

18 November 2015

Christina McKelvie MSP
Convener of the European and External Relations Committee
The Scottish Parliament
EDINBURGH
EH99 1SP

Dear Convener,

Human Rights Inquiry

I am writing in connection with the Committee's inquiry on Human Rights and the potential impact in Scotland of proposed changes to the current legislation.

I have noted the detailed background in the SPICe Briefing and know that others will be writing to you in detail on the legal implications. As Ombudsman, I wanted to put on record my concerns that changes in this area may reduce respect for the rights of individuals and the impact that may have on decisions made about them. I am doing so because respect for rights play an important role in good decision-making by public organisations and, as Ombudsman, I am clearly concerned with good decision-making.

The role of an Ombudsman is not and never has been completely fixed. However, looking at both its history and the many and various ways Ombudsmen operate around the world, a critical part of the role is to help to support the respect for rights by the State and public organisations. And, in particular, that when decisions by powerful, public organisations are made which impact on an individual or group of individuals it can be demonstrated that those decisions take into account the rights those individuals have. In 1993, the office holder in an office which preceded the creation of mine said that "maladministration", the key standard by which an Ombudsman assesses the actions of organisations would include an : "Unwillingness to treat the complainant as a person with rights"¹.

The Parliamentary Assembly of the Council of Europe has also commented on a growing link between the Ombudsman and human rights that has evolved over a number of years. In 2003 they said: "the development of methods of human rights is

¹ Parliamentary Commissioner for Administration, *Third Report 1993-94*, 3-4

now included in the standards to be respected by good administration, on the basis that administrative actions which do not respect human rights cannot be lawful:²

In 2013 they reaffirmed: that ombudsman institutions, which have the responsibility of protecting citizens against maladministration, play a crucial role in consolidating democracy, the rule of law and human rights³.

I mention this not to emphasise the importance of my office but to explain why I have decided that it is appropriate for me to highlight concerns that proposed changes to the current Human Rights legislation may lead to a diminution in respect for the rights of citizens. As the Committee will be aware the Ombudsman is not a political role and, indeed, I have a duty to remain independent of politics. This means I will only participate in debate when it impacts directly on this office or when my role means I consider the perspective we have may be useful to the Scottish Parliament, the organisation to which this office is ultimately accountable.

In Scotland, the passing of the Human Rights Act 1998 has led in the public sector to an increased awareness of the importance of thinking about rights on a day to day basis. The work of the SHRC in Scotland to help front-line staff translate rights into practice is innovative and creative. The Care Inspectorate has recently said they will incorporate human rights directly in to their standards to help support this work further. Scotland's National Action Plan, to which I contributed, demonstrates that this work is on-going but all of this work is clearly aided by the fact that there has been stability and broad agreement on what the rights are and how they can be legally defended. There is not yet sufficient detail about the proposed changes to assess what their impact may be but I am concerned that the discussions that surround them and any confusion about what people's rights or how they can be enforced as a result of proposed changes may undermine much of this good work. It is our experience that clear and consistent standards provide a useful aid to decision-making. The European Convention of Human Rights has a long, established history and that not only provides confidence but also gives the current system of rights a significance and status that goes beyond national boundaries and provides an important emphasis on the dignity that should be accorded to all humans.

Until we see the detail of the proposals it is difficult to comment on what the impact will be but, to date, I am uncertain what the benefits of moving from this long-established and increasingly well-understood system of rights to a new system and am concerned about a potential decrease or confusion in the focus on rights by decision-makers in the public services as a result.

Yours sincerely

Jim Martin
Ombudsman

² S3, PACE Recommendation 1615 [2003]

³ S1 PACE Resolution 1959 [2013]