THE IMPACT OF THE HUMAN RIGHTS ACT IN THE COURTS

1. We are asked to provide information in the form of an assessment of the impact of the Human Rights Act 1998 (HRA) in the Courts since it became law. It has been made clear to us that what is required is an analysis of the influence of the Act on Court decisions rather than a critique of the legislation and its desirability. Whilst we have endeavoured to adhere to this request, we have felt it necessary to provide some comment and an introduction so as to make the information provided more readily understandable.

2. The historical background to the Convention is well known. It set out certain basic rights which could be said to reflect generally understood notions of what human beings could expect by way of minimum rights in a civilised society. Many had been denied such rights particularly during the 1930s and 1940s.

3. Although significantly a product of British thinking and draftsmanship, the Convention was not incorporated into the law of this country until the 2nd October 2000. Thus it is not a modern instrument. Although from time to time politicians and lawyers of differing political persuasions had advocated some form of a Bill of Rights or indeed the incorporation of the Convention, it was not until the 1990s that the case for incorporation began to gather serious political support. Eventually it became part of the Labour Party manifesto for the 1997 Election.

4. Even before incorporation, the Convention was referred to from time to time in cases in this country. The comments of Lord Denning MR reflected a commonly held view. He said in *R v Chief Immigration Officer, Heathrow Airport ex parte Bibi* (1976) 1 WLR 979 at 985B: "*The Convention is drafted in a style very different from the way in which we are used to in legislation. It contains wide general statements of principle. They are apt to lead to much difficulty in application: because they give rise to much uncertainty. They are*

not the sort of thing that we can easily digest. Article 8 is an example. It is so wide as to be incapable of practical application. So it is much better for us to stick to our own statutes and principles, and only look to the Convention for guidance in case of doubt." Such a view has been described by advocates of the Human Rights Act as "*insular"* [1]

5. Judges and lawyers met the new Act with various reactions from enthusiasm through confusion to hostility. Lecturers prepared the way by providing guidance on its likely impact. All Judges, whether full or part-time, attended seminars to equip them for the incorporation.[2] Public authorities at all levels received guidance, sometimes alarming and often creative as to how to respond to the impact of the Act and as to ways in which they might fall foul of it.

6. As with the so-called compensation culture, so with the pejoratively described human rights industry, the way organisations have regulated their affairs has often seemed to commentators to be unreflective of any actual or likely interpretation of the Act by the Courts.

7. Whatever scepticism the Judges might have had in relation to the Act, most have approached the task of reflecting it in their decision-making in a conscientious manner and in some instances with considerable enthusiasm. Assimilation has not always been easy. Pre-incorporation a citizen of the United Kingdom could take his case to Strasbourg and argue that (whatever the Courts in this country had decided) his or her human rights had been infringed. It was not a course adopted very often; partly because of the modest financial benefits that were likely to accrue and the considerable expense and delay involved in the process. Thus the remedy was usually only sought by those with a significant point of principle to establish. The

[1] Human Rights Act 1998: Lester & Pannick. (Butterworths)
[2] It is estimated that £4m was spent in this process.

Strasbourg jurisprudence had little or no practical effect on the way cases were decided here.

8. The promoters of the Human Rights Bill deployed a compelling metaphor on the effect of the Act. It was to bring rights home[3]. Equating the incorporation of the Act with bringing home the bacon or even the World Cup was beguiling. It could be said to ignore the fact that the laws of this country already reflected a synthesis between the human rights of its citizens and obligations necessarily placed on them for the efficient and better organisation of government.

9. With incorporation, the Judges had to "*take into account*"[4] decisions from Strasbourg by the European Court of Human Rights. This was rather different from the obligation to follow precedent to which British Judges were more accustomed. It has now been six years since incorporation and the effect of the Act has been much criticised. It is important, however, to consider its actual effect as opposed to some of the rather hyperbolic comments that are found in the popular press.

