

PE1695/G

Petitioners' submission of 5 March 2019

“THERE WAS (ALSO) A COMMONLY EXPRESSED VIEW THAT POLITICAL STATEMENTS ON HUMAN RIGHTS, HOWEVER WELCOME AND WELL INTENTIONED, NEVERTHELESS AMOUNT TO LITTLE MORE THAN RHETORIC, WHEN NOT SUFFICIENTLY PUT INTO PRACTICE.”

That is a quote from the [REPORT](#) of 10/12/18, by the First Minister's Advisory Group on Human Rights. The woeful “Submission” (PE1695/F) from Government regarding our Petition, PE1695, follows a similar vein.

Government have completely ignored, and presumably, have learned nothing, re “Access to Justice in respect of Human Rights” from the aforementioned very detailed Report by a Group of undoubted Experts in Human Rights, led by Professor Alan Miller. Neither do they acknowledge the Report by the Equalities and Human Rights Committee of the Scottish Parliament. ([Getting Rights Right: Human Rights and the Scottish Parliament](#), 26/11/18). That Committee also took evidence from several Human Rights Experts.

As was stated in both Reports, this year marks the 70th anniversary of the Universal Declaration of Human Rights. It is also the 20th anniversary of The UK Human Rights Act 1998 and The Scotland Act 1998. This was supposed to mean an additional layer of Human Rights protection in Scotland.

Our Petition, PE1695, is solely about lack of access to justice in Scotland, regarding Human rights. We, and others in our position, were continually told we had no rights, our complaints were continually dismissed, we were unable to find anyone conversant with Human Rights to give us advice and ultimately unable to access expert Human Rights Legal Assistance. Regarding our initial Petitions (PE1263 & PE1542), none of the Scottish Government relevant Regulations re the Southern Isles Milk Quota Ring Fence ever mentioned Human Rights or the Rights of the individuals concerned. Neither did any of the relevant Scottish Government “Consultations” or “Reviews”.

Quote from the REPORT of The First Minister's Advisory Group.

“Progress then has evidently been made on Scotland's Human rights' journey, HOWEVER, it is critical to acknowledge that there are GAPS AND SHORTCOMINGS TOO.” “TOO MANY PEOPLE ARE NOT ENJOYING THEIR RIGHTS IN EVERYDAY LIFE.” “In short, there is inadequate practical implementation of rights and there is everyday accountability deficit.”

“ALL THIS LEADS TO A DENIAL OF ACCESS TO JUSTICE. This has been highlighted by civil society as a major problem, but it is a practical problem with practical solutions. It is a matter of political choices and priorities. What is needed is the POLITICAL WILL TO IMPLEMENT THE SOLUTIONS.”

“No matter what framework may be put in place, experience has shown that Human Rights stand or fall depending on how much they can be practically implemented in everyday life.”

A Key Finding on Process:- “There was inconsistency and variability in human rights-based policy making across different policy areas. Public bodies did not have adequate human rights capacity. This applied to both service providers as well as to everyday accountability bodies such as inspectorates, regulators and adjudicators.”

A Key Finding from Public Bodies as Duty Bearers:- “While there was definite interest, there was found to be a low level of awareness of the implications of giving effect to rights from UN Treaties and how to practically implement them throughout LAW, POLICY AND PRACTICE.”

Key Findings relating to Effective Implementation and Accountability

1 There is inadequate legal implementation.

“Laws giving people rights are not sufficiently put into policy and practice by public bodies. THERE ARE BARRIERS TO ACCESS TO JUSTICE. These include unavailability of independent advocates or legal representatives, who can support people in identifying human rights issues as well as providing representation, lack of an effective referral pathway once issues are identified; costs; delay and too much pressure placed on individuals.”

2 There is insufficient practical implementation.

“Public service providers do not deliver these services in a way which sufficiently respects and fulfils the rights of people. This is often due to a lack of resource but can also be due to lack of training, AWARENESS OF RIGHTS, and sometimes just a lack of empathy and respect for dignity.”

