HOUSES OF PARLIAMENT

Joint Committee on Human Rights

Oral evidence: The Government's Independent Human Rights Act Review, HC 1161

Wednesday 17 March 2021

Watch the meeting

Members present: Ms Harriet Harman (Chair); Lord Brabazon of Tara; Fiona Bruce; Ms Karen Buck; Joanna Cherry; Lord Dubs; Lord Henley; Mrs Pauline Latham; Baroness Ludford; Baroness Massey of Darwen; Dean Russell; Lord Singh of Wimbledon.

Questions 43-53

Witnesses

I: Sanchita Hosali, Director, British Institute of Human Rights; Carl Foulkes, Chief Constable, National Police Chiefs' Council; Gregor McGill, Director, Legal Services, Crown Prosecution Service; Sarah Dallal, Equality and Diversity Lead, Tees, Esk and Wear Valleys NHS Foundation Trust.

Examination of witnesses

Sanchita Hosali, Carl Foulkes, Gregor McGill and Sarah Dallal.

Q43 **Chair:** Good afternoon and welcome to this evidence session of the Joint Committee on Human Rights. The Joint Committee on Human Rights, as its name suggests, is a committee of the House of Commons and the House of Lords. Half our members are from the House of Lords and half are MPs. Also as our name suggests, we are concerned about human rights.

The Government have established an inquiry into human rights—an independent review of the Human Rights Act. Alongside that, we are asking questions about how the Human Rights Act is operating in practice to feed into this independent review to help inform government action.

We are very grateful indeed to have four distinguished witnesses appearing to give evidence to us and answer our questions. We have from the National Police Chiefs' Council, Carl Foulkes, who is a Chief Constable from North Wales with the responsibility within the National Police Chiefs' Council for equality, diversity and human rights. Welcome, and thank you for joining us. We have from the Crown Prosecution Service the director of legal services, Gregor McGill. Thank you for joining us. We have from the NHS perspective Sarah Dallal, who is the equality and diversity lead at Tees, Esk and Wear Valleys NHS Foundation Trust. For an overview, we have Sanchita Hosali, who is the director of the British Institute of Human Rights.

I will start by asking each of you a general question: what difference would you say the Human Rights Act has made to the way public authorities operate in practice in the UK? Who would like to start by answering that question? Could we hear the police perspective first?

Carl Foulkes: I was a young constable when the Human Rights Act came in; I have aged somewhat since then. When I look at the impact of the human rights legislation from when it was first brought into policing, it fundamentally underpins what we do now. It affects everything we do on a daily basis, from our use of force to our covert policing, to public order events to firearms operations. It has fundamentally changed the training of our officers when they join the service, to our command training and specialist training when people progress into specialist disciplines. In policing we are now constantly balancing the human rights of individuals, the human rights of society and the requirements of the law in the UK. We do that as a matter of course. That was not the same pre-1998, prior to the Human Rights Act coming in.

Chair: Would you say that causes problems? Do you think, "We ought to be able to do this in the interests of protecting people and preventing crime, and in the interests of justice, but we cannot because of the Human Rights Act", or do you find that you are able to do the job in the way that you feel it should be done alongside the Human Rights Act?

Carl Foulkes: I genuinely feel that the Human Rights Act is an enabler. I would not have said that pre-1998, because I remember the kinds of concerns we had when we were looking at bringing it in. I was in covert policing at the time and there were some significant concerns about our ability to continue covert policing operations in the context of human rights. However, it has flipped us into thinking through an individual, personal approach to things, rather than a more corporate approach. That cannot be a bad thing.

I think it is an enabler. Yes, it causes some challenges. As we have seen more recently, sometimes legislative requirements and the Human Rights Acts do not sit comfortably together. We are making operational command decisions on that basis, but I think the focus on the individual and on the person is very important. The legislation is challenging but enabling.

Chair: Thank you very much indeed. That is very clear. Can we hear from Gregor McGill, please, from the Crown Prosecution Service? If we are waiting to catch up with Gregor, could we go to Sarah Dallal and hear how the human rights legislation impacts on your work?

Sarah Dallal: I do not think I can speak for the whole NHS. I think you have asked me here because I can speak about the experience that we have had in our NHS trust. That is the perspective that I would like to take, if that is all right with you.

I work in a mental health and learning disabilities trust, and people's rights are already restricted, often by the Mental Health Act and the Mental Capacity Act. In our trust, the human rights legislation has given us an objective legal framework that we can use when we are making complex clinical decisions. That has been absolutely invaluable to our staff and our service users. I will talk a little bit more about that in answer to the specific questions that you have asked me and I will give you some examples of how I think that has worked out.

We have benefited from the support and training that we have had from BIHR. Training in human rights is not mandatory for NHS staff, but the relationship that we have had with BIHR has made a

difference to us. It has trained us up and enabled us to use this objective legal framework.

Chair: You do not feel that having the Human Rights Act in any way prevents you giving people the treatment that you feel they need or leaves society exposed to people who, because of their mental health problems, are dangerous? You do not feel that the Human Rights Act is a problem there?

Sarah Dallal: No, I do not feel that the Human Rights Act is a problem; if you use it properly it protects everybody. It should be a way of protecting and respecting the rights of all the people involved in a particular situation.

Chair: Thank you very much. Do we have Gregor McGill back?

Gregor McGill: You do Chair, yes. When the Human Rights Act came in we had to implement it into our Code for Crown Prosecutors, which you will remember from when you were Solicitor-General. We have to make decisions in accordance with the code. When the Human Rights Act came in, we were obliged to consider its the principles when making our decisions and we had to train our prosecutors to do that. We now implement those principles and expect our prosecutors to take the code into account when making a decision about whether to prosecute. That happens across the realm of offences.

One of the main offences where it is most prevalent is hate crime, because our prosecutors have to balance the Article 10 right to expression with keeping society safe and secure. Our prosecutors have to apply the principle that there is an Article 10 right to freedom of expression, which is a qualified right that can be interfered with only in accordance with the law when it is necessary to do so and in a proportionate way. They now have to do that when making the earliest decision about when to prosecute. The Human Rights Act enables us to consider those things right at the beginning of a case and make those decisions early so that we know the arguments that will be made and we can prepare for them.

