



**Report of Observations on Equality and Human  
Rights Impact Assessment in practice at  
Aberdeen City Council**

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## 1. Executive Summary

The Scottish Human Rights Commission (the Commission”) would like to thank Aberdeen City Council (the “Council”) for engaging on this project to understand how the Council’s use of Equality Human Rights Impact Assessment (“EHRIA”) has worked in practice. This report does not contain the findings of any formal evaluation process but rather is based upon interviews with Council employees and observations of the Commission arising from this. The purpose of this work has been two- fold. Firstly, in assisting the Commission progress towards the development of best practice guidance on the use of Human Rights Impact Assessment (“HRIA”) and secondly, to assist the Council to build and improve on existing practice.

The Commission views HRIA as one of the key ways in which human rights and a culture of human rights may be systematically mainstreamed into the policies, practices, procedures and priorities of local authorities and other public bodies.

The Commission has engaged with Council to understand the Council’s experience to date on embedding human rights into policy and decision making through an integrated Equality and Human Rights Impact Assessment (“EHRIA”) model, particularly in the light of difficult and challenging budgetary decisions over the last 2 years.

This report draws together observations made following interviews with Council employees exploring their experience of conducting EHRIA and how well they believe human rights considerations inform their daily decision making and the political decision making of the Council.

The observations from this report may assist the Council to learn from its experience of using EHRIA. The report will also contribute to the Commission’s goal of developing guidance on a best practice model of conducting HRIA’s which may then be piloted by willing public sector partners.

### **Benefits of assessing human rights impacts**

Council employees observed many benefits to adopting an integrated impact assessment tool which included human rights issues. In particular they noted the benefits as:

- Ensuring legal compliance with the Human Rights Act 1998;
- Avoiding duplication of work and effort through separate impact assessment processes;

- Ensuring that the rights of everybody, not only equality strands groups, were protected. Attention was drawn to the rights of those who may be marginalised, although not necessarily a specific equality group, such as homeless people, sex workers and those from areas of deprivation.
- Human rights assisted with the balancing of competing rights and interests. For example, in assessing street begging bye-law impacts the contested rights of those begging in the streets required to be balanced against the rights of persons with disabilities who claimed to be negatively impacted by street begging; or the rights of Scottish Gypsy Traveller communities which required to be balanced against the rights of the settled community.

### **Challenges and Recommendations**

While this report does not form part of an evaluation, a number of challenges to the success of assessing human rights impact did emerge that require to be addressed. In particular interviewees identified the following issues which give rise to recommendations :

- A need for further training and awareness raising of all officers conducting the assessments to ensure equalities and human rights issues are considered at all stages and not only at the end of the policy making process when the EHRIA requires to be completed and submitted with a Committee report.
- A need to change negative perceptions about impact assessment by fostering an understanding that the impact assessment process is not about preventing people from doing things but is about improving customer service delivery.
- A need for further training and awareness raising of all officers conducting the assessments to ensure human rights standards and principles are well understood as well as their applicability to diverse service areas.
- A need for early, effective participation and consultation on all policy proposals, in particular on budget saving proposals, to ensure communities do not feel disempowered from the decision making process.
- A need for a more robust monitoring and review process of impact assessment outcomes.

## 2. Introduction and Background Context

### Background

The Scottish Human Rights Commission (the “Commission”) was established by The Scottish Commission for Human Rights Act 2006, and formed in 2008. The Commission is the national human rights institution for Scotland and is independent of the Scottish Government and Parliament in the exercise of its functions. The Commission has a general duty to promote human rights and a series of specific powers to protect human rights for everyone in Scotland.

The Commission considers that Human Rights Impact Assessments (“HRIA”) are one of the key ways in which human rights and a culture of human rights may be systematically embedded into the policies, practices, procedures and priorities of government, public and private bodies.

It was a stated aim of the Human Rights Act 1998 (“HRA”) that a “culture of human rights” would be created. It has been made clear, as expressed by the Joint Committee on Human Rights, that *“the building of a human rights culture over time would depend not just on courts awarding remedies for violations of individuals’ rights, but on decision-makers in all public services internalising the requirements of human rights law, integrating those standards into their policy and decision-making processes, and ensuring that the delivery of public services in all fields is fully informed by human rights considerations.”*<sup>1</sup> HRIA are then one tool, as part of a range of positive organizational responses to this challenge.

Public body decision making at every level should then be striving towards taking account of human rights standards and principles. This has become ever more pertinent as public bodies are facing difficult decisions, often with human rights impacts, in the face of tighter financial constraints.

The recent Scottish Government Guide to public sector decision making sets out four essential steps in decision making processes to: 1. Prepare; 2. Investigate; 3. Decide; and 4. Notify.<sup>2</sup> The Commission considers that these basic steps as outlined in the guide are integral to a human rights based approach and that furthermore they can be effectively embedded and strengthened in many instances through a robust impact assessment process.

Aberdeen City Council (the “Council”) took the progressive step in 2005/6 to integrate their Equality Impact Assessment tool, (which is a statutory requirement under the Race Equality Scheme, Gender Equality Scheme and the Disability Equality

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<sup>1</sup> Joint Committee On Human Rights-Thirty-Second Report 7 November 2006-  
<http://www.publications.parliament.uk/pa/jt200506/jtselect/jtrights/278/27810.htm>

<sup>2</sup> Right First Time- A practical guide for public authorities in Scotland to decision-making and the law; February 2010; <http://www.scotland.gov.uk/Publications/2010/02/23134246/0>

Duty), with human rights to assist them in meeting their statutory duties under the Human Rights Act 1998<sup>3</sup> in an initiative to embed a human rights culture within the Council.

