:

- What human rights stories already exist, especially those which are captured for a non-specialist audience?
- What are the most likely sources of human rights stories that are not currently captured?
- What are the obstacles (e.g. ethical, logistical, attitudinal) to the more systematic capturing of human rights stories?; and
- How might those obstacles be overcome?

### 1.1 The nature of the problem

The premise of the study is that mainstream political and media debate about the HRA does not provide a rounded or accurate picture of its impact. There are two closely-associated dimensions to this partial representation, or sometimes misrepresentation, of the HRA. The first concerns the supposed **beneficiaries** of the HRA: in public discourse, the Act is predominantly associated with the protection of groups perceived as unpopular or undeserving; and, consequently, with the

purported erosion of personal responsibility.<sup>1</sup> Such arguments exclude consideration of the way in which the HRA benefits individuals or groups who do not conform to this narrative, some of whom (such as children, older people, people with disabilities or women at risk of violence) face circumstances in which their human rights are especially vulnerable to abuse.

The second dimension concerns the way in which the HRA works. The dominant portrayal of the Act is that it is principally a tool for **litigation**. This debate excludes consideration of the many and varied ways in which the HRA influences decision-making and guides institutional practice outside the courtroom. Moreover, much political and media debate dwells upon a relatively small number of contentious legal cases – cases which are, by definition, unrepresentative of the public experience at large.

There are exceptions to these trends. Some cases are reported positively even by newspapers generally hostile to human rights; for example, the European Court of Human Rights (ECtHR) judgment against the UK which held that the indiscriminate retention of DNA profiles of millions of people who have not been convicted of any crime violated the right to respect for one's private and family life.<sup>2</sup>

Despite these exceptions, the central premise of our study – that the HRA is largely depicted as benefiting litigious and 'undeserving' individuals at the expense of the public interest, and that this portrayal fails to capture the overall impact of the Act - was repeatedly confirmed by participants in the scoping study. For example, one participant at the lawyers' roundtable ventured that:

The public and the press associate the [HRA] with ... high-profile litigation - which tends to be brought by 'bad' people. The challenge is getting across the idea that human rights also reach into smaller places, every day, and reach ordinary people who are not 'bad' and who may be vulnerable ... We need to separate this out from litigation which is a very small part of the impact of the HRA.

Several interviewees observed that even where human rights cases or issues are likely to engender public sympathy, the human rights dimension is often downplayed

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<sup>1</sup> For example, in August 2011, after the riots in several English cities, David Cameron, commenting on 'the Human Rights Act and the culture associated with it', stated: '... what is alien to our tradition - and now exerting such a corrosive influence on behaviour and morality - is the twisting and misrepresenting of human rights in a way that has undermined personal responsibility' ('PM's speech on the fight-back after the riots', Witney, 15 August 2011).

<sup>2</sup> *S and Marper v UK*, Nos. 30562/04 and 30566/04 [GC], 4 December 2008. See, for example, 'One million innocent people could have their profiles wiped from Britain's "Orwellian" DNA database after court ruling' *Daily Mail*, 5 December 2008.

or omitted in media reports and political debate; for example, lawyers representing families whose loved ones had died due to catastrophic failings in care and treatment at Stafford Hospital noted that virtually no media reports highlighted that the families had relied on the HRA in their legal challenge.

It follows from our central premise that in order to encourage a more balanced and well-informed discussion about the HRA, there is a need to bring more systematically into the public domain human rights stories that concern everyday scenarios and services affecting many people, and that reflect the impact of human rights standards and principles both inside and outside the courts. This imperative reflects our starting point – the fundamental principle underlying the concept of human rights that they are universal; they belong to every person by virtue of his or her humanity and are as relevant in the home, care home or hospital ward as they are in the police station or prison cell.

## **1.2 Public opinion about human rights and the HRA**

We noted in section 1.1 that certain politicians and sections of the press represent the HRA as a charter for miscreants to pursue their individualistic interests through the courts. It might be expected that this narrative about the HRA would be reflected in correspondingly negative public opinion. Indeed, the unpopularity of the HRA is widely asserted; however, the nature and extent of public discontent is rarely explained or substantiated. This omission matters because the assumption that the HRA is irretrievably unpopular is frequently used as the principal justification for the argument that the Act should be repealed and replaced by a new UK Bill of Rights.<sup>3</sup>

Surveys of public opinion in this area are inconsistent and their findings are likely to be determined in part by the way in which questions are phrased. Broadly speaking, evidence from quantitative and qualitative surveys suggests that the **existence** of a law in the UK to protect rights and freedoms in line with international standards is popular in principle, as are the specific rights contained in the HRA.<sup>4</sup> Hostility towards the Act appears to derive not from its primary function, nor its detailed content, but from the perception that it is used so as to protect disproportionately groups that are

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<sup>3</sup> The majority of members on the Commission on a Bill of Rights, formed by the coalition government in 2010 to investigate options for creating a new bill of rights for the UK, stated that the ‘lack of “ownership” [of the HRA] by the public ... is ... the most powerful argument for a new constitutional instrument’; Commission on a Bill of Rights (2012) *A UK Bill of Rights? The Choice Before Us* Volume 1 (London: Commission on a Bill of Rights), p. 29.

<sup>4</sup> ComRes poll for Liberty (2010) at [www.comres.co.uk/polls/Liberty\\_HRA\\_poll\\_27.09.10.pdf](http://www.comres.co.uk/polls/Liberty_HRA_poll_27.09.10.pdf); K. Kaur-Ballagan, S. Castell, K. Brough and H. Friemert (2009) *Public Perceptions of Human Rights* (Manchester: Equality and Human Rights Commission), p. 22; Ministry of Justice (2008) *Human Rights Insight Project*, Ministry of Justice Research Series 1/08 (London: Ministry of Justice), p. 47.

viewed as undeserving (identified in polls as refugees and asylum seekers, immigrants, criminals and prisoners, among others).<sup>5</sup>

Research commissioned by the Equality and Diversity Forum (EDF) in 2012 indicates a lack of understanding about how the HRA works; for example, about the fact that the Act does not permit courts to strike down primary legislation.<sup>6</sup> There is also a prevalent view that human rights are not relevant to everyday life or public services. Another theme emerging from this research was resentment at perceived interference by European bodies in national decision-making. This perception is likely to have been fuelled by the erroneous yet widespread view that the European Court of Human Rights is part of the European Union; the burgeoning critiques of the legitimacy and competence of the Court to adjudicate on human rights matters in the UK; and a lack of understanding about the operation of international law and the history of the European Convention on Human Rights (ECHR) specifically. Critics of the ECtHR have called for the UK to consider withdrawing from the ECHR – a step no democracy has ever taken.<sup>7</sup>

Taken together, these factors constitute a significant image problem for the HRA, as well as for the relationship between the UK and the ECtHR. However, the evidence should not be misconstrued. Hostility to the HRA which derives from lack of knowledge and understanding should be distinguished from that which is connected to more deep-rooted sources of alienation. Nor should the vitriolic tone of some national press coverage be taken as a proxy for public attitudes as a whole.<sup>8</sup>

The research commissioned by EDF indicates that around one quarter of the population in Britain is implacably hostile to human rights, while a slightly smaller

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<sup>5</sup> Kaur-Ballagan et al, *Public Perceptions of Human Rights*, p. 57; Ministry of Justice, *Human Rights Insight Project* at 44; YouGov/ITV survey (2011) at [http://cdn.yougov.com/today\\_uk\\_import/yg-archives-pol-yougovitv-humanrights-240311.pdf](http://cdn.yougov.com/today_uk_import/yg-archives-pol-yougovitv-humanrights-240311.pdf).

<sup>6</sup> Equality and Diversity Forum (2012) *Public Attitudes to Human Rights* (London: EDF) p. 6.

<sup>7</sup> A. Donald, J. Gordon and P. Leach (2012) *The UK and the European Court of Human Rights*, Research Report 83 (Manchester: Equality and Human Rights Commission), Chapter 9.

<sup>8</sup> Respondents to the two consultations by the Commission on a Bill of Rights expressed 'overwhelming support' for retaining the HRA (see the minority report by Baroness Helena Kennedy and Philippe Sands QC in *A UK Bill of Rights? The Choice Before Us* Volume 1, p. 178). The majority report of the Commission correctly observes (p. 28) that respondents to the consultations, being self-selecting, may not represent public opinion. However, the very unreliability of numerical measures of public opinion means that the Commission's majority was unable to adduce evidence beyond the anecdotal for **its** view that the HRA is irredeemably unpopular.

proportion is strongly positive.<sup>9</sup> The rest are either uninterested (around 10 per cent) or conflicted (around 40 per cent): these are groups that might potentially become more positive about human rights, or might at least be prevented from becoming negative. According to the research, people often hold inconsistent and complex views about human rights. A person's reaction to 'human rights' may in fact be driven by their reaction to other themes which they see as associated with human rights, such as Europe, criminality, immigration and perceived unfairness.<sup>10</sup> People tend to become more positive when exposed to messages that: make human rights feel relevant to them; connect with tradition; emphasise fairness; and increase their understanding of how human rights laws work in practice.<sup>11</sup>

While the data in the EDF survey is not disaggregated geographically, there is evidence elsewhere that attitudes towards, and awareness of, human rights and the HRA vary between the different nations of the UK, with negative commentary being more pronounced at Westminster and among sections of the UK press than in the devolved nations.<sup>12</sup>

### **1.3 Methodology**

The study employed a qualitative methodology. The authors conducted semi-structured telephone interviews with 39 individuals and held two roundtable discussions: one with 12 members of the legal profession and one with 10 representatives of NGOs. The roundtable discussions were held in London under the Chatham House rule. Interviews and roundtable discussions were recorded, transcribed and analysed for emergent themes.

Participants in the study were purposively sampled to ensure that we elicited views from a range of actors: national human rights institutions (NHRIs); human rights NGOs; sectoral NGOs (or NGO federations); advice-giving bodies; members of the legal profession; public authorities; and oversight and/or complaint-handling bodies. Given the small sample sizes, interviewees cannot be considered representative of the different constituencies involved. Interviewees were drawn from all parts of the UK; however, we did not conduct a sufficient number of interviews to permit us to

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<sup>9</sup> Equally Ours (2013) *Telling the story of everyone's rights, every day* (London: Equally Ours), p. 7.

<sup>10</sup> Equality and Diversity Forum, *Public Attitudes to Human Rights*, p. 12.

<sup>11</sup> Equally Ours, *Telling the story of everyone's rights, every day*, p. 11.

<sup>12</sup> See Commission on a Bill of Rights, *A UK Bill of Rights? The Choice Before Us* Volume 1, Chapter 9. The Commission found (at p. 163) that there was little support in the devolved nations for the idea of replacing the HRA with a new bill of rights; moreover there was 'little, if any, criticism of the Strasbourg Court, of the European label of the Convention, or of human rights generally in Scotland, Wales or Northern Ireland'.

make a strong differentiation in respect of our findings between the different nations of the UK.

In addition, we devised an online survey aimed at members of the legal profession. This was promoted via the Law Societies in the UK, as well as legal networks such as the Human Rights Lawyers' Association; the Law Centres Network and the UK Human Rights Blog. The survey received 56 responses. The findings of the survey are not statistically significant given that respondents were self-selecting; however, the responses provided useful 'snapshots' of experience and opinion.

In addition, the report refers to documentary sources including academic and 'grey' literature; websites; blogs; and audio-visual material.

#### **1.4 Scope of this report**

This report focuses principally on human rights stories generated by the application of the HRA in the UK. In respect of litigation, the themes discussed in the report are also relevant to judgments concerning the UK issued by the ECtHR and their implementation. Therefore, we refer both to judgments of domestic courts and the ECtHR as potential sources of human rights stories.

It is beyond our scope to examine stories generated by the implementation of international human rights treaties which impose legal obligations on the UK government (albeit ones which are not directly enforceable in the courts).<sup>13</sup> However, we make reference to international human rights instruments where appropriate - for example, where they inform the approach of a particular public authority or NGO and where this has the potential to complement story-telling about the HRA.

This study is primarily concerned with the 'raw material' of human rights stories: that is, identifying the impact of the HRA and the way in which this impact has been, or could be, captured in story form by different types of organisation. It was beyond our scope to engage with the media or to propose strategies to communicate these human rights stories to particular audiences. Rather, this study complements and supports the efforts of other organisations that are engaged in such communications work. These include the British Institute of Human Rights (BIHR)<sup>14</sup> and Equally Ours, a partnership of eight national charities (including BIHR) committed to raising awareness of how human rights benefit individuals in everyday life.<sup>15</sup>

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<sup>13</sup> Such as the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of all Forms of Discrimination against Women; the Convention on the Rights of the Child; and the Convention on the Rights of Persons with Disabilities.

<sup>14</sup> [www.bihhr.org.uk](http://www.bihhr.org.uk).

<sup>15</sup> [www.equally-ours.org.uk](http://www.equally-ours.org.uk).

## **1.5 Guide to this report**

Chapter 2 discusses in generic terms how we might determine the impact of human rights principles and standards, and the HRA in particular, on life in the UK. Chapter 3 examines particular sources of evidence of impact and the extent to which this evidence has been – or could be – captured in story form.

Chapter 4 looks at the constituent elements of a human rights story and the factors that might, in the view of our interviewees, make a story more or less persuasive. Chapter 5 considers some of the barriers to the capturing of stories and ways of overcoming them.

Chapter 6 concludes by proposing some concrete steps that might be taken, both immediately and in the longer-term, to capture human rights stories.

## **2. Determining the impact of the Human Rights Act**

In order to tell a human rights story, it is necessary to generate one; in order to generate one, it is necessary for human rights to have had an identifiable impact in a particular situation. This chapter discusses in generic terms the impact of the HRA in the UK. It discusses what we mean by impact – identifying various types and scales of impact, and the nature of the evidence that may be adduced to demonstrate impact.

### **2.1 The Human Rights Act and public authorities**

The HRA came into force across the UK in 2000; the devolved administrations in Scotland, Wales and Northern Ireland had been bound by the Act since their inception in 1999.<sup>16</sup> The HRA gives further effect in UK law to the rights and freedoms in the European Convention. It makes available in UK courts a remedy for a breach of a Convention right, without the need for applicants to take the often protracted route to the European Court of Human Rights in Strasbourg.

In respect of the impact of the HRA on everyday life, the most important provision of the Act is that which makes it unlawful for any public authority, or person exercising a public function, to act in a way that is incompatible with Convention rights unless primary legislation requires them to act otherwise, and provides individuals with remedies if a public authority breaches their human rights.<sup>17</sup>

Public authorities have not merely a negative obligation to refrain from interfering with individuals' human rights, but also a positive obligation to take proactive steps to ensure that individuals' rights are protected, regardless of who or what is causing the harm.<sup>18</sup> Therefore, public authorities may find themselves subject to legal proceedings not only for their actions but also for their omissions; for example, if they fail to take reasonable steps to protect individuals from infringements of their Convention rights by private individuals; or if they fail to conduct effective investigations into credible claims into serious violations of Convention rights.

These provisions of the HRA have far-reaching implications for public authorities and for the relationship between the users and providers of public services. They also have important consequences for how we might evaluate the impact of the HRA on the lives of people in the UK and where we might look for evidence of that impact.

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<sup>16</sup> In addition, the devolved governments and legislatures are prevented from legislating or acting in a way that would breach the UK's obligations under the ECHR.

<sup>17</sup> HRA 1998 ss. 6-8.

<sup>18</sup> These obligations derive from Article 1 of the Convention, which obliges a state to secure human rights for everyone under its jurisdiction, taken together with the other substantive Convention rights.

## 2.2 Types of impact

A persistent theme of our interviews and roundtable discussions was the need to be aware of the different types of impact that the HRA may exert in order that personal narratives can be contextualised and used to present a holistic picture of the difference made by the Act.

We suggest below various scenarios, concerning different types of actors and processes, which illustrate the diverse ways in which the HRA may exert impact and thereby generate stories. Some stories may involve more than one of these scenarios:

- A court or tribunal makes a decision which relies solely or mainly on human rights arguments and which secures a beneficial outcome for the applicant and potentially for others in a similar situation.
- A human rights judgment leads to a change in legislation, regulation or statutory or professional guidance.
- A human rights judgment prompts a public authority (whether the defendant authority or another) to change its policies, procedures or practices in order to prevent the same human rights breach from occurring in the future.
- The use of human rights arguments secures a beneficial outcome for the applicant at an early stage in legal proceedings, short of judicial consideration.
- A public authority adopts a 'human rights-based approach', i.e. it proactively uses human rights standards and principles, to shape the design and delivery of a service and guide decision-making.
- An individual, or their carer or advocate, uses human rights-based arguments informally to secure a beneficial outcome from a service provider in a particular situation.
- A complaints-handling body uses human rights standards and principles to investigate an individual's or family's complaint about a service and recommend any necessary changes.
- A regulator or inspectorate body uses human rights standards and principles as part of its inspections of public services and as a basis for recommending any necessary changes.
- An NGO uses human rights-based arguments as the basis of a campaign or lobbying exercise to secure changes to a particular law or policy.

This list, which is not exhaustive, indicates the different types and sources of evidence that may need to be adduced in order to generate a human rights story. Some sources of evidence are more visible and 'hard-edged' than others: for example, legal judgments are a matter of permanent record, while for impact that

occurs outside the courtroom the evidence may be more anecdotal, fragmentary or buried.

There is also variety in respect of who might be the protagonist of a human rights story. In some instances, the story might be told by the person whose rights are at stake; in others, it might be a carer, advocate, public servant, advice-giver, lawyer or campaigner who explains how he or she uses human rights standards and principles to achieve particular outcomes (see also section 4.1).

### **2.3 The issue of causality**

Across these diverse scenarios, causality is an important factor to be considered. The question needs to be asked in each instance: how confident can we be in saying that the application of human rights standards and principles generally, or the HRA in particular, caused a particular outcome? This question might arise in relation both to the impact of human rights legal judgments and in relation to the impact of human rights standards and principles when they are applied outside the courtroom.

#### **2.3.1 Determining the impact of human rights judgments**

Where a legal judgment relies wholly or mainly on human rights-based arguments, we may be confident in attributing the **demonstrable** impact of the judgment to human rights law. However, judgments may not always have the impact on individual or institutional behaviour that one would expect and where impact does occur, the evidence may be difficult to identify, especially where the ruling has implications for a wide range of services.<sup>19</sup> Therefore, impact cannot be assumed but must be demonstrated in each instance.

Impact beyond that on the parties to a case can most easily be identified where a legal judgment has immediate implications for legislation, administrative action or statutory guidance, i.e. where a judgment leads directly to a change in the law or the way that the law is applied. In some instances, judgments are revolutionary in their effect, impelling public authorities to drive visible and sometimes rapid change from the top down. An example is the case that brought an end to the inhuman or

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<sup>19</sup> These barriers to impact, and barriers to assessing impact, are discussed in A. Donald and E. Mottershaw (2009) 'Evaluating the Impact of Human Rights Litigation on Policy and Practice: A Case Study of the UK', *Journal of Human Rights Practice* 1(3): 339-361. See also L. Platt, M. Sunkin and K. Calvo (2009) *Judicial Review Litigation as an Incentive to Change in Local Authority Public Services in England & Wales*, Institute for Social and Economic Research No. 2009-05.

degrading practice of ‘slopping out’ in Scottish prisons.<sup>20</sup> Another is the decision which had an immediate impact on reducing destitution within the asylum system.<sup>21</sup>

In other instances, impact may be substantial but may occur cumulatively over a period of years; for example, the elaboration in successive ECtHR and domestic judgments of detailed procedural obligations for the investigation of deaths at the hands of the state or when people are in the care of the state, a process which has been of direct benefit to bereaved families (for detail, see section 3.2.3).

Elsewhere, impact is achieved as a result of the combination of multiple social and political factors. For example, judgments that highlight a particular law or policy as being inconsistent with human rights standards may be used by civil society actors to reframe an issue or make it more prominent, thereby tipping the balance in favour of legal or policy reform. ECtHR judgments against the UK concerning the rights of lesbian, gay, bisexual or transgender (LGBT) people contributed to legal reform in respect of the decriminalisation of adult homosexual acts in private;<sup>22</sup> equalisation of the age of consent;<sup>23</sup> removing the prohibition on gay men and lesbians joining the armed forces;<sup>24</sup> and recognition of the rights of transsexuals.<sup>25</sup>

Judgments may also have an impact from the bottom up. Practitioners may use judgments instrumentally to vindicate existing grassroots efforts to challenge entrenched institutional policies and practices which are inimical to people’s enjoyment of their rights. A case in point is a judgment concerning a blanket ban on the manual lifting of two profoundly disabled sisters; the judgment provided a practical framework for practitioners to use in order to balance the dignity of the individual with the health and safety of employees by means of individualised risk assessments.<sup>26</sup> Another judgment with significant implications for the day-to-day practice of social care providers is that which clarifies the test to be used when deciding if a person who lacks mental capacity has been deprived of their liberty; the

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<sup>20</sup> *Napier v Scottish Ministers* 2005 SC 229 OH.

<sup>21</sup> *R (Limbuela and Others) v Secretary of State for the Home Department* [2005] UKHL 66. The judgment changed the use of a statute which denied support to asylum applicants deemed to have applied late and established the principle that where the fate of individuals is in the hands of the state – because it denies them support and bars them from working or claiming mainstream benefits – severe destitution that results constitutes inhuman or degrading treatment under Article 3 of the ECHR.

<sup>22</sup> *Dudgeon v UK*, No. 7525/76, 22 October 1981.

<sup>23</sup> *Sutherland v UK*, No. 25186/94, 27 March 2001.

<sup>24</sup> *Smith and Grady v UK*, Nos. 33985/96 and 33986/96, 27 September 1999.

<sup>25</sup> *Goodwin (Christine) v UK*, No. 28957/95 [GC], 11 July 2002.

