

## **The Review's Human Rights Based Approach**

The Review is taking a human rights based approach.

We are using the approach that is set out by the Scottish Human Rights Commission

If you want to know more about this approach, you can read below or read this document:

[http://www.scottishhumanrights.com/media/1409/shrc\\_hrba\\_leaflet.pdf](http://www.scottishhumanrights.com/media/1409/shrc_hrba_leaflet.pdf)

This approach has principles called the PANEL Principles. These are:

### **Participation**

- People should be involved in decisions that affect their rights.

### **Accountability**

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

### **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.

### **Empowerment**

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

### **Legality**

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

This approach also uses the FAIR process.

We need to think in this way:

### **Facts**

- What is the experience of the individual?
- Is the individual being heard and if not, do they require support to do so?
- What are the important facts to understand?

**Analysis** of right(s) at stake (See the reference at the end for explanation – 1)

- What are the human rights or issues at stake?
- Is the right to life or the right not to be subjected to inhuman or degrading treatment at stake? If so, these rights are absolute and cannot be restricted.
- Can the right be restricted? What is the justification for restricting the right?
- Is the restriction on the right ‘proportionate’? This means - is it the minimum necessary restriction to meet the aim or is a “sledgehammer being used to crack a nut”?

**Identification** of shared responsibilities

- What changes are necessary?
- Who has responsibilities for helping to make the necessary changes?

**Review** actions

- Have the actions taken been recorded and reviewed and has the individual affected been involved?

## How we will apply a human rights based approach to the Review

The PANEL principles are given above.

These principles can be applied to all decisions that the Review makes, including decisions about processes, recruitment decisions, decisions on engaging with stakeholder groups, and decisions on recommendations.

Participation	Getting evidence	Involve people with lived experience of all levels of ability.  Involved people with lived experience in the review in an advisory capacity at the same level as other experts.
	Making decisions	In all of our main decisions, think about the views of people with lived experience  This is for decision making in the advisory groups, and for other decision in the Review
	Reporting	When we report findings and make recommendations, we connect these to the views and experiences of people with lived experience

Accountability	Getting evidence	When we begin the Review, we will seek evidence in an open way instead of asking lots of closed questions.  We will invite evidence from DPOs.
	Making decisions	We keep a record of significant decisions made by the Executive.  We will consider evidence from DPOs when making our decisions.  We consider advice from our advisors when making we decisions, and whenever possible, we let advisors know how we have used that advice.

	Reporting	<p>If it is possible, we will respond to all questions that people and organisations ask.</p> <p>We will write back to DPOs to let them know how we have used their evidence.</p> <p>With our recommendations, we will suggest ways in which the outcomes of this Review can be monitored.</p>
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Non-discrimination and equality	Getting evidence	<p>Give priority to people who may face the biggest barriers to having their rights met</p> <p>Assess our approach for getting evidence, to make sure that it promotes equality and human rights</p> <p>Be clear how we identify people who are more disadvantaged than others (for example, children)</p>
	Making decisions	<p>When making decisions, priorities the human rights of people who face the biggest barriers to realising their rights</p> <p>Assess our approach for making decisions, to make sure that it promotes equality and human rights</p>
	Reporting	<p>Assess the potential impact of our recommendations, to check that they could promote equality and human rights</p>

Empowerment	Getting evidence	<p>All autistic people and people with learning disability with an interest in the review will be offered support to understand the relevant rights</p> <p>We will empower professionals to give evidence, and to develop their own understanding of human rights, by providing materials that explain relevant human rights well and which enable professionals to respond with relevance.</p>
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		We will try to make sure that support is there for all people to take part
	Making decisions	Some autistic people and people with learning disability will advise the review on how to run the Review  These people will be fully supported to understand the relevant rights, and be fully supported to take part in the advisory groups
	Reporting	Reports will be accessible for all people who may be interested in them

Legality	Getting evidence	We will ask legal experts to give us advice on how to get our evidence  Gather evidence in the context of our human rights framework and report on this
	Making decisions	We will ask legal experts to give us advice when we are making our recommendations, to make sure that we have understood the law  Make decisions within a human rights framework, and based on evidence gathered within a human rights framework
	Reporting	Make recommendations within a human rights framework, and based on evidence gathered within a human rights framework  We will be clear who the duty bearers are, and who the rights bearers are, when we make our recommendations.

### The FAIR process

We can use the FAIR process at each stage of the Review.

For example, for Stage 1:

Stage 1 – Get evidence on people’s experiences of the 2003 Act

<b>Facts</b>	Make sure that people have the support that they need to take part in the review
	Get information on the operation of the 2003 Act: law, regulations, monitoring data, existing reviews and research, and so on
	Get new information on the experiences of people who have been subject to the Act, from: (1) people with learning disability or autism (2) carers (3) professionals who have used the Act
	Decide what the important facts are to understand (based on people's experiences)
<b>Analysis</b>	Identify the human rights issues
	Analyse what we find, in relation to different types of human rights (Absolute, qualified and limited human rights are explained in reference (1), which is given at the bottom of this page)
	Think about whether any restrictions on human rights are justified and proportional
Identification of shared responsibility	Identify what facts we need to know next
	Find out who can give us those facts
	Decide how we will get this evidence
<b>Review actions</b>	Analyse what people told us about how it was to take part in the Review in Stage 1. Use these findings to tell us what to do in the next stage of the review  When analysing the evidence that we get in Stage 2: check that we have got the evidence that Stage 1 told us to get
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(1) If you want to know more about what it means to restrict human rights, you could look at:

Can human rights ever be restricted? EHRC

<https://www.equalityhumanrights.com/en/what-are-human-rights/how-are-your-rights-protected>