

Equality and Rights Organisation – Presentation

Agenda:

Welcome everyone. For those of you who don't know me, my name is Rob Platts. I'm the Founder of, and Equality Advisor to, the Guernsey Disability Alliance.

I have been asked to make a presentation about Equality & Rights Organisations and this is because one of the work streams of Guernsey's Disability and Inclusion Strategy, which I had the honour to work on, involves establishing just such an organisation.

So, the main aim of today's session is to explain why the idea was included in the Strategy, what roles of an ERO might be, and what principles might govern it.

You'll see from the agenda I'm suggesting that before we talk about EROs we should first consider the background to the human rights such an organisation might be promoting and protecting.

Siriol's brief to me was that I should expect a range of understanding, amongst you, about human rights and that I should pitch the presentation to take this into account. Therefore, those of you who are experts, please bear with me and my amateur explanations, and feel free to question and correct.

Those of you who might be relatively new to the subject, please do interrupt if something is not clear. As the old saying goes, there are no stupid questions – just stupid presenters.

To begin with, before I attempt to explain anything about human rights, I have a couple of questions. So, first question - hands up please those of you who believe that it's important that Human Rights are recognised and protected?

Second question, do you think that members of the general public in Guernsey have a good understanding of what human rights are and how they apply in Guernsey? Hands up if you think they do?

Why so little understanding?

Why no info?

Many of us have relatively comfortable lives

Perhaps Guernsey doesn't have a visible burning human rights issue?

Poor education?

Maybe, the concept of Human Rights just isn't on people's radar?

OK, we'll move on.

So – what are human rights? and how did the concept originate and develop?

Concept at least 2,500 years old. slightly more recent examples include the Magna Carta and the American Bill of Rights.

Can anyone think back to their history lessons and offer a common aim that these two documents shared?

Basically, both provide some protection from the tyranny of governments and rulers and from the tyranny of the majority.

It wasn't until the world went through the atrocities of 2 world wars that attempts were made to broaden the concept of human rights from a national and regional scale to a worldwide understanding.

Those wars led, in 1948, to the development of the Universal Declaration of Human Rights and indeed to the formation of the United Nations organisation.

In 1948 – 48 Countries signed UDHR – since then, that number has grown to 192.

Any idea who this is? Eleanor Roosevelt, then then First Lady of the United States of America.

I suggested earlier that people in Guernsey may not have rights on their radar. It's interesting to see how Eleanor Roosevelt puts this in to perspective in the speech she made when the Universal Declaration of Human Rights was adopted by the UN. She said:

"In small places, close to home—so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighbourhood he lives in; the school or college he attends; the factory, farm or office where he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world."

Prophetic words indeed.

What are human rights?

First thing to say is that Guernsey has been included in a number of International Treaties and Conventions. Any ERO might be expected to have good knowledge of many of them. Today, however, I'm going to concentrate on the main ones which impact on civil, political, social and economic rights.

Human rights, are explained by the United Nations and set out in the Universal Declaration of Human Rights, as a common standard of achievement – a set of moral principles if you will, Concerning how people can expect to be treated by governments, by organisations, and by each other, the authors of the UDHR where clear that these principles are themselves grounded in the concepts of non-discrimination and self-determination: **Rights**

are universal, what does that mean? (applies everywhere **to everyone**)

Inherent, inalienable,

Interdependent and interrelated (work together and should not be considered separately) and

This last point echoes Eleanor Roosevelt's words, that its everyone one's responsible to promote respect for rights.

But the Universal Declaration was just that, just a declaration. On its own it had no enforceable effect.

Other mechanisms were needed in order to bind governments to these principles.

In Europe, this was achieved in 1949 through the establishment of the Council of Europe. To be clear, this organisation has nothing to do with the European Union. The Council now has 47 members.

The idea of the Council was to advance the principles of human rights and to encourage member nations to give legal force to those principles.

Members of the Council didn't come to agreement about all the rights included in the original Declaration.

Eventually a conclusion was reached that the rights in the Declaration could be **split** into two main types: Human rights involving matters to do with civil and political rights. These are sometimes known as the negative rights, things that governments in particular should not do – like torture their citizens, or imprison or detain without due process of a fair trial, for example.

The second classification is social and economic rights which require positive intervention by governments to, for example, ensure everyone has equal access to education, or housing, or an adequate standard of living.

Unlike the Civil and political rights, socio economic rights are not expected to be immediately achievable by all governments and are often expected to be realised over time. This is known as progressive realisation. Such realisation though, must apply equally, without discrimination.

So, the Council of Europe came up with a plan to give force to the Universal Declaration in a number **of ways**. In 1950, the Council's first Convention was agreed.