10. What were the various possible approaches that Judges might have adopted? They might have paid little more than lip service to the Act, reflecting the sense that this country had no need of the Convention. So as to comply with their duties, Judges could have devised some formulation to the effect that they had taken the Convention into account in reaching a decision (which they would have reached anyway).

11. Alternatively Judges might have found the Act a useful aid in changing the law in areas where precedent in this country appeared to be out of step with modern views or where the law was generally regarded as unsatisfactory but had for some reason not yet attracted Parliament's attention. In other words,

[3] Rights Brought Home: The Human Rights Bill Cm 3882
[4] s.2(1) of HRA

the Act could give Judges greater freedom to make new law under the guise of complying with the Convention.

12. The Judges could weave into the common law the Strasbourg jurisprudence so as to create new precedents which were more in line with decisions on the Convention.

13. The Courts also could have particular recourse to the Convention in so-called hard cases or when pre-incorporation law gave no clear answers. This might have the effect of elevating the Convention almost to the status of say the Constitution of the United States.

14. All the above approaches were matters that were considered by the 1978 House of Lords Select Committee on a Bill of Rights.[5] The potential advantages were clear and relatively easy to understand including the "freshening up" of the common law. Membership of the European Community made it all the more important for the British legal system to develop as part of the Community rather than in isolation.

15. The arguments against it were a little more subtle. They included the potential politicisation of the judiciary who would have significantly more powers to make law particularly in relation to freedom of expression, privacy, education and race relations. The development of the law, instead of progressing step by step using case law empirically to develop legal principles, would involve the application of wide principles making the outcome of cases far more difficult to predict. (See Lord Denning's observations above).

16. It is well known that many senior judges were and remain keen supporters of the Act. Lord Woolf, the former Master of the Rolls and Lord Chief Justice is one. The senior law lord, Lord Bingham of Cornhill, another. He said this:

[5] In the light of the conflicting argument the Select Committee could not reach a conclusion about whether it was desirable in principle to enact a Bill of Rights.

"*It would be naive to suppose that incorporation of the Convention would usher in a new Jerusalem. As on the morrow of a general election, however glamorous the promises of the campaign, the world will not at once feel very different. But the change would over time stifle the insidious and damaging belief that it is necessary to go abroad to obtain justice. It would restore our country to its former place as an international standard-bearer of liberty and justice. It would help to reinvigorate the faith, which our 18th and 19th century forebears would not for an instance have doubted, that these were the fields in which Britain was the world's teacher not its pupil. And it would enable the Judges more effectively to honour their ancient and sacred undertaking to do right to all manner of people after the laws of usages of their realm, without fear or favour, affection or ill-will.*"[6]

17. No senior judges have written or said more about the Act than Lord Justice Sedley. In a lecture/article published in 2005[7] he made this observation: "*The passing of the Human Rights Act 1998 was a historic constitutional project. It set out to do two chief things: to supplant the perceived method of statutory interpretation – the divining of Parliament's intention through the drafter's words – by a purposive reading which would re-configure legislation wherever possible to give effect to Convention rights; and to compel all public authorities, the Courts included, to respect those rights and everything they did and decided. In these two fundamental respects it may be said that the Courts are not yet fulfilling the mandate which Parliament has given them. Where they are succeeding is in two particular fields. One is the reshaping of important areas of substantive law affecting vulnerable minorities to give effect to Convention rights. The other is a gradual realignment of the processes of legal reasoning, and is this which in the long-term may turn out to be the more significant – whether for better or for worse, future commentators will have to say.*"

[6] The European Convention on Human Rights: Time to Incorporate in R Gordon and R Willmot-Smith (eds) Human Rights in the United Kingdom (Clarendon Press 1996).
[7] Human Rights Act: A Success Story? edited by Luke Clements and Phillip A. Thomas.

