

BRITISH INSTITUTE OF HUMAN RIGHTS: POLICY POSITION ON THE HUMAN RIGHTS ACT

Policy statement

The Human Rights Act is a crucial safety net for everyone. It helps to make principles like fairness, dignity, and respect real and meaningful for people in their everyday lives.

Across the country, younger people, older people, survivors of domestic violence, parents, asylum seekers, people living with mental health problems, disabled people and others facing discrimination and disadvantage have begun to use the Human Rights Act ‘beyond the courtroom’ to challenge poor treatment, just as the Government intended when it introduced this legislation almost ten years ago.

Although awareness of the Human Rights Act within the public and voluntary sectors remains low, evidence is emerging, in fields including health and social care, education, equality, and anti-poverty, to show how using the Human Rights Act benefits many people in the UK and the public services they access.

There is a pressing need to promote and build upon this work, to defeat myths and misconceptions about the Human Rights Act and to replace them with a new narrative that emphasises how the Human Rights Act can be a force for positive social change. This new narrative will provide a vital foundation for any future debates about extending the legal protection of human rights.

The Context

What is the Human Rights Act?

The Human Rights Act was introduced in 1998 by the Labour Government and entered into force on 2 October 2000. It was designed to ‘bring rights home’ by making most of the human rights protected by the European Convention on Human Rights (‘the Convention’) a part of UK law. As a result of the Human Rights Act, people are now able to invoke these rights in the UK courts, instead of having to go to the European Court of Human Rights in Strasbourg.

When the Human Rights Act was passed, the Government explained that its purpose was to support a culture of respect for human rights across the UK. The idea was that it would have its greatest impact not in our courts of law, out of reach of the public at large, but in the wider community, especially in the hands of those who provide public services and those who use them.

This is important because the Human Rights Act is not only about legal cases. The broader and deeper aim behind the Human Rights Act is a democratic one, to build in every person a consciousness of shared ownership of the fundamental values of society, enforceable as a last resort through the legal process. The Human Rights Act therefore provides a crucial safety net, a tool for negotiation and ensuring accountability; protecting people from an overweening state. Ultimately, a culture of respect for human rights is about creating a path to greater decency, respect and fairness for everyone.

The institutional and informational vacuum

However, progress has been somewhat limited, particularly hindered by the lack of institutions responsible for driving the implementation of the Human Rights Act. Although the Northern Ireland Human Rights Commission was established in 1999 (as part of the Good Friday Agreement), there was no comparable body in Britain until October 2007, when the Equality and Human Rights Commission (EHRC) opened for business. The Scottish Human Rights Commission opened the following year in December 2008.

The absence until recently of a statutory body tasked with promoting the Human Rights Act in Britain means that public awareness about human rights and the Human Rights Act remains very low. Similarly, despite promotional activity by the Ministry of Justice, implementation of the Human Rights Act within public authorities also remains low and heavily compliance focused. Voluntary and community organisations are at an early stage of exploring the relevance of the Human Rights Act to different aspects of their work.

The Human Rights Act in action

Yet there is increasing evidence that the Human Rights Act is bedding down, being used by individuals and voluntary and public bodies to challenge poor treatment and develop better public services. From older people in care homes, disabled children being a part of the school community, to women seeking safety, BIHR is gathering evidence of how the Human Rights Act offers something for everyone, and particularly gives a voice to people who are often ignored, yet whose basic rights are most at risk.(1)

There is exciting emerging practice which is taking human rights beyond the actions of a few pioneering individuals into institutions themselves. In health and social care, poverty and schools, BIHR has led and stimulated partnerships with a range of organisations to test the impact of human rights. We are now seeing many others in the voluntary and public sectors adopting approaches which put human rights into action.(2) The emerging evidence suggests benefits for service users, staff and organisations as a whole.

1 See for example BIHR's report *The Human Rights Act: Changing Lives* (2nd Edition, 2008), and www.ourhumanrightsstories.org.uk an innovative new website coordinated by BIHR which brings together the experiences of organisations and individuals working on human rights, children, equality, older people, women, mental health, carers, refugees, prison reform, advice, democracy, and poverty, showing how the Human Rights Act can secure better outcomes for ordinary people.

2 The EHRC Human Rights Inquiry Report (2009) documents numerous examples of organisations adopting approaches which put human rights into action.

Yet, just as the Human Rights Act is beginning to bed down and deliver real change for people we have reached a critical political juncture in which the foundations of these green shoots of good practice are being threatened.

Current political debates

In recent years the Human Rights Act has come under serious attack in public discourse. The continuing low awareness of the Human Rights Act among the general public and the lack of systematic mainstreaming across the public and voluntary and community sectors has created an information vacuum, filled to a large extent by myths and misconceptions pedalled in parts of the media and by some politicians.