The European Convention on Human Rights dealt with the civil and political rights. Guernsey has, through the U.K ratifying that Convention, been a party to it for nearly 70 years.

This was followed some time later, actually not until **1961**, by the European Social Charter. This deals with the Social and Economic rights we identified earlier. Guernsey is not a party to this Charter.

Slightly confusingly, in 1966, the UN's International Covenant on Economic, Social and Cultural Rights was opened for signature. This Covenant contained many of the Social and economic rights originally in the UDHR. What was new was that the Covenant put's a duty on High Contracting Parties – in other words member nations of the UN, to persuade their territories and protectorates to comply with the Covenant.

My understanding is that because we are a Crown Dependency, Guernsey was automatically signed up to this Covenant when the UK signed. However, Guernsey has resisted the extension of the UK's ratification. This means that whilst Guernsey has said it agrees with the principles, it has not incorporated the Covenant in to our domestic legislation and is not legally bound to those principles.

Whereas it has been legally bound by the Convention on Human Rights since, I think 1951.

There were two main initiatives which gave force to The European Convention on Human Rights. **Firstly, the Council established the European Court of Human Rights.** The Court is in Strasbourg, France. not to be confused with the European Court of Justice which is completely separate, and deals with the laws made by the European Union.

Why is the Court of Human Rights needed? What's the importance of it? (the court allowed citizens of member states, for the first time, to challenge the actions, policies and laws of their government in a third party, independent court.) This is a really important point.

But the court in Strasbourg soon had a huge backlog of cases so the second important thing was that parties to the Convention are required to develop **domestic legislation.**

Now, only after all domestic courts of appeal have been exhausted, can a case be appealed to the European Court of Human Rights.

In Guernsey the route of appeal depends on which court or Tribunal the case was originally heard. But, if, for example, a breach of Convention rights is claimed in a matter before the Royal Court, an appeal against the decision would then be to the Guernsey Court of Appeal and from there to the Privy Council. After this, the matter might be appealed to the European Court of Human Rights.

But there is another reason to have domestic legislation. You see, only governments can be challenged in the European Court. Domestic legislation is required if individuals are to be able to challenge other individuals or non-government organisations. The route of appeal in these cases would stop within Guernsey.

What rights do we have in Guernsey?

Perhaps not the right question – why? The correct question might be “Which human rights are recognised and protected in Guernsey?”

The Guernsey Law which gives effect to the European Convention on Human Rights – those civil and political rights we talked about, is **the Human Rights (Bailiwick of Guernsey) Law, 2000**.

On the back of your agenda, you’ll find a list of the rights protected by this Law. For clarity and simplicity, I’ve only included the headings.

Having this law means that if an islander now has a complaint about a States body infringing their right to a private life, for example, then they can challenge this in court. Before 2,000 such cases could only be heard in the European Court of Human Rights and it would have taken years.

Because there is a requirement for governments to eliminate discrimination, **Guernsey also enacted enabling legislation** in 2004 which allows us to develop other secondary legislation, and other statutory mechanisms to tackle discrimination. The Law explains that measures to prevent discrimination include a) the prohibition and elimination of discrimination, and

(b) the promotion of -

(i) equality of status, opportunity and treatment, and

(ii) the equal enjoyment of rights and freedoms,

This Law then, allows Guernsey to establish discrimination Ordinances which will deal with the prohibition of discrimination bit, but the law also allows Guernsey to set up a commission or ERO and it's that which could deal with the promotion of rights and equality.

The only Ordinance we have so far, however, is the Sex Discrimination (Employment)(Guernsey) Ordinance. Of course, the disability ordinance, or possibly now a broader discrimination ordinance, is currently in development.

It's worth reminding ourselves that whilst we have signalled our agreement to the social charter, Guernsey has not given this legal force. We do not have a Social and Economic Rights Law, for example.

What is the effect of not having a Social and Economic Rights Law?

Arguably our social security legislation, our health and safety legislation, and our rather scant employment legislation covers some of the ground of the Social Charter – but what is the protection that's missing? - I'd suggest primarily we can't challenge the laws we do have and, we can't challenge what is missing, because we have no independent court of appeal we can turn to. 18 mins

Before I move on to consider EROs are there any questions about Rights?

OK, lets move on to understanding how the idea of an ERO developed and why it found its way into the Disability and Inclusion Strategy.

During the development of the Strategy, the GDA carried out research into the effectiveness of discrimination and equality legislation.

A part of this research looked at instruments, other than legislation, which can be used to promote and protect rights. The most common instrument is some sort of Human Rights Commission or Organisation.