3 There is inadequate everyday accountability.

“Inspectors, regulators, complaints handlers and adjudicatory bodies do not consistently do enough to uphold the rights of people. This again can be the result of lack of resource and lack of training and awareness, although there is significant emerging good practice” My question would be where?

“A “Duty to Comply” is already well established in our law, eg. Section 6 of the Human Rights Act 1998. This duty of a public body is a necessary part of providing AN EFFECTIVE REMEDY to a rights holder. This is REQUIRED UNDER INTERNATIONAL HUMAN RIGHTS LAW. It is a duty to provide an outcome which is consistent with the rights of the individual, and NOT SIMPLY A DUTY TO PROVIDE A PROCESS which takes into account the rights of the individual.”

“Where a duty is not fulfilled, court judgements have the potential to address individual cases as well as systemic human rights problems. Accordingly, within a

public body the duty to comply can unhelpfully lead to human rights being regarded as more a matter for lawyers. In fact, it is also the responsibility of policy makers and those who make daily decisions – whether they be head teachers, health and social care managers, local authority chief executives, or inspectors and regulators.”

The [REPORT](#) by The Equalities and Human Rights Committee of the Scottish Parliament 24/11/18 (Getting Rights Right: Human Rights and the Scottish Parliament 6th Report 2018)

Despite the fact that the REPORT states :- “The Scottish Parliament is therefore rooted in human rights. Human rights are at its very foundation, its core.” And “Over the last two decades the parliament has been at the forefront in developing a culture of human rights.” It is our view that this was not always demonstrated by the evidence to that Committee.

The report states at the Committee’s focus groups, held in Leith, Inverness, Clydebank and Galashiels, various topics were discussed but there were several common themes, including LACK OF ACCESS TO JUSTICE AND LACK OF ADVOCACY SUPPORT.

Regarding the Human Rights Framework it is stated “Public Authorities may only restrict your rights under certain circumstances, for reasons like NATIONAL SECURITY, PUBLIC SAFETY, THE PREVENTION OF CRIME OR THE PROTECTION OF HEALTH. Even then, such restrictions on qualified rights are only justifiable if they are both NECESSARY AND PROPORTIONATE.”

Regarding Access to Justice for Human Rights Breaches the Report stated “Many witnesses, including NHRIs, academics, and NGOs, considered the ability of rights holders to seek justice when their rights had been infringed or violated to be fundamental to the effective realisation of human rights and to the public’s confidence in the human rights system. Rights without remedies are not only ineffective, but encourage public cynicism about the human rights framework and its institutions.”

The Health and Social Care Alliance said that “empowerment to claim rights is meaningless without ACCESSABLE STRUCTURES for people to claim their rights in practice.”

Marie Anderson, the Northern Ireland Public Services Ombudsman, explained that although she did not have an explicit human rights mandate she used a human rights based approach to her investigations. She said “I test public authorities in Northern Ireland and ask them “Have you had regard to the human rights of the individual who has complained to me?”

Rosemary Agnew, the Scottish PSO said “we do not operate a human rights framework in the way the NISPO does.” (When we put in a Complaint to the Scottish

SPO, we were initially told they covered human rights, five months later we were told they did not.)

Regarding Current Enforcement and Remedies the Report states “Some witnesses questioned whether current non-compliance mechanisms were fit for purpose, claiming ACCESS TO JUSTICE WAS IMPOSSIBLE FOR SOME.”

The report also states “Public legal education was cited by the Law Society as a way to increase routes to remedy. They drew attention to their Street Law Programme, which delivered classes about the law and the legal process to school pupils to help them recognise, prevent and in some cases, resolve legal problems.”

Providing evidence to the Equalities and Human Rights Committee, Professor Mills who is professor of international relations and human rights at the University of Dundee told the Committee that

“There is a lot of capability and appetite among universities and nongovernmental organisations to continue that work”. (that work being the Scottish Human Rights Commission’s recent report “Building a human rights culture in Scotland: insights from audience research”, which looks at public understanding of human rights)¹.

