

## Written evidence from Lived Experienced Leadership Group (HRA0064)

### About the Group

We are a group of individuals with direct experience of poverty who are experts in economic, social and cultural rights. We came together under Scotland's National Action Plan for Human Rights and now support, and are supported by, the Scottish Human Rights Commission. We have been working together as a group since 2015. We advocate for governments and public authorities to take a human rights based approach to law, policy and practice, with a particular focus on economic, social and cultural rights. These include rights to health, housing, food, social security and an adequate standard of living.

You can find out more about our work and our Terms of Reference on the following webpage:

[Lived Experience \(scottishhumanrights.com\)](https://scottishhumanrights.com)

### **Has the Human Rights Act led to individuals being more able to enforce their human rights in the UK? How easy or difficult is it for different people to enforce their Human Rights?**

We are pleased to have the opportunity to contribute to the Joint Committee's Call for Evidence on the UK Government's Independent Human Rights Act Review.

We think it is vital that the existing protections set out in the Human Rights Act are maintained. However, they must be broadened to include economic, social and cultural rights. The COVID-19 pandemic has sadly shown that too many individuals and families still struggle to access and enjoy even basic rights to food, incomes and a social safety net. Our evidence to the Scottish Parliament's Equalities and Human Rights Committee at the start of the pandemic illustrates some of the barriers we faced as a group of people in poverty.<sup>1</sup> We note the recommendations of the National Task Force on Human Rights Leadership on improving protections for economic, social and cultural rights in Scots law through incorporation and urge the UK Government to take similar steps. However, alongside an increase in protections, there must also be improvements to the mechanisms available to people to access remedy and redress. We note that those cases which succeed in being litigated under the Human Rights Act 1998 are a very small proportion of the actual need, given that the barriers to bringing and successfully litigating a case for people in poverty are enormous. Each case which has an impact on improving the situation of people in need is an important step in the journey towards being a country which respects rights and the rule of law.

In our own experiences, accessing redress for rights violations is complex and time-consuming and there appears to be very little support available for people who wish to do this. The process of achieving redress needs to be accessible and easy, with advocacy and

advice available for rights holders. Members of our group have direct experience of trying to achieve redress through the Human Rights Act 1998. They have found it difficult to access the specialist legal support required to bring a case. In some cases, this has been compounded by direct discrimination towards particular communities such as Gypsy/Travellers by lawyers:

‘I actually have replies from solicitors saying that they don't deal with 'Travellers.’

Some ideas and suggestions which our group has to improve accountability and access to justice include:

- the opportunity to take collective complaints - a very large body of evidence testifying to human rights breaches would emerge;
- a set of guidelines for the 3rd sector/advice sector on acting on alleged human rights breaches so they can give clear information when it is appropriate to do so;
- a regulatory body with meaningful enforcement powers to be established, so that individual cases can be considered. This body should have or should support independent monitors in relevant geographic communities and communities of interest who can report back issues or concerns which will be taken seriously and investigated;
- There should be recourse in law like the "small claims court", allowing for punitive damages.

It will be critical that groups are considered to have standing in bringing cases to court so that communities which are badly affected by human rights violations can have their cases heard. We see building case law as one of the ways that meaningful change can be achieved, but for this to happen, there needs to be a skilled and accessible legal profession which is prepared to provide people with advice and representation.

With respect to remedies, we feel that there should be a range of remedies available for either courts or any regulatory body to deploy. These could include:

- Apologies;
- Fines for public authorities who breach rights;
- Damages for individuals and/or communities affected;
- Improvement and review programmes which monitor the progress of public authorities which have breached rights. This could also include training and capacity building for staff, to ensure appropriate reflection and learning;

- Public authorities committing before the court to ceasing actions or omissions which are detrimental to rights.

We particularly draw attention to the lack of funding available for grass-roots human rights activism which hampers and prohibits people from achieving change in their communities. We also draw attention to the issue of victimisation and harassment of Human Rights Defenders and advocate that the UN Guiding Principles on the protection of Human Rights Defenders are considered so that complainants and activists are protected from any adverse consequences of advocating for rights.

We would like to see a much greater focus on providing positive ways to communicate about rights and demonstrating positive examples of accountability.

We have been disappointed to see that the Independent Human Rights Act Review has a technical, legal focus which effectively shuts out the participation and inclusion of many people who are directly affected by human rights issues. People should not need a specialist legal qualification to be able to participate in a Review which profoundly affects our relationship to our governments. We note that the International Covenant on Civil and Political Rights explicitly articulates that individuals have the right to take part in the conduct of public affairs,<sup>ii</sup> and especially those which so profoundly seek to shift the balance of power even further away from us, as rights holders. Furthermore, a core principle of a human rights based approach is that of participation. We think the Committee should recommend that the Independent Review considers how people across the UK can participate meaningfully in discussions about improving and strengthening rights protections, thinking especially about people with protected characteristics and intersecting identities. These people, after all, have much to contribute to our understanding of how to be a rights-respecting nation.

### **How has the operation of the Human Rights Act made a difference in practice for public authorities? Has this change been for better or worse?**

As a group we are concerned that in our experience, there is still very limited understanding of the rights within the Human Rights Act and also the mechanisms within it designed to protect individuals. This is sometimes a result of ignorance and sometimes complacency. When one of our group recently challenged their local authority as to the limited information available about the Human Rights Act on their website, they were told that ‘it is in everything we do’ without evidence to support this assertion.

We note that it remains very challenging for public authorities to take a human rights approach to designing and delivering public services, with opportunities for participation and accountability relatively limited and tightly controlled. In relation to participation, we note that in our collective experience, critical voices are rarely permitted to speak out in processes which are meant to be participatory. This is detrimental to learning, improvement and empowerment. There must be a greater level of comfort among public authorities to hearing

and being open to criticism from rights holders as a tool for improvement, and a willingness to implement practical steps to address issues raised by rights holders. Rights holders should be involved in evaluating the success of these changes.

*22/03/2021*

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<sup>i</sup> Adequate Standard of Living Reference Group (our previous name), 2020, Submission to the Scottish Parliament Equalities and Human Rights Committee on its Inquiry into COVID – 19 [The impact of the COVID-19 pandemic on equalities and human rights - Scottish Parliament - Citizen Space](#)

<sup>ii</sup> Article 25, International Covenant on Civil and Political Rights.