

**Presentation: Holyrood conference**  
**Human Rights and Equalities Scotland-How the New**  
**Landscape affects you**  
**8<sup>th</sup> October 2008, Sheraton Grand Hotel, Edinburgh**  
**Professor Kay Hampton, GCU**

## **Introduction**

My task is to reflect on the presentation made by the previous two speakers and to comment, briefly on the relationship between the two new commissions.

In my brief presentation, I will focus on two key issues that relate mainly to the principles and approaches underlying the work of the EHRC and SHRC.

- i) The interface between Equality and Human Rights
  
- ii) How the two Commissions should work together to deliver seamless support, information and advice so that you, the practitioners and policy-makers can effectively build a fair and just society through your routine day- to-day work.

Recent legislative changes and the different administrative arrangements for addressing inequality and Human Rights in Scotland have quite understandably created apprehension amongst our stakeholders.

As with any change, people become anxious about new requirements, especially in relation to the law and it is the joint responsibility of the SHRC and EHRC to provide you with clear messages about their role, responsibilities and approaches to developing a fair and just society.

Although the theme of this conference is “new landscapes”, I would like to remind participants that the idea of human rights and equality is not new. Human Rights is as old as the Magna Carta and the fight for equality in Britain is more than 60 years old. So while the issues remain the same, the institutional and administrative arrangements for achieving these are transforming to suit 21<sup>st</sup> century developments in developed societies.

As you would have gathered, from the previous two speakers, their fundamental roles are evolving and will focus more explicitly on individual and collective rights. This will create, in the case of Scotland, an effective framework for ensuring the core principles of human rights, ie: freedom, respect, equality, dignity and autonomy.

## **The Interface between Equality and Human Rights**

Turning to the interface between Equality and Human Rights and the working relationship between the SHRC and EHRC - Both commissions possess legal instruments to tackle inequality and human rights in Scotland, albeit at different levels and jurisdiction.

While critics continue to question the benefits of having two Commissions with what they perceive to be ‘similar’ responsibilities in Scotland, this is not necessarily unique. Internationally, it is not unusual for nation states to have separate HR and equality bodies, **but** ideally a harmonisation of the two make much more sense on the ground, given the sentiments reflected in the Vienna Convention. Whilst appearing similar, a scrutiny of the legislative framework, in this regard, will show that each commission possesses very distinct but complimentary responsibilities.

In effect, the Equality Act, 2006 consolidates 6 strands of equality in line with Article 14 of the European Convention. SCHR is much broader, in that in

addition to Article 14, it includes the full range of protection for individuals in line with the UNHRC.

Secondly, each commission has different types of legal powers which play out differently in Scotland given the devolved – reserved political arrangements.

In a nutshell, SHRC has HR responsibility for all devolved policy areas and practice - ECHR has responsibility for equality in all devolved and reserved policy and practice areas as well as HR for reserved areas.

## **What does this mean in practice?**

In terms of the Scotland Act, 1998, the following are outlined as devolved and reserved:

### **Devolved Matters**

Health, Education, Training, Local Government, Aspects of Transport, Social Work, Housing, Economic Development

Legal System, Law and Order, The Environment, Agriculture, Fisheries and Forestry, Sports and The Arts

### **Reserved Matters**

Constitution of UK, UK Foreign Policy, UK Defence and National Security (including Immigration policies), UK Fiscal, economic and monetary system, Common Markets for Goods and Services, Employment Law, Social Security

## **Overview of Commissions**

### **SHRC:**

SHRC was established by Scottish Commission for Human Rights, 2006 as a requirement of the Scotland Act, 1998 and is grounded in principles of HR. Established in terms of Paris Principles it is therefore independent of

Governments and in a position to challenge the most powerful of state institutions with no interference from Governments.

SHRC focus is on human dignity and a developing a human rights culture through balancing rights and responsibility - fairness and equality are core to human rights and is implicitly noted throughout with special mention of anti-discrimination in Article 14. The duty of nation-states are to respect, protect, promote and realise HR

- Focus is on the impact on individuals rather than with an equality strand
- Fills gaps left by equality strands through interpretation and broadening anti-discrimination protection (refugees)
- Strengthens the strands by balancing rights and responsibilities and competing rights through mechanisms of proportionality, promotion and good relations

By making public bodies accountable for their decisions, human rights can protect vulnerable individuals against institutional malpractice, abuse and discrimination.

SHRC will focus on the treatment of people and in doing so will cut across different equality areas-, eg scrutinising abuse of old people in care, treatment of children and patients in mental health hospitals.

So in dealing with the vulnerability of these groups the SHRC will invariably be working in the traditionally designated equality fields.