Chair: From your perspective of having seen the CPS at work before the Human Rights Act and since, do you feel that there are cases where you would have been able to prosecute but because of the Human Rights Act you cannot? Does the legislation inhibit you in pursuing the interests of justice?

Gregor McGill: It is very difficult to say. I have been a prosecutor for a number of years and we have to operate in whichever system

is in force at the time. Whatever the law is, we have to apply it. Certain cases have become more challenging to prosecute, but as challenges arise we try to find solutions. To a certain extent, we are neutral on that point because, as prosecutors and lawyers, we have to operate the laws that Parliament has passed and make our decisions based on them.

Chair: Do you have any examples? Obviously you have to make decisions in the interests of justice, and although you are applying the law as Parliament has passed it you also have your own views about what is right and wrong. Could you mention any examples of cases where, because of the Human Rights Act, you have not been able to work your way through them and you have had to drop a prosecution that you would have preferred to go ahead? Do not worry if you cannot think of any off the top of your head, but if you could get back to us with any examples that would be good.

Gregor McGill: I can think about it. I can say that it would be very difficult because—you will remember this—the European Convention on Human Rights was largely drafted by British lawmakers, so it is essentially compliant with UK law. I can think about that. If I can think of any specific examples I will come back to you, if that would help.

Chair: Thank you very much indeed. Could we hear from Sanchita from the British Institute of Human Rights? What difference do you think the Act has made to the way that public authorities operate in practice?

Sanchita Hosali: The short answer is that we see a positive difference. The Human Rights Act sets down not only rights into UK law but duties for how they should be implemented. That is positively influencing the way services are commissioned, the leadership within those services, the development of public policy, and the planning and delivery of those services. It is supporting staff with a framework, as Sarah mentioned, within which to make decisions. It enables people who are interacting with services and authorities to challenge back, not just as a point of unfairness but as a point of law, and to use those rights, to raise them and to use the duties to think about the best outcomes.

Questions about whether the Human Rights Act has stopped us doing something, potentially because of safety or risk, are important. If you apply the Human Rights Act in a practical way, when you take it from the courtrooms and apply the principles at the public authority level, if you are restricting rights you are thinking about safety or risk. It is part of the same process, as opposed to separating processes out. A lot of the areas that we

work in are around risk management, risk reduction and how public authorities can work with the idea of safety from a rights perspective and on a rights basis, so the concepts do not become oppositional.

We see the Human Rights Act as an effective tool from the top, in how services and authorities are operating strategically, right down to the front-line delivery of those services and policies, in a way that provides a language for individuals to question and hold those services to account through daily interactions by saying, for instance, "Have you taken note of my right?" as opposed to, "I don't think what you've done is fair." Those are fundamentally different concepts. The Human Rights Act also enables staff in services and authorities to ask those questions. We see it as having a hugely positive impact.

The issue for us on the impact of the Human Rights Act is to do not with the law but rather with the leadership around it and its implementation, which I am sure we will discuss further.

Q44 **Dean Russell:** Thank you all for being witnesses today. My question relates to Section 6 of the Human Rights Act, which, as you will know, requires public authorities to act in a way that is compatible with convention rights. I am interested to know how organisations have embedded the Section 6 duty in the way that they formulate policies and deliver public services. Could I get from each of your responses a sense of what impact the Section 6 duty has had on those who deliver and receive front-line services?

Carl Foulkes: I touched on this when I gave my first answer but I will expand on it. The Section 6 duty and our responsibilities sit as a core thread through policing. Human rights and the Section 6 duty sit through the College of Policing training packages when officers enter training school. Our authorised professional practice has human rights and the Section 6 duty sitting positively all the way through it. Pre-1998 you would not have seen the firearms manual, the public order manual or the use of force manual being published. They have all been published because of our positive duty to be clear, transparent, proportionate and necessary. Human rights responsibilities sit loud and proud within all elements of our training at all levels in the organisation, from basic training when officers come into the organisation, to specialist training for firearms commanders, public order commanders, authorising officers in covert policing or custody officers.

Another element is the national decision-making model. It was the conflict management model some years ago and evolved into the national decision-making model, at the centre of which sits the

code of ethics. Under "powers and policies" sits our responsibility to take cognisance and consideration of our human rights responsibilities when we are spinning through our national decision-making model. My officers and our staff do that on a daily basis and our commanders build it into their training and their planning for consistent operations.

Ultimately, this goes back to the heart of policing in England: we police with the consent of our communities. We do not always get that right but it is fundamental. That is where I think the Article 6 responsibility sits and that is why it is important that it is embedded in everything we do.

Dean Russell: When I joined a dawn raid at the end of last year, it struck me just how much paperwork was involved. I did not expect to start the morning at 4.35 am with a PowerPoint but that is what happened beforehand. Does the legislation cause additional work and paperwork? Is it delaying bobbies from being on the beat?

Carl Foulkes: In all honesty, I am not sure that it does, because the legislation is around your decision-making and how you come to the right response and the right decisions. Your experience at that dawn raid would have been our wraparound approach: how we were going to do it, the health and safety of our staff, our responsibilities and what we look for. A fundamental element of that would be the human rights element of treating someone with respect and dignity and the use of the force involved. It fits in there.

The legislation probably does place some demand, but when we talk about human rights now, which we probably did not when the legislation was first brought in, it sits at the core of the decision-making model that we spin through. When we do our firearms command we talk about spinning the model through, which is the speed of going through those decisions to make sure that your powers and policies and your human rights obligations have changed or evolved: do you need to take different operational decisions because of the evolving information coming through? That ensures that we continue to be proportionate and necessary in our approach.

Dean Russell: Gregor, from your perspective and experience, how have organisations embedded the Section 6 duty?

Gregor McGill: I will start my answer by repeating what I said before. We were required to embody the principles Section 6 of the Human Rights Act into our Code For Crown Prosecutors, which is the document by which we make our decisions. There are two

tests: is there sufficient evidence to provide a realistic prospect of a conviction, and is it in the public interest to prosecute? In answering those questions, the prosecutor, following the introduction of the Human Rights Act, has to encompass the principles of the Act, so it was brought right into the heart of our decision-making process. The principles are there in all of our legal guidance to give our prosecutors guidance as to how the legislation should be applied.

