

WARWICKSHIRE POLICE AUTHORITY - 28th JULY 2010

Human Rights Policy

Report by Policy Officer (Resources)

Summary

This report presents a Human Rights Policy for consideration and approval by the Authority

Recommendation

That the Authority adopts the Human Rights Policy put forward in this report

1. Police authorities have a legal duty to “...*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 1998.*” The APA produced a guide to assist police authorities in this duty by providing the human rights legal framework set against the context of policing. The guide included a toolkit to assist authorities in meeting this monitoring function. The drafting and adoption by police authorities of a human rights policy was strongly recommended as a key part of any framework.
2. At its meeting on 9th June, the Equality, Diversity and Human Rights Panel considered a draft Human Rights Policy, drawn together from APA guidance and examples from other police authorities. After consideration and a few suggestions to improve the document, the Panel recommended the policy for approval by the Authority. The policy is at **Appendix A** to this report.
3. The Authority are asked to approve the policy, which has been equality impact assessed.

Dave Stenning
Policy Officer (Resources)

WARWICKSHIRE POLICE AUTHORITY

HUMAN RIGHTS POLICY

Purpose

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

1. INTRODUCTION

- 1.1 The Police Authorities (Particular Functions and Transitional Provisions) Order 2008 made under the Police and Justice Act 2006 provides that:-

“a police authority 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 1998”.

- 1.2 This new monitoring duty came into effect on 14 March 2008 and is additional to and complements the general duty on police authorities to maintain an efficient and effective police force for its area.
- 1.3 The human rights monitoring duty also complements the Authority's existing equalities and diversity monitoring practices. However, the Authority recognises the need to ensure that aspects of human rights monitoring that do not relate to the equalities duties are properly considered.
- 1.4 This Human Rights Policy sets out the human rights legal framework in the context of policing and includes an Action Plan on how the Authority proposes to meet its human rights monitoring duty. Where appropriate, guidance issued by the Association of Police Authorities (APA) *“Human rights guidance for police authorities – monitoring compliance with the Human Rights Act 1998”* has been used in formulating this Policy.

2. THE HUMAN RIGHTS ACT 1998 (HRA)

- 2.1 The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) is an international treaty of the Council of Europe. It was adopted in 1950 and ratified by the UK in 1951 and came into force in 1953. The ECHR provides a mechanism for individuals to ensure their ECHR rights against state parties. It is administered by the European Court of Human Rights in Strasbourg, and the Committee of Ministers of the Council of Europe.
- 2.2 The HRA came into force on 2 October 2000 and gives people in the UK the opportunity to enforce their ECHR rights in British courts rather than having to incur the cost and delay of taking a case to the ECHR. The HRA requires all legislation (primary and secondary) to be interpreted so as to be compatible

with 'Convention rights' if possible. Although this applies to all legislation affecting the police, questions of statutory interpretation are primarily for the courts. An important matter for policing is the duty that the HRA places on all public authorities, including the police and police authorities to act in a way which is compatible with 'Convention rights'. Police staff are also covered whenever they perform public functions. There are special exemptions but very few (if any) apply to policing.

- 2.3 The HRA allows individuals who believe that their 'Convention rights' have been infringed to bring legal proceedings, including a claim for damages.

3. CONVENTION RIGHTS DEFINED

- 3.1 The rights protected by the HRA are called 'Convention Rights' and are set out in Schedule 1 to the HRA. The subject matter of these rights is as follows:-

- Article 2 The right to life
- Article 3 Prohibition on torture
- Article 4 Prohibition on slavery and forced labour
- Article 5 Right to liberty and security
- Article 6 Right to a fair trial
- Article 7 No punishment without law
- Article 8 Right to respect for private and family life
- Article 9 Freedom of thought, conscience and religion
- Article 10 Freedom of expression
- Article 11 Freedom of assembly and association
- Article 12 Right to marry
- Article 14 Prohibition on discrimination
- Article 1, Protocol 1 Protection of property
- Article 2, Protocol 1 Right to education
- Article 3, Protocol 1 Right to free elections
- Article 1, Protocol 6 Abolition of the death penalty
- Article 2, Protocol 6 Death penalty in time of war

- 3.2 These rights have to be read with Article 16 (restrictions on political activities of aliens), article 17 (prohibition on abuse of rights) and Article 18 (limitation on use of restrictions on rights) (s.i.(1)). The full text of these Articles is set out in the APA guidance.