<sup>26</sup> *R v East Sussex County Council Ex parte A, B, X and Y* [2003] EWHC 167.

decision stated that what it meant to be deprived of liberty ‘must be the same for everyone, whether or not they have physical or mental disabilities’.<sup>27</sup>

In other instances, various barriers may obstruct the transition from a legal judgment to changes in law, policy and practice.<sup>28</sup> Legislative responses to judgments may be delayed due to (national or local) political controversy about the implications of the decision, or simply inertia. At the level of public authorities, judgments can only influence individual or institutional behaviour if authorities monitor human rights case law and disseminate the implications for policy and practice to those that need to act upon them – and there is evidence that public authorities do not always do so systematically. In addition, a public authority’s response to judicial review may be significantly determined by the degree to which judgments fit with its existing priorities and budgets as well as other external frameworks. In some instances, the implications of human rights judgments appear to sit uncomfortably with, or are viewed as subordinate to, other policy imperatives, such as performance indicators and targets; audit and inspection regimes; and other statutory and regulatory requirements. Authorities may take the route of minimal or non-compliance when there is a need (actual or perceived) for additional resources or for a substantial revision of budgeting priorities.

Barriers to impact may, at the same time, be barriers to **assessing** impact. The existence of multiple ‘drivers’ of policy and practice may make the impact of a human rights judgment difficult to disentangle from other causal factors, especially where substantial time lags are involved. In such instances, we may be able to say that the HRA is a contributory rather than determinant factor in causing a particular change to a law, policy or practice.

### **2.3.2 Determining the impact of human rights-based practice**

Even in the absence of a legal judgment, public authorities may use human rights standards and principles proactively to design or deliver a service or to guide a particular area of decision-making. This is often described as adopting a ‘human rights-based approach’ to a service or decision-making process. The application of human rights standards and principles can be thought of as using a human rights ‘lens’ to view and reframe particular problems, experiences and relationships. Practitioners may use the human rights lens to identify and tackle problems with the way that services are delivered: for example, they may identify that bathing a person

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<sup>27</sup> *P (by his litigation friend the Official Solicitor) (Appellant) v Cheshire West and Chester Council and another (Respondents) P and Q (by their litigation friend, the Official Solicitor) (Appellants) v Surrey County Council (Respondent)* [2014] UKSC 19 at para. 46.

<sup>28</sup> These barriers are analysed in Donald and Mottershaw, ‘Evaluating the Impact of Human Rights Litigation on Policy and Practice: A Case Study of the UK’.

or assisting them to the toilet without regard to their privacy or dignity may in some circumstances amount to a breach of their right to respect for private life.

A public authority may, when it applies a human rights lens, identify policies or practices that are indiscriminate in nature and replace them with ones that are personalised and sensitive to context: for example, after a human rights-based review of its policies and practices, a high-security mental health hospital in Scotland stopped the use of blanket measures such as mail vetting, body searches and restrictions on movement.<sup>29</sup> In situations like this, and many more, practitioners find themselves faced with competing, complex demands – demands that concern different individuals (patients, staff, the wider community, for example) and/or different issues (privacy, safety, for example). By providing clarity on when and how certain rights can be restricted the human rights framework provides practitioners with a tool that enables them to navigate such situations. Certain rights can be restricted for certain reasons, including in order to protect the rights of others – practitioners can, in some circumstances, balance the various rights of various individuals. The human rights framework provides guidance on how this can be done – for example, restrictions must be proportionate; they must be kept to a minimum, and they must not be discriminatory.<sup>30</sup>

Human rights have permeated decision-making in diverse areas of public service. However, it is relatively unusual for this experience to be evaluated in terms of its impact on substantive outcomes for the users and providers of services. Evidence of such impact is elusive. Policy and practice which is initially embedded as part of a human rights framework may, over time, lose its human rights 'label' and it may therefore be harder to establish a causal link between the human rights-based intervention and particular outcomes. This effect has been observed in evaluations of longstanding human rights-based initiatives, where approaches to decision-making become habitual and their provenance is forgotten or is poorly understood, especially among newer staff.<sup>31</sup> Timescales are also a matter of sensitivity: a service into which human rights are explicitly introduced may appear to deteriorate in the short- to medium-term as individuals appropriate the language of human rights to describe their conditions or claims or feel emboldened to access complaints mechanisms. Indeed, from a human rights perspective, such outcomes may be viewed as

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<sup>29</sup> Scottish Human Rights Commission (2009) *Human Rights in a Health Care Setting: Making it Work - An Evaluation of a human rights-based approach at The State Hospital* (Glasgow: SHRC), pp. 63, 66, 70.

<sup>30</sup> Further details on balancing rights, on the principle of proportionality, and on ways in which rights can be restricted can be found on the Equality and Human Rights Commission's website at: <http://www.equalityhumanrights.com/human-rights/human-rights-practical-guidance/key-messages/>

<sup>31</sup> Scottish Human Rights Commission, *Human Rights in a Health Care Setting*, p. 28.

indicators of success. Substantive beneficial outcomes, so far as they can be identified, may be more visible in the longer term.

Evidence of direct causation may also be difficult to identify where human rights are implicit, rather than explicit, in an organisation's work; for example, where an organisation chooses to frame its work in terms of 'dignity' or 'respect' rather than human rights (or the HRA) as such.

Given these methodological difficulties, where data **is** available as a result of robust evaluations of human rights-based practice in public authorities or within civil society, it is important to ensure that such evidence is publicised and contextualised as part of the wider story about the HRA (see section 3.1.2 e. for examples of such evaluations).

## **2.4 Scale of impact**

Just as there is variation in relation to types of impact, there are also differences between human rights stories in relation to the scale of impact. In some instances, the impact of the HRA lends itself readily to being captured in the form of a personal narrative; for example, where an individual or a family has benefitted directly from a human rights judgment or the application of human rights within a public service.

Human rights stories may also be told on a broader canvas. Impact may occur at the level of a particular organisation, service, policy area or beneficiary group. Such impact may be on governance or administration – bringing law, policy or practice more in line with domestic and international human rights obligations and making the processes of law- and policy-formation more transparent and underpinned by reasoned justification. This might happen, for example, when a public authority uses the human rights framework to balance competing interests or decide on a proportionate response to a particular problem. One participant in the lawyers' roundtable noted that the language of proportionality had become increasingly commonplace within local authorities, adding: 'That is completely novel post-HRA. It shows the effect of law on the culture of the public body'.

Impact may also be identified in the provision of mechanisms of redress (whether judicial or non-judicial) to ensure a fair hearing for individuals when public authorities fail to meet their obligations. David Russell of the Northern Ireland Human Rights Commission (NIHRC) notes that the availability of judicial remedies is critical as a spur to improved political and administrative action:

The HRA ... brings home the reality of what human rights mean if a public authority doesn't get it right. In the absence of a tool as forceful in terms of its

enforcement mechanism, this would be a much slower and more difficult process.<sup>32</sup>

Some stories may work simultaneously at different levels: one person's story may imply, or directly lead to, a broader cumulative impact for people in a similar situation. Indeed, many of our interviewees argued that stories are most persuasive when they address different scales of impact, combining both intimate and larger-scale narratives in order that individual stories are not isolated and de-contextualised. In our online survey, a lawyer ventured that:

Stories of small gains by individuals are important to the person involved but not newsworthy. They should be recast, where appropriate, as stories of state oppression ...Otherwise, the big guns will always set the agenda.

The mental health charity Mind considers the bigger picture when it conducts human rights-based advocacy. For Nat Miles of Mind,

It's important that it's not just about advantage for individuals – we need to use the ideas and language [of human rights] as something that can help to improve services for everyone.<sup>33</sup>

Angela Patrick of JUSTICE argued that some achievements of the HRA are so far-reaching that they don't need an individual 'figurehead'.<sup>34</sup> For example, human rights litigation had brought about the criminalisation of forced labour and slavery,<sup>35</sup> established that protection of journalistic sources is a basic condition for press freedom,<sup>36</sup> and had contributed to the introduction of new legislation on stalking.<sup>37</sup> She adds:

Many critics of the HRA suggest that rights are really just a matter of common sense. However, it took human rights-based litigation to bring about change

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<sup>32</sup> Interview with David Russell, Deputy Director, Northern Ireland Human Rights Commission, 2 December 2013.

<sup>33</sup> Interview with Nat Miles, Policy and Campaigns officer, Mind, 20 January 2014.

<sup>34</sup> Interview with Angela Patrick, Director of Human Rights Policy, JUSTICE, 10 January 2014.

<sup>35</sup> Section 71 of the Coroners and Justice Act 2009 entitled 'Slavery, Servitude and Forced or Compulsory Labour'. The law was substantially shaped and inspired by the ECtHR ruling in *Siliadin v France* No. 73316/01, 26 July 2005. See V. Mantouvalou (2010) 'Modern Slavery: The UK Response', *Industrial Law Journal*, 39, 4: 425-31.

<sup>36</sup> *Goodwin v UK*, No.17488/90 [GC], 27 March 1996 and *Financial Times and others v UK*. No. 821/03, 15 December 2009.

<sup>37</sup> See George Thomas and Cecily White, 'Stalking: new offences and a new approach?', UK Police Law blog, 19 March 2013.

... Common sense has needed the leverage of an enforceable human rights framework. The 'holy grail' is the story that allows you to identify the person – but there are also important constitutional principles underlying the legal framework that don't attach to an individual but which are politically and intellectually attractive to the press and others.

Mark Wright of the Equality and Human Rights Commission (EHRC) offers the example of a human rights story about domestic violence which was generated as part of the Commission's Human Rights Review in 2012 (see also sections 3.1.1 c and 5.1).<sup>38</sup> The story centred on a woman, Mary, who had benefitted from a human rights-based approach by Northumbria Police and Victim Support to tackling domestic violence (and whose story was narrated by an independent domestic violence advisor based in a police station).<sup>39</sup> Beyond Mary's experience lies a bigger story about the preventive benefits of Northumbria Police's approach to other women in her situation. On a larger scale still is the potential to extend the human rights-based approach to other police services and thereby to the many thousands of women who experience, or are at risk of, domestic violence.

## **2.5 Conclusion**

Human rights stories may be generated in many different contexts, involving many different types of actor. Sometimes the protagonist of a human rights story is the person whose rights are at stake; in others, it is an advocate, advice-giver, public servant, lawyer or campaigner who uses human rights to achieve beneficial outcomes for others.

In order to avoid the risk of 'over-claiming', it is necessary in each instance to demonstrate, rather than merely assume, the impact that the HRA has had. This requires awareness of the different dynamics by which judgments exert – or fail to exert – impact outside the courtroom. There are multiple barriers that may obstruct the smooth transition from a human rights judgment to changes in institutional behaviour.

Compelling stories are also generated when human rights standards and principles are used outside the courts. Again, there is a need in each instance to demonstrate the causal link between a human rights-based intervention and a particular outcome.

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<sup>38</sup> <http://www.equalityhumanrights.com/about-us/our-work/human-rights/human-rights-review-2012/case-studies/marys-story>.

<sup>39</sup> The human rights-based approach involved designing the service around the positive obligation to intervene to protect those at risk of inhuman or degrading treatment as a result of domestic violence. As a result, all officers are trained in human rights so that they avoid dealing with domestic violence incidents as breaches of the peace and actively consider the need to protect the victim and their children from harm.

Human rights stories may take the form of personal narratives, or they may be painted on a bigger canvas. The most powerful may be those stories that work simultaneously at both an intimate and systemic level, ensuring that personal narratives are not isolated and decontextualised.

### **3. Evidence about impact: where to look for human rights stories**

In Chapter 2, we discussed the impact of the HRA in generic terms. In this chapter, we look at sources of evidence as to the impact of the HRA and the extent to which this evidence has been – or could be – captured in story form. It was beyond our scope to provide a holistic analysis of the impact of the HRA in respect of particular beneficiary groups or areas of law or policy. However, we identify examples of the kinds of impact discussed in Chapter 2. This exercise helps us to understand the relationship between impact and stories and, therefore, to identify where we might look for human rights stories.

#### **3.1 Sources of evidence**

In this section, we provide an overview of existing evidence about the HRA's impact. This evidence varies in respect of how far the experience to which it relates has been captured in the form of stories. In some cases the evidence amounts to 'ready-made' stories – the evidence is already packaged in story form. In others the information exists, but hasn't yet been told as a story, as such. For example, evidence submitted to public consultations contains raw material from which human rights stories can be derived, but the evidence may not have been systematically reviewed and processed in order to yield such narratives. Similarly, legal judgments may contain the components of a story but will be focused on specific points of law. In order to reflect this variation, we have divided the existing sources of evidence into: 'ready-made' human rights stories; repositories of data; and human rights legal judgments. These are not firm distinctions: some sources may contain both ready-made stories and 'raw' evidence from which further stories could be captured.

##### **3.1.1 Ready-made human rights stories**

Below, we list sources of evidence about the impact of the HRA which has already been captured in the form of discrete stories. The list includes sources that contain a range of stories (both litigation- and non-litigation based) and are explicitly human rights-focused. The emphasis is on stories in which human rights have been used not only to 'name the problem' but also as the basis for a solution.

##### **a. Age UK and the British Institute of Human Rights**

Age UK and the British Institute of Human Rights have evaluated the impact of their joint 'Older People and Human Rights' project, and thereby generated examples of human rights-based arguments being used to secure beneficial outcomes for older people outside the courtroom.<sup>40</sup> For example, local groups had used human rights to

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<sup>40</sup> Age UK and BIHR (2012) *Older People and Human Rights Project evaluation report* (London: Age UK and BIHR); available at <http://www.ageuk.org.uk/Documents/EN-GB/For-professionals/Equality-and-human->

challenge the closure of public toilets; and the restriction of the rights of lesbian, gay, bisexual or transgender people in care homes. Human rights were also used as a framework to discuss care and treatment to ensure dignity in death for older people.

#### **b. British Institute of Human Rights**

In the UK, BIHR is the principal source of stories about how human rights standards and principles, and the HRA specifically, are put into practice by people to help them help bring about positive change. BIHR works both with individuals and advocates who are focused on a person's particular situation. Its work is concerned with how human rights help organisations in the public and voluntary sector to transform culture and practice. According to its director, Stephen Bowen, stories are the 'heartbeat' of BIHR's work.<sup>41</sup> Notable publications include *Changing Lives*, which presents 31 case studies of how members of the public have used human rights law, as well as the language and idea of human rights, to challenge poor treatment and negotiate improvements to services provided by public bodies without resorting to litigation.<sup>42</sup> The stories are grouped under the following thematic headings:

- protecting human dignity;
- challenging discrimination;
- promoting participation;
- challenging brutality;
- taking positive steps to protect human rights;
- using human rights where resources are an issue;
- using human rights to challenge blanket policies;
- protecting human rights in the context of contracted out services;
- using human rights to support private and family life
- supporting public sector staff to take individual needs into account in decision-making; and
- fair procedures.

Another publication, *The Difference it Makes – Putting human rights at the heart of health and social care*, contains numerous examples drawn from BIHR's three-year engagement with 20 voluntary and community organisations seeking to apply human

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rights/Older%20People%20and%20Human%20Rights%20project%20-%20Evaluation%20Report%20Sept%202011.pdf?dtrk=true.

<sup>41</sup> Interview with Stephen Bowen, Director, British Institute of Human Rights, 14 January 2014.

<sup>42</sup> BIHR (2008) *The Human Rights Act – Changing Lives* (Second edition) (London: BIHR); available at [http://www.bihhr.org.uk/sites/default/files/BIHR%20Changing%20Lives%20FINAL\\_0.pdf](http://www.bihhr.org.uk/sites/default/files/BIHR%20Changing%20Lives%20FINAL_0.pdf).

rights in their everyday work.<sup>43</sup> The examples are presented both as individual stories ('securing good outcomes for service users, their families and carers') and organisational journeys ('transforming the internal culture of organisations and forming the basis of partnership working with services'). This exemplifies the approach commended in section 2.4 of situating personal narratives in the context of larger-scale stories told at the level of an organisation or sector. It means that the protagonists of the stories include people using services; people delivering services; and advocacy organisations. Another publication, *Make Human Rights Happen*, contains stories generated by BIHR's annual Human Rights Tour and work with voluntary and community-based organisations. It includes two case studies concerning carers and disabled people, as well as several stories drawn from organisational practice and campaigns aimed at changing policy.<sup>44</sup>

BIHR also maintains a website, 'Our human rights stories' which demonstrates 'the wide scope that human rights have to better the lives of people from every part of society'.<sup>45</sup> The stories are sourced both from BIHR's own work and from other organisations that have used human rights in the courts and in their advocacy work.

In addition, BIHR has captured human rights stories in the context of its annual, pan-UK Human Rights Tour (see also section 5.1). A compelling example that was used in the roadshows is a video about a couple, Mr and Mrs Driscoll, who invoked their right to respect for their private and family life in order to ensure that they were able to live together in the same care home.<sup>46</sup>

### **c. Equality and Human Rights Commission**

In 2008, the EHRC held a Human Rights Inquiry, under its statutory powers, to examine 'how human rights work in Britain'.<sup>47</sup> In 2012, it produced a Human Rights Review to examine how well public authorities protect human rights.<sup>48</sup> Both exercises generated human rights stories.

As part of the Human Rights Inquiry, the Commission produced videos telling human rights stories in the context of a primary school in Hampshire; a local health board in Wales; an NHS mental health Trust in Liverpool; and the family at the heart of a

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<sup>43</sup> BIHR (2013) *The Difference it Makes – putting human rights at the heart of health and social care* (London: BIHR).

<sup>44</sup> BIHR (2012) *Making Human Rights Happen* (London: BIHR).

<sup>45</sup> <http://www.ourhumanrightsstories.org.uk/>.

<sup>46</sup> <http://www.avaproject.org.uk/sector-news/archive/video-human-rights-drama-%E2%80%98bringing-rights-home!%E2%80%99.aspx>.

<sup>47</sup> EHRC (2009) *Human Rights Inquiry* (London: EHRC).

<sup>48</sup> EHRC (2012) *Human Rights Review 2012: How fair is Britain? An assessment of how well public authorities protect human rights*.

ground-breaking legal case concerning the human rights of people who lack mental capacity and find themselves deprived of their liberty (the ‘Bournemouth’ case).<sup>49</sup> The Inquiry report also contains numerous brief case studies of the impact of the HRA on the work of public authorities.

As part of its Human Rights Review, the EHRC published online ten case studies illustrating how human rights have been used to improve the way public services are managed and delivered.<sup>50</sup> Three are filmed and seven are written narratives. They concern legal judgments; cases settled short of judicial consideration; and stories generated in the context of the application of human rights standards and principles by public authorities. The stories are related expressly to particular Articles of the ECHR.

Examples include a film and written narrative about how Northumbria Police and Victim Support applied a human rights-based approach to domestic abuse cases (see also sections 2.4 and 5.1); a written narrative about how London Safeguarding Children Board piloted new human rights-based guidance to help social workers, teachers, police, health workers and other professionals to identify and support trafficked children; and a film and written narrative about MacMillan Cancer Support’s human rights-based approach to cancer care.

#### **d. Equally Ours**

Equally Ours is a partnership established in 2013 between eight national charities which have formed a communications ‘hub’ in order to raise awareness of the practical benefit of human rights in everyday life. Funded by the Thomas Paine Initiative, Equally Ours has collated a range of human rights stories that relate both to litigation and the application of human rights standards and principles in public services.<sup>51</sup> These include stories that have been extracted from sources listed elsewhere in this section.

#### **e. Liberty**

The human rights organisation Liberty captures specific stories within the context of its Common Values campaign. The campaign highlights the values (such as dignity, equality and respect) that underpin human rights law. Liberty has produced films and written narratives featuring:

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<sup>49</sup> <http://www.equalityhumanrights.com/human-rights/our-human-rights-work/human-rights-inquiries/our-human-rights-inquiry/case-studies/>.

<sup>50</sup> <http://www.equalityhumanrights.com/human-rights/our-human-rights-work/human-rights-review/case-studies/>

<sup>51</sup> <http://www.equally-ours.org.uk/human-rights-stories/>.

- Janet Alder, who used the HRA to seek justice after her brother choked to death in a police station while officers looked on and failed to assist him;<sup>52</sup>
- Patience Asuquo, a domestic worker who used the HRA to help bring about the prosecution of her abusive employer;<sup>53</sup>
- Diane Blood, who used the HRA to win the right to have her late husband recognised on her children's birth certificates;<sup>54</sup>
- Verna Bryant, whose daughter was murdered by a sex offender while he was on licence from prison and who used the HRA to secure an inquest into the killing, thereby revealing a series of institutional failures;<sup>55</sup>
- Nicholas Mercer, a former lawyer with the British army, who speaks of the role of human rights in protecting prisoners of war from abuse; making military tribunals more independent and impartial; and protecting gay and lesbian soldiers from harassment;<sup>56</sup>
- Jenny Paton, who used the HRA to challenge her local authority which had conducted surveillance on her family after she was wrongly suspected of lying about living in a certain school catchment area;<sup>57</sup>
- Richard and Gillian Rabone, whose daughter committed suicide after being negligently allowed to leave hospital and who used the HRA to establish that hospitals must safeguard the right to life of mental health patients, whether or not they are formally detained;<sup>58</sup>
- Janis Sharp, the mother of Gary McKinnon, the autistic computer hacker whose health condition prevented his extradition to the US on human rights grounds.<sup>59</sup>

### 3.1.2 Repositories of data

By repositories of data, we mean information which has been gathered but not yet processed with a view to producing human rights stories. This does not necessarily mean that the data has not been collated or analysed at all: rather, it may have been collated and analysed for another purpose. For example, the data may have been used to draw conclusions about the realisation or non-realisation of human rights in a particular area, but there may be further potential to extract discrete stories from the (oral or written) evidence gathered. Evidence submitted to consultations may contain human rights stories that are not reflected in the published summary of responses and therefore need to be extracted from the separate submissions.

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<sup>52</sup> <http://www.liberty-human-rights.org.uk/news/latest-news/my-hra-janet-alder>.