In respect of how the principles are received, I suppose the best example is the digital disclosure notices that have been in the press recently. You will recall that in all types of offences, but specifically in the investigation of sexual offences, digital downloads from mobile phones and other electronic devices are often necessary to investigate the allegations. That brings in principles relating to Article 6, which is the right to a fair trial, which is an absolute right—it can be limited in certain circumstances but not in these circumstances—and, of course, Article 8, the principle of the right to a private life and so forth.

Following the Human Rights Act, the code requires us to consider all those arguments when the prosecutor is making the decisions, but also to enable those affected by the notices to make challenges to them on the basis of their Article 8 rights and for us to try to come to a compromise as to how we satisfy Article 6 but also the privacy rights under Article 8. Where those two articles rub up together is where the most difficult decisions are made.

You may be aware that we put out some guidance relating to our prosecutors following only reasonable lines of inquiry—so not asking for a blanket download, but asking only for that material from a download that is strictly necessary for the police to obtain the evidence that is necessary to seek to prove any offence. That was litigated in a recent case called R v Carl Bater-James and Sultan Mohammed, which was in the Divisional Court last year. The Lord Justice of Appeal gave guidance as to how questions such as this should be approached, what the prosecution should do and what those subject to the notices should expect. That enabled us, within this jurisdiction, to come to the ability to find our way through that difficult process. That was a good example of how the Human Rights Act and those principles allowed us to come to a consensus about how we should approach questions of that nature.

Dean Russell: Given the nature of the work you do, what would you say to people who might say to me, "The Human Rights Act means that victims are put second. It is about protecting the criminal and not the victim"? What is your view from being at the

coalface in your role?

Gregor McGill: The Human Rights Act always makes us balance the rights between the competing interests in a criminal trial. Essentially, that is between the rights of the suspect and the rights of the complainant. The problem in any criminal trial is that decisions always have to be made and the balance sometimes goes one way rather than the other. But, as I said, the Article 6 right to a fair trial is an absolute right. I can see why sometimes it is felt that the rights of victims are trumped by the rights of the suspect, but the decisions are made by judges, who are experienced in making those judgments. Balancing is always a very difficult exercise. I can see why people sometimes feel that, and I do not want to seem blasé about it, but I think judges are very good at seeking the appropriate balance.

Dean Russell: May I ask the same question of Sanchita, in particular around how organisations have embedded Section 6 duties in the way they formulate policies and deliver public services?

Sanchita Hosali: Picking up on what has been said about victims versus defendants provides a good example. Part of the reason why people who are victims of crime feel that human rights are not necessarily for them—as we have certainly found from our work with survivors of domestic abuse, for example, over the last year—is that the support services and people's interactions with public services are not always couched in terms of their rights. People are not told, "These are your rights. This is how this decision needs to be made. This is how the Human Rights Act is working."

There is a widescale issue around Section 6 not being fully understood across the gamut of public authorities and the public sector. That is an issue because it is the implementation that makes a difference to people's lives every day. However, where organisations have understood Section 6 it is a very important tool. The duty around human rights being not just about good practice or guidance but a section in a piece of domestic legislation that is about a legal duty is very powerful for pushing it through within public authorities and for the people accessing them.

We see policies being changed around, for example, young people's access to their mobile phones and the internet when they are inpatients in hospital and they have everything taken away from them under the broad notion of safety. Yet if you approach that from a human rights perspective you need to think about what law allows you to take those things away. Is there a legitimate and necessary purpose? Is it proportionate? Of course it is not

proportionate; a host of other, less restrictive things could happen. Through that, we see changes to policies and changes to the way services are delivered. Most importantly, we see changes to the relationships between staff and the young people accessing that service.

Often there is a very oppositional relationship between staff in public authorities and the people accessing them. The framework around the Human Rights Act can say that a set of rights apply to all the people in the scenario, including staff, and a set of duties, and this is how they will be implemented. The framework provides a language and a tool to assist.

We see human rights being implemented through policy changes, such as that one around service organisations. Take housing associations that are supporting people with mental health conditions or offending histories, for example. They think about why is violence happening, how they record it, how they assess people's needs, whether it meeting their rights, how they integrate that into the quality standards that they have as a service and the expectations that people have when they enter the service. For example, one housing organisation we worked with saw a 50% reduction in violent incidents following the human rights approach and integrating the Section 6 duty. Staff tell us that it is about giving them back their value base.

Dean Russell: I will stop you there because I am conscious of time and I have a load of questions. May I very briefly go to Sarah on that question? It would be amazing if you could answer in a couple of minutes because I have far more eminent colleagues waiting to ask questions.

Sarah Dallal: I do not have a lot to add to what my fellow witnesses said. Practically speaking on embedding the Section 6 duty in our organisation, we have to do equality impact assessments on all our policies as part of our Equality Act duties. We have embedded human rights into that process so that all our policies, which obviously impact on the care that we are giving to people in our services, are looked at through a human rights lens. That has had a particular impact on our restrictive practice policies, which has improved things for staff and service users.

Q45 **Lord Dubs:** I am a Labour Member of the House of Lords. My question is primarily directed at the CPS and the police. You may feel you have already touched on it in earlier answers but I will give you a chance to develop it. Can you provide examples of how practices in the police and the CPS changed following the implementation of the Act in 2000? As a supplementary question,

what were some of the main challenges in implementing the Section 6 duty in the police and the CPS?

Carl Foulkes: It is always a challenge, remembering back to a world that was quite some time ago. I have mentioned already that I genuinely feel that the Human Rights Act has dramatically changed our approach because it cuts across so much of our operational delivery. Prior to it coming in we definitely had a mindset about what action we deemed necessary to get to the right outcome. The Human Rights Act has brought us in to thinking about the checks and balances of what is necessary, proportionate and appropriate. That framework has helped decision-making at all levels of the organisation, from front-line officers and police staff to senior commanders. That is a fundamental change. I cannot overegg that difference.