18. It is still relatively early to assess the overall benefits or lack of them which have followed incorporation of the Act. There has been a considerable amount of judicial activity in the higher courts, particularly the House of Lords, in relation to the Act. Whether the result in any particular case was desirable is of course to involve a subjective judgment. Where we can however offer some comment is as to the likelihood of a different result following the Act. We do not think it helpful to provide a complete list of all cases where the Human Rights Act has been mentioned. Most have not in fact been decided on the basis of anything provided by the Act. Rather we have sought to identify some areas which seem to us to give an indication of how the Act is affecting judicial thinking and the possible long-term effects of this change in approach.

19. The concept of human rights is of course a subject much visited by philosophers and beloved of academic lawyers. The concept of human rights has been described as "*nonsense on stilts*"[8] Professor Ronald Dworkin[9] has discussed at length whether human rights should be regarded as "*trumps*". Identifying what are the core human rights can be said to involve consideration of Darwin's theories of evolution and an understanding of what human beings are at their core.[10] But all but the most cynical would accept that attempting to define and protect human rights can properly be regarded as a noble aspiration. Even the most fervent advocates of the advantages of the Act must, however, regret the way in which the concept of human rights has been mocked by the tabloids in this country and readily embraced by some whose use of human rights vocabulary has tended to devalue the aspirations embodied in the Convention and which lay behind the campaign for incorporation.

[8] Bentham, Burke and Marks on the Rights of Man.
[9] Taking Rights Seriously.
[10] Gearty, Can Human Rights Survive? Hamlyn Lectures 2005.

Liability of public authorities

20. The liability of public authorities in negligence has been a subject of changing judicial opinions in the last 50 years or so. The central issue is whether or not it was appropriate that authorities paid for by the public and given statutory duties and powers by Parliament should be liable to compensate those affected by their acts or omissions. With the development of the law of negligence, one argument was that public authorities should be treated no differently from private individuals. If a duty of care was owed and there was a breach of such a duty, then compensation should be paid. On the other hand, the position with a private defendant was usually far less complicated. A public authority might well be discharging a duty towards different people often with potentially conflicting interests. So that, for example, the Home Office owed a duty to prisoners in custody but also arguably a duty to those affected by a failure to control those prisoners whether they be other prisoners or members of the public.

21. The law of tort in the last 50 years has to a considerable extent been concerned with defining the boundaries of liability on the part of public authorities. In the final analysis judges have had to decide whether as a matter of policy, it is appropriate for a duty of care to be owed even though there may have been some putative breach of such a duty on the particular facts of a case.

22. An example of this is the case of *Hill v The Chief Constable of West Yorkshire* [11]where the House of Lords decided that no duty of care was owed to the mother of the last victim of the Yorkshire Ripper even on the assumption that there was carelessness by the police force. The decision was based firstly on the lack of proximity between the police and the unascertained victim of the Ripper and secondly, that it was not desirable or fair, just and reasonable for the police to be held responsible to pay damages where they made errors. If they were it might divert them from their duties and could involve expensive

[11] [1989] AC 53.

and time-consuming analysis of the standard of police work on a particular case.

23. The immunity of the police from claims in negligence was qualified in various decisions but remained a core principle. It was most recently confirmed in the decision of the House of Lords in *Brookes v Metropolitan Police Commissioner* (2005) 2 All ER 489 when it was held that no duty of care was owed to a victim or witness in a criminal case.

24. The case of *Van Colle v Chief Constable of Hertfordshire Police* (2006) 3 All ER 963 provides a good example of where the HRA seems to have changed the law. A claim was brought against the police on the basis that they had failed to prevent the murder of a witness in a criminal case. The claim was brought not in negligence which would probably have been doomed to failure in the light of *Hill* and *Brookes* but rather under the Human Rights Act (Section 7) on the basis that Articles 2 and 8 had been infringed. Because there had been clear warnings of the possibility of the witness being murdered, the Judge concluded that the officers had failed to act compatibly with the victim's right to life under Article 2 of the Convention and in relation to his parents' right to respect for their private and family life under Article 8. Damages were awarded and it was concluded that the causation requirement which would have existed in a conventional tort case namely proof of causation on the but for test had no application where there was a breach of a Convention right. Thus it can be seen that the HRA has resulted clearly in a case being won where it might not otherwise have succeeded.

