



20 June 2007

Our response to the House of Lords decision in *YL v Birmingham City Council and others*

The British Institute of Human Rights said today:

'We are stunned by this decision. By exempting private care homes from the Human Rights Act when they house people under contract to a local authority, the House of Lords has undermined the fabric of human rights protection in the UK.

Hundreds of thousands of older people and disabled people are placed by their local authorities in private and voluntary sector care homes, and they all stand to lose from this decision. The highest court in the land has now confirmed that residents and their families are unable to use the Human Rights Act to challenge these care homes when basic human rights are denied.

We know only too well from our training work that horrible human rights abuses occur in care home settings. Neglect, persistent rough handling, leaving people for hours in soiled sheets, splitting of older couples, and routine overmedication to keep people docile are just some of the examples we hear about regularly.

An array of organisations intervened in this case to plead for protection against treatment of this sort for care home residents. BIHR jointly intervened with Liberty and JUSTICE. Other interveners included Age Concern, Help the Aged, the Disability Rights Commission, and the Secretary of State for Constitutional Affairs. All argued strongly for the Human Rights Act to apply.

This case was an opportunity for the House of Lords to say once and for all that private and voluntary sector care homes 'stepping into the shoes' of the state have a responsibility to protect their residents against human rights abuses. The House of Lords failed in this task. In doing so, it has defied Parliament's intent to ensure the widest possible human rights protection for people in the UK. The responsibility now clearly lies with Government to remedy this loophole.'

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Notes to Editors

1. For further information contact Sonya Sceats, Policy and Research Officer, on 020 7848 1817, ssceats@bihr.org.uk, or go to our website www.bihr.org.

2. The YL case involves an 84 old year woman with Alzheimer's disease. She has been living in a private residential care home since early 2006 when she was placed there by her local authority. The local authority is paying for her care, although her family contribute a modest 'top up' fee. Four months after she arrived at the care home, the management fell out with members of her family and threatened to evict her. There was evidence that moving her could have a very serious impact on her health. The House of Lords was asked to rule on whether the care home was bound by the Human Rights Act. An earlier decision by the Court of Appeal, in the notorious Leonard Cheshire case, suggested the answer was no, but this has long been considered an 'unstable' decision which the House of Lords was likely to overturn.

3. Today's judgment of the House of Lords in YL was not unanimous. Of the five Lords who heard the case, two of the most senior decided in YL's favour. Baroness Hale of Richmond returned to the original Parliamentary debates which made clear that private bodies would be covered when they were delivering services previously provided by the state. She explored the various factors for the courts to consider when determining whether a person is 'performing functions of a public nature' for the purposes of section 6 (3) (b) of the Human Rights Act, and declared that in this case they 'lead inexorably to the conclusion that the company, in providing accommodation, health and social care' was performing a public function, and was thus bound by the Human Rights Act. Lord Bingham of Cornhill agreed. In her judgment Baroness Hale referred to two BIHR reports: *Something for Everyone* (2002) and *The Human Rights Act – Changing Lives* (2007). Both of these reports are available on our website www.bihar.org or by contacting info@bihr.org.uk.

4. In the Court of Appeal, the YL case was joined with another case called Johnson v Havering. The Johnson case involved three people in their 90s in residential care who challenged their local authority's decision to move them into privately run homes. They argued that this would strip them from protection under the Human Rights Act. BIHR gave expert evidence to the High Court in the Johnson case. This expert evidence is available on our website. On 30 January 2007 the Court of Appeal dismissed appeals in both YL and Johnson seeking to establish that the care homes had responsibilities under the Human Rights Act to protect the human rights of their residents. However, recognising the immense public importance of the issue, the Court of Appeal agreed to refer the case to the House of Lords for 'reconsideration'. In the end, only the YL case proceeded to the House of Lords.

4. The decision by the House of Lords in YL increases the pressure on the Government to plug the 'legal loophole' that has denied older and disabled people in private and voluntary sector care homes (the vast majority of care home residents) protection under the Human Rights Act. BIHR is committed to working with partners to help find a solution.