

Human rights and the public sector

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Public Law analysis: Following on from Human Rights Day on 10 December, Daniel Machover, head of public law at Hickman & Rose, gives his views on human rights in the public sector and the implications of the government's current agenda.

What are the top issues shaping the UK human rights agenda in 2016–17?

Human rights are on the back foot and it is difficult to see that the UK has any coherent agenda going into 2017. The government has promised to replace the Human Rights Act 1998 (HRA 1998) with the so-called 'British Bill of Rights', at a time of great political uncertainty caused by Brexit, and the most draconian surveillance powers in UK history were recently passed into law. Important human rights claims have been described as vexatious by politicians and by sections of the press while severe cuts to the justice department and to legal aid has undermined the public's ability to engage its human rights.

What role should public bodies play in protecting human rights and furthering the human rights agenda?

The vision behind HRA 1998 was a cultural change in the public sector whereby decisions would be made with reference to basic rights—it was always more than a legal mechanism to bring the [European Convention of Human Rights](#) (ECHR) into UK courts. If a public authority shirks their human rights responsibilities or attacks citizens for invoking human rights duties, they undermine this objective and the effectiveness of the ECHR principles.

Aside from working enthusiastically to fulfil their human rights obligations, the most important thing public bodies can do is educate the public on how their work is likely to engage human rights.

How do public bodies measure and communicate human rights performance?

Human rights compliance is a function of public decision making and so before a new policy is launched, or any individual case decision is made, it should be rigorously assessed to ensure it does not infringe any rights. Any policy or decision which is not successfully challenged is, to that extent, a human rights success. Comprehensive records of when and how human rights principles are considered in decision-making processes should be kept, monitored and published. That should help to create a positive human rights culture, as opposed to the current negative portrayal of human rights by central government in particular.

Front line staff working directly with the public are best placed to ensure human rights are understood and applied in practice and measuring their awareness of human rights issues could also provide a useful indication of how well human rights principles are applied by a public body.

What challenges lie ahead for the government in terms of reforming the UK human rights agenda, in particular proposed repeal of HRA 1998?

The main legal difficulty in repealing HRA 1998 would be ensuring its replacement, the so-called 'British Bill of Rights', is compatible with the UK's international obligations as a signatory of ECHR, assuming we remain so.

The government wants to do away with 'vexatious claims', remove the obligation to take account of judgments of the European Court of Human Rights and generally reinstate the sovereignty of Parliament by requiring UK courts to interpret legislation so as to give effect to the clear intention of Parliament. Unfortunately, these objectives fly in the face of the human rights regime which effectively checks the power of the state. The government will therefore face significant resistance from the House of Lords and a host of charities, pressure groups and non-governmental organisations.

EU membership might have posed a significant legal obstacle to the proposed repeal of HRA 1998, as members are required to uphold respect for human rights under the founding EU Treaties and the [EU Charter of Fundamental Rights](#),

but now it will be little more than a scheduling issue as Parliament will need to find time to repeal HRA 1998 and the European Communities Act 1972 in one term.

Are there any other trends on the horizon for human rights in the UK?

The most troubling trends for human rights in the UK are the spread of misinformation and negative rhetoric which is steadily downgrading the importance of human rights and legitimising attacks on human rights lawyers—leaving vulnerable communities increasingly exposed to discrimination and abuses of their rights. This is to be expected from certain sections of the press, but the problem now goes right to the top of politics. Theresa May referred to ‘activist, left-wing human rights lawyers’ in her [speech](#) at the Conservative Party conference in October 2016 and others have attacked lawyers working to hold the government to account in similar terms.

The rhetoric of declining Parliamentary sovereignty, ‘vexatious claims’ and ‘ambulance chasing lawyers’ require nuanced responses and unfortunately misinformation about human rights spreads much more quickly than the truth.

Interviewed by Anne Bruce.

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