- 3.3 Convention rights are not all of equal status. The protection afforded under the ECHR and the HRA varies from right to right. The ECHR recognises three categories of Convention rights:-

- Absolute Rights - those rights that are strongly protected and cannot be restricted even in times of war or other public emergency.
- Specific Rights those rights that are less strongly protected than absolute rights. They can be restricted in times of war or other public emergency.
- Qualified Rights those rights that are to be balanced against the public interest and which can be restricted in times of war or other public emergency. Qualified rights are set out in positive form but can be restricted where it can be shown that a restriction is:-

- prescribed by law;
- legitimate; and
- necessary and proportionate.

3.4 The full text of the Convention rights Articles is set out in the APA guidance.

4. NON-DISCRIMINATION

4.1 There is a general principle of non-discrimination under the HRA but it is limited to non-discrimination in the enjoyment of Convention rights. The principle of non-discrimination in effect prohibits a difference in treatment between two similar groups that has no objective and reasonable justification. As a general rule, differences in treatment based on race, gender or disability, for example, will be very hard to justify.

5. POSITIVE OBLIGATIONS

5.1 In general, the HRA only imposes *negative* obligations, e.g. an obligation not to subject individuals to ill-treatment and an obligation not to interfere with privacy (save where that interference can be justified). However, sometimes *positive* obligations are imposed requiring certain action to be taken e.g. protecting one detainee from another. These can be very important in a policing context. The most important positive obligation for the police is the obligation to take reasonable measures to preserve life. As a general rule, the police are obliged to do all that could be reasonably expected of them to avoid a 'real and immediate' risk to life which they knew or ought to have known about.

6. HUMAN RIGHTS STANDARDS APPLICABLE TO POLICING

6.1 The first stage to measuring compliance with the HRA is the development of meaningful standards against which the performance of the police can be monitored. Since the HRA protects Convention rights, these standards must be based on the ECHR. Detailed standards applicable to policing derived from the rights in the ECHR, as interpreted by the ECHR or by British courts, have been devised and are set out and fully described in the APA guidance. They cover the following:-

- protecting the public;
- the prohibition of ill-treatment;
- the use of force;
- investigation and follow-up in cases of death and serious injury;
- public order;
- criminal investigations;
- surveillance;
- informers and undercover officers;
- search and seizure;
- arrest and detention;
- reasons;
- access to a lawyer;
- questioning;
- the right to be brought promptly before a court;
- bail;

- children;
- victims and vulnerable witnesses.

7. OVERARCHING PRINCIPLES

7.1 In addition to the standards above, the Force is expected to abide by the following overarching principles in the day-to-day policing of the county:-

- in the performance of their duties, police officers should respect and protect human dignity and maintain and uphold the human rights of all persons;
- police officers should not discriminate (or aid or incite others to discriminate) on any grounds including race, colour, sex, language, religion, disability, age, sexual orientation, marital or family status, political or other opinion, national or social origin, property, birth or other status. Any difference in treatment shall be required to be justified and proportionate;
- the protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights;
- police officers have a duty:-
 - to protect life and property;
 - to preserve order;
 - to prevent the commission of offences;
 - where an offence has been committed, to take measures to bring the offender to justice.
- when carrying out their duties, police officers should obey and uphold the law, protect human dignity and uphold the human rights and fundamental freedoms of all persons as enshrined in the HRA, the European Convention on Human Rights and other relevant international human rights instruments;
- police officers should, as far as is practicable, carry out their functions in cooperation with, and with the aim of securing the support of, the local community;
- police officers should act with fairness, self-control, tolerance and impartiality when carrying out their duties. They should use appropriate language and behaviour in their dealings with members of the public, groups from within the public and their colleagues. They should give equal respect to all individuals and their traditions, beliefs and lifestyles provided that such are compatible with the rule of law;
- police officers should act with integrity towards members of the public and their colleagues so that confidence in the police is secured and maintained. They should avoid all forms of behaviour that may reasonably be perceived to be abuse, harassment, bullying or victimization.

- 7.2 The above standards and overarching principles will be used by the Authority in assessing the performance of the Constabulary in complying with the HRA.

8. PRINCIPLES OF SCRUTINY

8.1 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 (e.g. IPCC) 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.

8.2 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 (e.g. Warwickshire's "embedded governance" framework) 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.

