



Embedding Human Rights in Equalities Impact Assessments



Executive Summary

The City of York Council (CYC) has started to develop an Equalities Impact Assessment (EIA) tool as its main framework for assessing the impacts of policies in the city. The new tool seeks to integrate equalities with human rights impact assessments. Human rights allow public authorities to assess the impact of their policies on everyone, because everyone is entitled to human rights. Statutory equalities duties require public authorities to assess the impact of their policies on groups defined by certain characteristics. An integrated approach thus looks at a wide range

of competing interests through the lens of human rights, while ensuring that policies are not discriminatory towards specific groups. The existing literature shows that by integrating Human Rights and Equalities Impact Assessments (HREIAs) local authorities improve their:

- performance;
- data-gathering capability;
- accessibility;
- transparency and accountability;
- compliance with the law; and
- capacity-building.



Background

HREIAs – or, more frequently, Equalities and Human Rights Impact Assessments (EHRIAs) – are tools to ensure that the equalities and human rights implications of a given policy are taken into consideration when developing that policy (*ex ante*) or to assess the equalities and human rights impact of a policy once this has been implemented (*ex post*).¹

Section 6 of the Human Rights Act 1998 makes it unlawful for a public authority to act in a way that is incompatible with a right included in the Act. This means that when people are interacting with a public body, the officials involved must respect, protect and fulfil their human rights.² Moreover, under **Section 149 of the Equalities Act 2010**, public authorities in the UK have a statutory equality duty to advance equality of opportunities and eliminate discrimination in the exercise of their functions. Section 149 lists a number of protected characteristics that public authorities must consider: age, disability, gender reassignment, marriage and civil partnership, race, religion or belief, sex and sexual orientation. By integrating human rights into EIAs, public bodies are able to better meet their obligations under the Human Rights Act 1998. HREIAs present three distinct advantages:³

- a. They broaden the scope of impact assessments because they apply to everyone and not just to individuals with one or more protected characteristics;
- b. They allow public authorities to balance competing rights, interests and risks;
- c. They highlight any adverse human rights impacts of prospective policies.⁴

CASE STUDY: RENFREWSHIRE PILOT

During 2013 and 2014, a pilot impact assessment was developed in Renfrewshire to assess the human rights implications of changes to the provision of advice services.

- a. Among other things, the evidence gathered as part of the pilot showed that changes to advice services would require **internal and external information sharing**.
- b. The assessment showed that this would likely impact clients' **privacy rights (Human Rights Act 1998, Schedule 1, Article 8)**. An equalities only impact assessment would not have evidenced this specific potentially adverse impact.
- c. While recognising that **information sharing could improve the service provided to customers**, it was recommended that any commissioning or procurement of advice services which included internal or external information sharing should provide clarity as to how data would be shared in accordance with the relevant privacy standards.

SOURCE: Scottish Human Rights Commission, 'Are there examples of human rights impact in the pilot studies?' available at <http://eqhria.scottishhumanrights.com/eqhriapilotaddvalue.html>

The City of York Council has already developed tools to assess the impact of their policies. The 'Better Decision Making' tool was developed to help public servants to assess the equalities, social, economic and environmental impact of new proposals. In addition, the Council is developing an EIA tool, which requires public servants to list the human rights impacts of the policies assessed. The CYC has also developed a guidance on how to fill out EIAs and will soon be piloting the new tool. This policy brief identifies some good practices and principles to ensure that the human rights component of the Council's EIA tool is not limited to a mere tokenistic checklist exercise.



What does a human rights-based approach look like?

Both the Scottish and Australian Human Rights Commissions, the national human rights institutions for Scotland and Australia entrusted with promoting and defending human rights, use the PANEL Principles to anchor their human rights-based approach. A summary of these principles is included in the table below with some general examples:⁵

Principle	Example
Participation of everyone whose rights are affected by the decisions being taken.	The identification of the risks to human rights involved in a given policy is carried out with service users.
Accountability of the authorities involved in the decisions.	The official entrusted to carry out the risk assessment is clearly identified, and information is provided in relation to how a decision can be challenged.
Non-discrimination and equality for all individuals and groups.	Professionals working with service users and service users themselves contribute their assessment of how a given policy may affect them in relation to their human rights as well as their protected characteristics.
Empowerment of individuals and groups to effectively exercise their rights.	Council staff and service users involved in the assessment are provided with education and information about their human rights and the relevance of human rights in their work and lives.
Legality of rights and decisions.	The outcome of a risk assessment complies with requirements set out in the Human Rights Act 1998. For example, a decision to interfere with a given human right is lawful, pursues a legitimate purpose and is necessary and proportionate.

Examples from the UK

Aberdeen City Council has published detailed guidance on how to conduct EHRIAs and has drafted a well-structured template for assessing the equalities and human rights impact of its planned policies and decisions.⁶



5: HUMAN RIGHTS IMPACT ASSESSMENT – TEST (See Paragraph 5 of the Guide.)