That goes back to some of Sanchita's points on how this changes your approach and your relationships with your communities and your staff. There is a constant balance between the greater good and the need to get the right information in evidence and so on. Firearms situations are a good example. While you potentially would have let the firearms operation run, you are now considering the human rights of the individual, and the threat, risk and harm to communities from not doing something or doing something. Would we have been thinking that way if we had not had the Human Rights Act? I am not sure that we would, or not in the same way as we are now. That is a fundamental change. The Act continues to affect everything we do.

Gregor McGill: My previous answer was that we were required right away from 1998, when the Act came in, to incorporate the principles of the European Convention on Human Rights directly into our decision-making when making a decision to prosecute. That was the biggest change, because previously we were mindful of the convention but there was no legal obligation on us to consider those principles when making our decision to prosecute. We had to follow domestic law. That was the most immediate change.

The challenge for us was that we had to ensure that all our prosecutors were properly trained and understood the complex jurisprudence of the European court in making those decisions, and the effect the European Convention on Human Rights would or would not have on the decision to prosecute. We had to rapidly train our prosecutors over quite a short period to ensure that our legal decision-making was lawful and in accordance with the law, and that we were making good, robust and proper decisions to prosecute as required under the Code for Crown Prosecutors.

Q46 **Baroness Massey of Darwen:** My question will be directed to Carl. You said at the beginning that you thought that the Human Rights Act was an enabler but challenging. I know about some police challenges. My brother was chief superintendent in Manchester for many years and I know it is challenging sometimes. I want to go back to something that the Joint Committee said in 2018 in a report on enforcing human rights. It said on Section 6, "The degree to which section 6 is performing this function appears to be patchy as it depends on awareness and training of public officials, which can vary according to the public authority". A witness gave the example of, "the police's approach to policing protests, as one where a human rights-based approach is embedded in public service delivery." She contrasted that to the Windrush issue and the Home Office. Does more need to be done to further embed human rights values into the police? Then I will come on to my second question.

Carl Foulkes: It is interesting when you look at the oath that officers swear in England and Wales. They swear an oath that they will "well and truly serve … in the office of constable … upholding fundamental human rights". That is an oath that predates 1998, so it has always been there. I would be arrogant if I said there is not more that we can do. I have talked about who if you are a specialist or you progress in a specialism you will continually get refreshed in your human rights training, the requirements, if you are public order, and under Article 10 and Article 11 specifically if you are firearms or covert policing, but there is clearly always more that we can do and probably should do to make sure that human rights sits at the forefront of all our decision-making.

The College of Policing is reviewing its approach at the moment. It has a package in place that deals with this really well, but there is always more that we can do to make sure that there is awareness raising, that colleagues are thinking about human rights and its impact on its decision-making, and how that sits in command training. Do I think it is embedded? Yes, I do, but like everything, you can always do more to reinforce the importance, the priority and the operational delivery.

One of the challenges of the human rights legislation over what we traditionally use in English law is that we are quite good with black and white. If you read the Public Order Act or the Theft Act, they are pretty clear, whereas human rights legislation is not as clear. It is not based on stated cases; it is the interpretation of law, some of which is stated in decisions in Strasbourg, but I believe it is much more of an enabling structure, which is why I use the word "enabling".

Q47 **Baroness Massey of Darwen:** I will go on to my next question. I know you do not want to talk about Clapham Common—maybe you will not but maybe you will. Under Section 6, the police are required to comply with human rights, including the right to free assembly and free speech. Do you think that police forces have taken sufficient account of human rights in their approach to enforcing the lockdown regulations? Is it something to do with the instructions not being clear that makes life more difficult for you?

Carl Foulkes: I think, as we all would, that the tragic murder of Sarah Everard has absolutely impacted on policing, communities, family and friends. I absolutely understand those who wish to raise the awareness of violence against women and girls and we absolutely support that in policing.

On our approach to enforcement of Covid regulations, bearing in mind the number of times that legislation has changed, the number of enforcements that we have asked our officers to change and the different regulations in different localities—I work in Wales, so mine is very different to England—I think my officers have done pretty well to interpret a changing legislative framework based on a moment in time, an environment and a locality to do the right things.

We still follow the four Es approach all the way through: engagement, explanation, encouragement and only then moving to enforcement. That approach is really important and I am not sure that we will ever cast it aside. Looking at the numbers in enforcement and the numbers in engagement, we are still engaging with our community in every context far more than we are enforcing. That is pretty important.

Have we got it right in every circumstance? Absolutely not, and when we make mistakes we need to put our hands up, learn from it, explain and apologise. But when you look at the number of engagements we have had and the amount of enforcement we have done through a really challenging 12-month period, I think that the officers have done a very good job in really challenging circumstances.

Baroness Massey of Darwen: Can you think of an example that is not Clapham Common where there has been really good practice in this, in your own experience?

Carl Foulkes: If I bring you back to my force, because I think it is easier if I talk about north Wales, I will look at the Black Lives Matter protests of last summer. We had really good engagement with the local organisers. We looked to facilitate protests,

recognising the nature of the issues and how powerful the message was. We looked to make sure that it was done in a Covid-safe environment as best we could and we made people aware of the issues about enforcement if they did not. We managed to facilitate the protests with no violence in north Wales and I think struck the balance between those who believed we should allow the protests and those who believed we should not.

Gregor used the word "balance" and I think one of the challenges in the Human Rights Act, especially Articles 10 and 11, and the Public Order Act is that it is a balance. It always was pre-Covid, but Covid has shone a very different lens and made it trickier for officers and commanders to make some challenging operational decisions.

Baroness Massey of Darwen: Can you think of an example where things have gone wrong, why they went wrong and what could have been done better?

Carl Foulkes: We are asking officers to make very difficult decisions, often quickly. Going back to my experience in north Wales, we have tried to make sure that officers are briefed, that they are aware of the circumstances and what we are going to do. Maybe the messaging of my expectations was sometimes not as clear to them. When that has happened we have learned the lessons and made sure that we put that into practice. When I look at the number of interactions we have had, the enforcement we have had and the feedback I have had from my local community, I think the balance has been about right.

Q48 **Ms Karen Buck:** I am a Labour Member of Parliament. My questions are directed to Sarah. In your helpful introduction you talked about the Human Rights Act giving an objective legal construct against which you could measure activities and, presumably, test against other legal requirements in respect of those in your institutions. Could you give us examples of where you have found that to be helpful? Could you help us to understand a little bit about where sometimes the Human Rights Act and other legal constraints that you operate under come into potential conflict?

