

THE HUMAN RIGHTS ACT: IS IT WORKING?

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Giving people legal rights is one thing: making those rights work effectively for the benefit of the individual, the community and society at large is a separate and bigger issue. For example, the constitution of the USA guarantees equality before the law but it needed Martin Luther King and 'black action' to begin turning paper rights into social reality.

In the United Kingdom the Human Rights Act [HRA] came into force in October 2000. Jack Straw, then Home Secretary, stated: "These are new rights for the millennium. The Act is a cornerstone of our work to modernise the constitution. It is one of the most important pieces of legislation the UK has seen. But it should not be seen as a field day for lawyers. It will instead, mark a major change in the creation of a culture of rights and responsibilities in our society." Big words and strong sentiments but has this legislation impacted significantly on those communities and individuals that are in greatest need of support. The gap between rich and poor has grown under the Labour government. We have the most unequal distribution of income in the EU [Greece excepted] with more than one in five people living on less than 60% of median earnings. Regional differences remain stark with Wales continuing to lag behind other parts of the UK.

The very term 'Human Rights' delivers a powerful and positive message. This is legislation aimed to protect citizens from the abuse of state power and sustain the basic features of a democratic society. Thus, it is not about controlling or regulating society. Instead, it seeks to protect the vulnerable and the aggrieved against the excesses and improprieties of public bodies and state action or possible inaction. Redressing this enormous imbalance of power between the individual and the state is not easy. Consequently, the HRA benefits from the involvement of professional facilitators: solicitors. These are the people who have keys to the gates that open up access to the law. Their knowledge, experience and technical know-how helps you and me to access justice effectively and seek appropriate remedies for wrongs suffered. Those who are socially excluded are particularly vulnerable and particularly needy of professional support.

We know that the HRA has and continues to be employed by the few specialist human rights barristers' chambers and London based pressure groups. Test cases are advanced and sometimes won in the High Court and the Court of Appeal. For example, under article 3, [prohibition of torture, inhuman or degrading treatment or punishment] local authorities have an obligation to protect abused children. Under article 8, [respect for family life, home and correspondence] Thames Water Ltd., was held to have breached its duty to prevent flooding of property caused by inadequate sewers. There have also been cases affecting housing and education. The range of common, every day disputes between the individual and public authorities which might attract the use of the HRA is considerable yet remains widely unknown to the general public. The Law Society estimates there are over a million disputes at any one time which could be resolved through the legal process but remain unresolved and are a continuing burden to the affected individuals.

On the other hand, the rich and powerful also use the Act, for example, to protect their privacy. Michael Douglas and Catherine Zeta-Jones tried to protect the commercial value of the wedding by stopping 'Hello' magazine from using pictures of the ceremony. In Canada publishing companies were successful in arguing that a

restriction on soft porn magazines was a breach of their right to free speech. Soldiers involved in the killing of 13 civil rights marchers in Derry in 1972 have used article 2 of the HRA [protection of life] to remain anonymous whilst giving evidence to the ongoing Saville Enquiry. Clearly, the legislation is a two edged sword.

So, who in reality owns the HRA: is it the state and the rich, famous and powerful or can ownership be claimed by the dispossessed who seek fair treatment in an unfair society? What is unknown is how the HRA has impacted on those on the lower end of the social spectrum and how high street solicitors to whom these people might turn have taken to the legislation.

In 2003 the author undertook a research project in the Cynon Valley to establish the level of awareness and usage of the Human Rights Act amongst local solicitors. In essence, I sought to establish what use they were making of this innovative legislation and if not, then why not. Twenty-one solicitors were interviewed.

The Cynon Valley was selected because of the prevailing social and economic conditions. It forms part of Rhondda Cynon Taff, which houses 8% of the Welsh population. What is known is this area ranks towards the bottom of various social indicators both within Wales and also within the UK as a whole. There are significant health issues, some of which are produced or exacerbated by inadequate housing. Long term unemployment and poor academic achievement is another local issue. 27% of pupils in RCT are entitled to free primary schools meals, which is 8% higher than the average in Wales. Such figures are indicative of low-income families. The Cynon valley houses a community in crisis. Jobs are scarce and low waged; the levels of educational attainment are poor; there is a major drugs abuse issue; the local authority struggles to meet its statutory obligations through shortage of funds. The valley abounds with problems, some of which might be resolved through law and specifically through the HRA.