<sup>53</sup> <http://www.liberty-human-rights.org.uk/news/latest-news/my-hra-patience-asuquo>.

<sup>54</sup> <http://www.liberty-human-rights.org.uk/news/latest-news/my-hra-diane-blood>.

<sup>55</sup> <http://www.liberty-human-rights.org.uk/news/latest-news/my-hra-verna-bryant>.

<sup>56</sup> <http://www.liberty-human-rights.org.uk/news/latest-news/my-hra-nicholas-mercer>

<sup>57</sup> <http://www.liberty-human-rights.org.uk/news/latest-news/my-hra-jenny-paton>.

<sup>58</sup> <http://www.liberty-human-rights.org.uk/news/latest-news/my-hra-richard-and-gillian-rabone>.

<sup>59</sup> <http://www.liberty-human-rights.org.uk/news/latest-news/my-hra-janis-sharp>.

**a. Evidence to the Commission on a Bill of Rights**

The Commission on a Bill of Rights conducted two public consultations in August 2011 and July 2012, which elicited around 1,200 substantive responses from across the UK from: civil society organisations (both human rights NGOs and other specialist NGOs); ombudsmen and inspectorate bodies; children's and older people's commissioners; NHRIs; trade unions; academics; solicitors and barristers and their representative associations; elected representatives; and members of the public.<sup>60</sup> Some of the responses contain detailed evidence about the impact of the HRA on particular groups or areas of law and policy.

For example, the Family Rights Group (FRG) stated in its submission that:

... the Human Rights Act has made a profound difference to families involved in legal proceedings by allowing them to bring their Convention claims in the domestic court and it has been relied upon extensively in family proceedings.<sup>61</sup>

FRG's submission highlighted judgments relating to fairness in decision-making procedures; the removal of children from the home; and the requirement to inform absent fathers about adoption. Writing in support of preserving the HRA, it notes that time is invariably of the essence in family cases, meaning that the option of taking a case to the ECtHR is unlikely to provide redress to prospective applicants given the protracted timescales involved.

For its part, the mental health charity Mind stated in its submission that the HRA is 'a vital tool to safeguard the basic rights of people with mental health problems'.<sup>62</sup> Mind's submission contains four discrete human rights stories arising both from

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<sup>60</sup> For responses to the Commission's August 2011 discussion paper, see <http://www.justice.gov.uk/about/cbr/discussion-paper-responses>. For responses to its second consultation in July 2012, see <http://www.justice.gov.uk/about/cbr/second-consultation>. The responses are summarised in Commission on a Bill of Rights (2012) *A UK Bill of Rights? The Choice Before Us* Volume 2: Annexes. As of 10 March 2014, a high proportion of randomly-selected links on the Commission's website both to individual and organisational responses was broken, precluding comprehensive analysis. However, some submissions are available from the websites of the respective organisations. Several NGO responses are also available via the Equality and Diversity Forum at: <http://www.edf.org.uk/blog/?p=14349>.

<sup>61</sup> The Family Rights Group advises and supports parents and family members in England and Wales who are involved with local authority children's services about the needs, care and protection of their children; Commission on a Bill of Rights Discussion Paper 'Do we need a UK Bill of Rights?', Family Rights Group's Response, November 2011, p. 4. Available at: [http://www.frg.org.uk/images/Policy\\_Papers/commission-on-a-bill-of-rights.pdf](http://www.frg.org.uk/images/Policy_Papers/commission-on-a-bill-of-rights.pdf).

<sup>62</sup> See <http://www.edf.org.uk/blog/wp-content/uploads/2011/11/Mind.doc>.

litigation and advocacy outside the courts: in one instance, the advocate of a woman who was discharged from a mental health hospital despite the fact that she still had suicidal tendencies had invoked her right to life under the HRA to secure weekly, rather than fortnightly, access to a support worker.

In its submission, MacMillan Cancer Support wrote of the 'crucial' protection the HRA provides for respect to a private and family life, and against inhuman and degrading treatment, in the context of cancer care.<sup>63</sup> MacMillan added that:

The HRA has ... had considerable impact outside the courtroom. Its provisions have often made it possible for individuals and families to challenge their treatment by public authorities, and to succeed in vindicating their rights, without having to go to court.

Another submission, from the National Aids Trust, noted that the HRA was valuable because it 'helps us to safeguard the dignity and safety of some of the most vulnerable people in society'.<sup>64</sup> By way of example, it notes that, while some migrants may be charged for HIV treatment, as a result of obligations under the HRA, the Department of Health had ruled that treatment that is immediately necessary must be made available to patients even if they have not paid in advance.

The Commission's final report and summary of responses omit these, and other, detailed responses about the impact of the HRA. Indeed, although the report notes that section 6 of the HRA is a 'cornerstone provision' in terms of the Act's practical impact for individuals and on public authorities, it makes only passing reference to the nature of this impact.<sup>65</sup>

#### **b. Evidence to the Joint Committee on Human Rights**

The parliamentary Joint Committee on Human Rights (JCHR) holds regular thematic inquiries as part of its broad remit to consider matters relating to human rights in the UK (excluding consideration of individual cases). Thematic inquiries that relate to the implementation and impact of the HRA include those on: human rights and the private sector;<sup>66</sup> the policing of protest;<sup>67</sup> the human rights of adults with learning

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<sup>63</sup> See <http://www.edf.org.uk/blog/wp-content/uploads/2011/11/Bill-of-Rights-Consultation-Submission-Letter-Macmillan-Cancer-Support-09.11.112.doc>.

<sup>64</sup> See <http://www.edf.org.uk/blog/wp-content/uploads/2011/11/NATresponse.doc>.

<sup>65</sup> Commission on a Bill of Rights, *A UK Bill of Rights? The Choice Before Us* Volume 1, pp. 113, 272.

<sup>66</sup> Joint Committee on Human Rights (2009) *Any of Our Business? Human Rights and the UK Private Sector*, First Report of Session 2009-10, Volume 1 – Report and formal minutes, HL Paper 5-I, HC 64-I and Volume II - Oral and written evidence, HL Paper 5-II, HC 64-II (London: TSO).

disabilities;<sup>68</sup> the human rights of older people in healthcare;<sup>69</sup> and reviews of the implementation of the HRA.<sup>70</sup>

During these inquiries, the JCHR invites the submission of oral and written evidence from, among others, ministers, government departments, public authorities, NHRIs, civil society organisations, professional bodies, academics and legal practitioners. Oral and written evidence is cited in the JCHR's reports and is also published in its entirety (and sometimes also made available in audio form). JCHR members also make external visits as required; for example, as part of the inquiry into the rights of older people in healthcare, Committee members visited hospitals and care homes and met local councillors, managers, staff, residents, patients and their families. Therefore, the JCHR's thematic reports and collated oral and written submissions contain a substantial amount of first-hand evidence about the impact of the HRA, from the perspective of people both using and delivering services.

For example, the inquiry into the human rights of adults with learning disabilities received oral and/or written evidence from numerous advocacy and service-providing organisations in the voluntary sector, as well as public authorities. The JCHR cited this evidence in support of its conclusion that,

We see the purpose of the Human Rights Act, not as an end in itself, but as a tool that can and should be used in law, policy and practice to enable ... social justice goals to be achieved.<sup>71</sup>

Oral evidence was taken from, among others, Joanna Perry, a trustee of Values into Action, a national campaign that works in partnership with people with learning disabilities. She said:

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<sup>67</sup> Joint Committee on Human Rights (2009) *Demonstrating respect for rights? A human rights approach to policing protest*, Seventh Report of Session 2008-09, Volume 1, Report together with formal minutes and written evidence, HL Paper 47-I, HC 320-I and Volume II – Oral and written evidence, HL Paper 47-II, HC 320-II (London: TSO).

<sup>68</sup> Joint Committee on Human Rights (2008) *A Life Like Any Other? Human Rights of Adults with Learning Disabilities*, Seventh Report of Session 2007-08, Volume I, HL Paper 40-I, HC 73-I and Volume II – Oral and written evidence, HL Paper 40-II, HC 73-II (London: TSO).

<sup>69</sup> Joint Committee on Human Rights (2007) *The Human Rights of Older People in Healthcare*, Eighteenth Report of Session 2006-07, Volume I – Report and Formal Minutes, HL Paper 156-I, HC 378-I and Volume II – Oral and written evidence, HL Paper 156-II, HC 378-II (London: TSO).

<sup>70</sup> Joint Committee on Human Rights (2006) *The Human Rights Act: the DCA and Home Office Reviews*, Thirty-second report of Session 2005-06, HL Paper 278, HC 1716 (London: TSO).

<sup>71</sup> JCHR, *A Life Like Any Other? Human Rights of Adults with Learning Disabilities*, para. 45.

Sometimes for staff, in particular staff working with people with learning difficulties in institutional settings, especially in long-stay hospitals, sometimes in the institutional world common sense is not the law of the land, it is not what rules how people are treated. Sometimes staff need help to see how human rights obligations can help them problem-solve.<sup>72</sup>

Ms Perry gave the example of a man who liked to go out in his garden, and who also liked to make noise. The neighbours complained and the response of his care home staff was to keep him indoors:

We helped the staff use the framework of human rights, which puts everyone's rights on the same footing, to see how his rights were equal to the neighbour's rights ... and to come to a compromise. The staff [went from] thinking 'Oh, human rights. That's just another thing we are going to have to deal with', to seeing how it could be used to problem-solve some very difficult situations ... from day-to-day stuff like that to life and death decisions.

#### **c. Evidence to the Equality and Human Rights Commission**

As part of its statutory Human Rights Inquiry in 2008, the EHRC commissioned research and public polling and convened a series of public evidence sessions to hear from witnesses.<sup>73</sup> The Commission published transcripts of the evidence sessions, which were held with Whitehall departments, inspectorates, public authorities; advice and advocacy bodies; members of the legal community; the media and individual claimants who had successfully used human rights arguments in court or to resolve disputes with public authorities.<sup>74</sup> These extensive transcripts are a repository of evidence about the impact of the HRA on public services, over and above the stories captured and presented by the Commission in the Inquiry report and online, to which we refer in section 3.1.1 c.

#### **d. Human rights guidance**

A range of organisations including government departments, NHRIs, regulators and inspectorates, public authorities and NGOs, has produced guidance for public authorities or bodies that carry out public functions on the implications of the HRA for their policy and practice. There are also sources of advice for civil society organisations and for people using services. The EHRC published updated guidance

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<sup>72</sup> Joint Committee on Human Rights, *A Life Like Any Other? Human Rights of Adults with Learning Disabilities*, Volume II, Ev 12-13.

<sup>73</sup> <http://www.equalityhumanrights.com/about-us/our-work/human-rights/human-rights-inquiries/our-human-rights-inquiry>.

<sup>74</sup> <http://www.equalityhumanrights.com/human-rights/our-human-rights-work/human-rights-inquiries/our-human-rights-inquiry/inquiry-panels/>.

for public authorities in 2014, which contains case studies.<sup>75</sup> The EHRC has produced a 'one stop shop' website for such guidance and advice.<sup>76</sup> The material is searchable by public sector area (such as health and social care) and theme (such as balancing competing rights and assessing risk). Some of the documents, online and audio-visual material grouped on the site include personal and organisational case studies. These include hypothetical scenarios or anonymised case studies, as well as legal judgments.

We understand that the EHRC is preparing new human rights guidance in 2014 for regulators, inspectorates and ombudsmen which will be substantially case study-based.

**e. Material produced by or about public authorities**

In section 2.3.2, we identified that, in a few instances, public authorities have conducted or commissioned evaluations of the impact of their human rights-based practice and that such assessments of impact are a potentially valuable source of human rights stories.

For example, the impact of human rights-based approaches has been explored in the context of learning disability and dementia services;<sup>77</sup> a high-security mental health hospital;<sup>78</sup> a variety of NHS Trusts;<sup>79</sup> and adult social care services.<sup>80</sup> Some

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<sup>75</sup> Equality and Human Rights Commission (2014) *Human Rights: Human Lives – A Guide to the Human Rights Act for Public Authorities* (London: EHRC).

<sup>76</sup> <http://www.equalityhumanrights.com/human-rights/human-rights-practical-guidance/>.

<sup>77</sup> L. Dyer (2010) 'A Human-Rights Based Approach to Involving Service Users and Carers' *British Journal of Well-Being* 1(3): 26; B. Greenhill and R. Whitehead (2010) 'Promoting Service User Inclusion in Risk Assessment and Management: A Pilot Project Developing a Human Rights Based Approach' *British Journal of Learning Disabilities* 39: 277; Mersey Care NHS Trust (2011) *An Evaluation of Service User and Carer Involvement in Mersey Care NHS Trust* (Liverpool: Service User Research and Evaluation); A. Roberts, B. Greenhill, A. Talbot, and M. Cuzak (2012) 'Standing up for my human rights': a group's journey beyond consultation towards co-production' *British Journal of Learning Disabilities* 40(4): 292; R. Whitehead, G. Carney and B. Greenhill (2011) 'Encouraging positive risk management: Supporting decisions by people with learning disabilities using a human rights-based approach', in R. Whittington and C. Logan (eds), *Self-Harm and Violence: Towards Best Practice in Managing Risk in Mental Health Services* (Chichester: Wiley-Blackwell).

<sup>78</sup> Scottish Human Rights Commission, *Human Rights in a Health Care Setting: Making it Work*.

<sup>79</sup> Ipsos MORI (2010) *Human Rights in Healthcare Project Phase III: Evaluative Review* (Ipsos MORI for the Department of Health). See also Mersey Care NHS Trust (2012) *Human Rights in Healthcare 2011-12* (Liverpool: Mersey Care).

evaluation reports contain case studies, which are variously framed at the level of the service or organisation or are seen through the eyes of individual (usually anonymised) practitioners and service users. Overall, the evidence base consists of a rich but fragmentary array of experience demonstrating a range of beneficial impacts at the level of individual services – many of the impacts are presented in anecdotal terms, a few are presented as the result of systematic analysis.<sup>81</sup>

Evidence points to the value of human rights as a framework within which decision-makers can manage risk, achieve transparency and find objective, balanced and proportionate solutions to complex problems.<sup>82</sup> Further, evaluations of human rights-based initiatives which place emphasis on the participation of service users indicate a range of beneficial outcomes for service users, staff and the service as whole.<sup>83</sup> These include attitudinal changes, such as the erosion of stigma and mistrust between service users and professionals and consequent improvements to relationships.<sup>84</sup> They also include measured improvements in outcomes (e.g. clinical or educational); reported levels of self-esteem and well-being among people using a service; and levels of sickness and stress among staff.

Human rights have been used to effect ‘root and branch’ change to the provision of a service. For example, many schools across Hampshire have adopted a human rights based approach to education, known as Rights, Respect and Responsibility, which is based on the UN Convention on the Rights of the Child. Starting with infants, this work goes much further than simply teaching human rights in the course of children’s education. The underlying principle is to use a participatory approach – involving teachers and pupils – and human rights principles to develop a school’s curriculum, activities, policies and rules. There is evidence to show that this approach has had

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<sup>80</sup> Ekosgen, The University of Bedfordshire and Queen Margaret University (2011) *Evaluation of Care about Rights – Phase 2: Report to the Scottish Human Rights Commission* (Glasgow: Ekosgen).

<sup>81</sup> For an overview of evaluations in the context of health and social care, see A. Donald (2012) *A Guide to Evaluating Human Rights-Based Interventions in Health and Social Care* (produced for the Human Rights in Healthcare programme of the Department of Health).

<sup>82</sup> A. Donald, P. Leach and J. Watson (2009) *Human Rights in Britain since the Human Rights Act 1998: a critical review* (London: Equality and Human Rights Commission), Chapter 3; Office of Public Management (2009) *The impact of a human rights culture on public sector organisations: lessons from practice* (Manchester: Equality and Human Rights Commission).

<sup>83</sup> See, for example, Scottish Human Rights Commission, *Human Rights in a Health Care Setting*, p. 75.

<sup>84</sup> See, for example, Dyer, ‘A Human-Rights Based Approach to Involving Service Users and Carers’.

positive impact on learning and the overall culture of a school.<sup>85</sup> As Ian Massey, the Hampshire project's manager puts it:

We are now able to talk about positive gains ... Children know they are respected ... this adds to their engagement in their education ... Teachers also feel more positive, feeling they have a better relationship with children, with the process of education becoming more of a joint process.<sup>86</sup>

### **3.2.3 Human rights judgments**

A legal judgment that relies wholly or mainly on human rights arguments and produces a beneficial outcome for the applicant/s is a human rights story in and of itself; however, more work may need to be done in order to render the meaning and significance of the judgment easily accessible to a non-legal audience and to explain what, if any, impact the judgment has (or could have) on people beyond the parties to the case (see also section 5.5).

Thousands of cases are heard each year in the UK but only a small proportion is 'reported'; that is, published. Generally, only those cases that develop the law, its application or interpretation are reported. This includes all Supreme Court cases, but only a selected number from the Court of Appeal, High Court and specialist courts. Transcripts of 'unreported' cases are sometimes available but the remainder are not recorded at all.

Previously, few judgments issued by the family courts (from April 2014, the Family Court) were published due to concerns about confidentiality; the same applied to the Court of Protection, which makes decisions and appoints deputies to act on behalf of people who are unable to make decisions about their personal health, finance or welfare. Following debate about the need for greater transparency as well as increased public understanding and confidence in these courts, revised guidance was issued (which took effect in February 2014) to ensure that far more of their judgments will be published in the future, albeit in an appropriately anonymised form.<sup>87</sup> This change is potentially significant from the perspective of generating human rights stories. The guidance notes, for example, that in some cases anonymity for the parties might not be appropriate – for example, if parents who have

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<sup>85</sup> K. Covell and B. Howe (2008) *Rights, Respect and Responsibility: Final Report on the County of Hampshire Rights Education Initiative* (Nova Scotia, Canada: Cape Breton University). See also <http://www3.hants.gov.uk/education/hias/childrensrights/stories-of-positive-change.htm>.

<sup>86</sup> Interview with Ian Massey Rights Respecting Programme Manager, Hampshire Inspection and Advisory Service, 4 December 2013.

<sup>87</sup> *Transparency in the Family Courts: Publication of Judgments – Practice Guidance*, issued on 16 January 2014 by Sir James Munby, President of the Family Division.

been exonerated in care proceedings wish to discuss their experiences in public, identifying themselves and making use of the judgment.

Legal judgments are available for free on the database of the British and Irish Legal Information Institute (BAILII), usually very soon after they have been issued.<sup>88</sup> A free case summary service is also available from the Incorporated Council of Law Reporting.<sup>89</sup> The Supreme Court releases all of its judgments in a searchable format, as well as providing succinct summaries.<sup>90</sup> Some proceedings of the Supreme Court are also filmed.<sup>91</sup> This approach to making legal judgments and processes more accessible to the public has yet to be emulated by the High Court or Court of Appeal. Separate online sources are available for judgments issued by courts in Scotland;<sup>92</sup> and Northern Ireland.<sup>93</sup> Judgments of the ECtHR are available on the Hudoc database, along with related media releases.<sup>94</sup>

Increasingly, legal blogs (and related Twitter activity including, since 2011, live Tweeting from inside the courts) are relied on as a source of swift and accessibly-written updates on human rights judgments. Among our interviewees, the source that is most relied upon by lawyers and non-lawyers alike is the UK Human Rights Blog written by members of 1 Crown Office Row barristers' chambers.<sup>95</sup> Other blogs that contain legal comment and analysis (but are not limited to human rights matters) are 'Head of Legal' (by the barrister Carl Gardner);<sup>96</sup> 'Jack of Kent' (by Financial Times columnist, David Allen Green) the UK Criminal Law blog;<sup>97</sup> and the UK Supreme Court blog.<sup>98</sup> Blogs on particular areas of law may also cover human rights

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<sup>88</sup> BAILII's database (at <http://www.bailii.org/>) contains British and Irish case law and legislation, European Union case law, Law Commission reports, and other law-related British and Irish material. BAILII is not searchable on Google. See also the Access to Law site (at <http://www.accesstolaw.com/uk/case-law/>) for a comprehensive digest of sources of case law, legislation and other materials.

<sup>89</sup> <http://cases.iclr.co.uk/Subscr/Search.aspx>.

<sup>90</sup> <http://supremecourt.uk/>.

<sup>91</sup> <http://www.youtube.com/user/UKSupremeCourt>.

<sup>92</sup> <https://www.scotcourts.gov.uk/search-judgments/about-judgments>.

<sup>93</sup> <http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/Pages/default.aspx>.

<sup>94</sup> <http://www.echr.coe.int/Pages/home.aspx?p=caselaw/HUDOC&c=>.

<sup>95</sup> <http://ukhumanrightsblog.com/>.

<sup>96</sup> <http://www.headoflegal.com/>.

<sup>97</sup> <http://ukcriminallawblog.com/>.

<sup>98</sup> <http://ukscblog.com/>.

judgments; for example, those covering media law;<sup>99</sup> housing law;<sup>100</sup> family law;<sup>101</sup> and law relating to legal capacity, deprivation of liberty, and community care.<sup>102</sup>

Retrospective digests of human rights judgments are also available. Among other activities, the Human Rights Futures project, based at the London School of Economics, monitors and evaluates the impact of the HRA inside and outside the courts.<sup>103</sup> The project has produced numerous briefings, including one in 2013 on the impact of the HRA on everyday life.<sup>104</sup> This includes concise explanations of the principles established in specific human rights judgments. In 2011, the Human Rights Lawyers' Association produced a digest of human rights judgments and other ways in which the HRA has 'changed for the better UK law and government'. The document focuses in particular on the way in which the HRA has improved the administration of justice; revitalized the work of the judiciary and permeated decision-making in broad areas of public policy.<sup>105</sup> The Equality and Diversity Forum produced a digest in 2006 of human rights judgments and the way in which they had provided redress to people facing injustice or discrimination.<sup>106</sup>

Separate analyses are available of ECtHR judgments relating to the UK, as well as non-UK judgments that have had a significant impact in the UK.<sup>107</sup>

### **3.2 Impact in specific areas of law, policy and practice**

In section 3.1, we outlined various types of sources of human rights stories, whether ready-made or in a more 'raw' form, and whether concerned with litigation or the use of human rights outside the courts. In this section, we identify certain areas of law, policy and practice that already generate human rights stories or have considerable potential to do so. It was beyond our scope to take a comprehensive list of policy areas and investigate how fruitful each is, or might be, as a source of stories. Rather, our selection was driven by the imperative, identified in section 1.1, to bring more

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<sup>99</sup> The Inform blog at <http://inform.wordpress.com/>.