Does this function have the potential to impact on an individual’s Human Rights? Evidence of impact and, if applicable, justification where the impact is proportionate should be provided. **The particular function should be lawful, necessary and proportionate.**

Proportionality: The principle of proportionality in human rights law means that when undertaking any function that interferes with a Convention right, **a public authority must interfere with that right as little as possible, only going as far as is necessary to achieve the desired aim.**

Any interference with a Convention right should be carefully designed to meet the objective in question and must not be arbitrary or unfair. Do not “use a sledgehammer to crack a nut”.

(See Appendix 3 of the Guide for more details)

ARTICLES		EVIDENCE
Article 2: Right to life	Yes No	
Article 3: Right not to be subjected to torture, inhumane or degrading treatment or punishment	Yes No	
Article 4: Prohibition of slavery and forced labour	Yes No	

Figure 2

Practice examples can also be found in England, albeit sparse.. Leicestershire County Council, for example, has embedded human rights in its EIAs since 2014-2015 in a similar way to Aberdeen City Council.⁷ Preston City Council’s guidance on EHRIAs includes human rights among other issues that Council officers should consider in addition to the protected characteristics under the Equalities Act 2010, but does not include a comprehensive rights checklist.⁸



Why carry out HREIAs?

The literature and practice on HREIAs⁹ and human rights based approaches¹⁰ suggest that these can add value in the following ways:

Performance – supporting efficient, effective and reasonably priced delivery of public services that respond to the needs and circumstances of people. HREIAs allow public authorities to identify any adverse human rights impacts and determine the best action to prevent, mitigate or remedy such impact.

Data gathering – highlighting (human rights) data gaps, and thereby direct local authorities to collect and act upon improved data.

Accessibility – facilitating relationship-building between public authorities and people through meaningful participation of communities that are affected by the delivery of public services.

Transparency and accountability – enabling the recording of the impact of the decisions and how concerns have been addressed.

Compliance – ensuring that decisions comply with the law, thus reducing the legal and financial risks associated with litigation.

Capacity-building – raising awareness among all those involved in the assessment about the rights and responsibilities involved, and informing learning in view of future decision-making processes.

Examples from the UK

Several public bodies across the UK have integrated human rights into their equalities impact assessment models and processes. Between 2012 and 2014, the Equality and Human Rights Commission Scotland and the Scottish Human Rights Commission¹¹ worked with Fife Council and Renfrewshire Council to improve their equalities impact assessment tools by piloting a joint EHRIA tool.¹²

CASE STUDY: FIFE CITY COUNCIL

- An independent baseline study showed that Council senior officers in Fife had a good understanding of equalities but a relatively poor awareness of human rights. Council officers received training in equality and human rights.
- A pilot of the EHRIA was conducted on the impact of Welfare Reform legislation on lone parents within Fife.
- The pilot showed that the Welfare Reform could impact, for example, the right to life of lone parents, especially those affected by mental health issues by exposing them to a heightened suicide risk.
- The outcomes of the pilot included an increased exchange and sharing of information regarding suicide risk and prevention among frontline staff as well as the implementation of adult and child protection mechanisms.
- The pilot showed the added value of using a human rights based approach. By only focusing on the equalities duty, the assessment would have not evidenced the risk for lone parents. However, because the right to life applies to everyone, the Council staff was not constrained by the protected characteristics listed in the Equalities Act in their assessment of the impact of the proposed reform.

SOURCE: Scottish Human Rights Commission, 'Fife Council Pilot Report' available at <http://eqhria.scottishhumanrights.com/eqhriapilotstudiesfife.html>



Policy recommendations

- **We recommend that the EIA tool currently being developed by the City of York Council is renamed to become the Human Rights and Equalities Impact Assessment (HREIA) tool, and that it formally draws both on the evidence presented in this Policy Brief and includes an evidence-based framework for systematically assessing the human rights impact of Council policies** – the Aberdeen City Council's EHRIA tool provides a good template to start from because it allows public servants to conduct a right-by-right impact assessment, which is based on publicly available evidence.
- **We recommend that the Council's guidance on HREIAs recognises the legal basis for the human rights component of HREIAs** – assessing the human rights impact of a prospective policy is not simply desirable. Public authorities in the UK have a legal duty not to act in a way that is incompatible with one of the rights included in the Human Rights Act 1998.
- **We recommend that any HREIA pilot conducted by the City of York Council is assessed against the criteria set out in 'Why carry out HREIA?' at page 6** – while there is a normative and limited evidence base for HREIAs, the literature and practice suggest that they can improve the local authority's performance, data gathering, accessibility, transparency and accountability, compliance and capacity-building.
- **We recommend that the Council staff receives human rights training adequate to assess the human rights impact of Council policies** – pilots conducted in Scotland demonstrate that Council staff has often a better understanding of equalities than of human rights.



