

Older people and human rights

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The British Institute of Human Rights (BIHR) is a charity with a unique focus on human rights as they affect people in the UK in their everyday lives.

If you are a journalist or politician and would like further briefing, comment or spokespersons (BIHR's Director, Katie Ghose or Chair, Geoffrey Bindman), please contact Katie Ghose or Anna Edmundson on 020 7848 1818.

For more details about the British Institute of Human Rights and the work we do please visit: www.bihar.org or contact our Administrator Amy Barrick on 020 7848 1818 (admin@bihr.org).

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How do human rights relate to older people?

Older people have the same human rights as everyone else in our society, yet they often find them ignored. Three rights of particular relevance are the right to life; the right to be protected from inhuman or degrading treatment (under Article 3) and the right to respect for their private and family life (under Article 8), all rights which became part of UK law when the Human Rights Act came into force in 2000. As people over 50 are an extremely diverse group, they will experience infringements of their rights in different ways and at different stages of their lives. Older people are among the millions of carers, supporting parents or disabled children for example, whose health or right to life itself can be put at risk when they are denied any respite from their caring responsibilities.

Do human rights in general have any special importance for older people?

Human rights are significant for older people because many rely heavily on public services; some experience prejudice and discrimination; they can be dependent on others for their care and may be living in poverty, ignored or cut-off from society. Human rights can help protect or provide redress when the very worst abuses occur. But they can also help to foster a new way of thinking which makes it less likely that people will have their rights flouted in the first place.

When the Government introduced the Human Rights Act, it was explicit about the role the Act could play in helping to improve public services, helping to make them more tailored to each individual's needs. Older people are often major users of public services, and as they grow as a proportion of the overall population, making sure that services respond to their needs will become all the more important. But we know from their experiences that they often receive inadequate service, ranging from the worst cases of neglect or abuse through to a failure to make decisions fairly or to listen to what the older person says they need. A human rights approach taps into people's concerns about being given a 'fair deal' and treated with respect and dignity and can improve a service for everyone, not just the individual concerned.

Human rights law can also help to plug the gap caused by the absence of a law to protect them from discrimination in goods and services. For example it can be used to challenge obvious cases of discrimination like routine breast cancer screening stopping at the age of 70.

Are all older people protected by the Human Rights Act?

No – the vast majority of older people in residential care are in private/voluntary homes and these are not covered by the Human Rights Act. The Act places bodies performing 'functions of a public nature' under an obligation not to breach people's

human rights. Politicians made it clear when the Act was introduced that they wanted this to be interpreted broadly so that people living in private and voluntary sector-run homes would be protected. Unfortunately a court decision (Leonard Cheshire, 2002) took a narrow approach. The Government has committed to resolving this and have pledged to consult on how to change the law so that everyone is included. In the meantime, a test case has emerged, in which three people aged 87-92 are challenging the lack of protection for people in private/voluntary care. This has the potential to affect large numbers: in 2001 (the latest year for which figures are available), Department of Health Community Care statistics reveal that the independent sector was providing approximately 92% of all homes and 85% of places in residential care homes. 81% of local authority funded residents were placed in independent residential or nursing homes.

What will the test case achieve?

The High Court heard the case in April and judgement is expected on Tuesday 11 July. Its decision could help fulfil Parliament's original intentions behind the Act and end the lottery for people who end up in the 'wrong' type of home. As it involves such an important issue, the judge may say that the higher courts (the Court of Appeal and House of Lords) need to hear the case. Whatever the court decides, the case should give an extra prompt to the Government to make sure that older people are given the same protection in law as everyone else. For further information about the case please contact BIHR.

How can human rights make a difference to older people's lives?

Following BIHR training, people have reported practical ways in which they have used human rights. For example, a care home for older people had a policy of not providing residents with bed-pans between lunchtime and teatime. This was challenged by a local support group as a breach of the residents' right to respect for their private life under Article 8 of the convention and the policy was subsequently changed. Care home closures have also been successfully challenged by residents using Article 8 (private and family life) arguments.

Another practical use of human rights has been in relation to the numerous cases in which older couples are separated, when one moves into residential care. A local council refused to place a married couple in the same nursing home in Oxfordshire, which was a potential breach of their right to respect for family life. The decision attracted national publicity, and the council eventually accepted that the couple should be placed together. However, if the right to family life was properly considered in the first place, councils would consider issues like the impact of separation on the couple's happiness and well-being and would very often find a practical solution to enable them to stay as a family unit.

Don't human rights get in the way of the real issue which is usually resources?

Human rights do not give anyone the right to demand a service that costs a particular amount. But a human rights approach does help to make sure that decisions are people centred rather than solely made on the basis of cost. In addition, it can help people designing and delivering services to come up with practical solutions that can often be low-cost or no-cost – for example providing equipment that enables someone to stay in their own home and retain their independence, dignity and family life rather than moving into residential care.

What are the implications of the recent attacks on the Human Rights Act for older people?

There now appear to be no immediate plans to amend the Human Rights Act. The Government has been emphasizing measures to encourage different interpretation of the Act rather than amendment or repeal and whilst David Cameron has said he will repeal the Act, he has pledged to remain signed up to the European Convention, whilst saying that he will introduce a new British Bill of Rights. However, the wave of negative publicity and continual association of human rights with bad people (i.e. paedophiles, rapists and terrorists) makes it incredibly hard to convey to older people that human rights can be of practical benefit in their lives. There has been an unremitting focus on Article 3 (which prohibits torture and inhuman or degrading treatment) and its use by foreign terror suspects to resist removal to another country, where they show a substantial risk of torture. It was these instances which led the Government at one point to threaten to weaken Article 3, for example by introducing a 'clarifying' law which insists that judges and officials consider public safety issues, even when a substantial risk of torture has been shown. In fact Article 3 offers vital protection from or prevention of appalling treatment by some of the frailest older people. There are numerous examples: people being washed or dressed without any regard for their dignity; being fed on the toilet; and incidences still of elderly people on mixed hospital wards against their wishes. It is essential that older people, their relatives, friends and those who work with them understand the absolute nature of the right not to be subjected to inhuman or degrading treatment. This message is much harder to get across in a climate of hostility towards human rights.

What does BIHR do in relation to older people and their human rights?

Older people are a key target group for our human rights promotion and training which is aimed at voluntary, community and public sector organisations. We have trained around sixty organisations, reaching a total of three hundred people.

We are about to launch a series of practical 'plain English' guides to human rights, and one of these is aimed at older people. They will be launched at a parliamentary reception on 18 July, which Human Rights Minister Cathy Ashton will be speaking at. For further information about the guides and the launch please contact Lucy Matthews (lmattthews@bihr.org; 020 7848 1818)