There are around 3,000 solicitors practising in Wales. Wales accounts for 5.6% of the joint population of England and Wales but has 3.3% of solicitors in practice. In Wales there is approximately one solicitor per 1,000 people and in England it is almost half that figure. Welsh firms are smaller and less profitable but one important question is whether they are able to handle the HRA which is new, challenging and totally different in terms of its conception and usage?

Our survey results identified a group of solicitors anxious to help their clients in what are becoming ever more difficult operating circumstances. The 'fat cat' legal aid solicitors, as described by Tony Blair, are extinct in the Cynon Valley, assuming this breed ever existed in the community. The profession is made up of predominantly Welsh people with two thirds of them born in the valley. The same percentage studied law in Wales and three quarters of the solicitors trained and now practice in the same Cynon Valley firm. Thus, there is a strong sense of local commitment and knowledge amongst these practitioners but at the same time this tight legal community has very little experience of practice elsewhere. There are concerns that feelings of belonging are insufficient to maintain the current numbers of law firms. Indeed, one solicitor said: "there are going to be fewer lawyers in the Cynon valley in ten years time. It is not a place where people like to live. It is not a place where you can get wealthy. It is not a place where you will sit in smart offices." Legal wages are relatively low and staff recruitment is difficult. The contracting numbers of solicitors will be accompanied by contracting services. This is especially the case as the Legal Services Commission, responsible for administering public monies for legal aid, is seen as officious, bureaucratic and parsimonious. In a word, the solicitors believe that the commission is 'strangling' free or low cost legal services to the community. In

a low waged community, as is the Cynon valley, publicly funded civil and criminal legal services are central to the legal practices. One solicitor commented: "We are seeing a shrinkage of legal aid franchises and the clients were probably better off a few years ago. They were pointed in the right direction more quickly and had a better choice of firm."

Within this depressing context the HRA has had very little effect or take up by the legal profession. "Initially we thought it was going to have a big impact but I think we can honestly say that it hasn't had a huge impact at all really." Why should this be the case where so many people might benefit from its usage? Solicitors admitted that they were not properly aware or trained in the value and use of the legislation. "There is a very low awareness of the HRA and it is not a topic that rises to the fore when we are talking amongst colleagues." Training is expensive and takes solicitors away from their desks. In a practice where financial margins are tight, solicitors will focus on doing what they have always done, what they know best and what has historically made money. Innovation, experiment, new services and test cases are chancy and possibly expensive activities. Teaching old dogs new tricks is difficult at the best of times and these are not good times for legal practitioners.

Concerns were also raised about the willingness of local magistrates to take on board HRA arguments under, for example, article 6 [fair hearing] though criminal practice solicitors declared that this was the most commonly used section of the legislation. "The magistrates in my view don't like you raising it. The magistrates court is not largely interested in much law: it is not much interested in legal argument either. It is far better founded to deal with factual issues. Its not a particularly appropriate court to try and deal with many legal arguments." Thus, solicitors are cautious about introducing new HRA arguments in court.

Where does this evidence take us? Clearly, the legal profession requires further training of a practical nature to show solicitors the value and utility of the HRA. "If we were frankly a little bit more imaginative and did a little bit more digging and even a bit more thinking, I'm sure the HRA could be applied to a lot more cases than we do at the moment." But the HRA must be placed within the context of a changing and uncertain legal profession. Local solicitors are unsure of their professional futures as publicly funded legal services are dramatically reshaped. In addition, new legal providers, such as "Tesco" may enter the market and undercut traditional services such as conveyancing and wills. Small firms of solicitors are disappearing in the valley and also in the United Kingdom. The general practitioner is under threat and with it comes a reduction of traditional legal services to the local community. New challenges and opportunities emerge and within this context the Human Rights Act remains open for debate and employment. It is truly the most important legislation that has been developed to support and protect those in greatest need. The immediate task is to make it known and make it work.