25. It might be regarded as an important contribution of the Act to provide remedies in cases of this sort. On the other hand where the House of Lords has so recently identified the policy which effectively gave immunity to the police in these circumstances, there is plainly something of a tension between the different strands of the law.

26. Another area of legal activity which has involved the HRA to a significant extent is in relation to claims against Social Services Departments of local authorities. In *X v Bedfordshire County Council* (1995) 2 AC 633 the House of Lords decided, largely on policy grounds, that local authorities should be immune from claims brought by children who allege that they should or should not have been taken into care. The reasons for their Lordships' decision were primarily policy ones including the risk of conflict, the multi-disciplinary element involved in child protection and the complex statutory background which formed the basis of the duty of the local authority to intervene and the powers and discretions vested in them by the legislation. When *X* went to Strasbourg, it was concluded that there had been a breach of Article 3 in the context of a failure to prevent child abuse (*Z v United Kingdom* (2002) 34 EHRR 3). Although there was an acknowledgment by the European Court of Human Rights of the difficult and sensitive decisions facing social services, it identified the important countervailing principle of respecting and preserving family life.

27. Since *X* various decisions of the Court of Appeal and the House of Lords appeared to qualify the immunity identified by the House of Lords, but in one area it appeared to be unqualified namely where the local authority (and medical practitioners) investigated sexual abuse. Here, there appeared to be no duty owed either to the child or even to parents who might wrongly be suspected to be the perpetrators of the abuse.

28. The Court of Appeal in *D v East Berkshire* (2004) QB 558 considered otherwise. The central question identified by the Court of Appeal was: if the common law does not offer the same protection as the Convention, should the common law be developed so the protection it offers mirrors that provided by the Convention? Indeed, the Court of Appeal considered that the coming into force of the HRA had undermined the policy considerations identified in the *X* case and therefore made it appropriate to alter the common law even though that meant the Court of Appeal effectively reversing the House of Lords. The

House of Lords went on to decide that there was no duty owed by the local authority to the parents but there was no appeal against the decision of the Court of Appeal in relation to the child.

29. It seems to us that the *D* case is a clear example of the Convention altering the common law or "*freshening"* it up. The parents' claim is now proceeding to Strasbourg. If the European Court of Human Rights conclude that their convention rights have been infringed what effect will this have on the common law? *D* was a case arising out of events pre-incorporation. But it seems to us that the Courts are prepared to alter the common law even retrospectively in the light of breaches of convention rights.

30. The effect of such an approach may be said to invigorate the common law. But it is not as if this was an area of law which had remained unconsidered. In a rather uncertain area of the law, even greater uncertainty has been engendered. This is an example of human rights "trumping" the common law.

31. All human rights instruments tend to reflect the times in which they were drafted. It does seem a little peculiar that the evolving common law should be wrenched off course by a broad statement of principle drafted shortly after the Second World War to deal with a wholesale abuse of human rights.

Osman

32. This was a case decided in Strasbourg before incorporation. It involved the issues which we discuss above namely the possible breach of an Article 2 right by the police in failing to protect a member of the public from violence when they ought to have known of the risk. But perhaps of even more significance was the pronouncement that the striking out procedure whereby cases were dismissed at an early stage when they had no chance of success was a breach of Article 6 and the right to a fair trial.