Sarah Dallal: I work in a large mental health and learning disability trust, and we provide care for people with learning disabilities and severe and enduring mental health issues, many of whom have experienced severe trauma and abuse. As you can imagine, people are at times very distressed and may want to take their own lives and we are very aware of the need to ensure that the interventions we use do not retraumatise them. The duty to

protect the right to life means that sometimes we use restrictive practices to keep the person safe and alive and we use interventions such as restraint and seclusion.

The Human Rights Act provides us with an objective legal framework for examining those decisions alongside the Mental Health Act. It helps us to ensure that what we are doing and how we are doing it is a lawful, legitimate and proportionate restriction of Article 8, on psychological and physical integrity, and Article 5, on liberty, and that we do not risk breaching people's Article 3 rights, which are about freedom from inhumane and degrading treatment. The Human Rights Act allows us to consider the proportionality of the intervention, which is particularly important as it encourages us to explore less restrictive interventions. For example, we can restrain someone in a compassionate and caring way by talking to them when they are well about how to do it, talking to them all the way through the restraint and debriefing them afterwards. I think that is a way that human rights help us with some of these very difficult situations that we experience.

Would you like some more examples? Would that be helpful?

Ms Karen Buck: It would be very helpful. In doing that, could you also tell us about how you have undertaken, and what the response has been to, the way in which this process engages staff, patients and patients' families? How well is it understood, and do all three of those groups regard it as a useful tool?

Sarah Dallal: Another example is that we have been able to do some human rights training for quite a lot of our staff, funded by the Health Foundation, working together with the British Institute of Human Rights. One of our staff who has had this training is now working on an older persons' ward, which she was involved in a case, very common on an older persons' ward, where they were considering whether someone with dementia should be discharged home or go into residential care. Our staff are very concerned to keep people safe so, initially, the conversation focused around that person being discharged to a nursing home. The rest of the ward had not had human rights training, but she had moved from where she was and was able to use human rights, particularly Article 8 and the right to family life, to challenge the team to think more creatively and flexibly about whether that person could go home. The person in the case wanted to go home, and they were being cared for by an adult child who wanted them to go home. She was successful—the team was able to look at rights and balance rights with risk. Somebody referred to that earlier. It is a very important benefit of using the Human Rights Act that it allows us to make safe decisions that are rights-respecting.

That approach has been very well received by the staff, because it allows them to feel confident when they make very complex decisions, which they do not want to get wrong, because we want to keep people safe and well but we also need to be rights-respecting. It has had an impact on service users in that it has enabled our staff to make less restrictive, more creative and safe decisions that have supported recovery—by which I mean looking at people's well-being and how to help them to lead the best lives they can. I am not sure whether the service users who have been affected by those decisions would necessarily know that it was about human rights, but certainly they would feel the benefit of that.

Ms Karen Buck: You do not think they see it as a burden. Do you think people see it as a tool rather than an extra box to be ticked?

Sarah Dallal: Certainly, the people who have had human rights training have definitely not felt that it was a burden. Recently I spoke with somebody in one of the teams that we work with, who said that she did not think that they could have got through the difficult decisions that they have had to make during this Covid period without the human rights framework. It is legal, objective, very clear and allows us to look at the rights of everybody involved in a particular situation, balance those rights and respect and protect the rights of all involved.

Ms Karen Buck: Is there somewhere else for this process to go now? Is this a continuing process? Will you be extending it?

Sarah Dallal: Yes. We are very excitingly involved in a strategic review going on in our trust. The trust has just committed to implementing a human rights approach with all clinical staff, so not just the few people that we have managed to train. That will involve taking an integrated and strategic approach, including training for all staff, making human rights explicitly the foundation of all our clinical practices and decision-making and embedding it explicitly in risk assessments, in care planning and our IT system so that we can record our decisions as part of the decision-making process. Obviously, there will be resource implications of that.

Ms Karen Buck: Thank you. That all sounds tremendously positive. In your view, should the Human Rights Act approach be extended into the care home sector?

Sarah Dallal: Yes, definitely.

Ms Karen Buck: Do you think it would be transferable, from what your experience has shown?

Sarah Dallal: Yes, I do. We have recently trained all levels of staff in one of our hospitals, from our healthcare assistants right up to our consultant psychiatrists, and it works for all of them. They all need to have the training because everybody makes decisions about care—so everybody needs to be coming from the same place, otherwise it becomes quite difficult.

Ms Karen Buck: Thank you very much for that. That was very positive.

Chair: Thank you. They were very interesting answers, particularly how you have amplified with practical examples how the Human Rights Act helps decision-making, which counters the impression that some people have that it somehow hampers decision-making. I think it is also very interesting what you have said about the fact that, if you have an integrated system between acute care and care in the care home sector, it is good for there to be a common approach. At the moment, the Human Rights Act does not apply to the care home sector, so I think your answers to Karen's questions were very interesting indeed. Thank you. Can we go to Lord Singh, please, for the next question?

Q49 **Lord Singh of Wimbledon:** I am a Cross-Bench Member of the House of Lords. My question follows on from the previous question, and perhaps Sarah could be the first to answer it. During the pandemic, some care homes and other residential settings have effectively imposed blanket visiting bans. Do you think sufficient account was taken of the human rights of residents and their families when these policies were devised? Do you think better embedding of human rights values might have led to a different approach? Here we have all the conflicting requirements and needs of the visitors, the person in the care home and the safety of the residents generally.

Sarah Dallal: I do not know what account was taken of human rights. I do not know about individual cases and how care homes came to their decisions about visiting policies, so I do not feel I can comment on that. I am aware of what has happened, but I think that a blanket policy is very rarely a rights-respecting policy, because it does not take into account how it impacts on individuals. Balancing the right to life with the right to ongoing family contact has to be done on an individual basis. Human rights would help people and help care homes to think about the least restrictive processes that they could put in place to protect the right to life and respect the right to people's family lives.

Lord Singh of Wimbledon: Thank you. I think you have put it very well about looking at the individuals and at the balance.

Sanchita, would you like to comment?