In the midst of having to make budget savings to enable the Council to operate on a secure footing, there were a number of high profile and difficult budget decisions which received media and political attention.<sup>4</sup> E.g. The Council was criticised in June 2008 when it emerged an Equality Impact Assessment on the proposed closure of a day care centre for people with learning difficulties had been carried out after the decision had been made.<sup>5</sup> The Council has taken considerable action since to ensure that all budget savings proposals are accompanied by a EHRIA so that elected members can take account of this assessment in their decisions.

In light of these experiences and the proactive steps the Council has taken to embed human rights into its decision making processes, and the Commission's interest in EHRIA tools as outlined above, the Commission regards the Council as an interesting case study for the effectiveness of the integration of human rights into impact assessment processes. The value of this case study is that it may provide learning and practise outcomes that will be useful to other public sector bodies particularly in the context of reducing public sector settlements which will require difficult and controversial decisions to be made in the sector.

## **The Report**

The report seeks to establish whether there has been a perceived added value to assessing human rights impact and begins to identify what might be done better to achieve the embedding of human rights through impact assessment. These observations, together with additional independent research, will assist the Commission to develop best practice guidance which may then be taken up by both Aberdeen City Council and other local authorities and public bodies which may wish

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<sup>3</sup> Section 6 HRA 1998-“ It is unlawful for a public authority to act in a way which is incompatible with a Convention right.”  
[http://www.opsi.gov.uk/acts/acts1998/ukpga\\_19980042\\_en\\_1#pb3-l1g6](http://www.opsi.gov.uk/acts/acts1998/ukpga_19980042_en_1#pb3-l1g6)

<sup>4</sup> See- Press and Journal-  
<http://www.pressandjournal.co.uk/Article.aspx/1097549?UserKey=> ;  
<http://www.pressandjournal.co.uk/Article.aspx/684015?UserKey=>  
Scottish Parliament- Public Petitions Committee Official Report 10 June 2008-  
<http://www.scottish.parliament.uk/s3/committees/petitions/or-08/pu08-1102.htm#Col901>

Hansard, 26 February 2009- <http://www.parliament.the-stationery-office.co.uk/pa/cm200809/cmhansrd/cm090226/halltext/90226h0004.htm>

<sup>5</sup> For example, in evidence to the Scottish Parliament's Public Petitions Committee in June 2008 it was stated that “no impact assessment was carried out” on controversial decisions to close day care centres for people with learning disabilities and that “only three months elapsed between the decision being taken and the closure of the service”<sup>5</sup> Anne Begg MP for Aberdeen South commented in a House of Commons debate relating to this that “The way we behave towards older people with disabilities, particularly learning disabilities....is nothing short of a diminution of their human rights.”

to develop integrated models of impact assessment. The new Equality Act 2010<sup>6</sup> and the implementation of the specific public sector duties in Scotland present a clear opportunity for the promotion of this approach.<sup>7</sup>

This report is based predominantly on a series of interviews with Council employees exploring their experience of adopting an EHRIA model. Informal interviews were conducted with 15 candidates from across the Council service areas, including, Housing and Environment, Planning, Education, Community Safety, Social Work, Community Planning and Regeneration, Information and Communication Technologies and Legal and Democratic in January 2010. The Commission also examined a number of completed EHRIA forms to assess their quality and the understanding of staff completing the assessments. The report gives a broad overview of observations on both the impact assessment process as well as outcomes.

The Commission fully acknowledges the limitations of this report's findings being largely based on the subjective views of Council office holders without the wider participation either of people who use Council services or have been affected by Council policy decisions nor of the Elected Members who have the ultimate responsibility for meeting the Council's statutory duties. The report is not based upon an evaluation or full assessment of the Council's processes. No audit of completed EHRIAs was conducted by the Commission. This report is intended to highlight some of the challenges to public bodies in embedding Impact Assessment processes. Due to the limitations identified in this case study however it is not prescriptive about what best practice model should be adopted. Furthermore this report takes a broad human rights perspective without a detailed consideration of whether the impact assessment process meets the Council's statutory duties under Equalities legislation nor best practice guidance on Equality Impact Assessment.

## **A Human Rights Based Approach**

The Commission regards the use of HRIA as a way of articulating a human rights based approach ("HRBA") in practice and will seek to establish the extent to which the impact assessment process and its implementation can achieve this. A HRBA is at its core about increasing the empowerment of rights holders and increasing the accountability and ability of duty bearers (in this instance the Council) to meet their human rights obligations.

Impact assessment should seek to reflect the core principles of a HRBA which the Commission promotes as being about Participation, Accountability, Non

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<sup>6</sup> Equality Act 2010-

[http://www.opsi.gov.uk/acts/acts2010/pdf/ukpga\\_20100015\\_en.pdf](http://www.opsi.gov.uk/acts/acts2010/pdf/ukpga_20100015_en.pdf)

<sup>7</sup> Commission Submission to Consultation on "Public Sector Equality Duty Specific Duties"-  
<http://www.scottishhumanrights.com/research/ourpublications/article/equalitydutyresponse>

Discrimination, Empowerment and a Linkage to legal Rights (the “PANEL” principles). The relevance of these principles to carrying out a HRIA is described in the attached appendix to this report. The following report will, within the limitations outlined above, reflect the extent to which the EHRIA in Aberdeen City Council reflects these underlying principles.



### 3. Key Observations

A number of observations about both the process and outcomes are made in this Report following the interviews with Council officers as to how the impact assessment process has worked in practice. The observations relate to how human rights have integrated with equality considerations; how the participation of people who use services has been handled; how well human rights have been understood and internalised by individual officers; and the extent to which it is felt human rights impacts have been usefully identified.

#### 3.1 Interplay between Human Rights and Equality

The impact assessment process adopted by the Council takes an integrated approach to assess both equality and human rights issues. This is regarded by the Commission as a progressive step in furthering both equality and human rights in the Council's decision making.

The Commission regards changes under the new Equality Act 2010 as presenting an opportunity to strengthen the conceptual, legal and practical link between equality, non-discrimination and human rights, including through the promotion of integrated EHRIA to public bodies.