## **EHRC**

The EHRC was established by Equality Act 2006 which is reserved but impacts on devolved areas - The EHRC is responsible to Equality Unit: Sponsor Department.

The objective of the EHRC is to harmonise equality strands, simplify legislation and make equality and human rights issues more manageable for organisations, structures and processes.

The EHRC, in its response<sup>1</sup> to the recent consultation paper, argues that the new Act must go beyond simplifying and harmonising and it calls for “a constitutional equality guarantee” and for a “new deal in fairness” to bring about social change.

This will be underpinned by encouraging public authorities to comply with Section 6 of Human Rights Act, 1998<sup>2</sup>

## **Potential Challenges**

A possible **Challenge** for us is that: Equality might be the focus rather than Human Rights - which will be secondary or an add-on strand

**Second Challenge:** Approach to addressing HR shortcomings within institutions will be discrimination driven rather than rights based.

**Third Challenge:** Addressing the Gaps in provision: Ones that fall between Human Rights and Discrimination. Non-integrated approaches taken to address social, economic and cultural issues as a result of drift towards the traditional comfort zones.

---

<sup>1</sup> “Fairness, a new contract with the public”, EHRC, July 2008

<sup>2</sup> Ie: compliance with European Convention and thus indirectly, Scottish Commission for Human Rights

**Fourth Challenge:** Failure to create an HR culture in Scotland as some find it easier to engage with anti-discrimination and notions of equality without understanding how equality fits within HR

**Fifth Challenge:** Tensions between Reserved and Devolved policy and practice areas.

## **Opportunities**

I feel certain that the two commissions can work in a complementary way to strengthen our fight in Scotland against all forms of discrimination, inequality rights abuse given our inherent common goals.

In Scotland, we have a tradition of working in partnership to achieve common goals and outcomes in the equality field. I see little reason for the two commissions to do otherwise in regard to equality and Human rights in the new arrangement.

While it is important to have clarity with regard to legal responsibilities in terms of devolved and reserved issues on the ground, individuals are understandably more concerned with the day-to-day reality of discrimination and the violation of their dignity and civic rights.

Both Commissions will deal with issues at an individual as well as an institutional level, both will influence policy and practice - this does not mean duplication of resources but careful planning, negotiation and consensus so that institutions, communities and individuals do not get mixed messages.

It is therefore the responsibility of both commissions to ensure the delivering of consistent information on common areas and a seamless service of support and interventions on for all who live in Scotland.

For example, taking a 'rights' based approach; the SHRC will enable public institutions to employ consistent and fair methods for assessing situations of dispute and providing solutions for all by striking a balance between individual rights and collective community rights.

This could mean, (as Alan Mentioned) using its power to enter places of detention, to inspect, interview and report to Parliament. Moreover, SHRC would need to intervene in cases, give evidence or conduct enquiries into policies and practices on a regular basis

On the other hand, the ECHR will act as one source of information and advice and tackle discrimination on multiple levels, including race, religion, sexual orientation, age, disability and gender.

It has the broader powers, including the power to conduct a judicial review on Human Rights issues, but only in reserved areas – a power that the SHRC does not have - but with the consent of the SHRC, The EHRC can use its powers in the devolved areas of Scotland.

Similarly, while SHRC does not have enforcement powers, if there is institutional reluctance to address human rights abuse it will work with ECHR to bring pressure on organisation to effect change.

So in effect, individuals in Scotland have a double layer of protection and the task of the two commissions is to ensure that no area of discrimination or human rights abuse falls through the net.

In this regard, I feel certain that both commissions will honour the sentiments of the Vienna Declaration, which stresses the importance of focusing on traditional areas of discrimination as well as the universality of Human Rights.

It is therefore not just desirable, but essential, that both commissions work in an inter-related and indivisible way to achieve race equality in Scotland.

## **Conclusion**

In conclusion, I want say that inequality and human rights abuses are a feature of Scottish Society.

It is therefore the responsibility of ECHR and SHRC to ensure that we work corporatively, rationalise resources, strengthen efforts and streamline our strategies to avoid duplication, contradiction of messages and more importantly, gaps in our work due to each feeling that it is the responsibility of the other.

You on the other hand, as practitationers and concerned citizens, should demand, nothing less of the commissions than evidence of progress year on year, on inequalities, quality of life, life chances and enhanced understandings of individual rights. This must be backed by tangible outcomes in terms of individual and collective experiences of fairness, dignity and justice.

The commissions on the other hand, can only provide evidence of progress, if you seek and follow our guidelines, advice and support. To realise the change we want to see, the two commissions regard you as core partner - as it is you after all who will be responsible for making changes on the ground.

I thank you for listening