<sup>100</sup> 'Nearly Legal' at <http://nearlylegal.co.uk/blog/>.

<sup>101</sup> 'Pink Tape', a blog from the Family Bar at <http://pinktape.co.uk/>.

<sup>102</sup> 'The Small Places' at <http://thesmallplaces.blogspot.co.uk/>.

<sup>103</sup> <http://www.lse.ac.uk/humanRights/research/projects/humanRightsFutures.aspx>

<sup>104</sup> Human Rights Futures (2013) *Human Rights Act impact of everyday life – some examples*; available at:

<http://www.lse.ac.uk/humanRights/articlesAndTranscripts/2013/KlugHRAEveryday.pdf>.

<sup>105</sup> Human Rights Lawyers Association (2011) *Human Rights Act: Over ten years of protection, participation and accountability*; available at <http://www.hrla.org.uk/hrla-publications/>.

<sup>106</sup> Equality and Diversity Forum (2008) *Human Rights and the Human Rights Act*; available at <http://www.edf.org.uk/blog/wp-content/uploads/2006/06/HRCases140606.doc>.

<sup>107</sup> See, for example, Donald, Gordon and Leach, *The UK and the European Court of Human Rights*, Chapter 5.

systematically into the public domain human rights stories that concern everyday scenarios and services affecting many people and/or in which the HRA has had a direct impact on law or policy which is neglected in public debate. In each of the areas we identify, evidence exists in the form of ready-made stories and/or repositories of data and/or legal judgments. We have grouped the selected areas under broad thematic headings which, taken together, tell a story about the HRA which is fundamentally different from that propounded in the media and political discourse.

### **3.2.1 Protection from violence and coercion**

In 2010, as a direct result of a judgment of the ECtHR, the UK introduced legislation that criminalised forced labour and slavery.<sup>108</sup> The law was designed to address the extreme exploitation experienced by migrant workers and other vulnerable groups in the sex industry, as well as sectors such as construction, agriculture/horticulture, contract cleaning and residential care.<sup>109</sup> Specifically, it aimed to plug a gap in protection for workers who were not covered by the Asylum and Immigration Act 2004, which criminalises forced labour connected to trafficking, and the Gangmasters Licensing Act 2004, which requires those who employ or supply workers in certain industries to be licensed. In August 2011, one of the first convictions under the new law was secured, when an employer was imprisoned for six months and forced to compensate a Tanzanian employee whom she had kept in servitude.<sup>110</sup>

Our interviewees also underlined the practical impact of human rights standards and principles in combating violence against women and girls in the context of domestic violence; rape and sexual violence; violence in the name of 'honour'; human trafficking and sexual exploitation; forced and child marriage; female genital mutilation; the sexual abuse of women asylum seekers in detention; sexual bullying and harassment; and prostitution.<sup>111</sup>

The End Violence against Women (EVAW) coalition highlights the particular significance in these contexts of the right to life; the prohibition of inhuman or degrading treatment; the right to respect for private and family life (including the right

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<sup>108</sup> See above n 35.

<sup>109</sup> Donald, Gordon and Leach, *The UK and the European Court of Human Rights*, pp. 61-63.

<sup>110</sup> See 'HIV expert jailed for keeping woman as slave in London flat', *The Guardian*, 11 August 2011.

<sup>111</sup> End Violence against Women (undated) *Schools Safe 4 Girls: Factsheet on the Human Rights Act and Preventing Violence Against Women and Girls*; available at [http://www.endviolenceagainstwomen.org.uk/data/files/Schools\\_Safe\\_4\\_Girls/Schools\\_Safe\\_4\\_Girls\\_Factsheet\\_HRA\\_and\\_Preventing\\_VAWG\\_Web.pdf](http://www.endviolenceagainstwomen.org.uk/data/files/Schools_Safe_4_Girls/Schools_Safe_4_Girls_Factsheet_HRA_and_Preventing_VAWG_Web.pdf); Equality and Human Rights Commission (2009) *Better public services: Breaking the silence on violence against women* (Cardiff: EHRC).

to physical and psychological integrity); and the right to be free from discrimination – and the positive dimension of each of these rights, which may require public authorities to take protective or preventive measures where women or children are known to be at risk of harm. These obligations are relevant to a range of public authorities, including schools, local authorities, police forces, government departments and health and social care bodies. The right to a fair trial under Article 6 of the Convention is also relevant; for example, women alleging sexual abuse by male guards at Yarl's Wood Detention Centre relied on it to obtain legal advice.<sup>112</sup>

In its submission to the Commission on a Bill of Rights, ERAW highlighted stories concerning a woman fleeing domestic violence, whose advice worker used the HRA to prevent her children from being placed in foster care;<sup>113</sup> the use of Article 2 to secure the re-opening of the inquest into the death of Naomi Bryant, who was killed in 2005 by a convicted sex offender;<sup>114</sup> and the protection afforded by the HRA to women who have been trafficked and are claiming asylum.<sup>115</sup> Participants in the NGO roundtable gave further examples of the practical value of the HRA. One noted that the Act been invoked in the context of 'honour' killings to argue that individuals outside the family, who are not implicated in the crime or inhibited from speaking out, can challenge the police for their failure to protect the person killed.

Cris McCurley, a solicitor based in north-east England who specialises in cases involving violence and coercion against women, describes the transformative impact of HRA for women who may otherwise be powerless within their families and communities:

These are hidden victims, many are very high risk and they really benefit from the fact that we have a HRA ... I see human rights in action every single day. I have hundreds of examples of transformative experiences that people have had by giving them access to their human rights. The transformation using human rights is ...phenomenal – it's a 'butterfly' moment when [women] reach that position when they've 'got it'. I remember one woman at a conference saying 'I've got a front door and a key and it's mine'. She had suffered horrific abuses of human rights – just about every section of the HRA applied to her – and she's now in a position where she's got her independence.<sup>116</sup>

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<sup>112</sup> Liberty's submission to the Joint Committee on Human Rights inquiry into the implications for access to justice of the Government's proposed legal aid reforms, September 2013, p. 2.

<sup>113</sup> BIHR, *The Human Rights Act – Changing Lives*, p. 18.

<sup>114</sup> See above n 55.

<sup>115</sup> S. Richards, M. Steel and D. Singer (2006) *Hope Betrayed: An Analysis of Women Victims of Trafficking and Their Claims for Asylum* (London: Asylum Aid and The Poppy Project).

<sup>116</sup> Interview with Cris McCurley, Ben Hoare Bell solicitors, 12 December 2013.

For such individuals, McCurley adds, human rights and the HRA are ‘both a sword and a shield’.

### **3.2.2 Protection of those whose rights are especially vulnerable to abuse**

Numerous HRA cases and stories concerning the use of human rights arguments outside the courts have concerned the rights of individuals or groups whose circumstances make their rights especially vulnerable to abuse. These include children and young people, older people, people with physical or learning disabilities, and people with mental health problems.

Compelling stories have arisen in the context of health and social care. For example, a young man with autism successfully challenged his removal from his family’s care against his and the family’s wishes;<sup>117</sup> an older couple argued for the right to be placed in the same residential care home rather than being separated;<sup>118</sup> and older people challenged the closure of care homes without consideration of the effects on the residents.<sup>119</sup>

The HRA is also used in the context of advocacy by people with mental health problems and on their behalf. Nat Miles of Mind notes that Brighton and Hove Mind have worked with BIHR to support Independent Mental Health Advocates and Independent Mental Capacity Advocates to ensure they are aware of the impact of using human rights-based arguments to ‘balance the coercive nature of the system’ and to negotiate better treatment for their clients; for example, to make representations about the use of Community Treatment Orders and to balance powers under the Mental Health Act.<sup>120</sup>

Other examples arise in places of detention. For example, as a result of human rights judgments, babies are no longer compulsorily removed from imprisoned mothers at the age of 18 months, but are only removed if it is in the child’s best interest,<sup>121</sup> and

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<sup>117</sup> *Hillingdon London Borough Council v Neary* [2011] EWHC 1377.

<sup>118</sup> See <http://www.ourhumanrightsstories.org.uk/case-study/human-rights-act-used-stop-older-couple-being-separated>. See also n 45.

<sup>119</sup> *Cowl et al v Plymouth City Council* [2001] EWCA Civ 1935 and *R (Madden) v Bury MBC* [2002] EWHC 1882.

<sup>120</sup> Interview with Nat Miles, Policy and Campaigns officer, Mind, 20 January 2014. Under revisions to the Mental Health Act 1983, people who are detained in hospital may be discharged under a Community Treatment Order, requiring them to comply with certain conditions. These may include restrictions on where they can live or travel, or requirements to take prescribed medication or undergo blood or urine tests, with the risk of being returned to hospital involuntarily if they fail to comply.

<sup>121</sup> *R (P and Q) v Secretary of State for the Home Department* [2001] EWCA Civ 1151.

rules permitting unnecessary physical restraint and seclusion of teenagers in custody were quashed.<sup>122</sup>

Human rights are central to decisions affecting children and families. For instance, children have won procedural rights to take part in decisions affecting their family life.<sup>123</sup> FRG's principal legal adviser, Bridget Lindley, highlights recent judgments concerning the requirement for courts to consider all available options before placing a child for adoption.<sup>124</sup> She adds that as a consequence:

The HRA has re-emerged as absolutely critical to the reform of family justice ... The [Act] is critical in local authority decision-making ...It's having a massive impact.

Decisions of the ECtHR have also been instrumental in bringing about the prohibition of corporal punishment in UK schools and restricting the physical punishment of children in the family.<sup>125</sup>

More generally, interviewees suggested that there is a wider story to be told about the protection afforded by the HRA to victims of crime, in contrast with the common depiction of the HRA as a 'perpetrators' charter'. Mind highlights a case concerning the decision by the Director of Public Prosecutions (DPP) to drop a prosecution because of concerns about the reliability of the evidence of the victim, who had mental health problems.<sup>126</sup> The case had considerable impact: not only did it produce a result for the individual involved but also it prompted the Crown Prosecution Service to change its policy and practice on decisions on prosecutions where the victim has mental distress.<sup>127</sup>

The former DPP, Keir Starmer, has argued that the rights of victims of crime are more 'subtle' than those of suspects, 'but no less fundamental for that'.<sup>128</sup> As discussed above, public authorities are under a positive duty to take reasonable

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<sup>122</sup> *R (C) v Secretary of State for Justice* [2008] EWCA 882.

<sup>123</sup> *Mabon v Mabon* [2005] EWCA Civ 634.

<sup>124</sup> *Re B-S (Children)* [2013] EWCA Civ 1146. Interview with Bridget Lindley, Deputy Chief Executive and Principal Legal Adviser, Family Rights Group, 3 February 2014.

<sup>125</sup> For details of the relevant judgments and their impact, see Donald, Gordon and Leach, *The UK and the European Court of Human Rights*, pp. 63-64.

<sup>126</sup> *R (B) v DPP* (2009) EWHC 106 (Admin).

<sup>127</sup> Mind (2010) *Achieving justice for victims and witnesses with mental distress: A mental health toolkit for prosecutors and advocates* (London: Mind).

<sup>128</sup> Keir Starmer QC, 'Public prosecution service annual lecture - the role of the prosecutor in a modern democracy', 21 October 2009. See also Keir Starmer, 'Human rights and victims: the untold story of the Human Rights Act', *European Human Rights Law Review* 2014, 3: 215-22.

steps to protect potential victims from a real and immediate risk to their lives from criminal activity. Victims also have the right to challenge decisions not to prosecute, particularly where they can point to poor decision-making or the inappropriate consideration of irrelevant factors in that process. The ECtHR has also extended the state's positive obligation to include the protection of victims and vulnerable witnesses in the court room.<sup>129</sup>

### 3.2.3 Justice for bereaved families

Some of the most prominent judgments against the UK at the ECtHR have concerned the claims of wrongful death on behalf of deceased relatives in violation of Article 2 of the ECHR (the right to life), as well as a failure adequately to investigate such deaths. Solicitors specialising in inquests noted that the human rights stories of families seeking justice after their loved ones have died in custody or in the care of the state 'come out in vivid colour', since 'without the HRA ... they would have no remedy'.

A leading case concerned with the protection of life is that of *Osman v UK*,<sup>130</sup> in which the ECtHR established criteria for when authorities have failed in their obligation to uphold the right to life. The judgment led directly to the development by the police of preventive measures to protect individuals whose lives the police have reason to believe are at risk.<sup>131</sup> Domestic judges have applied the same principle in determining that the operational duty on the state to protect specific individuals from threats to their life, including suicide, extends to mental health patients, whether or not they are compulsorily detained.<sup>132</sup>

Article 2 also imposes an obligation on the state to conduct an independent and effective investigation into the circumstances and causes of deaths at the hands of the state or when people are in the care of the state.<sup>133</sup> In the UK, the inquest system is one of the principal means for meeting this obligation. Successive judgments have established the requirements that must be met in order for the state to discharge its duty to carry out an effective investigation into credible cases in which Article 2 may have been breached. Investigations must be independent, prompt, open to public scrutiny, and must involve the family of the deceased. These principles have been

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<sup>129</sup> *Doorson v Netherlands*, No. 20524/92, 26 March 1996.

<sup>130</sup> No. 23452/94 [GC], 28 October 1998.

<sup>131</sup> A. Donald, E. Mottershaw, P. Leach and J. Watson (2009) *Evaluating the Impact of Selected Cases under the Human Rights Act on Public Services Provision* (Manchester: Equality and Human Rights Commission), Chapter 2.

<sup>132</sup> *Rabone and another v Pennine Care NHS Foundation Trust* [2012] UKSC 2, paras. 33-34.

<sup>133</sup> See cases at the ECtHR concerning the death of the applicants' next-of-kin during security forces operations (or in circumstances giving rise to suspicions of the collusion of such forces) in Northern Ireland, e.g. *Jordan v UK*, No. 24746/94, 4 May 2001.

held by both the ECtHR and domestic courts to apply to a wide variety of circumstances beyond those involving deliberate killing by state agents. For example, they were applied in cases involving: the killing of a man in a young offenders' institution by a cell mate with a known history of violence and racism;<sup>134</sup> the death after an asthma attack of a man who was known to be asthmatic and received deficient medical treatment while in prison;<sup>135</sup> deaths by suicide while in custody;<sup>136</sup> the death, by hyperthermia, of a soldier while on active service in Iraq;<sup>137</sup> and the death of a patient where there was a potential failure to act upon information that a GP had been administering opiates to terminally ill patients in lethal doses.<sup>138</sup>

Glyn Maddocks, an inquest solicitor in Wales, says the practical impact of judgments concerning Article 2 compliant investigations has been profound: 'It's had a huge impact in terms of the authorities – they know what they have to do'.<sup>139</sup> Nat Miles of Mind says that this impact has been of particular benefit to individuals with mental health issues and their families, since people experiencing mental health problems are proportionately more likely to die in custody or in the care of the state.<sup>140</sup> He singled out the beneficial impact for bereaved families of 'narrative' verdicts under enhanced investigations required by Article 2: these record by what means and in what circumstances the person died, the cause or causes of the death and, if relevant, any individual or systemic factors relevant to the circumstances of the death.

The centrality of Convention obligations in this area is underlined by the recently-concluded Article 2-based review by the Independent Police Complaints Commission (IPCC) into its work in investigating deaths.<sup>141</sup> An interviewee within the IPCC states that the adoption of a human rights-based approach is a vital element of the organisation's day-to-day work with bereaved families:

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<sup>134</sup> *R (Amin) v Secretary of State for the Home Department* [2004] 1 AC 653, para. 20. See also *Paul and Audrey Edwards v UK*, No. 46477/99, 14 March 2002, which concerned the killing of a man while in custody on remand by a cell-mate with a history of mental illness.

<sup>135</sup> *R (Wright) v Secretary of State for the Home Department* [2001] 1 Lloyd's Rep Med 478, para. 60.

<sup>136</sup> *R (Middleton) v Coroner for the Western District of Somerset* [2004] 2 AC 182; *Keenan v UK*, No. 27229/95, 3 April 2001.

<sup>137</sup> *R (Smith) v Secretary of State for Defence and another* [2010] UKSC 29.

<sup>138</sup> *R (Moss) v HM Coroner for the North and South Districts of Durham and Darlington* [2008] EWHC 2940.

<sup>139</sup> Interview with Glyn Maddocks, Gabb and Co solicitors and Human Rights Committee of Law Society, 13 December 2014.

<sup>140</sup> Interview with Nat Miles, Policy and Campaigns officer, Mind, 20 January 2014.

<sup>141</sup> Independent Police Complaints Commission (2014) *Review of the IPCC's work in investigating deaths* (London: IPCC).

It is important that the IPCC involves families in our investigations to ensure their questions are answered. It's often very important to families to see that our recommendations improve policing to ensure it won't happen to someone else. Our work needs to impact on policing in terms of its effectiveness and to ensure public confidence.<sup>142</sup>

### **3.2.4 The protection of individual liberties**

An important part of the human rights 'story' is the enhanced protection of the liberties of individuals from disproportionate interference by the state.

Notable impacts in the UK include legal reform to prevent the indiscriminate retention of the DNA profiles of innocent people;<sup>143</sup> and to protect people in the UK from unnecessary intrusion into their privacy through the use of secret surveillance.<sup>144</sup> It is also due to a judgment of the ECtHR that police can no longer stop and search people without any grounds for suspicion.<sup>145</sup>

As noted in section 2.3.1, human rights judgments concerning the UK have also led directly to legal reform to protect the rights of lesbian, gay, bisexual or transsexual people.<sup>146</sup> These decisions have also been significant milestones in the movement towards securing respect for the human rights of LGBT people in other European states; for example, they have shaped the conditions that countries must meet in order to qualify for admission to the Council of Europe.<sup>147</sup> The HRA has also been used to allow same-sex partners to be given 'nearest relative' status. The courts used their powers under the HRA to eliminate the discriminatory effect of a provision which meant that the survivor of a homosexual couple could not become a statutory tenant by succession whilst the survivor of a heterosexual couple could.<sup>148</sup>

Human rights law has also been used to ensure that people placed in public care as children now have a statutory right of access to records relating to their time in

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<sup>142</sup> Interview (anonymous), Independent Police Complaints Commission, 19 December 2013.

<sup>143</sup> *S and Marper v UK*, Nos. 30562/04 and 30566/04 [GC], 4 December 2008. For details of the impact of this judgment, see Ministry of Justice (2013), *Responding to human rights judgments: Report to the Joint Committee on Human Rights on the Government response to human rights judgments 2012-13*, CM 8727 (London, The Stationery Office), p. 34.

<sup>144</sup> For details of the relevant judgments and their impact, see Donald, Gordon and Leach, *The UK and the European Court of Human Rights*, pp. 67-70.

<sup>145</sup> *Gillan and Quinton v UK*, No. 4158/05, 12 January 2010.

<sup>146</sup> See above n 22-25.

<sup>147</sup> Donald, Gordon and Leach, *The UK and the European Court of Human Rights*, pp. 71-74.

<sup>148</sup> *Ghaidan v Godin-Mendoza* [2004] UKHL 30.

care.<sup>149</sup> Previously, it had been common practice to keep such files confidential and to destroy them soon after the period of care ended.<sup>150</sup>

As noted in section 2.3.1, human rights judgments have also led to the introduction of legal safeguards for people who lack mental capacity and who are deprived of their liberty in the context of care homes and supported living placements.<sup>151</sup>

Human rights are also being used to challenge the impact of new immigration rules which – by requiring UK citizens to have an income of at least £18,600 per annum before they can sponsor their foreign spouse to come to the UK – is preventing an estimated 15,000 families from living together.<sup>152</sup>

### **3.2.5 Ensuring fairness in decision-making**

Article 6 of the ECHR provides that everyone has the right to a fair trial in both civil and criminal cases. This gives an individual the right to be heard by an independent and impartial tribunal, in public and within a reasonable amount of time.<sup>153</sup> The right to a fair trial is fundamental both to the rule of law and to democracy itself. The Human Rights Lawyers' Association notes that, despite the existence of a right to fairness in common law, since the enactment of the HRA, Article 6 has had a significant impact on the conduct of civil and criminal courts and tribunals.<sup>154</sup>

A public authority lawyer at the Law Society roundtable ventured that post-HRA the right to a fair hearing has permeated day-to-day decision-making. She gave a typical example from her own experience of a disabled child whose complex educational and health needs had come before a local authority funding panel.

Pre-HRA, that [hearing] would never have been accessible, but now the family can say to the panel, 'You have to listen to parents and give your reasons because otherwise judicial review could follow'. So importing Article 6 into domestic legislation has made a difference. It has changed practice even though nine times out of ten there won't be litigation.

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<sup>149</sup> *Gaskin v UK*, No. 10454/83, 7 July 1989.

<sup>150</sup> Donald, Gordon and Leach, *The UK and the European Court of Human Rights*, p. 74.

<sup>151</sup> See above n 27.

<sup>152</sup> See <http://www.migrantsrights.org.uk/support-the-right-to-family-life>.

<sup>153</sup> Article 6 also imposes additional obligations which relate to criminal cases only; see <http://www.yourrights.org.uk/yourrights/the-human-rights-act/the-convention-rights/article-6-right-to-a-fair-trial.html>.