The Commission's work with public bodies to date suggests that there may be a number of benefits to adopting a joined up approach to equality and human rights and to conducting integrated impact assessments. The evaluation report into a human rights based approach at the State Hospital at Carstairs indicated that "taking a human rights based approach at The State Hospital .....laid the foundations for the integration of new equality, freedom of information and mental health duties." <sup>8</sup>

The Council officers were asked their views on the integration of human rights with equality in the impact assessment tool. The officers expressed, without exception, that including human rights as well as equalities impact was a positive development. The main reasons cited for this are set out below:

- **Legal compliance with the Human Rights Act 1998 and creating a culture of rights**

The Council Officers saw the impact assessment as being critical to their legal obligations both under existing equality legislation as well as compliance with the

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<sup>8</sup> Human Rights in a healthcare setting-  
<http://www.scottishhumanrights.com/research/ourpublications/article/healthcareresearch>  
[ch](#)

HRA 1998. This was only a starting point, however, as impact assessment was also seen to be important as “a tool which can slowly cause cultural change if it is used effectively and well.” One officer stated that “The main driver is legal compliance and why shouldn’t it be? Even within legal compliance .....the Council would strive to do the best it can.”

Another participant stated that the impact assessment process “gives you a toolset to start hopefully to change and move the direction of the organisation or parts of the organisation to achieve better outcomes,”.

- **Integrated tools for integrated thinking**

Council officers welcomed that human rights impact was being assessed without duplication through separate impact assessment processes. This ensures that the rights of everybody, not only equality strands groups, were protected.

Officers made the following comments: “the worse thing would be to have two separate assessments. They are natural partners if you like ...because it makes you think of that balance. They are all intertwined.”

“I have difficulty to see where the dividing line is between the two, equality and human rights. Upholding peoples rights should include reflecting the diversity and affording everyone equality of opportunity or access to services.”

“It saves complicating things of what is an equality and what is a human rights issue. For officers in the Council, we shouldn’t muddy the waters by trying to work out which is one and which is the other- It is irrelevant in terms of what the Council wants to achieve at the end of the day.”

- **Attention drawn to everyone whose rights are not sufficiently protected**

There were instances highlighted where an equality impact assessment alone would not necessarily assess impact on some of the most vulnerable groups in the city. As one officer expressed, by including human rights in the impact assessment “It challenged the myopia around the equalities agenda by looking at target groups and missing socio- economic groups or people with learning disabilities, homeless people, sex workers etc.” It was stated by another Council officer that it “is nice to be able to tell people we are not just planning for equality groups but for everyone.”

Another officer stated that “You have to see the totality of impact on people and if you separate into streams then you miss the whole impact. If you make decisions about services for carers it impacts disproportionately for women but it also impacts someone’s independence or family life so you have to see it as impact on people. To take it separately you lose the sense of how the decision will impact on lots of people in lots of different ways. ”

- **A framework for balancing of competing rights and interests**

There was found to be a benefit in many instances of using the human rights framework to balance competing rights and interest of different groups of people.

A detailed example of this was given in relation to the proposed introduction of a street begging bye-law prohibiting street begging. Some disability groups claimed that the practice of street begging was an infringement of their rights in physically and psychologically restricting pavement access. A detailed human rights analysis by the policy officer allowed for both the contested rights of those begging and the rights of persons with disabilities to be weighed up and this instance it was found that such a bye-law would have a disproportionate effect on those begging in the streets and was ultimately rejected by the elected members of the Council.

A further example which appeared to arise frequently for the Council was in weighing up the rights of Scottish Gypsy Traveller communities with the rights of the settled communities of the city. It would appear that the focus here remained with the equalities legislation but that a rights based analysis could at times assist in reframing the issue and moving away from an analysis which appeared to put the Gypsies / Travellers' rights at the apex of a hierarchy of interests to understanding that there were rights to be respected for both communities.

Another example given was in relation to what was referred to as the policy relating to when the Council can access someone's property without their consent by breaking and entering in order to check gas appliances are safe. A basic human rights analysis was seen to assist as it "makes you balance the risk of blowing up a tenement block against somebody's privacy. It forces you to weigh up and balance things; to take balanced view. That's why human rights are in there."

The formulation of the schools exclusion policy was also found to use human rights constructively to consider the balancing out of the rights of the pupil subject to exclusion as well as the rights of the other pupils and teachers in the school.

It was felt by some officers, who appeared to have a strong understanding of human rights, that human rights assisted in taking into account competing and conflicting interests and that human rights were therefore a valuable lens through which to analyse policy issues. One officer was of the view that "I think that's what a lot of people forget about human rights. ...It's not just one thing or another, you do have to balance different people's rights and priorities."

- **HRIA as a tool for Mitigating Risk and minimising negative impacts**

A few of the officers interviewed had an awareness that the impact assessment process assisted them in both identifying negative impacts and mitigating them wherever possible. For example, in relation to a proposal to reduce gardening maintenance the impact assessment process and engagement with stakeholders meant that the implications further down the line of reducing the service,

particularly for older people or people with disabilities could be explored and ways of minimising these effects explored. As discussed below, however, a lack of understanding about when human rights issues were engaged meant that in many instances this type of analysis was not seen to be undertaken in the impact assessment process. An analysis by the authors of a report commissioned by the Scottish Human Rights Commission found that of 41 EHRIAs reviewed all but three concluded that the policy assessed would have no human rights impact.<sup>9</sup>

### **3.2 Participation and Consultation**

The process of consultation and participation with the users of services and others appeared to vary considerably across different service areas and decisions.

The EHRIA form requests evidence of consultation at Step 3 of the form and usually this is completed to detail what prior consultation has been done. While in most instances officers reported that a thorough consultation process appeared to have been undertaken the outcomes or learning from such consultation were not always detailed.