The Equalities and Human Rights Committee report goes on to state “The Health and Social Care Alliance argued empowerment of people to claim their rights necessitated open and transparent administrative frameworks of ACCOUNTABILITY AND REDRESS underpinned by a wide range of support eg. legal aid and independent advocacy.”

A [letter](#) to the Equality and Human Rights Committee from the Convener of the Environment, Climate Change and Land Reform Committee stated—

“Human rights is of such significance, in order to ensure effective consideration across the Parliament there should be a lead Human Rights Committee taking a strategic role. This would ensure the development of a body of expertise and a focus on the issue. In addition, a focus on human rights should underpin the work of each Parliamentary committee and each committee should, as a matter of course, be undertaking human rights scrutiny throughout its work.”

Regarding Human Rights Scrutiny the Report states “Effective human rights scrutiny is an important aspect of accountability in the Scottish Parliament. ANY AREA OF INQUIRY OR LEGISLATION CAN HAVE HUMAN RIGHTS CONSEQUENCES AND A HUMAN RIGHTS DIMENSION.”

Sanchita Hosali of the British institute of Human Rights said “We expect parliamentarians to pass legislation that complies with human rights and to take part

¹ <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11460&mode=pdf>

in scrutiny and debate around human rights without a FOUNDATION OF KNOWLEDGE that would enable them to do so. We need to ensure that is in place.”

David Torrance MSP , when questioning Professor Mills, at a meeting of the Equality and Human Rights Committee on 29 March 2018 stated that when he was on the Delegated Powers and Law Reform Committee “No one said have you checked the human rights there?” Professor Mills said “ In our research we find part of the problem is that no one has the remit or mandate to ask the question re the human rights implications of decisions or evidence”

“An approach focusing more on the public authority duty-bearers, rather than the right-holders, was suggested by Carole Ewart, a Public Policy and Human Rights Consultant, as a way of strengthening enforcement of the HRA 1998. “ I WOULD URGE THE COMMITTEE TO FOCUS ON THE ROLE OF THE DUTY BEARER. THERE IS ABSOLUTELY NO POINT IN PEOPLE KNOWING ABOUT AND TRYING TO ASSERT THEIR RIGHTS IF THEY ARE IGNORED OR LAUGHED OFF AND NOTHING HAPPENS. THAT IS FUNDAMENTALLY DISEMPOWERING.”

Carole Ewart also proposed that the powers of the SHRC should be added to so that the Commission could undertake case work and bring test cases, adding “A fear of litigation preying on the current culture would presumably lead to a voluntary change in practice.” She had previously told the Equality and Human Rights Committee that “THERE IS CURRENTLY A DEGREE OF COMPLACENCY IN WHICH PEOPLE BELIEVE THAT HUMAN RIGHTS DO NOT MATTER BECAUSE NOBODY IS GOING TO ENFORCE THEM IN SCOTLAND.”

Another two quotes from the First Minister’s Advisory Group on Human Rights.

“THE COST OF LEGAL PROCEEDINGS CAN BE PROHIBITIVE AND THE DELAY FRUSTRATING. COSTS SHOULD BE REDUCED AND ACCESS TO LEGAL AID IMPROVED. “TEST CASES” OR SYSTEMIC ISSUES NEED TO BE IDENTIFIED EARLY AND FAST-TRACKED THROUGH THE JUDICIAL SYSTEM.”

“THE RIGHT TO AN EFFECTIVE REMEDY IS ENSHRINED IN INTERNATIONAL HUMAN RIGHTS LAW BY VARIOUS INTERNATIONAL AND REGIONAL TREATIES. INTERNATIONAL LAW ESTABLISHES DIFFERENT FORMS OF REPARATION TO REMEDY VIOLATIONS OF HUMAN RIGHTS, SUCH AS; RESTITUTION, COMPENSATION, SATISFACTION, REHABILITATION AND GUARANTEES OF NON-REPETITION.”

IN CONCLUSION, WE FEEL WE HAVE BEEN MARGINALISED BY THE SCOTTISH GOVERNMENT, OUR BUSINESS LEFT IN TATTERS AND WE SEEK REDRESS UNDER OUR HUMAN RIGHTS.