

Report from the Chief Executive to the Chair and Members of the Policy Authority Executive 4th June 2009

**Presenting Officer:
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Status: For decision

Cleveland Police Authority and the Human Rights Act

1 Purpose

- 1.1 To explain the statutory duty that the police authority has with regard to the Human Rights Act and to propose a monitoring and reporting structure to ensure that the police authority's scrutiny role is properly exercised.

2 Recommendations

- 2.1 It is recommended that all reports to panels in future contain a new section entitled "Human Rights Act Implications" to detail any Convention rights (Appendix A) that are directly relevant, together with a brief impact assessment.
- 2.2 It is recommended that the force provide an annual report on compliance with the Human Rights Act that includes the sections detailed in Appendix B of this report. This to be presented to the Human Resources and Diversity Panel.
- 2.3 It is recommended that the police authority receives an annual report on the operation of the Independent Custody Visiting process, including details of any human rights issues raised during the last 12 months and details of human rights training provided for Independent Custody Visitors.

3 Reasons

- 3.1 The Police and Justice Act 2006 (and subsequent Statutory Instrument 2008

No. 82) states that “police authorities shall monitor the performance of the police force maintained for its area in complying with the duties imposed on that force by the Human Rights Act 1998.” Although the duty is mandatory, each police authority can choose how it carries out monitoring in its particular police area.

- 3.2 Human rights can be thought of as the basic threshold in law designed to promote fairness, respect, equality, dignity and autonomy in human relationships and interactions. Alongside this there is separate, specific, tailored legislation to protect against discrimination.
- 3.3 The Human Rights Act gives people in the UK the opportunity to defend their rights in British courts rather than taking their case to the European Court of Human Rights in Strasbourg. The Human Rights Act makes it unlawful for a public authority to act incompatibly with the European Convention rights and allows for a case to be brought in a UK court or tribunal against the authority if it does so. The Act requires all legislation (primary and secondary) to be compatible with Convention rights. The Act allows individuals who believe that their Convention rights have been infringed to bring legal proceedings, including a claim for damages.
- 3.4 Since the Human Rights Act came into force, people have been able to argue that a decision violated their rights by being, for example, a disproportionate interference with their right to respect for private or family life. The courts will scrutinise the interference to see if it was legitimate, necessary and proportionate to protect a Convention right or to uphold a provision in primary legislation.
- 3.5 A core responsibility of the police is to protect the human rights of individuals against actions taken by others. Police officers have a duty to protect life and property, preserve order, prevent the commission of offences and, where an offence has been committed, take measures to bring offenders to justice.
- 3.6 Police activity can often interfere with human rights, but should do so without violating those rights. The most obvious manifestation of this is in the processes around arrests and detention. The police authority must ensure that the force complies with the Human Rights Act when delivering the policing service and that the authority has mechanisms in place to enable it to comply with the requirements detailed in section 3.1 above.
- 3.7 In order to measure compliance with the Human Rights Act it is necessary to set standards against which the police can be monitored. The Association of Police Authorities has produced such a list as part of its booklet “Human Rights Guidance for Police Authorities.” These standards are summarised in Appendix C.

Implications

4 Finance

4.1 There are no financial implications.

5 Diversity

5.1 The Human Rights Act seeks to promote equality and to protect the diversity of human culture and interaction. By monitoring compliance with the Act the police authority is supporting its equality and diversity obligations and policies.

6 Sustainability

6.1 The monitoring proposed in this report should help to ensure long-term compliance with the provisions of the Human Rights Act.

7 Risk

7.1 The risk of violation of the Human Rights Act is that of complaints and prosecution leading to fines and loss of reputation.

8 Human Rights Implications

8.1 This report covers the Human Rights Act as it applies to policing. The legal requirements have been considered and the impact of proposed actions assessed.

9 Conclusions

9.1 The aim of the report is to seek compliance with the Human Rights Act through the monitoring of policies and practices.

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Appendix A: Convention Rights

The Human Rights Act 1998 brings the European Convention on Human Rights into the operation of laws in the UK. Convention rights are set out in Schedule 1 to the Human Rights Act. Convention rights are not all of equal status. The protection afforded varies from right to right. There are three categories of absolute rights (A), special rights (S) and qualified rights (Q). Absolute rights are those that are strongly protected and that cannot be restricted. Special rights can be restricted in the public interest in times of emergency. Qualified rights are to be balanced against the public interest and they can be restricted in times of emergency. Any restriction on a qualified right must be prescribed by law; it must be shown to be legitimate, necessary, proportionate and non-discriminatory. The subject-matter of these rights is as follows:

Article 2: The right to life (A)

Article 3: Prohibition on torture (A)

Article 4: Prohibition on slavery (A) and forced labour (S)

Article 5: Right to liberty and security (S)

Article 6: Right to a fair trial (S)

Article 7: No punishment without law (A)

Article 8: Right to respect for private and family life (Q)

Article 9: Freedom of thought, conscience and religion (s), including the right to manifest religion or belief (Q)

Article 10: Freedom of expression (Q)

Article 11: Freedom of assembly and association (Q)

Article 12: Right to marry (S)

Article 14: Prohibition on discrimination (Q)

Article 1, Protocol 1: Protection of property (Q)

Article 2, Protocol 1: Right to education (S)

Article 3, Protocol 1: Right to free elections (S)

Article 1, Protocol 6: Abolition of the death penalty (S)

Apart from the absolute rights (A), there is no fixed rule on which human rights take precedence over others. The courts exercise a proportionality test when there are competing claims. Courts tend to interpret the law in the current context and expectations, with human rights thus tending to be extended over time.

Appendix B: Force Compliance with the Human Rights Act

The following should be reported to the police authority annually by the force:-

1. Details of human rights training.
2. Details of human rights monitoring in the application of the arrest and detention processes.
3. Details of human rights monitoring with respect to the treatment of victims and witnesses.
4. Details of human rights monitoring in the application of the grievance, discipline and complaints processes.
5. Details of human rights monitoring in relation to data management and data retention.
6. Details of human rights monitoring in relation to the application of policies on public order, use of force, covert policing and search & seizure.
7. Additional reporting, as required, on human rights compliance against the policing standards outlined in Appendix C.

Appendix C: Human Rights Standards Applicable to Policing

1. The police should protect the public by taking all steps that could reasonably be expected of them to avoid a real and immediate risk to life about which they know or ought to have known.
2. The police should seek to prevent torture and cruel, inhuman and degrading treatment or punishment of individuals. This will apply to the arrest and detention processes.
3. The police should use force only where it is absolutely necessary. For instance, the intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.
4. The police should protect the right to peaceful assembly and association.
5. The police should undertake criminal investigations according to basic rules that are prescribed by law, legitimate, necessary, proportionate and non-discriminatory. Surveillance, searches, and data/sample collection affects the right to privacy. Arrests and detention affect the right to liberty. Therefore there must be established processes in place to ensure a suspect's access to a lawyer, questioning according to PACE rules, bail conditions and prompt referral to a court.
6. Where children are concerned, the best interest of the child should always prevail. Records of child offenders must be properly managed.
7. Victims must be treated with compassion and respect for their dignity, be treated without discrimination and given access to the mechanisms of justice.
8. All records, samples and evidence must be managed in a secure and confidential environment.