There were some notable examples where officers could demonstrate a robust process of engagement which informed policy outcomes- for example in relation to the Single Outcome Agreement consultation process and the schools exclusion policy. In these instances it was clear that longer timescales had been a key factor allowing this to happen.

It is understood that subsequent to the interviews conducted for this report that the Council has taken proactive steps to improve its community participation and involvement processes to address the concerns highlighted by officers in January 2010 and outlined below.

#### **Budget Saving Proposals**

According to interviewees, tensions arise in the budget decision making process as there is a need to keep detailed proposals under consideration confidential until these are considered by elected members. Therefore community consultation may not have taken place on the specific proposal at this stage.

It was suggested that part of the explanation for dissatisfaction in this area of consultation with users of services had arisen due to the short timescales involved in taking forward the 2008 and 2009 budget setting process which could be mitigated considerably in future budget decisions. There appeared to be an understanding amongst officers that at a minimum where people have not been consulted on the budget saving proposal itself that they should nevertheless be involved in the

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<sup>9</sup> Human Rights Impact Assessment: Review of Practice and Guidance for Future Assessments  
by James Harrison and Mary-Ann Stephenson

redesign or alternative service being out in place.

A minimalist approach to participation and consultation on budget saving decisions is problematic in many respects. Firstly it undermines the principle of involvement and consultation about key decisions which will affect people's lives which is key to a HRBA and is also inherent to the human rights legal framework. For example it has been stated in relation to Article 25 of the International Covenant on Civil and Political Rights that participation in the conduct of public affairs includes the formulation of central government policies "as well as a local council's decisions regarding the frequency of garbage collection."<sup>10</sup> The European Convention of Human Rights also points towards the need for effective participation in decisions which affect the exercise of an individual's life.<sup>11</sup>

A human rights based approach necessitates therefore that people who use the services participate meaningfully in its design and delivery. The potential negative reactions, conflicting views, or publicity which may arise in relation to unpopular budget saving proposals does not negate the necessity of this participation. The involvement of communities should increase the likelihood that the needs of the community will be met more effectively and thus contribute to achieving better services. Furthermore, the involvement of communities helps ensure that the services are responsive to the particular needs of disadvantaged groups.

A lack of meaningful participation of people who use services could be seen to deprive individuals of the opportunity to put forward ideas for how budget savings could be made; alternatives to the budget savings being proposed; or ways in which the impact of the budget saving proposals can be minimised. This is key to establishing whether any interference with an individual's human rights is proportionate to the aim being pursued and therefore the minimum necessary interference with their human rights. It is this human rights based reasoning that the law courts would assess in any human rights claim and should therefore be reflected in all good policy and decision making and throughout the impact assessment process, in particular from the outset of policy formulation. Community consultation should then be considered at the earliest stages of scoping out budget saving proposals.

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<sup>10</sup> Joseph, Schultz and Castan; the international Covenant on Civil and Political Rights, Cases, materials and commentary; 2<sup>nd</sup> edition; p654 comment on General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25) : . 12/07/96.

<http://www.unhchr.ch/tbs/doc.nsf/0/d0b7f023e8d6d9898025651e004bc0eb?OpenDocument>

<sup>11</sup> TP&KM v UK (Application No. 28945/95 – Judgment 10 May 2001) This case concerned the removal of a child from its mother into care. The European Court of Human Rights found it a violation of Article 8 in that the mother was not a provider of the proper, fair, or adequate opportunity to participate in the decision making process following the removal of her child. See also case of TA<sup>a</sup>KIN AND OTHERS v. TURKEY, (Application no. 46117/99), 10 November 2004

A meaningful and effective process of participation will help identify the ways and means of establishing ways to minimise negative impacts and find solutions to meet the needs of the community. As one interviewee stated following a consultation process "What came out clearly for me was that service users understood the need for cuts but wanted to be involved and be involved in putting forward solutions." Another officer was of the view that "Some of the solutions aren't with us, they are with the people themselves. Sometimes we are getting in the way."

An example of where this lack of involvement has been reported and the potential benefits of community engagement explained was brought out in evidence to the Scottish Parliament's public petitions committee where it was made clear by a representative of Future Choices that "there was no dialogue between Aberdeen City Council and the disabled people of Aberdeen until we were told that the Choices day centre for the disabled, which is the only one of its kind, was to be closed. ...." "If Aberdeen City Council had told us what was happening and how it planned to proceed, we would have been willing to help.. We would have done our best to subsidise some of the services that Choices have offered. We were willing to cook our lunches, pay for our buses and so on, as long as the Council retained our qualified, highly trained staff..."<sup>12</sup> It would have been helpful if the final policy decision had been able to demonstrate that it had taken account of these views from the outset of the policy making process even if the ultimate decision as to closure of the service was the same.

The Council held a series of public debates over summer 2010 to explain to the local community the context in which it operates and the difficult decisions having to make in the current economic climate as well as the positive impacts it would envisage from policy changes. For example in the redesign of services for adults with learning disabilities the Council was of the view that "We were making a saving but [we were] also investing in new services and giving a better service. This, in a sense, would be addressing people's human rights- dignity autonomy and freedom etc. [We were creating a] much more personalised service, rather than herding people together in seclusion." Earlier consultation processes should provide the Council with the opportunity to set out some of the positive benefits of the new services to be established.

One interviewee stated "we need to bring people in at a much earlier stage than we are currently doing. At the moment we are making decisions and then looking at impact but what we should be doing is sitting down with individuals and seeing what are the options.... We should be much smarter at involving partners at an earlier stage and dealing with them rather than fire fighting retrospectively which is what we have done. "

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<sup>12</sup> Scottish Parliament- Public Petitions Committee Official Report 10 June 2008-  
<http://www.scottish.parliament.uk/s3/committees/petitions/or-08/pu08-1102.htm#Col901>

A recommendation arising from this report therefore is that the consultation process, particularly around budget making decisions, must be carefully examined. The Council has reported that it has already begun this process by developing a community engagement plan to be integrated across all council services. It is suggested that to improve in community involvement will begin consultation far earlier in the budget setting process. The Council will then have the opportunity to better manage the expectations of the public while reassuring them about the continued types of service provision that will be available. One interviewee stated that "I think they would be much more effective if we had a plan for the next 3/5 years for budget savings and how we are going to impact assess them; building in consultation." Directors and heads of service putting forward budget saving proposals would then have some advance feedback from communities before proposals are made.