<sup>154</sup> For examples, see Human Rights Lawyers' Association, *Human Rights Act: Over ten years of protection, participation and accountability*, p. 13-14. See also Ministry of Justice (2006) *Human Rights, Human Lives: A Handbook for Public Authorities* (London: Ministry of Justice ), pp. 18-23.

The HRA has been relied upon to ensure fairness in decision-making procedures in the area of family law, among others (see also section 3.1.2 a). For example, Article 6 has been applied to ensure that parents are legally represented where they wish to be; that children and families are properly consulted and included in local authority administrative decision-making; and that parents are consulted prior to removal of children from the home, even in an emergency situation.<sup>155</sup>

More broadly, our interlocutors noted the value of human rights-based approach in the context of improving public administration (see also section 5.4). The Deputy Northern Ireland Ombudsman noted that overt recognition of human rights standards and principles,

... humanises bureaucracy – it makes you think about the human. We're there to reflect back to the bureaucracy the individual's experience – that entitles us to say 'You didn't treat that person with dignity' or 'You took away their rights or freedoms'.<sup>156</sup>

### **3.3 Human rights in the devolved nations**

There is no single 'story' about human rights and the HRA that can be told across the UK. Rather, distinct stories, both positive and negative, arise within each nation of the UK.

The entrenching of human rights as a core pillar of the devolution settlements has generally helped to secure stronger institutional commitment for the protection and promotion of human rights in the devolved nations than at the level of the UK government.<sup>157</sup> This is most visible in Northern Ireland where, following a commitment made in the Belfast (Good Friday) Agreement, the then Labour Government established the Northern Ireland Human Rights Commission (NIHRC) in 1999, before the HRA had even come into force in England. Most notably, human rights were integral to the fundamental reform of policing in Northern Ireland. David Russell of the NIHRC ventures that:

The HRA has made a significant difference in Northern Ireland across the piece ... The HRA ... runs to the heart of the political settlement in Northern

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<sup>155</sup> See Family Rights Group's Response to the Commission on a Bill of Rights, November 2011, pp. 4-6.

<sup>156</sup> Interview with Marie Anderson, Deputy Northern Ireland Ombudsman, 30 January 2014.

<sup>157</sup> The devolved authorities and institutions have no competence to act in any manner that is contrary to the rights in the ECHR.

Ireland. There is a cultural recognition of the political centrality of the HRA – from the executive through to public authorities.<sup>158</sup>

Russell notes that human rights language is powerful in Northern Ireland as a result of its history. However, the human rights-based approach to policy-making is still in its infancy and is no more entrenched in public authorities' decision-making in Northern Ireland than elsewhere in the UK. Yet Russell detects a shift in this regard. The Commission is currently working with the civil service; the Health and Social Care Board; the Northern Ireland Ombudsman; and the Regulation and Quality Improvement Agency to embed human rights standards in principles in their work.

Russell suggests that the HRA provides the legal and moral framework within which to debate contentious issues, such as, in the Northern Irish context, the right of unmarried couples and same-sex couples to adopt;<sup>159</sup> the right of gay men to donate blood;<sup>160</sup> and access to termination of pregnancy.<sup>161</sup> He adds:

The HRA, in the view of the NIHRC, is not just about compliance but also about providing good public services – that it's the purpose of public services, to maximise human rights ... On matters of social and moral conscience, where political disputes can arise, the discourse of human rights and, in particular, the legal framework of the HRA has proven to be extremely beneficial.

In Scotland, too, there is evidence of political and institutional commitment to human rights – including rights that extend beyond the content of the HRA and ECHR. For example, the 2003 Homelessness etc. (Scotland) Act resulted from a policy commitment to using legally enforceable rights to tackle homelessness. Conversely, unlike the UK Parliament, the Scottish Parliament has declined to establish a dedicated human rights committee.<sup>162</sup> Human rights litigation is generally much less developed in Scotland than in England and Wales, with almost none outside the area of immigration.<sup>163</sup> Duncan Wilson of the Scottish Human Rights Commission

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<sup>158</sup> Interview with David Russell, Deputy Chief Executive, Northern Ireland Human Rights Commission, 2 December 2013.

<sup>159</sup> 'Court rules Poots cannot appeal gay adoption decision', BBC Northern Ireland, 22 October 2013.

<sup>160</sup> Northern Ireland Human Rights Commission (undated) *The 2012 Annual Statement* (Belfast: NIHRC), p. 14.

<sup>161</sup> Northern Ireland Human Rights Commission (undated) *The 2013 Annual Statement* (Belfast: NIHRC), pp. 43-44.

<sup>162</sup> Scottish Commission on Human Rights (2012) *Getting it Right? Human Rights in Scotland* (Glasgow: SHRC) p. 9.

<sup>163</sup> We are grateful to Carole Ewart of Human Rights Consortium Scotland for providing data obtained from the Court of Session, which shows that between 2011 and 2013, more than

considers that lawyers are only just beginning to tap into the potential of Article 3 (prohibiting torture and inhuman or degrading treatment) and Article 8 (the right to respect for private and family life) in respect of public services.<sup>164</sup>

In Wales, the political and institutional commitment to human rights is most visible in respect of the priority accorded by the Welsh Assembly Government to children's rights. The Children and Families (Wales) Measure 2010 encompasses a broader approach to child poverty than the UK Child Poverty Act, encapsulating thirteen aims, some of which are clearly connected to human rights principles, such as non-discrimination, participation and survival and development. The Rights of Children and Young Persons (Wales) Measure 2011 made Wales the first nation in the UK to incorporate the UN Convention on the Rights of the Child into domestic law. Wales was also the first nation in the UK to appoint a Children's Commissioner, whose mandate is based on the CRC,<sup>165</sup> and an Older Person's Commissioner, who is legally obliged to have regard to the UN Principles for Older Persons.<sup>166</sup>

Policy and legislative innovations have not always translated comprehensively into the realisation of rights in the devolved nations: in this sense, there is a gap between national policy rhetoric and the implementation of human rights within public services.<sup>167</sup> Yet the legal and political context for the future development of systematic approaches to human rights implementation appears generally more favourable in the devolved nations than outside them. Public discourse surrounding the HRA is somewhat more benign in the devolved nations than at Westminster (see also section 1.2). Evidence suggests that this is particularly the case in Wales. Our interviewees suggested that the HRA is less controversial in the devolved nations partly because the issues negatively associated with the HRA at Westminster and in sections of the UK press – such as immigration and the relationship with European bodies – are also less contentious.

### **3.4 Conclusion**

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three-quarters of the 866 judicial review applications lodged with the Court of Session concerned immigration. By contrast, only three concerned housing and only one concerned social security.

<sup>164</sup> Interview with Duncan Wilson Head of Strategy and Legal, Scottish Human Rights Commission, 19 December 2013.

<sup>165</sup> Children's Commissioner for Wales Act 2001.

<sup>166</sup> Commissioner for Older People (Wales) Act 2006.

<sup>167</sup> For example, the Scottish Human Rights Commission, in research undertaken to inform the development of a Scottish National Action Plan for Human Rights, finds that, while there are 'frequent and explicit' references to human rights in the operation of law and institutions in Scotland, processes to enact policies and strategies are rarely rights-focused. Scottish Commission on Human Rights (2012) *Getting it Right? Human Rights in Scotland – Executive Summary* (Glasgow: SHRC) p. 5.

Considerable evidence exists as to the impact of the HRA on the lives of people in the UK. Some of this is already captured in story form, while other evidence exists which requires further systematic review and processing in order to yield discrete narratives about individuals or organisations.

Individual narratives form part of a larger story about the HRA. We have identified several broad areas within which such narratives might be contextualised. These are: protection from violence and coercion; protection of those whose rights are especially vulnerable to abuse; justice for bereaved families; protection of individual liberties; and ensuring fairness in decision-making. Taken together, these broader narratives tell a story about the HRA which is fundamentally different from that propounded in public discourse.

Stories must also be sensitive to context. There is no single, UK human rights story. Rather, each nation of the UK presents particular opportunities and challenges to capturing stories which relate the impact of the HRA.

## 4. The elements of a human rights story

Having identified, in chapter 3, where human rights stories might be found, this chapter considers the constituent elements of a human rights story and the factors that, in the view of our interviewees, might make it more or less persuasive. It identifies questions that those seeking to find or tell human rights stories might need to consider including the nature of the protagonist of the story; the content and outcome of the story and the language and narrative techniques used.

### 4.1 Whose story is it?

Human rights stories can be told by, or about, the person whose rights are directly at stake. Respondents drew attention to the potential for personal blogs or other forms of self-reporting to be used to tell human rights stories, noting that first person narratives are particularly compelling compared to stories that are mediated by a third party.<sup>168</sup>

The protagonists of human rights stories can also be people who use human rights to achieve beneficial outcomes for others. Participants in the scoping study generally shared this expansive view of who might tell a human rights story and the desirability of ensuring a plurality of voices.

An interviewee from an NHRI noted that where a practitioner within a public service is the story-teller, they can establish a confluence of interest between their own rights and those of people using the service: for instance, if care workers' rights are respected, they will be able to be better care-givers. An NGO participant, recalling an oral evidence session to the JCHR, recounted how revelatory a nurse's evidence had been when she described using human rights to argue for rota changes to safeguard the quality of care:

She was [asked] 'Isn't this just common sense?' She said, 'Yes, but it helps to have a statutory obligation; common sense sometimes needs a helping hand'. It was powerful for JCHR members to see the issue from both the service user's and practitioner's point of view. [They] still talked about it months later.

It was noted that the negative climate surrounding the HRA inhibits practitioners within public services from talking about their experience of using human rights (see also section 5.1). Therefore, practitioners need to be encouraged and facilitated to talk publicly explicitly about the practical application of human rights.

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<sup>168</sup> See, for example, Paul Houston, 'The memory of my daughter Amy Houston has been dishonoured', *The Guardian* 9 May 2013.

Another issue which arises is that of which type of messenger is most trusted to talk about human rights. According to the research commissioned by EDF, the most trusted spokespeople appear to be those who have personal experience of having their human rights breached, or of directly protecting others' human rights; thus, a human rights lawyer was a more trusted messenger than a campaigner.<sup>169</sup> Nevertheless, many of the lawyers we spoke to assumed that they were inherently unsuitable messengers because they would be viewed as self-interested. These interviewees tended to feel that NGOs or non-legal advocates would be more persuasive story-tellers. However, some lawyers considered that they were well-placed to speak publicly about their clients' human rights stories and in a few cases had done so. Cris McCurley, a lawyer who represents mainly women and children from minority ethnic communities – and who, unusually among our contributors, actively seeks out media opportunities – expressed frustration with many journalists' approach:

Many women who've been through a traumatic and humiliating experience will give me or their support worker permission to tell their story for them, but the media only want it from the victim ... I'm always asked for examples and then the media will say, 'Can we speak to the woman?' and I'll say – 'No, did you not hear what I said about her suffering from post-traumatic stress disorder?'<sup>170</sup>

Our interviewees generally agreed that specialist NGOs or advocacy organisations were persuasive messengers; they were unlikely to be viewed as self-interested; were experts in their field; and often had longstanding relationships with people whose rights had been breached or were vulnerable to being breached. INQUEST, which supports bereaved families following deaths in custody, was mentioned repeatedly as an example of a persuasive messenger of this type. It was also noted that staff or volunteers who work on helplines or advice lines are potential story-tellers: they may have knowledge of a wide variety of human rights-related problems and, although they need to obtain consent, they can speak about the advice offered to callers without the same level of constraint as exists where there are formal confidentiality agreements with clients.

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<sup>169</sup> Equality and Diversity Forum (2012) *Public Attitudes to Human Rights*, p. 11. In an opinion survey, human rights lawyers had a net level of trust of 6, compared to -15 for a human rights campaigner (the figures show the difference between the percentage of people that would trust a particular messenger, and the percentage that would not trust them). Political and religious leaders and celebrities were the least trusted on the matter.

<sup>170</sup> Interview with Cris McCurley, Ben Hoare Bell solicitors, Sunderland, 12 December 2013.

An issue which arose repeatedly was extent to which the perceived ‘innocence’ of the story-teller affected the persuasiveness of the story in the context of the negative public debate about human rights discussed in Chapter 1. Our contributors were highly aware of this question and many said that they grappled with it regularly in relation to how they communicate their own work. A contributor from an NHRI was ‘aware of the tight constraints on who makes a compelling subject’ of a human rights story that is likely to be ‘palatable’ to public opinion. Clare Collier, a senior lawyer at the EHRC, explains that the Commission supports or intervenes in cases where it believes it can add value for the court and help achieve progress in the development or interpretation of human rights or equality law.<sup>171</sup> When the Commission is considering whether to support or intervene in a legal case, the likely media response based partly upon the nature of the claimant is considered as a risk factor alongside other considerations; this is sometimes, but not always, a decisive factor in the Commission’s decision as to whether or not to support or intervene in the case. This is one reason, Collier adds, why the EHRC is more likely to promote its non-legal work than its legal work as a source of human rights stories.

One barrister ventured that certain groups, such as prisoners and asylum seekers, elicit a ‘Pavlovian’ negative reaction in some sections of the press; conversely, stories concerning soldiers, nurses or children almost invariably play positively. However, a solicitor at the Law Society roundtable viewed entering into the ‘deserving/undeserving’ debate as crossing a ‘red line’:

We must not [play] into that narrative. Lawyers must not divert from this point ... It’s easy to represent people who are ‘cuddly’ – we must not give an inch on that. Rights are inalienable, never contingent.

Many contributors recognised the degree of subjectivity involved in assessing the ‘palatability’ of a particular narrator. It was also recognised that story-telling is context-specific: for example, contributors in Scotland and Northern Ireland noted that public debate about both immigration and human rights is less negative in those nations than in England and therefore stories – and story-tellers – talking about immigration would be received differently in each nation. The plurality of potential story-tellers is also relevant here: for instance, the story of how human rights litigation has humanised prison conditions might persuasively be told by someone working within the prison service or an official prison visitor as well as by a prisoner or ex-prisoner.

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<sup>171</sup> Interview with Clare Collier, Senior Lawyer, EHRC, 10 December 2013. The EHRC intervenes in human rights and equality cases taken by others, particularly at appellate level. Due to statutory constraints, the Commission cannot fund human rights cases brought by others which do not also raise issues under the equality enactments.

## 4.2 The content of the story

Some human rights stories are stark – involving obvious abuse of power or loss of dignity. Our interviewees highlighted stories in which things happen that feel intuitively wrong; such as instances of older people being neglected or abused by carers in their homes;<sup>172</sup> and the serious failings of care which caused unnecessary deaths and suffering at Stafford Hospital and which were challenged using the HRA.<sup>173</sup>

Other human rights narratives are more subtle, and require context and explanation to convey their import. Mark Wright of the EHRC suggests that stories concerning people's right to participation in their community fit this category: the ability to participate socially may be crucial to the well-being of an older or disabled person but the human rights dimension of such stories may need to be carefully teased out. Similarly, stories that are concerned with decisions that involve balancing the rights of different actors and/or ensuring that any limitations on rights are proportionate may not make for a crisp and immediately accessible narrative, not least because they lack an easily identifiable 'victim' and 'perpetrator'. Yet such stories may be persuasive to practitioners in that they convey the utility of human rights as a basis for decision-making.

Another area of debate is whether, to be persuasive, a human rights story needs to have a positive outcome from the perspective of the person whose rights are at stake. As Paola Uccellari of the Children's Rights Alliance for England (CRAE) put it, 'Are we saying "This is a human rights issue" or are we saying "We need the HRA to solve this"?' Our interviewees had differing views about the importance of a 'happy ending'. For some, simply using the language and concepts of human rights to 'name the problem' was valuable, even if human rights (or the HRA) are not envisaged as part of the solution. Naming a problem in human rights terms where it is appropriate helps to establish the relevance of the HRA to public services and to potential beneficiary groups. Moreover, it reflects the reality that human rights have a dual function as, on the one hand, a framework within which to critique policies and practices and, on the other, a framework to be used to shape policies and practices.

A case in point is that of Elaine McDonald who was left disabled after a stroke. She challenged her local authority's decision not to provide her with a night carer to help

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<sup>172</sup> Equality and Human Rights Commission (2011) *Close to Home: An Inquiry into Older People and Human Rights in Home Care* (London: EHRC).

<sup>173</sup> 'Mid Staffs Inquiry closes as latest claims conclude on behalf of victims and their families', Leigh Day news release, 1 December 2011. The families' legal representatives relied on the HRA because 'the treatment received was, in some cases, so appalling'. Poor treatment that directly caused or hastened the deaths of patients included food and drink being placed out of reach, buzzers being left unanswered and patients being left for extended periods of time after soiling themselves.

her use a commode and to require her instead to use incontinence pads even though she is not incontinent – something she regarded as an intolerable affront to her dignity.<sup>174</sup> Mrs McDonald lost her case in the domestic courts, an outcome described by one interviewee in an NHRI as ‘devastating ... [and] almost playing into hands of those who wish human rights ill’ by reinforcing the narrative that human rights protect the ‘undeserving’ more than the ‘deserving’.

Mrs McDonald subsequently took her case to the European Court.<sup>175</sup> It held that the contested measure reducing her level of care fell within the scope of Article 8 of the ECHR (the right to respect for private and family life) and that Mrs McDonald’s rights had been breached during a period in which the local authority had reduced her care without having followed the statutory rules for re-assessing a person’s needs. The Court found that after this procedural failure was rectified, the situation was lawful because there had been a proportionate consideration of the interference with Article 8, which was justifiable in the context of the wider need to make provision of services for others. As a human rights story, the case thus presents a mixed picture. On the one hand, Mrs McDonald remains in a situation that (in the ECtHR’s words) conflicts with her ‘strongly held ideas of self and personal identity’; on the other, the case has established that the withdrawal of care services **could** have such an effect on a person’s dignity and independence as to amount to an interference with the right to private and family life. It also represents a partial victory for Mrs McDonald in establishing that if the proper assessment procedures are not carried out, then such interference cannot be justified and may therefore amount to a breach of Article 8 (and that damages may be payable).

Several interviewees (speaking before the ECtHR decision) ventured that without the HRA, the local authority would not have had clear obligations in domestic law to consider Mrs McDonald’s dignity, the specific rights contained in the Act, and how they should be balanced against other claims on public resources. It was the HRA that meant the local authority could only take a decision that limited Mrs McDonald’s rights in a way that was proportionate. The case showed that such decisions cannot be solely driven by ‘who has the loudest voice’. For Katherine Hill of Age UK:

Human rights and the HRA have provided individuals with the legal framework and the ability to challenge decisions – this, in itself, is positive.<sup>176</sup>

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<sup>174</sup> *R (Elaine McDonald) v Royal Borough of Kensington and Chelsea* [2010] EWCA Civ 1109.

<sup>175</sup> *McDonald v UK*, No. 4241/12, 20 May 2014.

<sup>176</sup> Interview with Katherine Hill, Strategy Adviser – Equality and Human Rights, Age UK, 20 November 2013.

A participant in the NGO roundtable recounted that, in another local authority, human rights-based advocacy had secured an individual in similar circumstances to Mrs McDonald the very service that she had been denied. Such anecdotal evidence is compelling, and reflects the importance of non-litigation avenues to redress, particularly to people who face unusually high barriers to accessing the courts.

Stories like Mrs McDonald's, whether they concern litigation or other situations outside the courts, were considered by many of our discussants to be strong human rights stories in the sense that they arouse empathy. As one communications professional noted,

What it rests on is [whether it is] a powerful story with universal implications. We can all relate to older people in care, or why it's wrong to breach the rights of an autistic boy. It could be me, my son, someone I know.

A lawyer considered that stories with universal implications were more likely to arouse positive responses than, say, the case of Gary McKinnon (see section 3.1.1 e), which was by its nature exceptional. However, Ruth Marvel of Scope noted that stories about 'ordinary lives' were a 'subtle and slow burn tool' that may struggle to gain media attention compared to stories that are derived from litigation and concern 'hard-edged' issues such as UK complicity in torture.<sup>177</sup> For Isabella Sankey of Liberty, 'softer' stories are valuable for public education and campaigning, but in order to confront head-on the arguments for abolition of the HRA,

We have to highlight the harder-edged cases – ones that would not have been possible without the HRA. As the debate intensifies, we will need heavy-weight tools.<sup>178</sup>

### **4.3 How the story is told**

A human rights story, like any story, may be told in many different ways. Human rights stories we have reviewed use a range of narrative techniques which are in part dictated by constraints such as the need for confidentiality (see also section 5.2.2). Some stories are told in the first-person; others are mediated by a narrator. The subject of a story may be named or anonymous. Some stories concern a single individual; others are composite stories based on an amalgam of (usually anonymous) testimonies.<sup>179</sup> Some are written hypothetically to illustrate a typical scenario rather than a particular person's experience. The narrative technique will

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<sup>177</sup> Interview with Ruth Marvel, Director of Policy and Campaigns, Scope, 8 January 2014.

<sup>178</sup> Interview with Isabella Sankey, Policy Director, Liberty, 22 November 2013.

<sup>179</sup> See, for example, '100 days of care', produced by the Children's Rights Director for England, which features 100 diary entries from young people living in various forms of care; available at <https://www.rights4me.org/en/home/library/reports/report-100-days-of-care.aspx>.

also be influenced by the communications strategy adopted, whether using traditional (national, regional or local) media and/or social media.

As noted in section 1.4, it was beyond our scope to propose specific communications strategies; however, several of our interviewees considered it imperative to develop more extensive and imaginative use of social media to communicate about human rights, such as blogs, infographics and 'thumbnail' stories that can easily be Tweeted. Many also noted that local and regional, as opposed to national media, are often more receptive to stories with an overt human rights dimension.

