

THE MENTAL HEALTH BILL, HUMAN RIGHTS & INDEPENDENT CARE

Joint briefing by the British Institute of Human Rights & National Care Forum



The British Institute
of Human Rights 

May 2025



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We urge the UK Government and parliamentarians to amend the Mental Health Bill to ensure people receiving care have the same human rights protections irrespective of whether that care is outsourced to independent providers.

- The Human Rights Act provides important protections for people in vulnerable situations, such as when in receipt of care.
- Parliament clearly intended, in passing both the Human Rights Act and the Care Act, to ensure equal human rights protections for people accessing care services, whether outsourced or delivered directly by the State.
- This is even more relevant now than ever; according to a 2024 study by the Department of Social Policy and Intervention at Oxford University, "in adult social care, 96% of residential services are now outsourced".
- Making sure the law is clear and consistent is also important to care providers; the Human Rights Act is not a burden but a tool for public body workers to help them support the rights and dignity of the people they work.
- However, the recent legal case of a man called Paul has exposed a loophole in the law that leaves people whose care has been arranged under the Mental Health Act without direct human rights protections.
- Aftercare arranged under S117 of the Mental Health Act is not a purely private arrangement; this is care arranged and paid for by the NHS and local authorities.
- Care providers do not alter their care based on the law or funding model used to arrange someone's care. To do so would be both unethical and nonsensical – not least because many people transition between private and State funding during their time accessing services. It therefore would not be an additional burden on care providers to embed equal protections in the law and many care providers support this approach.



"As a company we believe that as a third party provider to the NHS and local authority that human rights protections should include companies like ours. Our reasons for this are that the authorities have requested us to provide the same service they would have done if not outsourced to a private provider. Even those that are independent care providers supporting individuals in a caring environment should also support individuals' human rights as a standard duty of care.

We believe that human rights protections should be in place to protect everyone who is receiving any care or support. It should be seen as the normal practice and not an additional burden. The transparency in all of this should surely bring standards into line with human rights and companies should not see this as a burden but should have staff champions to ensure that each individual is treated ethically and in a dignified manner."

- Secure Care Services

TIMELINE



1998: THE HRA

The Human Rights Act confirms that all bodies carrying out a public function have a duty to uphold human rights. Parliament said the Act “had to have a definition of a public authority that ... took account of the fact that ... an increasingly large number of private bodies, such as companies or charities, have come to exercise public functions ... previously exercised by public authorities.”



2006: YL'S STORY

84-year-old YL was placed in an independent care home by Birmingham City Council. When YL was told she had to leave the home within 28 days, she brought a court case arguing this interfered with her human right to private life and home. However, the Court said that the care home was not carrying out a public function and so did not have a legal duty to protect YL's human rights.



2014: THE CARE ACT

Parliament introduced the Care Act, which intended to close this loophole in human rights protections. This Act says a registered care provider, when providing personal care at home or residential accommodation with nursing or personal care, is carrying out a public function for the purposes of the Human Rights Act if the care is arranged or paid for by a local authority, in part or in full, under a specific set of powers.



2024: PAUL'S STORY

Paul was detained in hospital under the Mental Health Act. The hospital and local authority then arranged and paid for aftercare for him in an independent care home under S117 of the Mental Health Act. In the care home, Paul was deprived of his liberty. He later died in the care home from pneumonia and intestinal issues related to a medication side effect. Paul's family brought a human rights case. The Court said that S117 of the Mental Health Act is not one of the specific powers covered by the Care Act and decided the care home was not carrying out a public function so didn't have a duty to protect Paul's human rights.



2025: THE MENTAL HEALTH BILL

Baroness Keeley put forward an amendment to the Mental Health Bill to include a clause that ensures human rights protections apply when people receive outsourced mental health treatment or aftercare or are deprived of their liberty in connection with mental health care. This has since been withdrawn to allow for the UK Government to address the issue at Commons stage.



"If private providers weren't there, we wouldn't have a system. If they're taking on contracts that support people where statutory duties are in place and they're fulfilling some of those statutory duties, they absolutely should be public authorities. Particularly in mental health where we've got really key [Article 2 \[right to life\]](#), and [Article 3 \[right to be free from inhuman or degrading treatment\]](#), duties, for them not to be [public authorities] is a really bad plan."

- Daisy, Approved Mental Health Professional

ANNEX

About BIHR

The [British Institute of Human Rights \(BIHR\)](#) is a UK-wide charity working with individuals, community groups, public bodies and policymakers to enable positive change through the practical use of human rights law. Over the last 10 years we have trained over 10,000 staff including frontline health and care staff, senior leaders commissioners and regulators on human rights law.

About NCF

The [National Care Forum \(NCF\)](#) brings together more than 170 of the UK's leading not-for-profit care and support organisations. Collectively, these organisations deliver more than £4.4 billion of social care and support to over 268,495 people. They employ more than 146,652 people.

Further information

- [The 16 rights in the Human Rights Act](#)
- [The Mental Health Bill: a human rights explainer](#)
- [The Human Rights Act & Outsourcing Public Services](#)
- [Hybrid public bodies: What is a "public authority" under the Human Rights Act?](#)
- [Organisations' duties under the Human Rights Act: Health, Care & Social Work](#)
- [Legislative Scrutiny: Mental Health Bill](#)



Article 2
The right to life



Article 3
The right to be free from torture and inhuman or degrading treatment



Article 4
The right to be free from slavery and forced labour



Article 5
The right to liberty



Article 6
The right to a fair trial



Article 7
The right not to be punished for something that wasn't against the law when you did it



Article 8
The right to respect for private and family life, home and correspondence



Article 9
The right to freedom of thought, conscience and religion



Article 10
The right to freedom of expression



Article 11
The right to freedom of assembly and association



Article 12
The right to marry and start a family



Article 14
The right to be free from discrimination



Article 1, Protocol 1
The right to peaceful enjoyment of possessions



Article 2, Protocol 1
The right to education



Article 3, Protocol 1
The right to free elections



Article 1, Protocol 13
Abolition of the death penalty