One interviewee stated that "We have got smarter about having consultation earlier in the process albeit that it is an area fraught with difficulties." An approach which builds in consultation at an earlier stage can be viewed as assisting, as one Council officer put it to "renegotiate expectations" of the public. "This means a different kind of leadership from the Council and a different kind of leadership from our partners. The conversations we have are much more upstream and long term."

The approach of Health and Social Care is particularly helpful in this regard as outlined in its Community Engagement Strategy for Involvement where community engagement is defined as "a dialogue with people to improve services for the future in partnership, be accountable and help shape vibrant communities." It is understood that this model of community engagement is seen to operate throughout the entire cycle of commissioning of social care services. It is recommended that these community engagement processes are seen as integral to all policy decisions as being continuous, circular, iterative and fully integrated with the EHRIA process.

### ***3.3 Human Rights understanding and awareness***

The interviewees' understanding and awareness of human rights and how human rights are engaged in practice seemed to vary considerably.

It is understood that four training sessions for officers and three for elected members on the impact assessment process were carried out in the period November 2008 to May 2009 and will be ongoing to meet demand. While most of the interviewees had training in the impact assessment process only a few had training specifically in human rights, the most recent dating back to 2005/6. Very few of the interviewees referenced when questioned that there was accompanying guidance on Human Rights within the EHRIA or that there was human rights information on the Zone, the Council's intranet. The majority of interviewees would ask advice from the legal officers or search the internet for information. More accessible and tailored guidance would be helpful to officers.

Of the impact assessments examined by the Commission few demonstrated a thorough analysis of the human rights impact. Most interviewees highlighted their difficulty in understanding this part of the form. Very few impact assessments identified the relevant Articles of the European Convention of Human Rights, and fewer still went on to assess the legality (i.e. the legal basis for action), legitimate aim (i.e. what is the justification for the policy in terms of the Human Rights Act) and proportionality (i.e. is it the minimum necessary interference to achieve the legitimate aim) of the human rights impact. This meant that in these cases there was no opportunity to minimise the negative human rights impact nor to optimise and set out the positive human rights impacts.

An example of where a lack of understanding of human rights arguably led to a lack of thorough analysis was in the impact assessment relating to budget savings service re-design including people with learning and physical disabilities and mental health and substance misuse problems, which was done retrospectively to the decision being made. When the impact assessment was conducted no human rights were identified in the EHRIA. It is considered, however, that this is an example where there would be potential human rights implications, particularly in terms of Article 8 of the Convention and the right to private, home and family life, which required exploration in the form. The impact assessment failed to carry out any analysis of rights engaged which would include the following at Step 5 of the form:

- *Legality*:- What were the statutory duties in relation to these services?
- *Legitimate aim*:- What was the justification for cutting the service- was this budget saving (and therefore in the economic interests of the Council and to assist in protecting the rights of others in other services) or was the justification also in terms of the better realization of the rights of those receiving the service allowing them greater autonomy and freedom of choice.
- *Proportionality*:- The measure could be expressed as the minimum necessary interference with human rights in so far as alternative services were to be put in place as well as transitional arrangements from one service to another. It could have been explained here what steps were being taken to minimise the disruption to service users and their carers and to suggest further measures which would diminish the disruption to service users which could be taken.

Without this form of detailed analysis there was neither the opportunity to set out the legal basis for the interference with the human rights of individuals using services nor to explore how the negative impacts could be minimised and the positive impacts that such a service change may have.

An example of where the policy officer could identify a human rights argument but then struggled to follow through in the analysis as outlined above was given in relation to a proposal to put in place temporary homeless accommodation. The accommodation was to take the place of a former care home which had a sheltered



housing development attached to it. The sheltered housing was going to remain and the other part of the building become homeless accommodation. There were Article 8 issues of private home and family life identified by the officer for both the sheltered housing residents as well as the people using the homeless accommodation. In this instance the policy officer had correctly highlighted the Article 8 issues but had required assistance from the legal team to do analysis of the legitimate aim and proportionality which were seen to be complex.

One officer stated that the impact assessment process “doesn’t force you to do the longer term thinking. The justification becomes the budget cut. It doesn’t encourage thinking past that point.” This view seemed consistent with the way in which the impact assessments were conducted but not consistent with what the impact assessment process should aim to achieve in ensuring a long term and considered approach of equalities and human rights impacts is taken into account in policy making.

It is considered that further training and awareness raising for staff would assist greatly in helping to identify and analyse human rights issues. It is planned to introduce online training for EHRIAs but it is unclear whether this would include human rights training. The Quarterly Equalities newsletter may be another place to raise the profile of human rights impacts of Council proposals.

### ***3.4 Indirect Human Rights Impact***

A few of the interview participants expressed that while they had received some training it was difficult to link what they had learnt about human rights in the training with the realities of the policy decisions that they face. This was particularly the case for those providing services that were removed from a direct impact on the users of service, for example, such as Information and Communications Technology (ICT) or corporate business decisions. In both of these instances however, the interviewees were aware of potential human rights impacts of the decisions they were making further down the line.

An example given was where funding cuts are being made to third parties who deliver services on behalf of the Council which could potentially have negative human rights impacts. Where, for example, funding is being reduced to arms length partners such as Visit Scotland or the city museum there may be a need to consider a longer chain of potential impact in the services or facilities that are then affected and look at how that could be mitigated through the Service Level Agreement or through negotiation.