Our interviewees raised issues which pertain particularly to the telling of human rights stories. A perennial question is whether it is preferable to use the language and concepts of human rights law or the 'softer' language of principles and values such as fairness, dignity and respect (as, for example, Age UK tends to do). This question cannot be answered in the abstract since the choice of language will depend on the content of the story and the intended audience/s. Neither is it a matter of either/or. Ian Massey, who leads Hampshire County Council's Rights, Respect and Responsibility programme in schools, explains that he promotes the rights-based approach to education by talking first about its beneficial impact in relation to children's engagement, self-regulation of their behaviour and teachers' satisfaction, presenting a scenario that most would find unarguably desirable.<sup>180</sup> He then moves on to demonstrate, using empirical research, how this scenario can be attributed to the application of human rights standards and principles.

Communications which are consciously attempting to reframe debate about human rights and the HRA will inevitably be more overt in their use of language and concepts derived from human rights standards. Several of our interviewees suggested that it was important to 'reclaim' the language of human rights and to refer explicitly to the HRA in order to begin to reframe public understanding of it. Moreover, it was felt important to convey both the sophistication of the human rights framework and the legal force that underpins the values and principles it enshrines.

This does not limit human rights stories to using dry, technical language or inaccessible concepts. Human rights story-tellers in fact have an armoury of resources and techniques at their disposal. These will include compelling personal detail; several interviewees noted that Elaine McDonald's story is especially resonant because of the contrast between her former career as a prima ballerina and her present predicament. As Paul Harvey, a barrister and lawyer at the Registry of the ECtHR, notes:

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<sup>180</sup> Interview with Ian Massey Rights Respecting Programme Manager, Hampshire Inspection and Advisory Service, 4 December 2013.

The great thing about the Human Rights Act and about human rights is that it's **all** about people, personal stories, real tragedies.<sup>181</sup>

As discussed elsewhere in this report, story-tellers can also draw on wider narratives about the HRA such as protecting people from violence, abuse or neglect; invigorating democratic governance and policy-making; and humanising bureaucracy.

#### **4.4 Conclusion**

This chapter has identified questions that human rights story-tellers need to consider, including nature of the protagonist; the content and outcome of the story; and the language and narrative techniques used. Our interviewees did not advocate a prescriptive approach to these questions but, rather, one which is sensitive to context in respect of the purpose of the story and its intended audience.

However, some general principles can be extracted as to how to tell stories that convey both the legal and moral force of the human rights framework. One is to communicate not only what human rights stand for but also what they achieve for individuals in particular situations, whether procedurally or substantively. Another is to provoke empathy for the subject of the story, in part through the use of compelling personal detail and by conveying the universal implications of their predicament. A story can also be made more persuasive by (as one interviewee put it) creating a 'sense of jeopardy', i.e. by identifying who or what is under threat. Similarly, stories which feel serious, and not trivial, are more likely to persuade. In addition to people whose own rights are at stake, specialist NGOs and advocacy organisations are considered to be particularly persuasive messengers.

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<sup>181</sup> Interview with Paul Harvey, Doughty Street Chambers, 16 December 2013.

## **5. Finding human rights stories: barriers and solutions**

This chapter explores the barriers to generating human rights stories and solutions as to how they might be overcome. In some cases the barriers exist at the impact stage – they are, in essence, barriers to using human rights in various areas of work, and without initial use of human rights there can be no story. In other cases the barrier presents itself at the stage of transforming human rights impact into a story. Some of the barriers – and solutions – straddle both these stages.

The chapter examines the way in which low awareness or negative perceptions of human rights can impede the capturing of human rights stories, and possible solutions to these problems. It explores the difficulties and opportunities in capturing human rights stories directly from those whose rights are at stake. It examines the role of different ‘mediating’ actors: voluntary and advocacy organisations, oversight and complaints-handling bodies and members of the legal profession. It discusses the considerations at play when seeking to capture human rights stories from legal judgments.

### **5.1 Awareness and perceptions**

We identified in section 1.2 that surveys in Britain indicate a widespread lack of public awareness and understanding about human rights in the domestic context, as well as certain entrenched negative perceptions. Surveys suggest that these problems are mutually reinforcing in the sense that erroneous assumptions about human rights fuel scepticism or hostility; conversely, the more people know about human rights, the more positive they tend to become. Many interviewees suggested that low awareness and/or negative perceptions of the HRA affect organisations’ willingness and capacity to use or refer to human rights and thereby generate compelling human rights stories, creating a negative cycle.

Even where practitioners are aware of the HRA, they may view it as secondary to other ‘drivers’ of practice. Paola Uccellari of CRAE noted that practitioners in children’s services were likely to refer to the Children Act as their primary frame of reference, rather than the HRA:

The positive things that are required by the HRA – leading to good outcomes for children that everyone would agree with - are also required by some other domestic legislation, for example, the Children Act. So the good stories are not always seen as HRA stories. I think that, generally, practitioners do not turn to the HRA to try and work out what their practice should be like. They look at other bits of legislation and guidance that are more specific and detailed. These may be drafted to reflect the requirements of the HRA but it’s harder to make the link.

Where public authorities adopt policies and practices which fulfil their human rights obligations, they may not perceive or articulate that activity in human rights terms. A process of 'mediation' may be required to capture the human rights dimension, without inappropriately imposing a retrospective interpretation on the actions of the public authority. Interviewees observed that this process can be resource-intensive, since it involves identifying interlocutors within a public authority and working with them over a period of time to identify the ways in which human rights standards and principles have been applied and the preventive and protective aspects of a service that fulfil the authority's human rights obligations.

Similarly, a lawyer working for a local authority noted that decision-makers habitually use the language of proportionality 'but without thinking of it as a human rights concept – just like second-nature'. As noted in section 2.3.2, this is not necessarily problematic in and of itself, but makes the imprint of the HRA less visible.

These experiences highlight the need to identify receptive and knowledgeable individuals within public authorities to help 'translate' data about policies and practices into a discrete narrative about human rights. Willing interlocutors may not always be easy to identify; public authorities may not always have an individual or team with responsibility for human rights. Interviewees noted that equality and diversity officers do not always hold this brief and may be unsure of their ground in relation to human rights.

Our interviewees noted that there are often differences of view within a public authority, with some staff seeing human rights as beneficial and others viewing them as burdensome or irrelevant. As one NGO discussant noted, 'You have to be very careful about messaging: there is a risk of shining a light on a service and getting negative messaging'. Again, the need is apparent for careful mediation between policy and practice 'on the ground' and a story capturing its human rights dimension.

It was evident from our interviews that negative public perceptions about the HRA inhibit some organisations in the public, voluntary and community sectors from adopting an overt human rights-based approach – or, if they do, from drawing attention to it. An interviewee in a public authority which has adopted a service-level human rights approach noted that, the work was well-supported by the local community and by local (mainly Conservative) councillors, and positively reported by the local press. Nevertheless, the authority felt the need to keep this human rights work 'low profile' lest it attract negative attention from national politicians hostile to the HRA.

Scope has used the Convention on the Rights of Persons with Disabilities (CRPD) more systematically than the HRA as a tool to campaign on the dual fronts of non-discrimination and access to resources. Although the CRPD is not domesticated in UK law, the UK is a state party to the convention and, as such, bound by its obligations. Scope has focused on the disability convention because it includes specific and precise obligations of direct relevance to Scope's constituents. Ruth Marvel of Scope recalls that Scope had considered establishing a system for collecting human rights stories (mainly outside the courts, and involving the CRPD as well as the HRA); however, this was not pursued.<sup>182</sup> This was partly because of the negative climate surrounding the HRA, which left Scope unconvinced as to the usefulness of overt human rights language in its campaigns. Marvel notes that some in the disability sector view human rights as aspirational rather than practical and as 'rarefied [and] in some ways quite nebulous'. In addition, she suggests that human rights are thought of as a tool for litigation, rather than as a basis for advocacy or campaigning.

Another participant from the voluntary sector noted similar barriers in relation to the work of her organisation, which works with and on behalf of older people. She noted that, 'It's not just lack of awareness – it's sometimes cynicism', adding that the debate about human rights was viewed by some as 'toxic'. This had created a 'fear factor' around using human rights overtly, with some viewing it as an 'unnecessary risk'.

However, this view was not universal. For some organisations the negative climate around the HRA has been a galvanising factor: Nat Miles of Mind says that human rights used to be a 'watching brief' for the organisation, but now that human rights law is under threat, it is being more proactive (including by joining Equally Ours).<sup>183</sup>

In terms of litigation, Ruth Marvel notes that disabled people's organisations tend to view equality legislation as more useful than either the HRA or CRPD, since the focus is frequently on discrimination with regards to resources.<sup>184</sup> Age UK also tends to focus predominantly on discrimination faced by older people in access to services to services.<sup>185</sup> Several interviewees in the public and voluntary sectors suggested

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<sup>182</sup> Interview with Ruth Marvel, Director of Policy and Campaigns, Scope, 8 January 2014.

<sup>183</sup> Interview with Nat Miles, Policy and Campaigns officer, Mind, 20 January 2014.

<sup>184</sup> See, for example, the following database of legal challenges to the effect of spending cuts on disabled people compiled by Warwick University, which shows that most rely on equality rather than human rights law:

<http://www2.warwick.ac.uk/fac/soc/law/chrp/projects/spendingcuts/resources/database/legal/#disabled>.

<sup>185</sup> Interview with Katherine Hill, Strategy Adviser – Equality and Human Rights, Age UK, 20 November 2013.

that there is generally greater awareness about and confidence in using equality rather than human rights law. Voirrey Manson of NHS Wales noted that there appears to be a reluctance to raise or discuss human rights issues in an explicit way and feels that this is partly attributable to an absence of leadership within government and public authorities.<sup>186</sup>

How, then, might the negative cycle be turned into a positive one, such that human rights stories create awareness and, in turn, use of human rights, which in turn creates more stories? Naomi Contopoulos of Mencap states that:

People come to us for information, but then we get their stories ... A campaign uses stories but also generates stories as people come forward to talk to us.<sup>187</sup>

One example of this dynamic centres on the consultation conducted by Birmingham City Council in 2010-11 on restricting council-funded adult social care provision to those with 'critical' needs and thereby excluding those with 'substantial' needs who had previously been eligible. Birmingham's decision to tighten eligibility in this way was later successfully challenged in court using disability discrimination legislation).<sup>188</sup> Naomi Contopoulos recalls that anxious families approached Mencap, which subsequently used their stories (anonymously) to raise awareness about the equality and human rights implications of the proposed tightening of the eligibility criteria. Stories came from various sources: a 'story form' on Mencap's website;<sup>189</sup> staff delivering Mencap's own services; Mencap's network of regional advisers and campaigners; self-advocacy groups; carers' groups; Healthwatch groups; the Citizens Advice Bureau; and by word-of-mouth. Stories such as these have formed part of a wider campaign by NGOs concerned with learning disabilities to raise awareness of the human rights and equality impact of cuts to adult social care.<sup>190</sup>

Several interviewees underlined the importance of building relationships of trust between organisations, or between an organisation and individuals whose rights are at stake, in order to generate human rights stories. Stephen Bowen of BIHR offers a compelling story generated by BIHR's work to support voluntary and community sector organisations to integrate human rights into their advocacy. It concerned

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<sup>186</sup> Interview with Voirrey Manson, Specialist adviser, NHS Wales Equality and Human Rights, 10 January 2014.

<sup>187</sup> Interview with Naomi Contopoulos, Case Study Officer, Mencap, 29 November 2013.

<sup>188</sup> *R (on the application of W) v Birmingham City Council* [2011] EWHC 1147 (Admin).

<sup>189</sup> <http://www.mencap.org.uk/yourstory>.

<sup>190</sup> See, for example, The National Autistic Society, Mencap, Leonard Cheshire Disability, Sense, and Scope (2013) *The Other Care Crisis: making social care funding work for disabled adults in England*.

'Operation Poncho' – a campaign by the City of London, with police involvement, to wake rough sleepers during the night by 'hot-washing' doorways using high-pressure hoses in order to compel people to move on. BIHR worked with the community organisation Housing Justice to challenge these practices, with rapid success.<sup>191</sup> Stephen Bowen adds:

Rights-holders and those who represented them reframed their concerns in terms of duty-bearers and legal obligations. It was a glittering example of our work in action ... equipping people to reframe their concerns by attaching [them] to specific rights and tracking it to duty-bearers. Human rights played a powerful role in recalibrating responses within the local authority.

Later, Housing Justice used the human rights framework to convince Westminster Council to withdraw a proposed byelaw that would have made it an offence both to distribute free food to homeless people and to sleep rough within a specified area near Victoria Station.<sup>192</sup> Housing Justice and other NGOs also produced a guide to inform rough sleepers about their rights.<sup>193</sup>

There is considerable potential to generate stories by supporting voluntary and community sector groups to view their existing work in human rights terms, as well as to develop their practice by viewing it through a human rights lens. According to Stephen Bowen,

Our work with people at the 'coal face' becomes self-fulfilling – the minute people are able to translate a scenario into human rights terms they are able to see how this relates to their work, and with our support can start putting this into practice. This tried and tested process is what lies behind BIHR's unique story-bank. These can often be the most powerful human rights stories because they are about everyday life.

Again, Bowen suggests that relationships of trust must underpin this process, especially where larger (or nationally-focused) organisations are working with smaller (or locally- or sectorally-focused) ones.

Often these stories are human rights stories but for the advocacy group they are a homelessness story or an older people's story. You need a good relationship with the partner groups to generate a story that accords with their policy and approach as well as telling a human rights story. *Per se* there's no

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<sup>191</sup> Housing Justice newsletter, Spring 2012, pp. 1-3.

<sup>192</sup> <http://www.housingjustice.org.uk/pages/westminster-byelaw-campaign.html>.

<sup>193</sup> Housing Justice (2009) *Rights Guide for Rough Sleepers* (London: Housing Justice).

impediment to telling a story that works well for both – but you do need a good relationship to do this.

Interviewees emphasised the importance of peer-to-peer communication and education among both public authorities and the voluntary sector as a means of generating stories away from the ‘white noise’ of negative media coverage and political commentary. The ‘roadshow’ approach was recommended by both BIHR and national human rights institutions. Since 2011, BIHR has conducted an annual ‘Human Rights Tour’ to raise awareness about applying human rights in everyday life.<sup>194</sup> BIHR has held 52 events in 35 towns and cities across the UK, reaching almost 4,000 people including police officers, doctors and nurses, social workers, advocates, charity workers, carers, parents and others. These ‘pop-up’ events provide a space for participants to consider and evaluate their thoughts and feelings about human rights. Via education and capacity-building, they aim to make human rights real, relevant and emotionally resonant, conveying issues in a way that is legally accurate but not technical. The events also involve ‘ask us anything’ sessions, which enable participants to address prevalent perceptions of human rights.

Interviewees who had been involved with the Human Rights in Healthcare programme funded by the Department of Health similarly commended its peer-to-peer aspect. According to interviewee in the EHRC, roadshows focused on health and social care had also been effective because all the presentations were by practitioners

They yielded good examples of human rights-based approaches. They were not about litigation but about a conceptual human rights-based approach which is often hard to make real.

Those delivering training to practitioners and advocates may also be in a position to gather human rights stories. Lucy Series (author of the ‘Small Places’ blog; see section 3.1.3) delivers training to carers, advocates, social workers, doctors and lawyers on the deprivation of liberty of people who lack mental capacity. She says ‘they very often have positive stories to tell, but often don’t conceptualise them as human rights stories’. Unpaid carers may also have positive stories but may not articulate them as such and may even consider themselves hostile to human rights.

## **5.2 Reaching those whose human rights are at stake**

This section focuses upon the considerations at play when generating stories based directly on the experience of individuals whose rights have been, or are vulnerable to being, breached. It builds directly on section 5.1 in the sense that lack of awareness

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<sup>194</sup> <http://www.bihhr.org.uk/events/the-human-rights-tour-2013-4>.

or negative perceptions about human rights may affect the willingness or ability of a person whose rights are at stake from telling their story, or consenting to someone else telling it.

### 5.2.1 Capturing ‘buried’ stories

Underlying our discussion is the question of the extent to which people whose rights are vulnerable to abuse, or their families or carers, are able to access sources of support or advice, complaints processes or litigation by which their story might come to light.

People who experience poverty and social exclusion experience multiple barriers to asserting their rights. These include low awareness about human rights; an ingrained sense of powerlessness; fear of retribution; barriers inherent in the civil justice system itself, including its cost, adversarial nature and inaccessibility to (among others) people with physical or learning disabilities and people who are chronically poor or homeless; and a lack of cohesion and resources to instigate group action when administrative or corporate decisions require collective, rather than individual, challenge.<sup>195</sup> Barriers to accessing justice through the courts are multiplying with the removal in England and Wales of publicly-funded legal advice and representation from the majority of civil law claims concerning family, immigration, employment, debt, welfare and education matters;<sup>196</sup> proposals to restrict criminal legal aid;<sup>197</sup> and measures (and proposed measures) to curb applications for judicial review.<sup>198</sup>

Naomi Contopoulos of Mencap notes that the stories of people with learning disabilities may be ‘deeply buried’ as a result of multiple factors which leave them effectively stranded from sources of advice and support. Interviewees in advocacy organisations and ombudsmen observe that outreach work is vital to reach people who are especially reliant on public services but who lack the means to assert their rights.

A further dimension to this discussion is that people who **do** approach advice-giving or complaints-handling bodies or seek legal advice about a problem they face are very unlikely to invoke their human rights as such. A participant in the legal roundtable commented that ‘those who actually need the protection of the HRA have

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<sup>195</sup> L. Clements (2005) ‘Winners and Losers’ *Journal of Law and Society* 32(1): 34. See also R. Costigan and P.A. Thomas (2005) ‘The Human Rights Act: A View from Below’ *Journal of Law and Society* 32(1): 51.

<sup>196</sup> Legal Aid, Sentencing and Punishment of Offenders Act 2012.

<sup>197</sup> Ministry of Justice (2014) *Transforming Legal Aid - Next Steps: Government Response* (London: Ministry of Justice).

<sup>198</sup> Ministry of Justice (2014) *Judicial Review: proposals for further reform – the Government response* CM 8811 (London: Ministry of Justice).

no clue of its existence'. This impression was confirmed by commissioners for children and young people and older people; ombudsmen; and advocacy organisations (see also section 5.4). A concomitant problem encountered by some organisations was that complainants might assert that their rights **have** been abused when the facts of their situation do not support that perception: according to Nico Juetten, who leads on policy for Scotland's Commissioner for Children and Young People, both of these factors present barriers to generating stories that stay true to the rights'.<sup>199</sup> Interviewees in Northern Ireland note that there is greater human rights 'literacy' among the public, arising in part from the protracted process to create a Bill of Rights for Northern Ireland; this was said to make it more likely for people to articulate their problems in human rights terms (according to the Northern Ireland Ombudsman's office, around 20 per cent of complainants do so).<sup>200</sup>

A potential source of human rights stories from individuals that would otherwise be hard to reach is telephone helplines or drop-in advice services. Liberty's advice line is a source of stories and also one means by which it identifies cases that might be taken forward as strategic litigation. The Family Rights Group, which advises families whose children are involved with, or need, children's services, deals with more than 7,000 requests for advice each year. In common with other larger advice-giving bodies, FRG maintains a database of calls, which allows it to identify the incidence and severity of particular problems, including those that have a human rights dimension.<sup>201</sup> Callers' stories are used to inform the policy work of advice-giving bodies and may also be used publicly in anonymised form; for example, in the context of campaigning and lobbying. However, none of the organisations we engaged with had systems in place to capture the **outcomes** of the advice given, thereby limiting the potential to generate human rights stories. The Children's Commissioner in Scotland receives some 500 enquiries per year and noted that:

... this enquiry line certainly could generate practical stories, but we don't make sure they become stories ... We're aware that we're sitting on stories that would be useful but we don't use them ... systematically enough.<sup>202</sup>

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<sup>199</sup> Interview with Nicco Juetten, Acting Head of Policy, Scotland's Commissioner for Children and Young People, 17 December 2013.

<sup>200</sup> Interview with Marie Anderson, Deputy Northern Ireland Ombudsman, 30 January 2014.

<sup>201</sup> Such as a more than 800 per cent increase in the past five years of calls in which domestic violence is an issue and increasing difficulties in accessing domestic abuse support services; Cathy Ashley and Claudia Kanow (2013) *Desperate for help: Report analysing calls to Family Rights Group's advice service from families of children in need or at risk* (London: FRG).

<sup>202</sup> Interview with Nicco Juetten Acting Head of Policy, Scotland's Commissioner for Children and Young People, 17 December 2013.

However, with an imminent extension of the Commissioner's investigatory powers this is something that may change in the near future. The Northern Ireland Commissioner for Children and Young People (NICCY) noted that the advice sector in Northern Ireland is very active and that advice agencies are replete with stories of how human rights stories arguments have been used to resolve problems for claimants in a letter or telephone call or via mediation.<sup>203</sup>

Some organisations we interviewed had also issued open-ended calls for personal stories on their websites (these included both NHRIs and advocacy and/or advice-giving bodies). This method of reaching potential story-tellers had proved ineffective in the particular instances related to us. One NHRI noted that its call for evidence elicited responses from people in troubled circumstances but whose stories were not articulated in human rights terms and, even allowing for this fact, did not appear to have a human rights dimension. This experience suggests that if open calls are used, they should be carefully phrased, and that organisations issuing such calls should be prepared to respond to individuals who submit stories with suggested sources of advice or assistance.

### **5.2.2 Consent and confidentiality**

Telling human rights stories involves telling stories about individuals' lives. It is axiomatic that this should not be done without free, informed consent of those individuals. Where individuals have benefitted from the use of human rights, many factors may discourage them from telling their story, even if it is anonymised. Many interviewees observed that individuals who approach advice or complaints-handling bodies do so in order to get support or redress and not, as one children's commissioner noted, 'with the expectation of becoming a case study'. Such reticence has numerous and overlapping causes. Complainants or litigants generally embark on the search for redress as a last resort and may be keen to put their experience behind them. They may have no incentive to do anything beyond their immediate interest and may regard publicity as detrimental to their interest. Even those whose complaint or case is, from one perspective, successful may be discontented with the outcome or with the continuing difficulties they face. Complainants may continue to rely upon a service and may fear that publicity may invite retribution or further damage the relationship with the provider. Philip Connolly of Disability Rights UK (DRUK) noted that the protracted nature of litigation can act as a disincentive to applicants to tell their stories; people may feel 'in limbo' after a judgment and may be concerned that publicity may jeopardise their chances in the event of an appeal.<sup>204</sup>

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<sup>203</sup> Interview with Patricia Lewsley-Mooney, Northern Ireland Commissioner for Children and Young People, and Colette McIlvanna, Senior Legal and Investigation Officer, 19 December 2013.

