



APPG for Ageing and Older People: Inquiry on older people's human rights Evidence submission by the British Institute of Human Rights

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At the British Institute of Human Rights (BIHR) we work to bring human rights to life, ensuring that people know and benefit from their rights in everyday situations. We take legal standards and translate these into tools people can use to improve their lives. Through our community outreach, practical projects, research and policy, we empower people to:

- **know** what human rights are
- **use** them practically, achieving positive change in everyday life outside courts, and
- ensure those in power **respect and progress** our human rights laws and systems.

We work with people and groups often on the sharp end of public services, such as older people, those with mental capacity issues (including dementia) and families/carers, and have a particular expertise in health and social care. Our work has shown that our domestic human rights law, the Human Rights Act HRA (HRA), is a practical tool that people can use to bring about positive change in their lives.

The HRA takes 16 universal, internationally-agreed human rights (as set out in the European Convention on Human Rights) and makes them domestically enforceable through a series of duties. This includes a legal requirement for all public authorities to act compatibly with the rights in the HRA. This means older people's human rights should always be of central concern when an authority is making decisions about a person, a policy or a service. This includes local government, social services, NHS etc. All the human rights set out in the HRA are relevant for older people. BIHR's work shows that the human rights and legal duties in the HRA have been vital in ensuring that older people are treated with equal dignity and respect. We set out examples below.

Using human rights law to change lives

When used in everyday decision-making human rights can shift power imbalances, enabling people to benefit from the law to get better decisions and outcomes that respect their dignity and autonomy.

Woman with dementia retains relationship with partner

Erin is in her late 70s, is affected by dementia and living in a care home. Her partner, Patrick, visits regularly and is seen touching Erin in a sexual way. Staff are concerned and raise it with the local authority, who start a safeguarding enquiry. Erin is assessed as having capacity to decide if she wants to have contact with Patrick (including kissing and hugging) but not sexual contact. A Care Act Advocate supports Erin through the enquiry. After training by BIHR, the advocate recognised this was engaging Erin's right to family life (Article 8 in the HRA). The advocate had seen the positive impact the relationship with Patrick appeared to have on Erin and raises this with the social worker conducting the enquiry. The social worker agreed that Erin's right to family life was engaged and took this into account. The enquiry concluded that the local authority would not prevent Patrick from visiting Erin and that the staff would not intervene if they kiss and hug.¹

¹ Example from BIHR's project Care and Support: A Human Rights Approach to Advocacy, available in 'Mental Health, Mental Capacity: My human rights', BIHR, 2017 and <https://www.bihr.org.uk/Pages/FAQs/Site/health/Category/changing-lives>

Other examples from BIHR's work include:

- An older couple were being 'talked over' by their daughter and carer, and a Carer Support Worker recognised this was about their right to autonomy (protected by Article 8 in the HRA) so spoke to the couple and carer separately. Realising that the carer was struggling to cope, the advocate arranged for the couple to get more support to stay living together at home.²
- A 60-year-old man was refused a heart scan because he had a learning disability. His Independent Mental Capacity Advocate used the right to life and the right to be free from discrimination (Articles 2 and 14 in the HRA) during a meeting, to reverse the doctor's decision.³
- A woman in her 70s was being abused by the manager of her care home. Her Independent Mental Capacity Advocate used the right to be free from inhuman or degrading treatment (Article 3 in the HRA) to raise this with the manager, also alerting social services, the police and the CQC.⁴

Using human rights law to change organisations

Evidence from our work with service providers also shows that human rights can be an empowering tool for practitioners to design and deliver rights-respecting services, changing cultures and improving outcomes for service users.⁵

Dignified care pathways

A dementia practitioner, Lisa, challenged poor practice around planning the care pathway of a client, following training from BIHR on how to use a human rights approach. Lisa recognised that the client's own wishes to live in her own home were not being given appropriate weight. Lisa said: **"Getting people to think about the range of human rights involved meant she was given a much more dignified, respectful pathway to be supported to live in her own home"**. Lisa, Senior Dementia Practitioner⁶

Our work has also shown using human rights can help to:

- **Change cultures:** "[using a human rights approach] has improved the culture of our organisation. I started off sceptical about what difference [it] would make, but there has been a big turn around and the service is better as a result."⁷
- **Improve decision-making:** "Human rights have revolutionised decision-making. Staff are thinking differently. It needs to be rights based, not just risk based."⁸

Conclusions

A dedicated Convention on older people would provide international leadership and set standards to tackle issues specific to older people. Our work has shown that local enforcement of standards in the HRA, through a direct legal duty on public officials to respect and protect human rights, is making a real difference to people's lives here in the UK. It is therefore vital that any work on a dedicated Convention for older people recognises the role of the HRA in securing older people's human rights in the UK. With more widespread knowledge of these domestic legal standards, we could work towards universal protection and ensuring no-one slips through the net.

²See note 1.

³See note 1.

⁴See note 1.

⁵ See <https://www.bih.org.uk/evaluation-report> and <https://www.bih.org.uk/Pages/FAQs/Site/health/Category/changing-organisations>

⁶ Example from BIHR's project Delivering Compassionate Care: Connecting Human Rights to the Frontline available in Dementia and Human Rights: A practitioner's guide, BIHR, 2016.

⁷ See note 5.

⁸ See note 5.