Similarly there may be impacts which are far longer term in nature and further removed from the immediate delivery of services by the Council which should be considered. For example a budget reduction to the Renewables Energy Group, established by the Council, may have a long chain of impact in terms of policy around security of energy supply where losing investment there could ultimately

disproportionately affect the most vulnerable groups in society. Impact Assessment can be harnessed as the mechanism through which to articulate and capture these issues of social and environmental sustainability.

It was expressed that “from an ICT perspective [the impact assessment] is difficult to do as we work with other services so we are not the first point of interface with clients.” It is clear in this instance that the impact assessment ought to be done in co-operation with the policy officers involved but this does not detract from the need to conduct the EHRIA, nor the need for more explicit guidance setting out some relevant examples of where the EHRIA will be relevant for these types of services.

An example given of an indirect human rights related impact to be considered was in the creation of a hand vibration database which tracks individuals suffering from white finger condition from the use of pneumatic drills and when those individuals require doctors referrals. This type of system will have human rights implications to be considered, for example, potentially in relation to privacy rights, and the policy lead and ICT would be required to work together to determine these impacts.

It also considered that a more robust, upfront and longer term strategy on the participation of communities and partners will assist in identifying and addressing indirect impacts. In some circumstance consultation will allow partners to express that a saving to the Council in one area may mean a cost elsewhere. For example, a proposal to reduce the winter maintenance budget by £60,000 by not gritting pavements in winter may mean that accident and emergency admissions will increase as well as other social care costs meaning that further upstream will be a cost and not a saving. It was expressed by another officer how “A small decision can ultimately have a bigger impact and cause an uplift elsewhere.” Engagement with community forums and partners can therefore assist in flagging these indirect impacts and look at ways of mitigating such impacts.

## ***4. Conclusions and Recommendations for strengthening of process and outcomes***

The interviews highlighted both some of the benefits in assessing human rights impact through an integrated human rights impact assessment process as well as some lessons on how things could be done more effectively. It was felt by all the officers interviewed that the process was essential and was “about putting the people back into the equation, or making sure they are there.”

In summary, taking a human rights based analysis of the impact assessment process in Aberdeen City Council, the following conclusions can be drawn from each of the guiding principles:

- **Participation-** There has historically been a lack of participation of people who use services, particularly around budget saving proposals. In particular in

the years prior to 2008, there were acknowledged issues with a lack of community consultation around budget decision making. This should be seen as integral to any strategic policy decision and to the impact assessment process rather than as what one officer described a “proxy measure”. The Council has reported that it has begun work on a community engagement business plan for the next five years and it is hoped that this will significantly improve community participation in decision making.

- **Accountability-** While the impact assessment process acts as a mechanism through which to secure a form of accountability, particularly as the EHRIA is now a publicly accessible document, the accountability built into the process could be further strengthened through better monitoring and review of the assessment outcomes.

It could further be explored where there may be other places in policy and decision making where human rights considerations will be instructive. Examples of this highlighted by the Council interviewees included, having an equalities and human rights statement in service plans and corporate plans; ensuring that in social care individual assessments outcomes are broadly reflected within the EHRIA. In a planning context it was suggested that ways of integrating human rights into Strategic Environmental Assessments (SEA) may be helpful. Alternatively, at a minimum, ways in which the SEAs and EHRIs can be aligned and details from the EHRIA fed into the SEA may be considered.

- **Non- discrimination and Equality-** It was universally regarded as positive that the integrated assessment tool dealt with non-discrimination for equalities groups as well as the rights of all other individuals in society. It is considered that further awareness raising with officers could strengthen this aspect of the assessment.
- **Empowerment-** While there has been instances where communities have felt disempowered and disenfranchised in some situations where there has been a lack of engagement the Council is beginning to recognise and take steps to address this. It is understood the Council is carefully considering how early community engagement can assist in identifying the future re-design of services.
- **Legality-** The current impact assessment tool and accompanying guidance are very closely aligned with the obligations under the Human Rights Act 1998 and the Convention rights which are enforceable under the Act. It could be considered whether the tool should take some cognisance of obligations under the international human rights law framework. However, it is considered that better understanding of how the Convention rights operate and the tests of “legality, legitimate aim and proportionality” would greatly assist in ensuring human rights implications of policy making are thought through. In particular, officers should be confident to express where a right

is engaged, (for example in the closure of a service) and then be able to set out the justifications and proportionality elements of analysis.

The process for carrying out the EHRIAs contained many positive elements of oversight in an attempt to ensure equality and human rights considerations were adequately taken into account. For example Equalities Champions have been nominated within each service who are to have an overview of the Impact Assessment process for their service and ensure reports to committee are accompanied by an EHRIA where applicable. There is also a checklist for reports being presented to committee to ensure there is a record of whether an EHRIA has been carried out. The Corporate Management Team (CMT) has also taken on board recommendations to publish the EHRIAs online and the budget saving proposals for 2009- 10 are published on the Council website.<sup>13</sup>

Further to the above the recommendations for strengthening the process are further explored below:

- **Introduce Equality and Human Rights Considerations earlier**

There was found to be a need for further training and awareness raising of all officers conducting the assessments to ensure equalities and human rights issues are considered at all stages in policy and decision making and not only at the end of the process when the EHRIA requires to be completed and submitted with a Committee report.

Workload issues were highlighted as one officer stated the problem is that “people write reports and then realise they have to do an assessment- That is too late because they have often made the decision already.” It was pointed out that “In reality what happens is that people are performing to deadlines.”

An example of this which was given was in relation to the move across to new headquarters at Marischal College where one of the changes would mean that there is one communal area or customer access points. In theory where an EHRIA of the process is done towards the end of the process the opportunity to identify changes which could mitigate potential negative impacts on accessibility would be lost. It was noted that an early EHRIA is needed to ensure ease of access for all.