33. The decision bemused judges (see *Barrett* v London Borough of Enfield[12]). It had the effect of causing a number of cases that should never have proceeded to trial being consigned to a long lingering and expensive death. Eventually the European Court of Human Rights acknowledged that *Osman* reflected a misunderstanding of the role of striking-out in civil procedure. (See *Z* (supra)). But not before there had been considerable upheaval in civil litigation in this country where judges had attempted (even pre-incorporation) to reflect the *Osman* decision in deciding whether hopeless cases should go to trial.

Education

34. The right to an education as provided by Article 2 of the First Protocol of the convention had been restrictively interpreted in Strasbourg. But two cases reached the Court of Appeal in 2005 which resulted in findings of a breach of this convention right. In one a pupil wanted to wear strict Muslim dress to attend school and refused to accept the uniform rules prescribed by the school – which allowed, after wide consultation, for a modified form of Muslim dress. In the other, a pupil was excluded from school for taking part in an incident of arson in a classroom.

35. The House of Lords reversed the Court of Appeal in both cases, concluding that the right to an education simply meant access to a country's education system as a whole and not to a particular school. Their lordships also decided that a school could, after appropriate consideration, decide on a uniform and that a pupil had no right to insist on being allowed to wear a particular form of dress even if it was in accordance with their or their family's religious beliefs.

36. The decisions are to be welcomed. It is unfortunate that so much time, expense and adverse publicity resulted from the litigation as a whole. Whilst the ultimate result may seem in retrospect to be obviously right, the Court of

[12] [2001] 2 AC 550

Appeal thought otherwise. So that this is another example of the uncertainty in the law that has resulted from the incorporation of the convention.

Anufrijeva[13]

37. In this case the Court of Appeal had to consider, at great length and at considerable expense, various claims under the HRA. It placed in sharp focus the circumstances in which Article 8 might be infringed by the way in which a local authority and the Home Office had dealt with asylum seekers.

38. The Court came to very few clear conclusions apart from deciding that Article 8 might well be engaged and that in cases of maladministration there might be modest awards. The Court of Appeal, nevertheless, emphasised that it needed there to be a glaring deficiency for there to be an Article 8 infringement. It also attempted to discourage all but the most serious cases and tried generally to discourage court proceedings. Lord Woolf CJ said this: "*There are no doubt other ways in which the proportionate resolution of this type of claim for damages can be achieved. We encourage their use and do not pretend to be prescriptive. What we want to avoid is any repetition of what has happened in the court below in relation to each of these appeals and before us, when we were deluged with extensive written and oral arguments and citation from numerous lever arch files crammed to overflowing with authorities*". However, it is not easy to see how repetition of what happened in Annufrejiva can be avoided.

39. The case seems to us to illustrate one of the foreseeable disadvantages of incorporation: uncertainty as to the application of the convention to particular factual situations and time and expense wasted in litigation.

Detaining Suspects

40. The role of the Human Rights Act and in particular Article 5 was expected to be particularly potent where attempts might be made by the government of the

[13] *Anufrijeva v Southwark Borough Council* [2004] QB 1124

day to increase the power to detain without trial. This proved to be accurate when the House of Lords considered the case of *A & Ors. v Secretary of State for the Home Department* (2005) 2 AC 68. After 9/11, the government concluded that there was a public emergency threatening the life of the nation within the meaning of Article 15 of the Convention. Accordingly, it made a Human Rights Act derogation from the right to personal liberty under Article 5(1) in relation to the detention of non-nationals whom the Home Secretary believed posed a risk to national security. The House of Lords concluded that Courts could or should not displace the conclusion that there was a public emergency threatening the life of the nation within Article 15. But, having regard to Strasbourg jurisprudence they concluded that the detention of non-national suspects was contrary to the Human Rights Act and inconsistent with Human Rights Treaty obligations in that there was a discrimination on grounds of nationality or immigration status between non-nationals and nationals. The Derogation Order was thus quashed. It is arguable that the House of Lords could have quashed the order or some similar provision even without the advent of the Human Rights Act. But it is undoubtedly the case that the Human Rights Act gave an impetus to the challenge to the government's action and that the Strasbourg jurisprudence gave the House of Lords the opportunity to overturn the order in a way that might well not have been possible before incorporation.