Sanchita Hosali: Yes, absolutely. We do a huge amount of work with the care home sector. During Covid, we have worked with over 25 or possibly over 30 different public authorities and services and with around 1,500 staff and around 1,000 people accessing services. Primarily they are people who have some kind of healthcare or care support need, so a big proportion of that work has been around care homes.

I think there is confusion about the extent to which the Human Rights Act does or does not apply in care homes. We have had quite a lot of clarification through the law around where it applies to regulated services that are arranged in whole or part by the local authority or the NHS. That has opened up the key for care home providers for us to be able to say, "The Human Rights Act does apply to what you are doing". Our experience is that human rights were not taken into consideration in large part. If you look at the guidance issued by government, you will see a little note that says, "Do not forget not to breach people's human rights", with absolutely no indication or explanation as to how that integrates into all the things that care homes are doing around visiting policies, keeping people safe and staff rights.

In some of the outreach sessions that we have run during Covid, we have seen people whose families have been in care homes. They have been to our sessions, realised that they can raise this as an Article 8 issue, the right to family life—but also to think about the impact on family members who are often unwell or in a physically fragile situation, potentially towards an end-of-life situation, who in some cases are going four to six months without any family contact. By using that human rights language, they are able to get back to the care homes, and we have seen care homes completely change their approaches to providing PPE for family visits and different types of family visiting approaches, asking their local authorities to place people on vaccination priority lists so that family members can visit people who are living in care homes.

I think that, no, human rights were not taken on board initially in the care home situation. A big part of that is the lack of guidance and support that they had centrally, but there are examples of how using human rights meant that it could be done differently. There was just not the backing and support to make that happen across the board.

Lord Singh of Wimbledon: Thank you. That is very revealing and informative. Would Gregor or Carl like to comment at all?

Gregor McGill: My Lord, I operate in criminal law, so I cannot comment on the care home sector. However, I can say that in criminal law the proper application of human rights requires the balancing to be done of the different competing rights, in whatever decision you are making. Without that balance, you run the risk of not getting the human rights of everyone involved in the process adequately represented. On the criminal side, the criminal courts have repeatedly told us that when the Crown Prosecution Service makes a decision to prosecute, no matter how serious the case you cannot have a blanket policy that says you prosecute all cases. It requires you to consider each individual case on its merits.

Lord Singh of Wimbledon: It is coming across very loud and clear that individual cases should be considered. Chief Constable, would you like to make a brief comment?

Carl Foulkes: There is a problem when you are following a lawyer who has summed it up far better than I can, but the point about putting the individual at the heart of it is the message that comes through from witnesses today, and I absolutely support that.

Lord Singh of Wimbledon: Many thanks.

Chair: Thank you very much. Could we go for the next question to Lord Brabazon, please?

Q50 **Lord Brabazon of Tara:** I am a Conservative Member of the House of Lords. My question is directed particularly to Sanchita and the British Institute of Human Rights. Does more need to be done to raise awareness of human rights within public authorities? What are the key lessons you have learnt that you would highlight to others on how to go about embedding a human rights-compliant approach?

Sanchita Hosali: The short answer to that is, yes, a lot more needs to be done. It is certainly not unusual for my team to be working with a public authority and hear that this is the first time a commissioning manager has had a conversation about the Human Rights Act and the Section 6 duty, or for care home staff to have had food safety training but not to know that every decision they make should also be compliant with Section 6 of the Human Rights Act. A significant amount needs to be done. There needs to be a real push for the imperative that this is the law, this is not just good practice or being nice to people.

When it is done, it makes a difference. There are some key things from our work across lots of different public authorities about what really helps with solidifying that duty in practice to make it not just something that you talk about in the law but what people are doing

on a daily basis. The first thing is to not assume knowledge. Do not assume that people in public authorities and staff know about the Human Rights Act and what their legal duty is. I think there is a huge number of assumptions around that—that you can just say "human rights". The thing we hear back most frequently is, "I always knew human rights had something do with what I am doing, but I never really understood the law and the framework and how I am supposed to use it". Do not assume the knowledge.

What Sarah said was really important about explicitly the Human Rights Act, not explicitly human rights. With human rights, there is a big philosophical debate about what they do or do not mean to people. We talk about value, dignity and respect; those are brilliant, are important and are the flags that tell us that something might be a human rights issue, but they are not the Human Rights Act. What I think is dignified is very different to what you would think is dignified, so the legal framework is really important, explicitly locating it in that legal framework and the duty to do something. It is not just about niceness. Focus on the reality, and the practical work that the public authority is doing. It is not about the legal theory and the academia; it is about what does the right to not treat someone in an inhumane and degrading way mean when you are delivering care or providing housing support or when you are a police officer. It is all of those different areas, so make it practical not theoretical.

It needs to be across organisations, as Sarah has said. It needs to be front line up, leadership down and everyone in between. At one of the care home providers that we work with, everybody comes to the sessions that we provide for them, whether you are a housekeeper, a receptionist, a senior clinician or a nurse, because every single part of the puzzle has some part to play in whether people's rights are being upheld or not.

You need to have systems in place. Training is important, but it needs to be active and capacity building, about knowledge and skills and confidence to do something. It is not just a training tick-box exercise. There are lots of different things that you can think about as a public authority about how to operationalise that from your cultural organisational vision and strategic plan right down through to how you communicate with your staff about your expectations for respecting people's rights. Is it part of your supervision process; do you have standing items to consider human rights concerns; how do you assess and evaluate what you do as an organisation; and is it part of your quality framework? There are lots of different ways that you can integrate that.

We use two models that are really successful with organisations. There is the fair decision-making model, which is about analysing rights, identifying responsibility for change and recording and reviewing what is happening. That is a great operational model for thinking about human rights. Then there is the PANEL approach—participation, accountability, non-discrimination, empowerment and the law—and integrating that into the way that you are making service-level decisions across your organisation. There are lots of ways that you can look at human rights and operationalise them.

From a practical perspective, sometimes this question can feel very big: it is everything that we do, so how do we possibly tackle it? One thing that we do with public authorities is to look at the most difficult areas that they work on. Let us take a human rights approach using the Human Rights Act for those difficult areas, because if you can get the difficult areas right, the easier ones will follow. That is one of the practical things. But with regard to awareness-raising, I want to be really careful around language, because raising awareness does not necessarily mean to change. It is about being active, not just raising awareness; it is about engaging, empowering and supporting public authorities to do human rights-respecting work.