A further example given was in relation to the installation of a height restriction barrier at a parking site the purpose of which was to keep out the Gypsy / Traveller communities. It was not until the engineer in charge of erecting the barrier sought advice and assistance from the Community Planning and Regeneration Team that

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<sup>13</sup> Budget Saving Proposal Impact Assessments-  
[http://www.aberdeencity.gov.uk/CouncilTax/fin/ctx\\_BudgetProposals09\\_10.asp](http://www.aberdeencity.gov.uk/CouncilTax/fin/ctx_BudgetProposals09_10.asp)  
Corporate Overview Equality and Human Rights Impact Assessment on Budget Proposals for 2009-2010- <http://www.aberdeencity.gov.uk/nmsruntime/saveasdialog.asp?IID=20258&SID=8510>

the human rights issues to the frontline operations staff were highlighted and logged in the EHRIA.

- **Develop Impact Assessment Tool- language and guidance**

All interviewees were positive about the use of HRIA generally. One participant stated “I do like the Impact Assessment as an approach because it is a discipline for people. It does make you stop and think and write it down and check your thinking.....It brings the people back into documents that you can forget.”

It was suggested that the language of the EHRIA tool was too legalistic in parts; in particular the language of “legality, legitimate aim and proportionality”. A couple of interviewees stated that “It needs to be in plainer English.” These comments were supported by the fact that few of the completed impact assessments had completed this important part of the form. The form could be reviewed in light of this recommendation, but it is recommended that the steps retain the link to the Human Rights Act 1998 and steps undertaken by the courts in assessing human rights issues. The questions could be rephrased, for example, as “Is there a legal basis for this action?” and “What is the justification for a negative impact on a right”; and “Is it the minimum interference? What less restrictive alternatives have been considered?” etc.

While some felt the language in the form was overly complicated and repetitive others felt that the “Form is too user friendly and allows people to tick box too quickly. [It] Allows people to use pat language. To say because we can make budget savings we can do this that and the next thing.” It is considered that a better understanding by policy officers of how the form should be completed can address this balance between a user friendly tool and something meaningful.

None of the participants referenced the existing guidance on human rights. It is considered that the guidance on human rights must be made more accessible and tailored to the needs of officers. In particular it was noted that it would be “Useful to have real examples across different public body functions” this would assist officers in understanding the relevance of human rights to their service areas.

- **Promote and explain the Positive Value of Impact Assessment**

A number of officers expressed their perception that impact assessment has now become synonymous with budget savings and as such were seen as having negative connotations within the Council. Other officers felt that there was a tendency to think that if any negative impact was identified it meant that you couldn’t go ahead with the proposal and for this reason officers may shy away from the process.

It is considered that some awareness raising requires to be done to “re-brand” the impact assessment process as not being about stopping people doing things but

rather about improving customer service delivery and communicating the positive benefits of some service changes both internally and externally. The UK Ministry of Justice Human Rights Insight Project (the Project), for example, found that using a human rights based approach was found to improve the public's experience of public services.<sup>14</sup>

One policy officer noted that a properly conducted impact assessment can “also enable you to deal with questions and the brighter side to it is that it enables you to tell the public that you’ve actually done something about this, you have thought about it...”

For example the clear message from social care was that the re-design of adult day care service would have some clear benefits for adults with learning disabilities allowing them to access other services and have greater freedom, autonomy and choice. As one officer pointed out there was “Academic research supporting that institutional care in big buildings wasn't best for people.” However “originally the form did not make explicit” in setting out these positive human rights impacts. It was stated that “It comes down to selling it to the public how you put across the message.”

- **Increase Training and awareness raising**

As outlined above the human rights understanding of officers varied considerably but in the majority of cases it was felt further human rights training would be helpful.

One interviewee expressed that it was the training and the thinking behind the impact assessment which was useful rather than the form itself. It was stated that “I think it’s the awareness before the tool- its awareness and response and reflective delivery as you go through rather than produce something in a document.”

It was clear from the interviews that any further training should focus on examples to ensure that human rights standards and principles are well understood as well as their applicability to different service areas. As one participant stated “It’s the theory: reality check [and the] need to make the link from theory to day to day practice”.

It was clear from the views taken that both computer based training and a computer based tool would have downsides. It was considered that while the Council has online training but “not everyone has access and you won’t change attitudes by sitting on front of a screen. Computer based training is fine for knowledge but not for attitudes.” While any future guidance and tool may then be usefully produced in

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<sup>14</sup> See Human Rights Insight Project, Ministry of Justice Research Series 1/08 January 2008, p 75.

<http://www.justice.gov.uk/publications/docs/human-rights-insight-full.pdf>

online formats this should not detract from face to face learning and dialogue around human rights issues and the completion of the form.

- **Improve mechanisms to secure effective participation**

As detailed in Section 3.2 of the Report mechanisms and planning to secure more effective involvement and engagement of the users of services on all policy proposals, but in particular on budget saving proposals, will be essential to the effective functioning of the Council. It is understood that the Council has taken steps to move in this direction and that for the budget savings for 2009 and 2010, consultation began much earlier in the budget process. One interviewee expressed that what is increasingly been seen as best practice is to have a “much further upstream conversation so when it comes to changing a service or the investment in a service it is put in context for people.”

- **Build in a process of Monitoring and Review**

Information gathered from the interviews suggests that there is currently no system of monitoring or ongoing review of EHRIA. While the Community Planning and Regeneration team takes a key role in terms of quality assurance on all impact assessments that come to them extra resource would be required in order to carry out a further monitoring function. Responsibility for monitoring that impact assessments are completed where needed must then lie with the Heads of Service.

It is understood a Corporate Review of Policies and Procedures has taken place by the Chief Administrative Officer and the Council has a list of policies with their review dates. This tool will be used to identify when EHRIAs are due for review.