This negative media and political coverage perpetuates misconceptions about the Human Rights Act, for example by mistakenly presenting it as being only for particular groups or minorities, (3) hindering national security measures, (4) being a 'lawyers' charter' or privileging rights without responsibilities.(5) Examples of how the Human Rights Act is being used as positive force for social change challenge these commonly held misperceptions, but they rarely generate headlines.

It is against this negative backdrop about human rights and the Human Rights Act that current debates about replacing and/or changing the Human Rights Act are taking place. BIHR is concerned that these debates are not underpinned by a consensus on the value of the Human Rights Act. Rather, the Labour party Government and the Conservative party are suggesting significant changes in a particularly negative context. The Government has introduced a Green Paper on a Bill of Rights and Responsibilities and the Conservative party has consistently called for repeal of the Human Rights Act and its replacement by a British Bill of Rights; however there are currently no concrete proposals on the table.

What is at risk?

BIHR believes that, in the current context, calling for changes to the law which purport to add to, replace or repeal the Human Rights Act risk taking the protection of human rights in the UK backwards. Without a widespread shared understanding of what human rights are and how they relate to people's everyday lives, we are concerned about the extent to which there can be a genuine and informed debate about the protection of human rights. The threat of weakened protections is a real risk and there is much to lose, including:

Losing access to our human rights at home. Whilst the major political parties are clear that the UK would remain bound by the Convention, it is the Human Rights Act which enables individuals to enforce their rights in UK courts. Without this law

3 The Human Rights Act is for all people in the UK, it covers both citizens and non-citizens.

4 The Government's Review of the Implementation of the Human Rights Act (2006) states that, contrary to perceptions, the Act 'has not seriously impeded the achievement of the Government's objectives on crime, terrorism or immigration, and has not led to the public being exposed to additional or unnecessary risks'.

5 Human rights are founded on the idea of mutual respect; they automatically imply responsibilities. This is expressed in the Human Rights Act by the requirement to balance most rights to reflect our social responsibilities (an exception is the prohibition of torture, which can never be violated under any circumstances). This means some rights can be restricted to protect others, but our human rights do not depend on fulfilment of our responsibilities.

people will be back in the same position as before the Human Rights Act, having to go to the European Court of Human Rights in Strasburg.

The impact on people's everyday lives. Notwithstanding any changes to the law, criticising the Human Rights Act and introducing uncertainty is bound to affect many people and organisations that have begun to use the Human Rights Act to shift the balance of power between people and the state, using it to challenge poor treatment and improve services. The impact of this will be particularly significant for the most marginalised people and those in vulnerable situations who will never see the inside of a courtroom yet who are most at risk of human rights abuses.

International impact. Weakening the UK's domestic protection will have knock-on effects felt around the world. If other European countries with poor human rights records see the UK reducing its protection, there is no reason for them to take the European Convention on Human Rights seriously. This sends the message to the worst global human rights offenders that human rights are expendable. Furthermore, the UK's international voice will be significantly weakened, exposing the dichotomy of being an enthusiastic ambassador for human rights overseas, as vital safeguards for any society, whilst seeking to weaken our own human rights protections.

BIHR's recommendations

Non-regression of the Human Rights Act

The Human Rights Act must not be weakened in any way, shape or form. For BIHR, this means that:

- The Human Rights Act should remain on the statute books; any subsequent legislation which seeks to enhance the protection of human rights does not require the repeal of the Human Rights Act (there are many examples of countries that have both Human Rights Acts and subsequent Bills of Rights or similar additional legal protections);
- If a future government decides to legislate in this area, any new legislation must therefore ensure as a minimum all of the rights (drawn from the European Convention on Human Rights) as protected by the Human Rights Act continue to be enforceable in our domestic courts;
- These rights continue to be available to and enforceable by everyone within the UK's jurisdiction, regardless of citizenship or immigration status; and
- There is no weakening – via interpretative clauses, judicial guidance etc. of the mechanisms in the Human Rights Act which place these rights at the heart of our legal system and the provision of public services.

New narrative about the importance of the Human Rights Act to everyday life

There is a pressing need for a new narrative about the importance of the Human Rights Act, and human rights more generally, to everyday life in the UK. This new narrative should draw on pioneering work by BIHR and others which shows how the

Human Rights Act can make a positive difference in areas that matter to people in their daily lives, including health and social care, education, and efforts to tackle poverty and other inequalities in our society.