Lord Brabazon of Tara: Thank you very much indeed. Would any other witness like to comment on that question? I think it has been very well covered by our first witness.

Carl Foulkes: My Lord, I will add two very short points. I think the "why" is really important. This is around legitimacy of public authorities—policing in my case—to our communities and fostering better relationships. Secondly, when you look at why most people join the public sector, it is because they see an intrinsic value in doing the right thing, and this approach can click people back into, "That is what we are there for—support, care and understanding of community". I think that it can help with our legitimacy, and it goes to the intrinsic value of why staff are doing the roles that they are.

Lord Brabazon of Tara: Thank you very much.

Chair: Thank you. I think that is a very interesting perspective, the idea that the Human Rights Act goes with the grain of public service. Thank you. Can we turn to the next question from Lord Henley?

Q51 **Lord Henley:** I am a Conservative Member of the House of Lords. I will ask Sanchita to continue with what she was saying. Are there any sectors that have done particularly well in this field? Are there public authorities that need more help and more support to embed

a human rights-compliant approach in their organisations?

Sanchita Hosali: It is a good question. I am hesitant to quality mark certain sectors over other sectors. We often say in our work with public authorities that implementing the Human Rights Act is not so much a destination that you arrive at but more the journey of how you are doing what you are doing every day, and it is a continual improvement journey. I am hesitant to talk about the best players—

Lord Henley: I used the word "sector" to allow you to be more anonymous.

Sanchita Hosali: Some interesting things have come out from the session today, particularly from my fellow witnesses from the criminal justice sector, who have talked about how they have integrated the Human Rights Act into various different codes, practices and training. That is interesting. We heard from Sarah—which is definitely our experience of working in other sectors outside of the criminal justice sector—that those sorts of issues do not happen as standard. It is very rare, for example, in a health, care, housing or education setting that you will have a comprehensive package of training and support around what you are doing in human rights work, but the decisions you make will impact whether or not the person that you are dealing with has their rights respected.

Some strides have definitely been made in certain sectors, such as we have talked about today, but overall I think in other sectors there is not as much of a drive to integrate that Section 6 duty. We are a charity and we work with the organisations who want to work with us, improve their practice and meet their legal duties. I suppose the compliance factor there is definitely a question mark. Who is looking at the overall compliance across the public sector and public bodies? I think there is a huge role for regulators, because there is a definitely a difference of approach and a lack of consistency among regulators for the various different public sectors in what they ask and how they look at—

Chair: Could I butt in and ask a question about regulators? Do you think it is the job of the Equality and Human Rights Commission to ensure that all the regulators have human rights as part of their work? Is it doing that?

Sanchita Hosali: It is a really important role for an equality and human rights commission, which is a national human rights institution whose raison d'être is around human rights and equalities implementation. We can see a lot from organisations like the EHRC about compliance with equality law across different

sectors and working with regulators. There is a big question mark about the parity with human rights compliance and what is happening there. There is a huge role there, but I am not sure that it is being filled to the extent that it should be. We know in public service that, if something is regulated, it is much more likely and much easier for public authorities to push that work forward.

Q52 **Chair:** Thank you very much. I will ask a question that relates to enforcement of human rights. Obviously, the issue is not just what rights you have but whether you can enforce them. I shall ask Sarah first, but ask the same question to all the witnesses. Bearing in mind the difficulties and the escalation nature of the conflict if something goes to court, leaving aside the question of the cost and the time, do you think that some sort of independent method of seeking to resolve disputes over human rights issues would be a good idea? I do not mean one that restricted ultimate access to the courts but something that enabled people to resolve human rights issues without the need for litigation as a way of giving people an opportunity for enforcement without going to court.

Sarah Dallal: One thing that would help would be if there was a system-wide approach to human rights, so that everybody in the public sector was taking a human rights-based approach. We have thought about this question in our organisation. We would find it helpful to have somewhere to take some of the very difficult and challenging decisions that we face without going to court, whether that is in a dispute situation or not. There are cases that are incredibly complex, and some of the decisions that we need to make would really benefit from independent review. I have talked about some of the restrictive practices that we sometimes need to use to keep people safe, and maybe having somewhere to get a second opinion from an independent person would be really useful and helpful. The access would need to be really quick and easy, because in a clinical setting you are making decisions very quickly and you cannot wait three weeks to be able to get that kind of advice. We would find that helpful.

Chair: Could the Equality and Human Rights Commission, for example, provide the opportunity for those who have to implement the Human Rights Act to bring particular scenarios to it and ask it to give an opinion?

Sarah Dallal: I think if it was accessible and could be quick and easy and it was able to do that, it would be great.

Chair: Gregor, what would you think if somebody believed that the CPS had made a decision that breached their human rights? Would you regard it as helpful or annoying that they were able to take

some action to seek to have it adjudicated without going to court, if that is not a contradiction in terms?

Gregor McGill: The difficulty, I suppose, Chair, is that the criminal process is not always entirely voluntary and often the determination of the human right is an essential part of the trial. Under our present system, no matter what that body said, ultimately the decision as to where the balance was to be struck in the criminal trial under our jurisdiction is entirely a matter for the judge who is interpreting the legislation and what the law is in a particular case. In the criminal sense, I do not think it would be helpful, because it would all be subject to the decision the judge ultimately made in the criminal trial.

In the criminal trial we have processes in the magistrates' court and the Crown Court to fast track these questions through to the Divisional Court so that a High Court judge can interpret the law and tell us what the law is. But in the criminal sense, I do not think what you are suggesting would work because it would always be subject to what the judge said in the trial.

Chair: Thank you. Perhaps we can go upstream to the police and ask that question, because it could be an issue about somebody challenging that process. Carl, would it be annoying if you knew that there was somewhere that somebody could go, short of going to the court, to say, "I think human rights have not been taken into account here"?