<sup>204</sup> Interview with Philip Connolly, Policy and Communications Manager, Disability Rights UK, 17 January 2014.

A solicitor noted that litigants may not want to appear to 'boast' about a legal victory. He gave the example of a voluntary sector organisation which supports women experiencing domestic violence and which had used human rights arguments to prevent a proposed funding cut by a local authority; the group was reluctant to publicise the victory because it was aware that other voluntary sector groups remained in financial peril.

The fear of media intrusion or distortion was referred to frequently, particularly in respect of litigants from black and minority ethnic communities. Cris McCurley, a solicitor who works mainly with women from minority ethnic communities, noted that Muslim women who have used the HRA are fearful of telling their story lest it be used to stoke anti-Muslim sentiment.<sup>205</sup> Some of her clients had also had the experience of being promised anonymity by a media organisation but finding that they were not sufficiently anonymised to protect their identity; this had discouraged other women from coming forward. Another solicitor recounted the highly intrusive coverage of the case of two Ethiopian brothers whose asylum claims had failed but who had leave to remain in the UK until November 2014 and who successfully claimed that their local authority should fund their education costs.<sup>206</sup>

Anna Edmundson, formerly of INQUEST, says that families whose loved ones have died in custody may be concerned about the stigma attached to the person who has died and the danger of losing control of the story – and the portrayal of their loved one – if attention is drawn to the case. A solicitor who specialises in inquests recalls the case of a young man who had murdered his girlfriend and who committed suicide in prison despite the fact that he was on suicide watch; his mother had been unwilling to talk about the human rights dimension of his case because of the salacious reporting of the original murder. In other instances, tensions within bereaved families may prevent them from going public or from speaking with one voice about their experience.<sup>207</sup>

There is often particular reluctance to allow children's stories to be used as case studies, both from children and their parents or carers. The former Children's Rights Director for England notes that,

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<sup>205</sup> Interview with Cris McCurley, Ben Hoare Bell solicitors, 12 December 2013.

<sup>206</sup> *R (on the application of Kebede) v Newcastle City Council* [2013] EWHC 355 (Admin). The case concerned the Children Act 1989 and not the HRA. See, for example, 'Taxpayers' £10,000 bill to teach failed asylum seeker to fly: Ethiopian given lessons despite Government saying he must leave country next year', *Mail Online*, 4 November 2013.

<sup>207</sup> Interview with Anna Edmundson, (former) Research and Policy Officer, INQUEST 10 December 2013.

We often get a strong ‘no’ if we ask for consent to use individual stories – they come to us for advice, they don’t usually want their case to be heard by others.<sup>208</sup>

Northern Ireland’s Commissioner for Children and Young People sends parents or carers a consent form if it wishes to use a particular story. However,

Even with guarantees of anonymity there is often still reticence. Often this is related to fear of deterioration in an apparently resolved situation: they don’t want to rock the boat ... Parents are apprehensive and we have to consider this. Children might also be afraid of being identified.<sup>209</sup>

Advocates who support or advise complainants, and who might therefore be in a position to generate human rights stories, spoke of the particular obstacles they face in doing so. As one participant at the legal roundtable noted,

People may have lost a huge amount and can be desperately trying to claw back what they have lost. Advice agencies work hard to fulfil the person’s immediate needs before they have the ‘leisure time’ to talk about the human rights dimension.

Another hurdle facing advocates who might support complainants willing to tell their stories to is the difficulty of maintaining contact with clients over time, particularly if their lives are chaotic. This is especially problematic given the tendency, noted by several of our NGO participants, for the media to want access to the protagonists of human rights stories at short notice and on an exclusive basis when an issue becomes topical, which requires NGOs to maintain a ‘bank’ of primed and media-willing individuals.

Advocates may seek to shield clients from publicity even when they are willing for their story to be told. For example, an organisation working on violence against women noted that survivors of rape or domestic violence may feel impelled to speak out initially to prevent others from experiencing the same trauma but may later wish to dissociate themselves from the experience. Advocacy groups are aware of this longer-term risk of ‘re-traumatisation’ and may therefore discourage women from telling their story, even anonymously. NGOs also spoke of their reticence to ask clients to allow their story to be used as a case study. As one domestic violence

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<sup>208</sup> Interview with Roger Morgan, (former) Children’s Rights Director, Ofsted, 20 December 2013.

<sup>209</sup> Interview with Patricia Lewsley-Mooney, Northern Ireland Commissioner for Children and Young People, and Colette McIlvanna, Senior Legal and Investigation Officer, 19 December 2013.

organisation put it, 'You have a relationship of power and you don't want to abuse it. Woman may feel obliged to agree'.

Julie Bishop of the Law Centres Network added that Law Centre staff were bound by a commitment of confidentiality to clients. The Network seeks to capture stories from individual Law Centres about clients who have achieved a successful outcome, and uses these anonymously to demonstrate to funders the impact of the legal advice. However, these stories much more likely to concern equality rather than human rights law.

### **5.2.3 Supporting people to tell human rights stories**

Given these diverse barriers, in what circumstances have personal stories that demonstrate the beneficial impact of using human rights succeeded in being captured? The overriding theme from our interviews was the frequent need for individuals to be intensively supported to do so, either by their legal representative and/or a specialist NGO. Bridget Lindley of FRG stated that, 'There are no shortcuts to supporting family members'. Families in contact with FRG who had spoken publicly about their experiences had been extensively briefed and accompanied to events or interviews by FRG in recognition of the extent to which 'going public' exposes families to possibly hostile scrutiny.

INQUEST, too, has supported families to talk to the media about their experiences and harnessed these stories to its wider campaigning and lobbying role. Again, the success of this model was seen as being underpinned by the relationships of trust built up between INQUEST and bereaved families, as well as the organisation's relationship with trusted journalists and its expertise in the legal and policy questions involved. Families were supported to speak about their experience in natural, human terms, while INQUEST was able to supply the 'meta-narrative' about human rights. Anna Edmundson, formerly of INQUEST, gave the example of Dr Michael Antoniou, who has become an effective spokesman on the issue of deaths in mental health detention.<sup>210</sup> His wife Janey Antoniou, who was schizophrenic, took her own life while detained. Dr Antoniou has argued that Article 2 of the ECHR requires independent investigation of deaths in mental health protection. According to Edmundson, in telling his story in the print and broadcast media, Dr Antoniou conveyed,

... why Article 2 is so important in terms of procedural obligations and the positive obligation to protect life. He put it in terms of, 'I thought she would be safe in there' and, 'After she died I thought they would investigate to stop anyone else dying in those circumstances'. Those are all elements of Article 2

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<sup>210</sup> Interview with Anna Edmundson, (former) Research and Policy Officer, INQUEST 10 December 2013. See Yvonne Roberts, 'Janey Antoniou: "She was a person, not a diagnosis"', *The Guardian*, 26 May 2012.

protection – and because it was his story it was powerful ... from a human rights perspective.

Edmundson notes that the ingredients that made this a successful human rights story were:

... a trusted journalist; an articulate family member; and intensive support by INQUEST which set up the interview and was also part of it. It's labour-intensive – we did it on [the issue of deaths in mental health detention] because it's a core issue for us and we're funded to work in this area ... With more resources, we could do similar work on other cases. We have to be selective and strategic.

Another insight to emerge from this story is the factors that lead individuals or families to **want** to tell their story. Both INQUEST, and lawyers who had represented families at inquests, noted that bereaved families were often keen to speak publicly and had even sometimes been restrained from doing so by their legal representative if publicity was felt to be disadvantageous at the time. Bereaved families are commonly seeking acknowledgment of institutional failings, both for their own catharsis and to prevent others from suffering as they had. Adam Slawson, a solicitor, noted that families in these circumstances 'often feel very justified and safe in speaking out'.<sup>211</sup> Moreover, they were generally not inhibited by their continuing reliance on a public service.

### **5.3 Resources and organisational factors**

A persistent theme of our research was that the actors that are potentially well-placed to facilitate the capturing of human rights stories do not always regard themselves as having adequate capacity to do so. This was explained partly in terms of the wider political context of story-gathering. A solicitor noted that many voluntary and community organisations are 'punch drunk' and 'on their knees' as a result of cuts to funding and the need to respond to the impact of austerity and reform of social security. A human rights NGO noted that it was increasingly in 'defensive mode', leaving less time for proactive communications work. Smaller voluntary organisations commonly have no dedicated communications expertise or resources to devote to story-gathering. Even larger NGOs with such expertise identified resources as an obstacle to capturing human rights stories.

Lack of capacity was not the only barrier to capturing human rights stories. Organisations may not see story-gathering – or, at least, the gathering of human rights stories – as a priority. Interviewees noted that it can be especially hard to

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<sup>211</sup> Interview with Adam Slawson, Ben Hoare Bell solicitors, 13 January 2014.

secure organisational endorsement for story-gathering in larger organisations with more complex structures. Those whose work involves gathering stories commonly have to act as a bridge between beneficiary groups and staff carrying out operational, policy, communications and fundraising functions. They may therefore be isolated within their own organisation or have to negotiate between competing priorities. Naomi Contopoulos, case study officer for Mencap, notes that,

You need to convince colleagues that there will be no exploitation in telling someone's story ... There may be reluctance among colleagues to share them.<sup>212</sup>

Steve Hynes of the Legal Action Group ventures that in larger organisations,

Media/communications teams have their own strategies and objectives – if [using the story] doesn't suit their current agenda they tend to clam up.<sup>213</sup>

Nat Miles of Mind noted that being a federated organisation presents the particular challenge of communicating with more than 150 independent local Minds. Although there is strong organisational commitment to talking about human rights, many local Minds are struggling to survive in the new commissioning landscape and don't have the time to engage with national Mind on this issue:

We find that if we try to communicate to ask 'tell us how you're using human rights' – we may not hear anything back from them as they're just too busy and often the human rights awareness isn't there either.<sup>214</sup>

One initiative to address these obstacles is the Story Network, an informal network of staff in the voluntary sector whose functions include story-gathering.<sup>215</sup> Members of the network pool expertise on questions such as how to source stories; how to obtain informed consent; how to convey complexity within a concise personal narrative; and how to maintain the integrity of an individual's story whilst also conveying a message that suits wider organisational imperatives. Human rights organisations, or organisations with an interest in telling human rights stories, have not become involved with the network to date.

We detected significant appetite for collaborative initiatives – such as Equally Ours and the work of BIHR – that support NGOs to generate human rights stories by

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<sup>212</sup> Interview with Naomi Contopoulos, Case Study Officer, Mencap, 29 November 2013.

<sup>213</sup> Interview with Steve Hynes, Director, Legal Action Group, 14 November 2013.

<sup>214</sup> Interview with Nat Miles, Policy and Campaigns officer, Mind, 20 January 2014.

<sup>215</sup> Interview with Catherine Raynor, Mile 91 and The Story Network, 6 December 2013. See <http://www.mile91.co.uk/our-services/in/the-story-network/>.

making minor adjustments to their existing activities. For example, advice-giving or complaint-handling bodies may already gather case studies for internal use; for example, to demonstrate the impact of their service to funders or to parliament. However, they may not have the will or resources to capture this information in such a way that it can be used to communicate their work to the public. Anna Edmundson, formerly of INQUEST, noted that:

Collaborative initiatives are helpful – it’s a way of thinking about [story gathering] as you do the work and keeping it at the forefront of your mind – and tweaking what we already do to put the information in such a way that we can share it. It’s in our interest as INQUEST to ensure that the public understands the impact of the HRA and ensure that it remains.

Nat Miles at Mind similarly observed that:

We need to weave human rights into the work we are doing rather than seeing it as something extra ... We need to add a human rights thread to the [existing] narrative - for example in how we talk about crisis care services, compulsory medication, or the use of face-down restraint.

#### **5.4 Capturing stories from oversight and complaints-handling bodies**

Human rights standards and principles can support oversight and complaints-handling bodies to meet their own legal obligations and to ensure that public services meet the needs of the people that use them.<sup>216</sup> Human rights have become, to varying degrees, embedded within the operational frameworks of such bodies; however, human rights and HRA are rarely referred to explicitly in their published reports and case commentaries.<sup>217</sup> Even where human rights concerns are identified,

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<sup>216</sup> Such bodies include regulators, inspectorates, ombudsmen, and commissioners for children and older people. For this study, we have interviewed several ombudsmen and children’s and older people’s commissioners in the UK. See Ministry of Justice (2009) *The Human Rights Framework as a Tool for Regulators and Inspectorates* (London: Ministry of Justice).

<sup>217</sup> Office for Public Management (2009) *The role and experience of inspectorates, regulators and complaints-handling bodies in promoting human rights standards in public services* (Manchester: Equality and Human Rights Commission), pp. 51-53. An exception was *Injustice in residential care*, a report by the Local Government Ombudsman and the Health Service Ombudsman for England, which sets out the findings of a joint investigation into a complaint against Buckinghamshire County Council and Oxfordshire and Buckinghamshire Mental Health Partnership NHS Trust in relation to their care of a young man with severe learning disabilities. The findings note that: ‘Article 3 ... Article 8 ... and Article 14 ... [of the Human Rights Act] were engaged in Frank’s case ... A proper consideration of human rights issues at any point would have led to improvements in Frank’s and his parents’ situation’. See Commission for Local Administration in England and Health Service Ombudsman for

they are generally referred to as instances of maladministration or unreasonable decision-making rather than in human rights terms. As noted in section 5.2.1, complainants rarely approach complaint-handling bodies using the language of rights (although advocacy organisations are more likely to do so). These factors, combined with concerns about consent and confidentiality (section 5.2.2), mean that oversight and complaints-handling bodies have rarely been a source of human rights stories.

However, there is potential for stories to be generated by these bodies. The Northern Ireland Ombudsman is in the process of integrating a human rights approach into its handling of complaints from people who believe they have suffered injustice as a result of poor administration or the wrong applications of rules by government departments and public bodies in Northern Ireland.<sup>218</sup> Deputy Ombudsman Marie Anderson notes that human rights are being integrated into every stage of the Ombudsman's work, from validation of complaints through to investigation and assessment and the recommendations it makes to bodies that are the subject of complaints.<sup>219</sup> The overall objective is to ensure that the Ombudsman uses human rights principles and standards as a benchmark for the actions of bodies in its jurisdiction in order to establish if there has been maladministration. Marie Anderson ventures that the examination of cases 'through a human rights lens' will involve a shift in approach. Complaints will be investigated in an appropriate case using the values of fairness, respect, equality, dignity and autonomy (FREDA).

In one recent case, the Ombudsman had received a complaint from the father of a 16-year-old girl about removal of home tuition support. Applying a human rights-based approach, the Ombudsman decided to consider the rights of the child and in so doing asked the girl what her preference was, which she confirmed was to attend college. As Marie Anderson noted, 'Using FREDA has led us to empower that 16-year-old girl to make her own decision about how she wished to be educated'.

Marie confirmed that a human rights based approach will also be relevant in the context of proposed legislative change for the Office. The Committee of the Office of the First Minister/deputy First Minister of the Northern Ireland Assembly are considering granting the Ombudsman additional powers which include own motion investigations. Currently all investigations are conducted in private and, at present, only case summaries of investigations are published; however, the Ombudsman is also seeking powers under the new legislation to make its full investigation reports publicly available in the public interest. The Ombudsman hopes that the new powers

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England (2008) *Injustice in residential care: a joint report by the Local Government Ombudsman and the Health Service Ombudsman for England*, HC 421, p.8.

<sup>218</sup> See International Ombudsman Institute (2013) *Annual Report 2012-13* (Vienna: IOI), pp. 23-24.

<sup>219</sup> Interview with Marie Anderson, Deputy Northern Ireland Ombudsman, 30 January 2014.

will also be utilised with respect for the FREDA values and a human rights-based approach to Ombudsman reports will seek to balance the privacy of the individual and the public interest in holding public services to account.

Emma Gray of the Scottish Public Services Ombudsman (SPSO) notes that human rights have become more embedded in the Ombudsman's work since 2007.<sup>220</sup> While the SPSO cannot determine whether an individual's rights have been unlawfully breached – since this is the role of courts and tribunals – it can take account of the human rights of the complainant and can investigate how the relevant public authority has taken these into account in its actions or decisions affecting the complainant. Again, however, human rights are rarely referred to explicitly in the SPSO's case commentaries. Exceptions include the commentaries on complaints concerning two young men with special educational needs who had been distressed by the way they were treated by staff of the bus company which transported them to school;<sup>221</sup> and another concerning a woman who was injected with antipsychotic drugs by hospital staff against her will.<sup>222</sup>

Emma Gray notes that human rights principles frequently come into play in respect of complaints concerning policies which are indiscriminate in their effect. Human rights concerns are also powerfully evident in health-related complaints, such as those which concern care of the dying (people being moved into a shared ward to die without being screened; or people sharing a ward with a dead person for some time); or failures in nursing care, especially the management of continence. The Ombudsman recognises the publicity value of some cases and sometimes facilitates contact between complainants and journalists, but only if the complainant wishes.

The children's commissioners in the UK each have a remit to protect and promote children's rights. The Northern Ireland Commissioner for Children and Young People obtains stories from a variety of sources: its advice line; case work (both pre-legal and litigation);<sup>223</sup> outreach work, such as complaints clinics at youth clubs; events

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<sup>220</sup> Interview with Emma Gray, Head of Policy and External Communications, Scottish Public Services Ombudsman, 14 January 2014.

<sup>221</sup> Scottish Public Services Ombudsman, Ombudsman's Commentary, January 2007 Reports, p.1. The Ombudsman noted that the complaint did not refer to human rights; nevertheless, 'My expectation is that public authorities are not only technically compliant with the law, and with their own policies and procedures, but that they make decisions and take actions that further an approach that integrates human rights into their work.'

<sup>222</sup> Scottish Public Services Ombudsman, Ombudsman's Commentary, September 2010 Reports, p.1.

<sup>223</sup> The NICCY is the only children's commissioner in Europe to have intervened in cases before the ECtHR, concerning the privacy rights of children and young people in the Youth Justice System.

and campaigns; and networking activities with professionals, statutory bodies and NGOs. NICCY makes available anonymous case studies<sup>224</sup> and uses stories in campaigns such as Make it Right, in which children and young people articulated their experiences in demands in relation to issues such as poverty, justice, mental health, disability and the needs of young carers.<sup>225</sup>

## 5.5 Capturing stories from litigation

This section examines the particular barriers that exist to capturing human rights stories from litigation – and from the legal profession – and how they might be overcome.

### 5.5.1 ‘Translating’ legal judgments

We noted in section 3.1.3 that a legal judgment that relies wholly or mainly on human rights arguments and produces a beneficial outcome for the applicant/s is a human rights story in its own right. Yet a judgment requires a sensitive process of ‘translation’, as many of our interlocutors termed it, in order to produce narratives that convey its meaning and significance, as well as the applicant’s personal experience.

Stephen Bowen of BIHR noted that the facts in human rights judgments may be ‘colourful and complex’. There may be a succession of judgments ‘endlessly perfecting’ the law, the import of which may be opaque to a non-specialist audience. Legal judgments that involve complex facts or turn on arcane points of law do not always neatly illustrate advocacy or campaigning messages.

Stephen Bowen adds,

I have an anxiety that the effort to make a story interesting must be combined with ensuring that [it] retains legal credibility. This kind of quality control is resource-intensive.<sup>226</sup>

In addition, judgments may not always rely solely on human rights law but may be, as Bowen puts it, an ‘intricate muddle ... of common law and human rights’. In each case, then, it is necessary to identify the specific role played by human rights law. Anna Edmundson notes in respect of inquests that,

When cases get more complicated there may be a range of legal arguments advanced ... It can be hard to disentangle, but ... I can’t think of any big cases where human rights arguments **haven’t** been important, in the sense of

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<sup>224</sup> <http://www.niccy.org/legalandinvestigations-/casestudies>.

<sup>225</sup> <http://www.niccy.org/Makeitright>.

<sup>226</sup> Interview with Stephen Bowen, Director, British Institute of Human Rights, 14 January 2014.

being foundational or adding weight to other points. [Human rights have] become integral to this area of law – part of the fabric.<sup>227</sup>

A further risk is that where judgments do not rely solely on human rights considerations, the human rights dimension of the case may be lost or diluted in media coverage. A case in point is the proceedings that arose out of the deaths of three soldiers and the injuries of another two while serving in the British Army in Iraq between 2003 and 2006.<sup>228</sup> The case involved claims brought under both the law of negligence<sup>229</sup> and human rights law<sup>230</sup> each of which was successful before the Supreme Court. The EHRC, which had intervened to seek to clarify the law on the extent of the jurisdiction of the HRA, noted that there had been some favourable media coverage of the principle it established: that British soldiers killed while serving in Iraq were still under UK jurisdiction and so were entitled to human rights protection to the extent that is reasonable and does not interfere with the demands of active service.<sup>231</sup> However, the negligence aspect of the case had been more negatively reported, especially after a subsequent think-tank report which deplored what it perceived as ‘the legal erosion of British fighting power’.<sup>232</sup>

Judgments that concern the proportionality of the restrictions on a qualified right were also considered to be harder to communicate in the form of a crisp narrative. Such judgments are highly fact- and context-specific and may involve a nuanced balancing act between rights which appear to be in tension; for example, the rights of children and adults. NICCY observed that, in the absence of public understanding of the human rights framework:

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<sup>227</sup> Interview with Anna Edmundson, (former) Research and Policy Officer, INQUEST, 10 December 2013.