This means effective and inclusive national public education about the Human Rights Act and human rights. In addition there is a need for specific work to develop and mainstream practical guidance and support for public sector organisations and service providers, under a duty to comply with the Human Rights Act, on how to put human rights into practice.

This new narrative needs to be shaped and delivered by a wide range of actors. Given its remit to 'promote understanding of the importance of human rights' and 'to promote awareness, understanding and protection of human rights', the EHRC (and the human rights commissions in Northern Ireland and Scotland) has a key role in leading this work. However, other actors including voluntary and community organisations, the media, parliamentarians, lawyers, activists and all levels of government also need to be involved. Crucially, the involvement of people from the most excluded groups – including those living in poverty, or experiencing inequality or social exclusion – needs to be facilitated.

Further strengthening of the Human Rights Act

BIHR believes that people must be equipped with information about human rights in order to provide the foundation for a meaningful debate both about how to make existing legal protections real and the scope for further protections to be introduced. BIHR believes that the Human Rights Act should be further strengthened by:

Closing the 'public authority' loophole. There should be greater clarity over which private and voluntary bodies are covered by the Human Rights Act because they perform 'functions of a public nature'. A government consultation on the meaning of 'public authority' under the Human Rights Act has been promised on several occasions but has failed to materialise. In BIHR's experience, when private and/or voluntary organisations understand how human rights can help rather than hinder their service delivery, these organisations do not oppose being covered by the Human Rights Act.

BIHR is calling on the government to address this issue and to restore Parliament's original intent, as indicated by the then Lord Chancellor during parliamentary debates, that a 'wide interpretation' be given so as 'to provide as wide a protection as possible for the human rights of individuals'.

Creating a public sector human rights duty. There is currently very low awareness within public authorities on their responsibilities under Human Rights Act including the implicit positive obligations which require authorities to take proactive steps to protect human rights. For example, the Human Rights Act requires local authorities to protect those in vulnerable situations from abuse, including taking action in cases of child abuse to safeguard children from breaches of their right not be subjected to inhuman or degrading treatment (Article 3 rights).⁽⁶⁾ Yet when child

⁶ For example, in the case of *Z and others v UK* (2001), the applicants were four children who, over a five-year period, were subject to treatment including never being properly fed, living in unsanitary conditions and physical abuse. This had devastating and long lasting effects on their physical and psychological health. The European Court of Human Rights found that this violated the right not be subject to torture, inhuman or degrading treatment (Article 3) because the authorities had been aware

abuse cases come to light, such as the recent tragic case of Baby P, there seems to be little learning around how local authorities are under a human rights duty to take positive steps to protect such children.

BIHR is calling on the Government to create a 'positive' or 'general' human rights duty for public authorities or otherwise take steps to focus attention on the positive obligations imposed on public authorities by the Human Rights Act.

Protecting economic, social and cultural rights In BIHR's experience, the omission generally of economic, social and cultural rights is a major impediment when trying to explain the value of the Human Rights Act to the public, who see these rights as most closely related to their daily concerns; to staff in public authorities, who see these rights as central to the services they are delivering; and to voluntary and community organisations who want to see these rights realised for the groups they represent. Omission of these rights from the Human Rights Act also undermines the fundamental principle, confirmed in the Vienna Declaration and Programme of Action (1993), that all human rights are indivisible and interdependent.

BIHR is calling on the Government to recognise and protect economic, social and cultural rights via domestic law, and to otherwise raise awareness of the importance and relevance of these rights to the UK. Further, as the EHRC is not restricted in its human rights remit to the rights protected by the Human Rights Act it is therefore empowered to champion the importance of economic, social and cultural rights.

About BIHR

BIHR is a national independent human rights charity that is committed to challenging inequality and social justice in everyday life in the UK. Since the introduction of the Human Rights Act, we have specialised in taking human rights 'beyond the courtroom', making human rights knowledge accessible to a wide range of audiences and translating the ideas and laws into practical tools for people and organisations to use in everyday life. To this end, we provide information, training and consultancy to a range of voluntary, community and public bodies at national, regional and grassroots levels. We also run or collaborate in pilot projects in specific fields or sectors such as within the voluntary and community sector, in poverty, healthcare, schools and local government. In partnership with others, these allow us to test the impact of human rights on people's experiences of services and their ability to challenge the state when it fails to treat them with dignity and respect. We use this experience 'from the ground' to inform our policy and influencing work.

Further information about BIHR visit www.bihr.org.uk

February 2010

of the serious ill-treatment over a period of years and failed to take action to protect the children. It considered that while the local authorities were initially justified in maintaining the family as a unit by giving support to the parents, the gravity of the conditions and the signs that the children were suffering physical and psychological damage required that effective steps be taken to safeguard their welfare.