Inquests

41. The coronial system has for many years been the subject of criticism in that it did not provide a satisfactory forum for those who wished to enquire in more detail than was customary into the circumstances of a death; particularly when some blame might have been attached to somebody. The passing of the Human Rights Act and in particular Article 2 (the right to life) gave the Courts the opportunity to direct in certain circumstances a far more thorough enquiry and a more detailed verdict to be provided by coroners. The two leading cases are *R (Khan) v Secretary of State for Health* (2004) and *R (Amin) v Secretary of State for the Home Department* (2004) 1 AC 653. Parliament is now in the

process of reforming the coronial system. It might reasonably be said that the advent of the Human Rights Act has provided additional impetus to a long delayed re-examination of the system of Coroner's Courts.

Criminal Trials

42. The main fear of those who considered the potential impact of the Human Rights Act on the criminal law was that it was likely to lengthen and over-complicate proceedings. The disclosure process, already extensive and arguably unnecessary in many cases, was likely further to be enlarged in the light of Article 6. Early reports from the Courts suggested that Article 6 was being deployed by defence lawyers as a general principle to supplement other arguments on alleged unfairness in the criminal process. Anecdotal evidence is that by and large such vague and non-specific invocations of Article 6 have largely disappeared.

43. Where Article 6 has had a more significant impact is in relation to disciplinary hearings where the requirements of Article 6 have prompted a re-examination of the adequacy of the relevant process. Examples include the prison governor's hearings for disciplinary offences in prison. In fact prisoners' rights generally have been re-examined in the light of the Human Rights Act with particular reference to matters such as correspondence and the prisoners' Article 8 rights.

44. There have also been examples of Article 6 being relied upon as an argument in relation to excessive delays in the prosecution of offences. Although such arguments have always been possible, based on the principle of abuse of process. Perhaps all that can be said about the effect of the HRA on criminal law is that it has prompted a re-examination of fairness in a number of different areas and has reinforced rather than substantially changed the rights of those either prosecuted or disciplined.

Privacy and Defamation

45. The rights to free speech under Article 10 and under Article 8, the right to a private and family life, potentially affect the existing law in relation to privacy and defamation. Although the Human Rights Act has made an impact in terms of the arguments deployed in marginal cases, so far it cannot be said that there has been a profound effect on the way the law protects rights in this area.

Conclusions

46. We have not purported to provide an exhaustive analysis of the impact of the Human Rights Act on all areas of law. To some extent the picture is still uncertain. A study by the Human Rights Act Research Project suggested that between October 2000 and April 2002 the Convention was substantively considered in 431 cases in the High Court or above and apparently affected the outcome, reasoning or procedure in 318. This is in contrast with what went before. Research in 1997 revealed that in 21 years between July 1975 and July 1996 the Convention was considered in just 316 cases in the High Court or above and affected the outcome, reasoning or procedure in just 16. This study in our opinion reflects an initial burst of enthusiasm for human rights arguments but a closer analysis of particular decisions and experience of the way in which Courts are in fact treating human rights arguments up to date reveals a rather less significant impact of the Human Rights Act than the figures would suggest. The question remains whether the Human Rights Act has been a force for good and how it can be expected to continue to affect the way cases are decided.

47. Some provisional conclusions are possible:

(i) There is more uncertainty in the outcome of litigation where public authorities are concerned, particularly concerning the liability of public authorities in tort.

(ii) More time and expense is incurred in arguing Human Rights Act points than is probably justifiable, although this is likely to settle down.

(iii) There has been some "refreshing" of the common law with arguable benefit in some areas although the common law was generally regarded as being sufficiently dynamic to bring about changes absent the Human Rights Act.

