

Human Rights Policy

Purpose

To clearly set out the Authority's responsibilities, structures and scrutiny processes relating to the Human Rights Act 1998.

Duties placed upon the Authority

The Police and Justice Act 2006 states that 'Police authorities shall monitor the performance of the police force maintained for its area in complying with the duties imposed on that force by the Human Rights Act 2008.

The Human Rights Act places a duty on all public authorities, including the police and police authorities, to act in a way which is compatible with 'convention rights'. Police officers should respect and protect human dignity and maintain and uphold the human rights of all persons. Police staff are also covered whenever they perform public functions. There are special exemptions, but very few (if any) of these exemptions apply to policing.

The Human Rights Act allows individuals who believe that their 'convention rights' have been infringed to bring legal proceedings, including a claim for damages. A set of detailed standards derived from the rights has been devised and should be used to assess performance of the police in complying with the HRA. A summary of the standards is provided in Appendix 1.

Although the duty on every police authority to monitor the performance of the police in complying with the Human Rights Act 1998 is additional to the general duty to maintain an efficient and effective police force for its area, the two duties complement each other. In addition, the duties imposed on the police by the Human Rights Act 1998 complement their duties and obligations under other legislation. So, as a general rule, acts of the police in complying with legislation such as the Police and Criminal Evidence Act 1984, the Regulation of Investigatory Powers Act 2000 (and the associated Codes of Practice under each) and anti-discrimination and equality legislation will be compatible with the Human Rights Act 1998.

Monitoring

The Authority will measure compliance through the recognition of the standards applicable to policing. The performance of the police as a whole will be monitored for compliance with the Human Rights Act in the following areas:-

- training;
- policy;
- complaints, discipline and civil actions against the police;
- human rights awareness; and
- information or reports from partner organisations.

Structures

In order to comply with its duties, Cheshire Police Authority:-

- has a nominated Member and officer who lead on human rights;
- has a human rights policy which it reviews annually;
- Engagement Committee considers human rights annually and has human rights written into the terms of reference as a core area of consideration;
- has a committee structure which co-ordinates the authority's response to human rights and involves lead Members, human resources, professional standards, counter terrorism, performance and diversity, thereby ensuring that regular and effective scrutiny of the force is undertaken across all key areas of business; and
- considers where relevant and based on local circumstances, whether it is appropriate to include targets in relation to human rights in each chief officer's PDR objectives.
- Standards Committee upholds the principles of human rights.

Scrutiny

In monitoring the performance of the police force maintained for its area in complying with the duties imposed on that force by the Human Rights Act 1998, every police authority should have regard to the fact that other statutory bodies have been established to deal with certain aspects of policing. It is not necessary or desirable to replicate the functions of those other bodies and police authorities should co-ordinate their activities with those of other bodies and co-operate with them. It may be enough to obtain and review the reports, research and recommendations issued by these other bodies and, where they touch on issues of compliance with the Human Rights Act 1998, to assess the response of the police to them.

The duty imposed on every police authority to monitor the performance of the police force maintained for its area in complying with the Human Rights Act 1998 should be informed by three broad principles:

- It is the performance of the police as a whole that has to be monitored: i.e. success as well as failure.

- A positive dialogue between the police authority and the police in which problems are recognised and addressed as they arise is by far the preferred model.
- The process of monitoring should not be retrospective. It is how the police are complying with their obligations under the Human Rights Act 1998 now that has to be monitored, not how well they may or may not have complied with those obligations in the past.

As part of regular monitoring and challenge of the Constabulary, the Authority:-

- ensures that human rights compliance is tested against relevant areas including: training; discipline; grievance; and complaints;
- has two lead Members for diversity who are involved in dip sampling Constabulary equality impact assessments
- monitors Constabulary management and retention policies and practices which cover IT and forensics including CCTV, forensics, surveillance and intelligence via an annual Human Rights report to Engagement Committee
- receives, monitors and challenges information on relevant external Constabulary activity, including public order, use of force, covert policing, search and seizure or search warrants and use of stop and search.