What really grabbed our attention was the body of evidence from around the world that disability discrimination legislation and disability rights were not well understood or respected. We gathered statistics about enquiries and complaints dealt with by Human Rights organisations in many countries, including for example, Canada, New Zealand, Australia and the UK. The statistics were surprising.

Canada has 10 provinces and 3 territories. Most have their own human rights legislation and indeed their own human rights commissions.

Canadian Human Rights legislation typically protects on 15 grounds, gender, race, age, disability and so on. If enquiries and complaints were to originate equally then any one characteristic might account for approximately 7% of all enquiries and complaints. But you can see that disability accounts for about half of all enquiries and complaints in Canada.

In New Zealand, disability outstrips all other characteristics, and accounts for almost one in three of all complaints.

In Australia, half of all enquiries and 37% of all complaints involve disability.

Then we looked at the UK. there, 70% of all enquiries involved disability.

The fact that the ratio of enquiries to complaints differ invites further understanding so **we then looked** at comparative rates of resolution of complaints. Sorry I don't have a graphic for that, but every jurisdiction for which we could find figures reported a higher mediation resolution rate for complaints involving disability than for any other ground of discrimination.

So, it was clear to the GDA that Guernsey needs effective information, education and mediation systems to ensure the Disability Discrimination Ordinance and disability rights are well understood.

We were really keen to avoid disabled employees unnecessarily being pitted against employers and disabled customers being pitted against suppliers, and we think that easy to understand legislation and good information and training is key.

It's also clear from our evidence that relying on individual complaint to achieve systemic change is both unrealistic and unfair.

That's why the GDA was so keen that we had one or more mechanisms, short of legal action, to negate, or reduce, the need to end up in the court and tribunal system and to assist in tackling systemic discrimination.

More than anything we want to change people's attitudes so that it becomes second nature to accommodate and promote everyone's rights, and to understand how those rights should be interpreted with regard to disabled people. That's why the idea of an ERO was included in the Strategy.

Let's look at the possible aims and functions of an ERO:

Generally, the aim of EROs is to promote and protect Human Rights. Governments are tasked by Human Rights Conventions to use all reasonable methods to promote and protect rights. It might be seen as unreasonable that we do not already have an ERO.

Let's look at the specific functions an ERO might have in order to achieve these aims. **They include:**

1. monitoring progress of government compliance with various International Conventions. The UN Convention on the Rights of Persons with Disabilities, for instance, requires governments to identify one or more independent monitoring mechanisms. These mechanisms are required to contribute to official progress reports and they can also challenge government policy.
2. A major function of EROs is often to educate and to raise awareness of rights and change attitudes towards minority **groups**.

Article 26 of the Universal Declaration of Human Rights requires that "*Education shall be directed to the full development of the human*

personality and to the strengthening of respect for human rights and fundamental freedoms”.

Let's think back to those questions I asked at the start - Why don't people in Guernsey know about rights? The States are responsible for education, and the fact that people don't understand might be seen as a fundamental and systematic failure of successive States, since 1951, to comply with Article 26. However, although the States have said they agree with the principle of Article 26, it is not specifically included within our legislation so none of us can challenge this failure.

An ERO will be a great help but, personally, I believe it will need more than a single small body to imbue respect and understanding of human rights in all layers of our society. Mostly, it needs government buy in to achieve this sort of fundamental change in society.

The UN Convention on the Rights of Persons with Disabilities can mostly be progressively realised but governments are required to take immediate steps to do two things. Firstly, they must take steps to eliminate discrimination – usually that means at least introducing discrimination legislation, secondly, they must take immediate and effective action to raise awareness and change **attitudes**.

Other functions might include providing information and **advice**, developing standards and **guidelines**, training employers and suppliers of goods and **services**, pursuing class **actions**, **enforcement**, and handling **complaints**.

Any other thoughts on other possible functions? Any questions?

Who are potential users of an ERO? Let's see if you come up with the same list as me? (E,E, C,S Education,. NGOs, Charity's clubs)

Siriol asked me to briefly cover the Paris Principles. The States resolution requires that a business plan be developed for an ERO incorporating the Paris Principles.

Basically, the Paris Principles are standards that National Human Rights Organisations should attain. There is a Global Alliance of National Human Rights Institutions, currently with 110 nations listed. They are all ranked A, B or C according to how well they comply with the Paris Principles.

The first principle is that they should have a broad mandate based on universal human **rights**

They must be autonomous from **government**:

Their independence must be **guaranteed by statute**

They must be **pluralistic** – can anybody explain what that means please?

pluralism is the energetic engagement with diversity

But this isn't about representing all sections of society, it's about pluralistic representation within the ERO of non-governmental organizations responsible for human rights, including trade unions and concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists.