9. MONITORING

9.1 Whilst it is the performance of the police as a whole that has to be monitored for compliance with the HRA, the APA guidance identifies the following common areas that police authorities should consider for monitoring purposes:-

- **Training** – effective training in human rights principles and practice is fundamental to instilling a human rights based awareness and approach to policing in new recruits and experienced police officers.
- **Policy** – all police policies should set a framework for police decision-making and conduct that requires, and seeks to ensure, human rights compatibility in all areas of police work.
- **Complaints, discipline and civil actions against the police** – these provide an important means of monitoring the performance of the police in complying with the HRA since they each subject the behaviour of individual police officers to scrutiny, both external and internal.

- **Human rights awareness** – the promotion of human rights awareness is considered to be vital not only to facilitate the development of a tangible human rights culture within the police, but also to demonstrate the commitment of the police to human rights in their dealings with others.
- **Information and reports from partner organisations** – information and reports from partners about police activity can be helpful in monitoring human rights compliance in a proportionate manner. Reports from Custody Visitors and the Independent Police Complaints Commission are particularly relevant to the new duty.

10. POLICE AUTHORITY COMMITMENT TO HUMAN RIGHTS DUTIES

10.1 This Human Rights Policy confirms the Authority's commitment to the fulfilment of human rights duties within Warwickshire Police and within the Police Authority itself. In addition:-

- The Chair of the Authority's Equality, Diversity and Human Rights Panel (EDHRP) is the lead member and the Policy Officer (Resources) lead officer on human rights for the Police Authority.
- Whilst specific responsibility is contained within the terms of reference of EDHRP, human rights issues will be mainstreamed across the work of the full Authority, its committees as appropriate (e.g. Professional Standards Committee) and other means (e.g. ICV scheme).
- The Authority now has a human rights policy which it will review annually;
- The EDHRP will consider human rights annually and has human rights written into its terms of reference as a core area of consideration;
- The Authority has a committee structure which, through the EDHRP, coordinates 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
- The Authority will consider 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.

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

- Will monitor Force management and retention policies and practices which cover IT and forensics including CCTV, forensics, surveillance and intelligence via an annual Human Rights report.
- Will receive, monitor and challenge information on relevant external Force activity, including public order, use of force, covert policing, search and seizure or search warrants and use of stop and search.
- Will ensure that members, officers and volunteers of the police authority will receive appropriate and ongoing human rights training to ensure that

effective training is in place and that appropriate questions are asked on custody visits.

11. ACTION PLAN

- 11.1 An Action Plan has recently been endorsed by the EDHRP, which shows how the Authority will carry out its monitoring function of the Constabulary's compliance with the duties imposed by the HRA and fulfil its own responsibilities. The EDHRP will monitor progress against the plan.

12. PUBLISHING THE POLICY

- 12.1 The Authority is committed to ensuring that information relating to its services is accessible to the whole community. The Authority will seek to ensure that any barriers to effective communication and consultation are removed. This Human Rights Policy is published on the Authority's website at www.warwickshirepa.gov.uk

13. COMPLAINTS

- 13.1 If a member of the public believes that they have been affected by a failure of **Warwickshire Police Authority** to comply with its statutory obligations in relation to human rights matters, they should complain to:-

The Chief Executive
Warwickshire Police Authority
3 Northgate Street
Warwick
Warwickshire
CV34 4SP

Telephone: 01926 736363
Email: policeauthority@warwickshire.gov.uk

- 13.2 Complaints can be made in writing, by email or by telephone, or in person by prior appointment. If you wish to discuss a possible complaint or other issue please contact the Chief Executive to the Authority. The Authority will acknowledge complaints immediately and will contact the complainant to discuss the most appropriate way to progress and deal with the problem.
- 13.3 The Authority aims to complete an initial investigation and respond to the complainant within 28 days (although exceptional or complex cases may take longer). All complaints made in respect of this Policy will be monitored by the Chief Executive and reported to the Authority.
- 13.4.1 Where a complaint relates to the actions of an individual member of staff this will be dealt with under disciplinary procedures. Where a complaint relates to the actions of an individual member of the Authority this will be dealt with under the Authority's Code of Conduct in respect of members of the Authority.
- 13.5 This procedure covers Warwickshire Police Authority only. Complaints regarding Warwickshire Police and human rights should be made through the Force itself (www.warwickshire.police.uk).