The Authority has a Contact Plan which cites Human Rights as one of the key areas which the Authority will communicate, consult and involve the community. The Contact Plan 2009–12 outlines how the Authority communicates, consults and engages with citizens and was approved by Engagement Committee on 12 May 2009 (Minute 3).

Members, officers and volunteers of the police authority receive appropriate and ongoing human rights training and ensure that effective training is in place and that appropriate questions are asked on custody visits.

Mark Sellwood
Chief Executive

3 November 2009

HUMAN RIGHTS STANDARDS APPLICABLE TO POLICING

The standards applicable to policing are summarised below.

PROTECTING THE PUBLIC

The police are under an obligation to take preventative operational measures to protect individuals whose lives are at risk from the criminal acts of others. They should take all steps that could reasonably be expected to avoid a real and immediate risk to life about which they know or ought to have known. This obligation can also arise where the risk to life does not come from the criminal acts of others: for, example, it can extend to an obligation to take reasonable steps to prevent self-imposed risks to life (e.g. suicide). Failing to pass on important information concerning a risk to an individual's life to the appropriate person or body can breach this obligation.

THE USE OF FORCE

Article 2 applies to the use of lethal force and requires that such force be no more than is 'absolutely necessary' to defend any person from unlawful violence, to make an arrest or to stop a riot. But it is unlikely to be 'absolutely necessary' to use lethal force to make an arrest or to stop a riot except where an identified individual is using violence that poses a threat to life or limb.

THE PROHIBITION ON ILL-TREATMENT

Under Article 3, torture and cruel, inhuman and/or degrading treatment and/or punishment are prohibited absolutely.

INVESTIGATION AND FOLLOW UP IN CASES OF DEATH OR SERIOUS INJURY

Effective reporting and review procedures should be put in place regarding injuries and/or deaths resulting from the use of force and firearms by police officers. In cases of death and serious injury, a detailed report should be sent to the competent authorities. In addition, an effective official investigation is required whenever an individual is killed as a result of force being used by an agent of the state and/or when it is arguable that there has been a breach of Articles 2 or 3 of the ECHR. The investigation must be prompt, thorough, impartial and careful so as to ensure accountability and responsibility.

INFORMERS AND UNDERCOVER OFFICERS

It is legitimate for the police to use informers and undercover officers in the investigation of crime but informers and undercover officers should not incite an individual to commit a crime he or she would not otherwise commit.

PUBLIC ORDER

Everyone has the right to freedom of peaceful assembly and of association. These are qualified rights which can be restricted, but only where a restriction is prescribed by law, legitimate and necessary and proportionate. The right to peaceful assembly is not confined to static meetings; it also covers marches and processions.

CRIMINAL INVESTIGATIONS

Most criminal investigations will interfere with privacy. As a basic rule, they must be prescribed by law, legitimate, necessary and proportionate. Criminal investigations should also be objective and fair; and they should be sensitive and adaptable to the needs of vulnerable persons. The retention of information, data and samples will usually amount to an interference with privacy. Therefore it must also be prescribed by law, legitimate, necessary and proportionate.

SURVEILLANCE

All covert investigations must comply with the Regulation of Investigatory Powers Act 2000 and associated codes of practice. The use of CCTV cameras, even in public places, and the retention of data, can raise privacy issues under Article 8 ECHR and therefore must be prescribed by law, legitimate, necessary and proportionate. There must be proper methods of accountability regarding both the authorisation and the use of police surveillance and other information-gathering activities.

SEARCH AND SEIZURE

Search and seizure interfere with privacy and therefore must be prescribed by law, legitimate, necessary and proportionate. The right to privacy can extend to business or work premises.