This next one's a tricky one - They must have adequate **resources** – We're doomed!

And they must have adequate powers of investigation.

I'm not going into any greater depth than that today other than to say that it might be quite a struggle for a small ERO to comply with all these principles – particularly that of pluralism, however this might be possible if a Multiple Institution model was adopted. I'll explain what this is in a minute.

Let's take a quick look at some models of EROs:

Human Rights commissions are State institutions with an explicit mandate to protect and promote human rights.

They are typically headed by a number of full-time and/or part-time members, who are decision makers; Investigation is a core function; Many can receive individual complaints (this is referred to as “quasi-judicial competence” in the Paris Principles). Many have the authority to make recommendations only, following investigation, which is the more typical model.

A number of human rights commissions focus only on equality rights and antidiscrimination work and don't have a mandate to get involved with the other rights we have looked at today.

Typically, ombudsmen have a smaller staff and will not have commissioners. Ombudsmen often focus on complaint resolution rather than working to prevent discrimination from happening in the first place. They can favour quick resolution and so generally are not as focused on formal legal investigations. Sometimes there is no route of appeal. The success of ombudsmen is highly dependent on the reputation, integrity and leadership of the ombudsman herself or himself,

Single focus EROs are pretty self-explanatory and were perhaps more common in the past. When the Disability Strategy was being developed there was some discussion about having a disability rights organisation rather than a general ERO. Some members of the GDA liked the idea - others thought it was just another example of treating disabled people differently and were dead against it.

I don't know a lot about Multiple Institutions, but the idea is that several organisations get together in an affiliation to become a National Human Rights Institution or centre. Sometimes groupings like this are more able to comply with the Paris Principle of Pluralism. Finland's Human Rights centre is one example. It combines the office of the Parliamentary Ombudsman with the Human Rights Centre and the Human Rights Delegation. The delegation is itself a collection of 40 other statutory and non-statutory bodies with interests in human rights and minorities.

Hybrid Institutions might have a mandate to deal with multiple issues – for example human rights plus environmental issues. I'm afraid I don't have an example to offer you.

Finally, some EROs have no legal powers and are purely advisory and educational. This sort of body is unlikely to meet Paris Principles.

Siriol asked me to offer a couple of examples of EROs. I thought there probably wasn't much to be gained from looking at large EROs so I have turned again to Canada and looked specifically at a couple of their Human Rights Commissions serving populations more equivalent to Guernsey's.

This is a screen shot of Yukon's Human Rights Commission website. On the next slide I have compiled some very basic **information**: So, Yukon is the smallest of Canada's three territories but it's actually about the size of Spain. Yet its population is only half the size of

Guernsey's. Almost 75% of that population lives within Yukon's only city – Whitehorse.

The Commission has a board of 5 people including a past President of the Canadian Bar Association.

The Commission Staff of 8 includes the Director, a Legal counsel, a Public Education Co-Ordinator, 2 x Human Rights Officers, an Office Administrator, an Articled Student and a law intern.

It costs about £350,000 a year to run.

The Commission runs a mediation service. Complaints not settled by mediation are referred to the Yukon **Board of Adjudication**. The Commission handles 240 enquiries a year and approximately 25 complaints, but its major focus is on the promotion of rights.

Generally, the idea is that the more people understand about how to respect rights, the less likely it is that people will need recourse to the law to enforce their rights.

And here's a screenshot of Prince Edward Island's Commission website. Actually, both sites are very simple to navigate and have useful information.

Prince Edward Island is located on the Eastern side of Canada, just North of Nova Scotia. Being over 2,000 square miles in size it's almost 100 times the size of Guernsey. But it's population, at 139,000 is only about twice that of Guernsey.

The Commission has a board of 6 Commissioners. The Staff of four include Exec Director who is a QC, a Human Rights Officer who is a lawyer, a Mediator/Intake Officer and an Education Projects Officer. The Commission handles approximately 1800 enquiries and 65 complaints a year.

Again, there is a heavy emphasis on education at all levels of society.

I think there is much to learn from the studying the various approaches of the 13 Provincial Commissions. All the Commissions approach things in different ways. I'm not sure whether they all comply with the Paris Principles but the 14th Commission, the National Canadian Human

Rights Commission, which deals with the Federal Government certainly does.

Studying the Canadian systems has the advantage of the same language, and they use the term eh?, a lot eh?, just like we do, eh?

That about wraps up the presentation. I'll be very happy to answer any questions.