<sup>228</sup> *Smith & Ors v Ministry of Defence* [2013] UKSC 41.

<sup>229</sup> These claims concerned alleged failures by the Ministry of Defence (MoD) to provide available equipment and technology to protect against the risk of ‘friendly fire’ and to provide adequate vehicle recognition training, as well as failure to provide suitable armoured vehicles for patrolling.

<sup>230</sup> It was alleged that the MoD was in breach of the obligation to safeguard life protected by Article 2 ECHR due to its failure to take reasonable measures in light of the real and immediate risk of soldiers with patrolling obligations.

<sup>231</sup> Interview with Clare Collier, Senior Lawyer, Equality and Human Rights Commission, 10 December 2013.

<sup>232</sup> T. Tugendhat and L. Croft (2013) *The Fog of Law: An introduction to the legal erosion of British fighting power* (London: Policy Exchange).

Complicated stories like this are harder to use ... It's important to ... explain a situation fully and not sensationalise or over-simplify it.<sup>233</sup>

Yet other judgments convey a clear-cut and compelling narrative and it is these that are most immediately 'translatable' into human rights stories. Several interviewees highlighted the case of an autistic and epileptic teenager who was restrained at a swimming pool and subsequently placed, in soaking wet clothes, in a cage in a police van using leg irons and handcuffs.<sup>234</sup> The EHRC intervened in the case to argue that the teenager's treatment by the police was so serious that it contravened Article 3 of the ECHR, prohibiting inhuman or degrading treatment. The teenager won almost £30,000 in compensation for exacerbation of his epilepsy and psychiatric damage.<sup>235</sup>

### 5.5.2 Accessing records of legal proceedings

We noted in section 3.1.3 that only a small proportion of judgments is 'reported' (published) or transcribed. NICCY notes that the fact that lower courts and tribunals (such as the tribunal that deals with special educational needs and disability) do not issue written judgments is a 'very real, practical problem': not only does it limit access to stories, but also prevents the Commissioner from building a bank of precedents and breaches, putting it at a disadvantage compared with solicitors acting for the Education and Library Boards in Northern Ireland as they are involved in all cases.<sup>236</sup> The secrecy surrounding decisions of family courts and the Court of Protection in England and Wales constitutes a similar barrier to accessing stories; however, this situation is likely to change with the advent of greater transparency following revised guidance which took effect in February 2014 (see section 3.1.3).

The absence of recorded decisions from lower instance courts and tribunals is a significant but not insurmountable barrier to capturing human rights stories. Adam Wagner, a barrister and editor of the UK Human Rights blog, notes that for unreported decisions, a solicitor will often have a note of the proceedings from the

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<sup>233</sup> Interview with Patricia Lewsley-Mooney, Northern Ireland Commissioner for Children and Young People, and Colette McIlvanna, Senior Legal and Investigation Officer, 19 December 2013.

<sup>234</sup> *ZH (a protected party by GH, his litigation friend) and the Commissioner of Police for the Metropolis*, Liberty (intervener) Equality and Human Rights Commission (intervener), [2013] EWCA Civ 69.

<sup>235</sup> <http://www.equalityhumanrights.com/news/2013/february/court-of-appeal-condemns-the-treatment-of-an-autistic-boy-by-the-police/>.

<sup>236</sup> Interview with Patricia Lewsley-Mooney, Northern Ireland Commissioner for Children and Young People, and Colette McIlvanna, Senior Legal and Investigation Officer, 19 December 2013.

barrister present or may be able to facilitate contact with the claimant.<sup>237</sup> However, 'It would involve quite a bit of work to find those very practical, "down on the ground" cases'.

Even more elusive are stories that emanate from the very large proportion of claims that are settled in the early stages. This may be at the earliest stage of the 'letter before claim', which is part of the 'pre-action protocol' that all claimants are expected to follow in order to establish whether litigation can be avoided. Or, if the claimant has grounds to start a judicial review, it may be at the next stage of a 'letter before action'. Cases may also be settled or withdrawn either before or after the 'permission stage', when a judge decides whether the claimant should be granted permission to proceed to a full judicial review hearing. Research indicates that a high proportion of judicial review claims settle in favour of the claimant, suggesting that the majority of cases has substantial merit.<sup>238</sup> Adam Slawson, a solicitor who specialises in public law including health and social care and migrant and asylum support, estimated that some 90 per cent of his firm's cases are resolved in some way before court:

Local authorities rarely risk litigation if [a claim is] compelling. Usually only the borderline cases end up in court.<sup>239</sup>

Adam Wagner agrees that from the perspective of human rights stories,

Cases which settle early could be among the most attractive – often the public authority will hold up its hands and admit wrongdoing. The ones that come to trial will often be the ones which are more complex or where there has been unattractive behaviour on both sides.

Adam Slawson describes how the HRA exerts traction on local authority decision-making in such circumstances:

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<sup>237</sup> Interview with Adam Wagner, 1 Crown Office Row and UK Human Rights Blog, 14 January 2014.

<sup>238</sup> In a nine month sample of 22 non-immigration cases that reached settlement after permission had been granted, only five settlements did not favour the claimant. Of 54 cases that settled after proceedings were issued and before permission was granted, 46 settled on the basis of a review or reconsideration of the decision under challenge, or with some other substantive benefit to the claimant. See V. Bondy and M. Sunkin (2009) *The Dynamics of Judicial Review Litigation: The resolution of public law challenges before final hearing* (London: Public Law Project), p. 39.

<sup>239</sup> Interview with Adam Slawson, Ben Hoare Bell solicitors, 13 January 2014.

In many areas of public law where an authority has discretion, the HRA is often pivotal in arguing that the local authority **must** act; in other words, you use the Act to change it into a duty. This is often how letters before claim are framed: ‘You have the option to act or not act but if you don’t you will be in breach of [the HRA]’.

Other interviewees agreed that stories concerning cases settled early can be just as persuasive as those based on judgments; the key question was whether the claimant’s personal experience could be captured since, as one participant noted, ‘Without a name and a face, it’s not a real story for the purposes of swaying a sceptical public’. The vast majority of cases that are settled or resolved early do not reach the public domain. The exceptions are cases in which the events underlying the claim are high-profile; however, as in the case of the Stafford Hospital claimants, the human rights dimension of the out-of-court settlement may be obscured in media coverage.

### **5.5.3 The role of the legal profession**

Our interviewees in the legal profession noted that the best way to access litigation stories and claimants – both for reported and unreported cases and claims settled early - is to make direct approaches to solicitors’ firms or barristers’ chambers. They advised that anyone interested in gathering human rights stories should approach a law firm or chambers that specialises in human rights and ask to interview solicitors or barristers about their case work. Such face-to-face approaches were much more likely to be productive than simply writing to law firms or chambers and asking them to provide examples of human rights cases. Similar approaches could be made to networks of legal practitioners, such as the Law Centres Network; the Legal Aid Practitioners’ Group or specialist networks such as the Immigration Law Practitioners’ Association or Housing Law Practitioners’ Association. However, such networks or federated bodies are themselves dependent on a supply of stories from individual members, and tend to be more geared towards peer-to-peer exchange and matters of general concern than in gathering individual stories. They may, however, be a conduit to individual lawyers or law firms who might in turn facilitate direct access to stories and clients.

Several solicitors and barristers suggested that legal practitioners do not generally see it as their role proactively to disseminate stories: as one said ‘lawyers generally want to conclude the case and move on’. This was explained partly in terms of a lack of resources, especially for smaller firms and legal aid practitioners, for whom, as one solicitor noted, ‘proactive communications work is low down the agenda’. Larger law firms might include selected cases, including those that are unreported or were settled early, in newsletters, brochures and on their websites; however, these may have a public relations focus and may not contain the best selection of human rights

stories. Moreover, they may be legalistic accounts and contain few details about the claimants' circumstances. Law firms that specialise in human rights can be identified using the Law Society website.<sup>240</sup> Barristers can be identified using the Bar Directory, published jointly by the Bar Council and Sweet & Maxwell.<sup>241</sup>

Our interviewees suggested that lawyers tend to engage in publicity about a case only once it has concluded, if at all, fearing that publicity at an earlier stage might jeopardise their client's chances. Steve Hynes of the Legal Action Group commented that lawyers are rarely media-willing: 'They don't want to be answering media questions, they are aware of the risk of prejudicing cases'. However, he adds, after a case has concluded, media interest tends to die away rapidly.

Lawyers may also fear attracting negative attention if they seek publicity. Cris McCurley observed that: 'Lots of lawyers say to me "I'm pleased you do this [publicity] but I wouldn't have the confidence"'.<sup>242</sup>

We found some exceptions to this pattern, in the form of lawyers (like McCurley) who seek out media opportunities to talk about the issues facing their clients or who support a media-willing client. Jamie Kerr, a solicitor in Scotland, recalled the case of his client, David Maclsaac, an American teacher who had worked in Scotland for a decade and was threatened with deportation on the spurious ground that his four-year marriage to a Scottish woman was a sham. Mr Maclsaac had invoked his rights to a private and family life under Article 8 of the ECHR and his case had gained high-profile media coverage and political attention within Scotland.<sup>243</sup> The Home Office had reconsidered its decision in his favour and this had 'only happened because of the political pressure, which in turn came as a result of the media pressure'. The case had involved an unusual coincidence of factors: an articulate claimant who kept control of his story; and political factors that made it expedient for politicians to take up his cause. Jamie Kerr adds that

I think there needs to be more awareness among solicitors of the benefits of using the media – not only in the wider sense of needing positive human rights messages to win over the public but also in a narrower, selfish sense of the way it benefits them professionally and also helps their clients.<sup>244</sup>

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<sup>240</sup> <http://www.lawsociety.org.uk/>

<sup>241</sup> <http://www.barcouncil.org.uk/about-the-bar/find-a-barrister/>

<sup>242</sup> Interview with Cris McCurley, Ben Hoare Bell solicitors, 12 December 2013.

<sup>243</sup> See, for example, 'Celebration for Ae headteacher after winning legal battle which could have separated him from ill wife', *Daily Record*, 14 November 2013.

<sup>244</sup> Interview with Jamie Kerr, Morton Fraser Solicitors, Scotland, 11 December 2013.

A more fundamental obstacle to generating human rights stories from litigation is that lawyers may lack the awareness, expertise or confidence to use the HRA in the first place. Cris McCurley suggests that there is a tendency among the profession to think of human rights as a specialist and largely international area of law. She adds:

When the HRA was first enacted [lawyers were] using it in every argument and statement. Then it became something that you had to say you had considered, but you wouldn't necessarily use as a principal pillar of your case. It's such a missed opportunity ... Used in careful argument it's so effective ... It's incredible that we don't make more use of it.

Lawyers practising in Scotland and Wales told us that there are only limited pools of human rights expertise in those nations.<sup>245</sup> The same dearth of human rights specialist advice was thought to exist outside of metropolitan centres in England. Glyn Maddocks, an inquest specialist who practises in Wales, commented that:

Outside London, many [lawyers] are frightened of [human rights]. It's seen as specialist ... No-one would spot human rights issues or understand their significance. It's about education, training and a fear factor on the part of lawyers. It's also, in part, a generational difference.<sup>246</sup>

Julie Bishop of the Law Centres Network noted that Law Centres are generally more geared to equality and non-discrimination work than to human rights; there were diminishing numbers of funded specialist discrimination posts in Law Centres (mainly in housing or employment law) and many staff would not necessarily have any specialist knowledge of the HRA. Philip Connolly of DRUK ventured that in terms of resolving their own situation, disabled claimants often opt for the quickest and simplest route: this might mean eschewing litigation altogether or relying on 'lower levels' of legal protection. Therefore, even where human rights **could** be used, 'Cases are often won or lost before human rights arguments start to be put'.<sup>247</sup>

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<sup>245</sup> See also R. Costigan and P.A. Thomas (2005) 'The Human Rights Act: A View from Below' *Journal of Law and Society* 32(1): 51-67. This study identifies multiple barriers to the use of human rights by solicitors working in the Cynon Valley, an area of high deprivation in south Wales. These include: uncertainty about how to access rights under the HRA; lack of training; the high cost of electronic legal resources; difficulty in securing public funding for cases; a belief that lower instance courts are not receptive to human rights-based arguments; and a perception that the HRA is a tool of last resort when other, more specific, legislation is not available.

<sup>246</sup> Interview with Glyn Maddocks, Gabb and Co solicitors and Human Rights Committee of The Law Society, 13 December 2013.

<sup>247</sup> Interview with Philip Connolly, Policy and Communications Manager, Disability Rights UK, 17 January 2014.

Glyn Maddocks added that negative media coverage had affected lawyers' perceptions of the utility of human rights and the HRA:

Lawyers may feel that human rights arguments won't find favour with clients, even though beneficial to them. Plus, there's unease about whether the HRA will even remain.

Discussants at the Law Society roundtable deplored the negative climate surrounding the HRA and argued that it was incumbent on lawyers to promote awareness and understanding, at least within their own profession, as well as to issue rebuttals of inaccurate media coverage of human rights litigation. However, apart from some legal bloggers (see section 3.1.3) they were unaware of any concerted action among the legal profession to 'defend its own territory from misrepresentation by the media'.

## **5.6 Conclusion**

This chapter has identified a negative cycle – in which low awareness and negative perceptions inhibit human rights story-telling, in turn frustrating efforts to raise awareness and change attitudes – and explored how to create a positive one.

Capturing human rights stories emanating from organisational or sector-wide experience requires persistence and may be highly resource-intensive. Public authorities rarely promote, or even recognise, the human rights dimension of what they do. There is a need to find willing and knowledgeable interlocutors; weave a coherent narrative from disparate sources of data; and surmount problems of low awareness and negative perceptions. There may also be a need to do extensive fact-checking and to determine questions of causality in order that the human rights dimension of a story can be told authentically.

Relationships of trust - between organisations, and between individuals whose rights are at stake and their advocates – are the wellspring of human rights stories. Peer-to-peer communication within the public and voluntary sectors can generate stories away from the 'white noise' of negative media commentary. Organisations need to be incentivised to capture human rights stories; this will often require external 'mediation' between their day-to-day practice and a story that captures its human rights dimension. There is significant appetite among NGOs for collaborative initiatives that support them to generate human rights stories by making minor adjustments to their existing activities.

Many human rights stories are 'buried', in the sense that individuals whose rights are vulnerable to being breached are effectively stranded from sources of advice or legal remedy. Those that do seek redress may not invoke their human rights as such –

and where individuals have benefitted from the use of human rights, many factors may discourage them from telling their story, even anonymously. An exception is bereaved families, who are often highly motivated to seek public acknowledgment of institutional failings.

Individuals almost invariably require intensive support to tell their human rights story. Specialist NGOs, which are trusted both by their clients and the public, are viewed by many as ideally placed to fulfil this role - and to provide the human rights 'meta-narrative' to contextualise personal testimonies. Helplines, advice services and existing efforts to gather case studies for other purposes are all potential sources of human rights stories. Oversight and complaints-handling bodies have rarely been a source of human rights stories, but there is some potential for this to happen.

Human rights judgments require a sensitive process of 'translation' in order to produce narratives that convey their meaning and significance, as well as the personal experience at the heart of them. Some judgments are complex and arcane and do not lend themselves readily to advocacy or campaigning imperatives. Yet others involve compelling narratives that are immediately 'translatable' into human rights stories.

Cases from lower instance courts and tribunals that are not recorded, and claims that are settled in the early stages, are a vast untapped reservoir of human rights stories. Capturing these requires face-to-face contact with selected law firms or barristers' chambers, since our study suggests that members of the legal profession generally do not view it as their role proactively to disseminate human rights stories.

## 6. Next steps

In this chapter, we extract from the preceding chapters some concrete steps that could be taken, both immediately and in the longer-term, to capture human rights stories or to relate them more persuasively. These suggestions are not targeted at specific actors, but may be of interest to the range of organisations that we have engaged with in this scoping study.

- Our study suggests that many lawyers are aware that they are ‘sitting on’ persuasive human rights stories and some would welcome the opportunity to share them (section 5.5.3). In particular, cases from lower instance courts and tribunals that are not recorded, and claims that are settled in the early stages, are an untapped reservoir of potential human rights stories. Capturing these requires direct, preferably face-to-face contact with selected law firms or barristers’ chambers that specialise in public law or human rights rather than generalised appeals for stories. Organisations seeking human rights stories could periodically hold ‘human rights surgeries’ in law firms, during which lawyers would be invited to pass on stories and facilitate contact with willing clients.
- There is potential for organisations that wish to capture human rights stories to engage with The Story Network, an informal network of staff in the voluntary sector whose functions include story-gathering and whose experience may hold valuable generic lessons about capturing and telling stories (section 5.3).
- We detected significant appetite for collaborative initiatives that support NGOs to generate human rights stories by making minor adjustments to their existing activities; for example, to capture stories from calls to helplines that are already logged or from case studies that are already gathered for other purposes (section 5.3). Specialist NGOs whose client groups may experience human rights problems are perceived as being extremely well-placed to perform this role, enjoying trust from the individuals they support or advise, the public and the media. There may be opportunities for targeted investment in story-gathering exercises with such organisations. Such interventions need to take account of the fact that individuals may need to be intensively supported over a period of time to tell their stories.
- Events such as roadshows that involve peer-to-peer communication within the public and voluntary sectors are viewed as valuable exercises for gathering stories – and developing human rights practice - away from the ‘white noise’ of negative commentary about human rights (section 5.1).

- This report has focused principally on developing the supply of human rights stories, rather than media and communications strategies for disseminating them. However, a clear message from our interviewees was the imperative of developing more extensive and creative use of social media to tell human rights stories, such as personal blogs, infographics, and ‘thumbnail’ stories that are amenable to being told on Twitter.
- Oversight and complaints-handling bodies that have adopted an overt human rights-based approach are another untapped source of stories; among our interviewees, the Northern Ireland Ombudsman has taken the most far-reaching steps in this regards (section 5.4).
- There are repositories of information about the impact of the HRA that have not been systematically analysed for human rights stories, such as evidence contained in submissions to the Commission on a Bill of Rights (section 3.1.2). These include submissions from organisations that are not as yet systematically involved in capturing human rights stories but that could be incentivised to do so.

## Appendix: List of interviews

Interviewees' job titles and organisations are stated as they were at the time of the interview.

1	Anonymous			Independent Police Complaints Commission	09.12.13
2	Anderson	Marie	Deputy Ombudsman	Northern Ireland Ombudsman	30.01.14
3	Bishop	Julie	Director	Law Centres Network	17.12.13
4	Bowen	Stephen	Director	British Institute of Human Rights	14.01.14
5	Collier	Clare	Senior Lawyer	Equality and Human Rights Commission	10.12.13
6	Connolly	Philip	Policy and Communications Manager	Disability Rights UK	17.01.14
7	Contopoulos	Naomi	Case Study Officer	Mencap	27.11.13
8	Cooper	Jonathan	Barrister	Doughty Street Chambers	12.12.13
9	Edmundson	Anna	Research and Policy Officer	INQUEST	10.12.13
10	Gray	Emma	Head of Policy and External Communications	Scottish Public Services Ombudsman	15.01.14

11	Harvey	Paul	Lawyer	Doughty Street Chambers; Registry of the European Court of Human Rights	16.12.13
12	Henry	Anna	Head of Human Rights Programme	Equality and Human Rights Commission	21.11.13
13	Hewitt	Catherine	Legal Adviser	Commissioner for Older People, Northern Ireland	30.12.13
14	Hill	Katherine	Strategy Adviser– Equality and Human Rights	Age UK	20.11.13
15	Hutton	Emma	Programme Director	Equally Ours	27.11.13
16	Hynes	Steve	Director	Legal Action Group	14.11.13
17	Juetten	Nico	Acting Head of Policy	Scotland's Commissioner for Children and Young People	17.12.13
18	Kerr	Jamie	Solicitor	Morton Fraser Solicitors, Scotland; Law Society of Scotland	11.12.13
19	Lewsley-Mooney	Patricia	Commissioner	Northern Ireland Commissioner	19.12.13

				for Children and Young People	
20	Lindley	Bridget	Deputy Chief Executive and Principal Legal Adviser	Family Rights Group	3.02.14
21	Maddocks	Glyn	Solicitor	Gabb and Co Solicitors	13.12.13
22	Manson	Voirrey	Senior Equality Manager	The NHS Centre for Equality and Human Rights, Public Health Wales	10.01.14
23	Marvel	Ruth	Director of Policy and Campaigns	Scope	08.01.14
24	Massey	Ian	Rights Respecting Programme Manager	Hampshire Inspection and Advisory Service	04.12.13
25	McCurley	Cris	Solicitor	Ben Hoare Bell Solicitors	12.12.13
26	McIlvanna	Colette	Senior Legal and Investigation Officer	Northern Ireland Commissioner for Children and Young People	19.12.13
27	Miles	Nat	Policy and Campaigns Officer	MIND	20.01.14
28	Morgan	Roger	Children's Rights Director	Ofsted	20.12.13

29	Pazdzierska	Nicola	Press Officer	Equality and Human Rights Commission	28.11.13
30	Patrick	Angela	Director of Human Rights Policy	Justice	10.01.14
31	Raynor	Catherine		Mile 91 and The Story Network	06.12.13
32	Russell	David	Deputy Chief Executive	Northern Ireland Human Rights Commission	02.12.13
33	Sankey	Isabella	Policy Director	Liberty	22.11.13
34	Series	Lucy	Research Associate	Cardiff Law School, Cardiff University	14.11.13
35	Slawson	Adam	Solicitor	Ben Hoare Bell Solicitors LLP	13.01.14
36	Uccellari	Paola	Director	Children's Rights Alliance for England	06.12.13
37	Wagner	Adam	Barrister	One Crown Office Row; UK Human Rights Blog	14.01.14
38	Wilson	Duncan	Head of Strategy and Legal	Scottish Human Rights Commission	19.12.13
39	Wright	Mark	Project Manager	Equality and Human Rights Commission	28.11.13

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