ARREST AND DETENTION

Everyone has the right to liberty and security of their person. No one shall be subjected to arbitrary arrest or detention. Arrest and detention should be carried out strictly in accordance with the law. In ordinary criminal cases, there must be a reasonable suspicion that an individual has committed a criminal offence before an arrest is made. That presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence. Any unnecessary force used against those detained is likely to be classified as inhuman. All persons under any form of detention or imprisonment should be treated in a humane manner and with respect for the inherent dignity of the human person. Those detained have a right to a medical examination on admission, their health should be fully protected and medical attention should be provided when required.

ACCESS TO A LAWYER

Everybody detained by the police should be informed of the right to be assisted by a lawyer upon arrest.

QUESTIONING

Resort to violence, threats or methods of questioning that impair a suspect's capacity to make decisions or judgments is prohibited. In addition, all suspects have the right to remain silent during questioning, although, within limits, adverse inferences can be drawn from silence in certain circumstances. The time and place of all questioning should be recorded.

THE RIGHT TO BE BROUGHT PROMPTLY BEFORE A COURT

Everyone arrested for a criminal offence has the right to be brought promptly before a court.

BAIL

The general presumption is that those awaiting trial should not be detained, but released on bail. Bail may be refused if it is necessary and for a good reason, such as a fear of absconding, interference with the course of justice and protection of others. The reasons for refusing bail must be both relevant and sufficient. Bail may be conditional.

CHILDREN

Where children are concerned, the best interests of the child should always prevail. Arrest, detention or imprisonment of a child should be used only as a measure of last resort and for the shortest appropriate period of time. In principle, no information that may lead to the identification of a child offender should be published.

VICTIMS

Victims should always be treated with compassion and respect for their dignity. Victims are entitled to access the mechanisms of justice and to be treated without discrimination. Victims should be informed of the timing and progress of the investigation of their cases and subsequent proceedings.

EQUALITY IMPACT ASSESSMENT

POLICY	HUMAN RIGHTS POLICY	
<p>Description</p>	<p>Aims To policy sets out the Authority's responsibilities, structures and scrutiny processes relating to the Human Rights Act 1998.</p> <p>Which individuals and organisations are likely to have an interest in or likely to be affected? Any member of the public coming into contact with the Constabulary or Authority.</p> <p>General comments:- The Police and Justice Act 2006 states that 'Police authorities shall monitor the performance of the police force maintained for its area in complying with the duties imposed on that force by the Human Rights Act 2008.</p> <p>The Human Rights Act places a duty on all public authorities, including the police and police authorities, to act in a way which is compatible with 'convention rights'. Police officers should respect and protect human dignity and maintain and uphold the human rights of all persons. Police staff are also covered whenever they perform public functions. There are special exemptions, but very few (if any) of these exemptions apply to policing.</p> <p>The policy was developed with the approval of the lead Member for Human Rights.</p>	
DOES THE ACTIVITY INCLUDE MECHANISMS TO:-		
Promote equality of opportunity	Yes	
Eliminate discrimination that is unlawful.	Yes	
Eliminate harassment	Yes	
Promote positive attitudes	Yes	
Encourage participation	Yes	
Take steps to meet people's needs, even if this requires more favourable treatment.	Yes	
Provide an opportunity for people to highlight the barriers presented by this policy?	Yes	

DIVERSITY/GROUP	IMPACT H/M/L	REASONS/ COMMENTS
Race	M	The impact should be positive
Gender	M	The impact should be positive
Disability	M	The impact should be positive
Age	M	The impact should be positive
Sexual orientation	M	The impact should be positive
Religious belief	M	The impact should be positive
Transgender or transsexual individuals	M	The impact should be positive
Could any high impact be justified on the grounds of promoting equality of opportunity?		Yes
Is a full assessment necessary?		No
Could any high impact amount to an adverse impact in this policy?		No

I am satisfied that this policy has been successfully impact assessed.

I understand the impact assessment of this policy is a statutory obligation and that, as owners of this policy, we take responsibility for the completion and quality of this process.

Signed (completing officer) 3 November 2009



Signed (Chief Executive) 3 November 2009