Endnotes

- 1 James Harrison and Mary-Ann Stephenson, 'Human Rights Impact Assessment: Review of Practice and Guidance for Future Assessments' (1 June 2010) *Scottish Human Rights Commission* 14; see also Equality and Human Rights Commission, 'Equality and Human Rights Impact Assessment Project', available at <https://www.equalityhumanrights.com/en/advice-and-guidance/equality-and-human-rights-impact-assessment-project>; Saskia Bakker et al, 'Human Rights Impact Assessment in Practice: The Case of the Health Rights of Women Assessment Instrument (HeRWAI)' (2009) 1(3) *Journal of Human Rights Practice* 436-437; for a wider definition of impact assessments see International Association for Impact Assessment (IAIA), 'What Is Impact Assessment?', available at https://www.iaia.org/uploads/pdf/What_is_IA_web.pdf.
- 2 British Institute for Human Rights, 'Our Assessment of the Human Rights Act in General', available at <https://www.bih.org.uk/Handlers/Download.ashx?IDMF=10385e62-c27e-4385-94e8-8d125a07b4f3>.
- 3 Scottish Human Rights Commission, 'Why assess human rights impact?', available at <http://eqhria.scottishhumanrights.com/eqhriaBusinesscase.html>.
- 4 Ibid.
- 5 Scottish Human Rights Commission, 'What is a human rights based approach to policy and decision making?', available at <http://eqhria.scottishhumanrights.com/eqhriaaddvalpolicy.html>; Australian Human Rights Commission, 'Human rights based approaches', available at <https://humanrights.gov.au/our-work/rights-and-freedoms/human-rights-based-approaches>.
- 6 Aberdeen City Council, 'Equality and Human Rights Impact Assessments' available at <https://www.aberdeencity.gov.uk/services/people-and-communities/equality-and-diversity/equality-and-human-rights-impact-assessments>.
- 7 Leicestershire County Council, 'Equality & human rights impact assessments (EHRIAS)', available at <https://www.leicestershire.gov.uk/about-the-council/equality-and-diversity/equality-human-rights-impact-assessments-ehrias/ehria-overview>.
- 8 Preston City Council, 'Equality analysis and impact assessments', available at <https://www.preston.gov.uk/article/1097/Equality-analysis-and-impact-assessments>.
- 9 See footnote no. 1 above; see also The Danish Institute for Human Rights, 'Human Rights Impact Assessment. Guidance and Toolbox' 13.
- 10 British Institute for Human Rights, 'The Difference It Makes: Putting Human Rights at the Heart of Health and Social Care', p. 8, available at <https://www.bih.org.uk/Handlers/Download.ashx?IDMF=6a2726a4-a220-418f-9f4a-1fc03ca93cdc>.
- 11 The Equality and Human Rights Commission Scotland is the Scottish branch of the Equality and Human Rights Commission, the Great Britain's national equality body, which has been awarded an 'A' status as a National Human Rights Institution (NHRI) by the United Nations. It works in partnership with the Scottish Human Rights Commission, which is an independent public body, accountable to the people of Scotland through the Scottish Parliament. The Scottish Human Rights Commission is also accredited as an 'A Status' NHRI within the UN system.
- 12 Scottish Human Rights Commission, 'Pilot Local Authorities', available at <http://eqhria.scottishhumanrights.com/eqhriapilotstudies.html>.



About this Project

Shaping a Human Rights-Based Approach to COVID-19 in the City of York – Drawing on York's status as the UK's first human rights city, in July 2020 the City of York Council (CYC) asked the York Human Rights City (YHRC) network, a civil society led partnership working closely with statutory agencies, to submit a COVID-related policy action plan. The remit was to summarise policy lessons from the lockdown, and to ensure that responses to a second wave and COVID's longer term legacy were locally calibrated and better informed by human rights principles. Building on a body of research conducted by the YHRC network as well as the action plan, the Centre for Applied Human Rights undertook a project with the following aims: (i) to understand processes of policy co-creation in the city; (ii) to analyse pathways and obstacles to impact; (iii) to adjust and revise policy recommendations as necessary; and (iv) to aid post-COVID recovery in the city.

The project focuses specifically on two priority areas for research: 1) Co-production: this refers to the co-production of policy and related interventions by CYC and the voluntary sector and community groups in York; and 2) Human Rights and Equalities Impact Assessments (HREIAs) as a process accompanying policy development and implementation, and as a tool for learning, both shaping individual policies/interventions in an ongoing manner and providing a collective resource for learning and reflection.

Research Team

The research is led by Paul Gready and Piergiuseppe Parisi, and it is supported by Marynka Marquez, Emma Jackson and Claire Fox.

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ABOUT THE CENTRE FOR APPLIED HUMAN RIGHTS

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