Within specific services, for example, in Social Care, a project management system will flag a review process. Also where the legal department undertakes the development of policy, for example, in relation to data protection issues or surveillance where statutory obligations are engaged, it appears that there is a more systematic review of the policies to ensure they are aligned with legislative requirements and in these instances the EHRIA will be reviewed concurrently with the policy. It is recommended that ways in which the EHRIA outcomes are systematically monitored and reviewed by Heads of Service are implemented.

It would appear therefore that the impact assessment process itself now has some traction within the Council and is embedded in the process of decision making as reports go to Committee. However, the level of understanding about assessing human rights impact needs improving / work. Where individual policy officers did have an understanding of human rights they were able to explain good examples of where human rights were useful as a lens through which to analyse issues. As one officer pointed out “We have to get to a place where this is seen as added value, not an added task.”

Despite the challenges outlined above and the limited use that has been made of utilising the human rights framework in the impact assessment tool it remains clear that the human rights can assist the Council to “make better decisions, demonstrate to service users that the decision making process is objective, and protect the organisation against allegations that it has not considered people’s rights.”<sup>15</sup> The human rights framework can also help public bodies to “develop and provide the type of individualised public services that people have increasingly come to expect. It will certainly help to manage risk and to avoid poor service outcomes.”

While a strengthening of the impact assessment process and capacity building of the officers is likely to bring about the positive shift as outlined above ultimately the elected members of the Council need to be committed to the process and to the detailed consideration of each and every proposal from a human rights perspective. Interviewees reported their perception that the impact assessments could be used as a “political football” and that there will be times when elected members will hear the evidence of negative impact and nevertheless make a decision to proceed with a proposal. What is important, however, is that the evidence is clearly presented and thoroughly understood by the elected members and that there is a reasoned decision making process in place, taking account of equality and human rights implications. The Commission would welcome further engagement with elected members on raising their awareness about human rights and how human rights can assist in good decision making.

The Commission would like to thank all the officers who agreed to take part in this study and commend the commitment of the Council to work towards improving their processes to better embed equality and human rights.

The Commission intends to further build upon the observations from this report, supported by further analysis of other HRIA models in operation, and work towards developing best practice guidance on the use of HRIA. The Council’s continued engagement and commitment to improving its impact assessment processes is to be welcomed and will assist the Council to meet both its statutory obligations and secure better services for the people of Aberdeen.

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<sup>15</sup>

Watson and Woolf- Human Rights Act Toolkit, 2<sup>nd</sup> edition, 2007



## **APPENDIX- Human Rights Based Approach Principles- PANEL**

Impact assessment should seek to reflect the core principles of a HRBA which the Commission promotes as being about Participation, Accountability, Non Discrimination, Empowerment and a Linkage to legal Rights (the “PANEL” principles).

- **Participation**

*The principle:* HRBA requires a high degree of meaningful participation, including from communities, civil society, minorities, and other groups particularly those who may be vulnerable or marginalised such as Scottish Gypsy Travellers or older persons on decisions that affect their lives.

*What does this mean for HRIA?:* The early participation and engagement of people who use services or will be affected by the policy proposal should be a core part of the HRIA process from beginning to end providing a real opportunity to influence policy outcomes. The participation should be both meaningful and constructive and all information about proposals should be easily accessible to affected individuals.

- **Accountability**

*The principle:* HRBA focuses on raising levels of accountability by identifying rights - holders (and their entitlements) and corresponding duty-bearers (and their obligations). Such approaches necessitate the development of adequate laws, policies, institutions, administrative procedures and practices, and mechanisms of redress and accountability that can deliver on entitlements, respond to denial and violations, and ensure accountability.

*What does this mean for HRIA?:* The need for accountability for human rights obligations puts into context the need for carrying out a HRIA to ensure human rights are embedded in all policies and procedures. The principles of accountability would also necessitate a high level of transparency in decision making processes and therefore require the publication of impact assessments wherever possible. It also calls on the need to develop proper processes not only for assessing impact but to ensure there is ongoing review and monitoring and reporting of the outcomes.

- **Non Discrimination and Equality**

*The principle:* Human rights requires the prohibition of discrimination and steps to eliminate discrimination in practice to pursue equality. Particular attention is given to the direct and indirect consequences of decisions on individuals and groups due

to their identity or status. A HRBA also requires the prioritisation of those in a marginalised position. This may include differential impacts on any ground including based on race, gender, age, disability, gender identity, religion or belief or any other status such as mental health service users, people living in poverty etc. There is no universal checklist of who is most vulnerable in every given context. Rather, rights-based approaches require that such questions be answered locally.

*What does this mean for HRIA?:* This principle points to the need to assess impact beyond the traditional equalities groups of race, gender etc to assess impact on all people in society. There is nevertheless a particular focus on vulnerable and marginalised groups who must be identified and included in the participatory processes.

- **Empowerment**

*The principle:* HRBA focuses on strategies for empowerment and sees individuals and communities as the owners of rights, and emphasises the human person as the centre of the local authority action (directly, through their advocates and through organisations of civil society). The goal is to give people the power, capacities, capabilities and access needed to change their own lives, improve their own communities and influence the policy decisions that affect them.

*What does this mean for HRIA?:* Participation in the forming of policy decisions through consultation will assist in realising the principle of empowerment. Further to this the implementation of the policy/practice should be monitored and where necessary steps taken to assist local communities to realise their own rights.

- **Legality of Rights**

*The principle:* A HRBA means that the objectives of a policy, practice or procedure should be expressed in terms of particular rights and must not be incompatible with human rights and seek to fulfil human rights where appropriate. There must always be a recognition of rights as legally enforceable entitlements.

*What does this mean for HRIA?:* It means that the HRIA should link directly to international, regional and domestic human rights instruments. In the context of the Council this means that reference ought to be made at a minimum to the European Convention of Human Rights 1950, the Human Rights Act 1998, and the Scotland Act 1998; and where deemed appropriate the international treaties ratified by the UK.