(iv) There is greater freedom for judges to make new law in areas where the law is either uncertain or possibly antiquated. In these circumstances, using the Human Rights Act and the Strasbourg jurisprudence, judges can bring about a change in the direction of the law. Two examples are *Secretary of State for the Department of Health & Others* [2006] 1 Lloyds Rep 48 and *R (Laporte) v Chief Constable of Gloucester* [2004] 2 AER 874.

(v) Some cases where claimants would have failed before the Human Rights Act can now succeed. What success means however is still somewhat uncertain. The actual remedies available under the HRA are still a matter for development. Lord Bingham described the secondary nature of damages in the human rights context: (*R (Greenfield) v Secretary of State for the Home Department* (2005) 1 WLR 673):

> "*The 1998 Act is not a tort statute. Its objects are different and broader. Even in a case where finding a violation is not judged to afford the applicant just satisfaction, such a finding will be an important part of his remedy and an important vindication of the right he has asserted… The purpose of incorporating the Convention in domestic law through the 1998 Act was not to give victims better remedies at home than they could recover in Strasbourg.*"

> If this thinking is reflected in the approach of courts to Human Rights Act cases, it may mean that litigants do not find that the Human Rights Act to provide them with very much by way of tangible returns and thus as with the pre-incorporation days, the invocation of the Act may be restricted to points of principle rather than more everyday assertions of infringement and consequential loss. However, it is far from certain that this thinking will be generally adopted and it is common place for claims under the Human Rights Act to include a claim for damages – particularly in claims against education and social services departments and the police.

48. Where the law is plainly developing is in relation to the doctrine of precedent. Section 2 of the HRA requires a Court to take into account Strasbourg jurisprudence but not necessarily to follow it. Lord Bingham in *Jones v Saudi Arabia* (2006) 2 WLR 1424 at 1435 said that this meant that a domestic court would *"ordinarily follow"* a decision of the European Court of Human Rights. However, the House of Lords departed from a judgment in Strasbourg in the case of *R v Spear* (2003) 1 AC 734 and see also *R v Lyons* (2003) 1 AC 976 where, per Lord Hoffmann at paragraph 46 ("*there is room for dialogue on such matters"*).

49. It must also be remembered that the European Court is itself prepared to depart from its earlier jurisprudence where persuaded that it is appropriate to do so. See for example, *Stafford v UK* (2002) 35 EHRR 1121, 1140 (paragraph 68 and *Z v UK* (2001) 34 EHRR 97 (where *Osman* was re-examined). So that there is an element of dynamism here. And also of uncertainty.

50. Has the HRA made a significant improvement in the delivery of a fair and efficient system of justice? We venture to doubt this. Indeed we think that Lord Denning's observations in 1976 were prescient and that the failure by the

United Kingdom to incorporate the Convention before 1998 was well considered.

51. The approach of the Courts to the Human Rights Act has not perhaps been as radical as some feared. But we do venture to suggest that the effect of the Human Rights Act has been considerable in terms of the way in which public authorities organise their affairs. Whilst much of the evidence is anecdotal and perceived, sometimes, through the possibly unreliable medium of the popular press, there nevertheless seems to us to be a significant body of evidence that in a number of areas public bodies fearful of human rights violations are being unnecessarily elaborate and defensive in their response. This is very much a mirror of what was covered by the all party parliamentary enquiry into the so-called Compensation Culture. There it was concluded that the perception of a compensation culture affected the way people behaved notwithstanding the fact that there was no real evidence of an increase in compensation claims.

52. Do we need to repeal or amend the Act? Should it be replaced by a Bill of Rights? The political risks of repealing any law which provides support for human rights are not for us. But we are not satisfied that the Human Rights Act has provided or will continue to provide sufficient by way of legal benefits to warrant its continued presence on the statute book, and there are plainly disadvantages. We do also venture to doubt that a Bill of Rights would necessarily be an improvement on the current law. But that, too, is outside the remit of this short paper.

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