

A Rights-based Approach

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What are human rights?

Human rights are the basic rights and freedoms that belong to every human being regardless of where they are from or how they choose to live their lives.

These rights cannot be taken away from a person, although they can sometimes be restricted – for example if a person breaks the law, or in the interests of national security. The covid-19 crisis is a good example of this.

These basic rights are based on shared values like dignity, fairness, equality, respect and independence and are defined and protected by law.

Human rights come from their foundation document - the Universal Declaration on Human Rights, proclaimed by the United Nations General Assembly in Paris on 10 December 1948. The United Nations has led the way since then in developing human rights, although the European system has also developed over the same time and is a source of a lot of rights, good practice and policy.

In Scotland our human rights are protected by the Human Rights Act 1998. There are 16 basic rights protected by the Act.

These cover civil and political rights, such as:

- the right to life
- the right to a fair trial
- the right to privacy
- the right to vote
- freedom of expression
- freedom of religion or conscience
- freedom of assembly
- freedom from torture, inhuman or degrading treatment or slavery and economic, social and cultural rights, such as:
 - the right to an adequate standard of living
 - the right to the highest possible standard of physical and mental health
 - the right to education
 - the right to work and to decent conditions

- the right to social security
- the right to participate in cultural life and to enjoy the benefits of scientific progress

What is the rights-based approach?

The rights-based approach is about empowering people to both know about and to claim their rights. It is also about increasing the ability and accountability of individuals and institutions who are responsible for respecting, protecting and fulfilling rights.

In practice this means giving people greater opportunities to take part in shaping the decisions that impact on their lives. It also means making sure that those with the responsibility for fulfilling rights recognise and know how to respect those rights, and make sure they can be held to account when this doesn't happen.

The rights-based approach is therefore about making sure that both the standards and the principles of human rights are integrated into policymaking as well as the day to day running of organisations.

The diagram below shows how this should work. Rights holders – all of us – need to understand our rights and participate in order to demand that our rights are respected. Duty bearers, for example services, need to be held accountable so that they meet their obligations under the Human Rights Act.

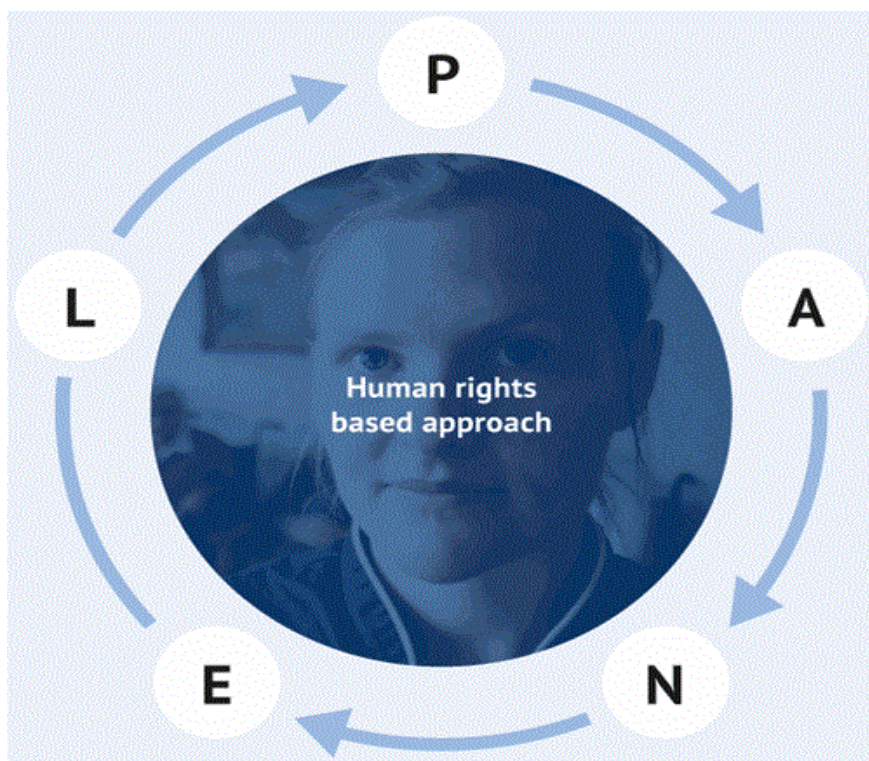


So what does the rights-based approach look like in practice?

There are some underlying principles which are of fundamental importance in applying a human rights-based approach in practice. These are:

- participation
- accountability
- non-discrimination and equality
- empowerment and
- legality

These are known as the PANEL principles.



Participation

People should be involved in decisions that affect their rights.

Everyone has the right to participate in decisions which affect their human rights. Participation must be active, free, meaningful and pay attention to issues of accessibility, including access to information in a form and a language which can be understood.

What does this mean for us?

This means that individuals should participate in all decisions about the support they or their loved ones are receiving. This could range from participation in the commissioning and procurement of services by local authorities to participating in decisions about the kind of support being received.

Accountability

There should be monitoring of how people's rights are being affected, as well as remedies when things go wrong.

For accountability to be effective there must be appropriate laws, policies, institutions, administrative procedures and mechanisms to secure human rights.

What does this mean for us?

In Scotland there are a range of bodies which promote accountability for respecting, protecting and fulfilling human rights. In different ways these bodies all have a responsibility to ensure that the standards of accountability for human rights are as high as possible. These include the commissioners of services and inspection and regulation bodies.

Non-discrimination and equality

All forms of discrimination must be prohibited, prevented and eliminated. People who face the biggest barriers to realising their rights should be prioritised.

What does this mean for us?

There are times when people receiving care and support services can be amongst some of the most vulnerable and marginalised people in our society – the rights-based approach means we must pay particular attention to the protection and realisation of their rights.

Empowerment of rights holders

Everyone should understand their rights, and be fully supported to take part in developing policy and practices which affect their lives.

The rights-based approach means that individuals and communities should know their rights and be supported to understand them. It also means that they should be fully supported to participate in the development of policy and practices which affect their lives and to claim rights where necessary.

What does this mean for us?

This means that everyone should understand what their rights are and how they can claim these rights. Achieving this may require the provision of appropriate advocacy support.

Legality of rights

Approaches should be grounded in the legal rights that are set out in domestic and international laws.

What does this mean for us?

Service providers and all other accountable bodies must be sure that their practices and procedures are grounded in human rights law. Under the law they must not breach the human rights of anyone.

References: Scottish Human Rights Commission, Equality and Human Rights Commission