Carl Foulkes: Many of the issues that come in contact and conflict with policing around human rights can be very emotive, very emotional and emotionally charged. But the physical and social availability and the cost of going through a legal route can be disproportionate and time consuming; a recent example was 11 years from start to finish in a public order environment. So there is an opportunity here for some sort of mediation—and I would love to see a pilot—that could deal with some of these issues at a much quicker, speedier level and try to get to a resolution. That might help to deal with some of those issues and set some precedents and policy going forward and, in the operational context of policing, may well help us and our communities.

Q53 **Chair:** Thank you very much. That was an extremely interesting answer. As you will know, we are asking you these questions because the Government have established an independent Human Rights Act review, which is considering how the Human Rights Act is operating and whether and how it should be amended. That was a manifesto commitment that the current Government made. In your view, are there any amendments that ought to be made? Are

there any things that you fear coming out of this review where you do not want them to make amendments? What are your hopes and fears arising out of this review? Where do you think they could move things forward? Where do you think there is a threat that they could make things worse? Could we start with Sarah on that?

Sarah Dallal: I do not think there should be any amendments. Certainly there should not be any rights taken out. The risk that I see in amending the Act is that we might lose rights that we have that are really important.

Chair: Thank you. Can we go to Gregor next?

Gregor McGill: Chair, I suppose I have to be very careful how I answer this. I am a serving civil servant and it is not for me to make suggestions on what the Government say. All I will say is that I would not want any amendments that stopped the criminal justice system being able to strike the appropriate balance between the rights of the suspect and the rights of complainants in the criminal justice system or that would affect the effectiveness of the criminal justice system. But any amendments or any changes are entirely a matter for Parliament and the Government.

Chair: Thank you. Can we go to Carl next? The Government will be eager to hear from the police and you are the chief constable with the lead on human rights, so your view as an experienced chief constable is very germane here. Are there things that you are itching for the Government to change, or at least to ask Parliament to change, about the Human Rights Act, or are there things that you are worried about that they might change that you think they should not?

Carl Foulkes: I take us back to Gregor's original statement that the legislation was written by British lawmakers and that is probably why it is standing us in good stead. There are challenges between Strasbourg and operating at the European level on some of the judgments compared to what is British law and British history here. That creates some challenges—but fundamentally from a policing point of view, and my point of view specifically, I think the Act serves us really well. Being able to deliver a policing service that is built on the foundation of human rights going forward is really important.

There is nothing I can say to you, Chair, that we would like changed or altered. I think there is a question of the kind of role of Strasbourg and our own courts and the legislative pillars that it is built on, but Gregor could give you a view on that.

Chair: Could I ask you to amplify a bit further on where you see

the issue between our courts and Strasbourg? What lies behind what you have just said on that?

Carl Foulkes: I think it is fair to say that Strasbourg will make judgments on the Human Rights Act based on different countries around Europe that have a very different history, legal system and police enforcement to ours. That can create some anomalies and differences sometimes. However, to go back to the fundamental human rights as they are written, they support policing and our communities to get the balance right between making sure that we still police by consent and deliver the service that we should going for.

Chair: Is that not an argument, though—that the European court judges are obviously from all around Europe and not necessarily here with their feet planted in the UK—for allowing our judges and courts to make decisions that incorporate looking at the European Convention on Human Rights rather than having them decided in the first instance by European courts?

Carl Foulkes: I think potentially, yes, Chair. You have eminent judges here making decisions on statute law and common law in England and recognising the history while referencing Europe. I think it is a moot point one way or the other, but it is an important point to recognise where legal precedent is being set and how that impacts on policing and the legal system in the UK.

Chair: Thank you very much indeed. Sanchita, what are you hoping for our of this review, what are you fearing and what would you like to advise the Government not to do or to do when it gets the independent review's report?

Sanchita Hosali: Twenty years into this debate, I feel as though we are having the same conversation that we have had many times, which is about tinkering with the edges of the Human Rights Act. What I am hoping for is that we will come out of this with a position about focuses on implementing the Human Rights Act rather than continually changing it. However, I have my serious doubts that that is where we will be.

I think that this review, along with the many other reviews under other governments of different political persuasions over the last 20 years, has been motivated by the fact that Governments find human rights inconvenient—and they are supposed to, because human rights are a check on check on governmental power. The way in which our Human Rights Act has been constructed is so nuanced, and it is such a well-crafted piece of law, so it protects not governmental sovereignty but parliamentary sovereignty; it protects the roles of our courts and officers but not decision-

makers—they cannot overturn our law. To pick up on the previous decision, Strasbourg make judgments but, if it is not about the UK, it is not technically a precedent; it does not necessarily have to bind us. It is about how our courts interpret that in their duty to take account and not slavishly necessarily follow that jurisprudence. All this is bound up in the way the Human Rights Act has been constructed.

I find myself at the head of a human rights organisation, which would normally want to push social justice issues forward, saying that we want the status quo. We want the Human Rights Act to be left alone and for us to get on with the job of implementing it rather than continually tinkering with the edges of it. The direction of travel, everything that has underpinned each of the reviews, commissions and consultations that have happened over the last 17 to 18 years has not been predicated on how we improve human rights protection. It has been predicated on the balance is too far one way, that things have gone too far, that we need constraints. It is not about positive, progressive promotion and protection of human rights.

We have significant fears about this particular review. On the review itself, the questions that were asked were so highly technically legal that only a specific part of the population will respond to those questions. We have had huge national organisations, front-line staff, professional bodies, individuals and parents of disabled children saying, "I have something to say about the operation of the Human Rights Act. These questions do not allow me to say that". Over the last seven weeks, we have engaged with about 450 people and organisations, and the one word that comes out from all of them about the review is "unnecessary".

Chair: Thank you very much indeed to all of our witnesses. I think that this review is very important because it is dealing with the Human Rights Act and it is absolutely essential that the findings are grounded in public authorities' actual experience of implementing and working under the auspices of the Human Rights Act. Your joining us today and giving your experience of how you operate the Human Rights Act in practice—and, Sanchita, how you train and support public authorities to implement it—I hope will be very useful for the review, as well as being very useful indeed to us. To pick up what Carl said about people working in public service, in the NHS, the Crown Prosecution Service and the police, you are working on behalf of all of us—and all respect to those of you who work in the public service. Thank you very much indeed. That concludes our evidence session.