The British Institute of Human Rights
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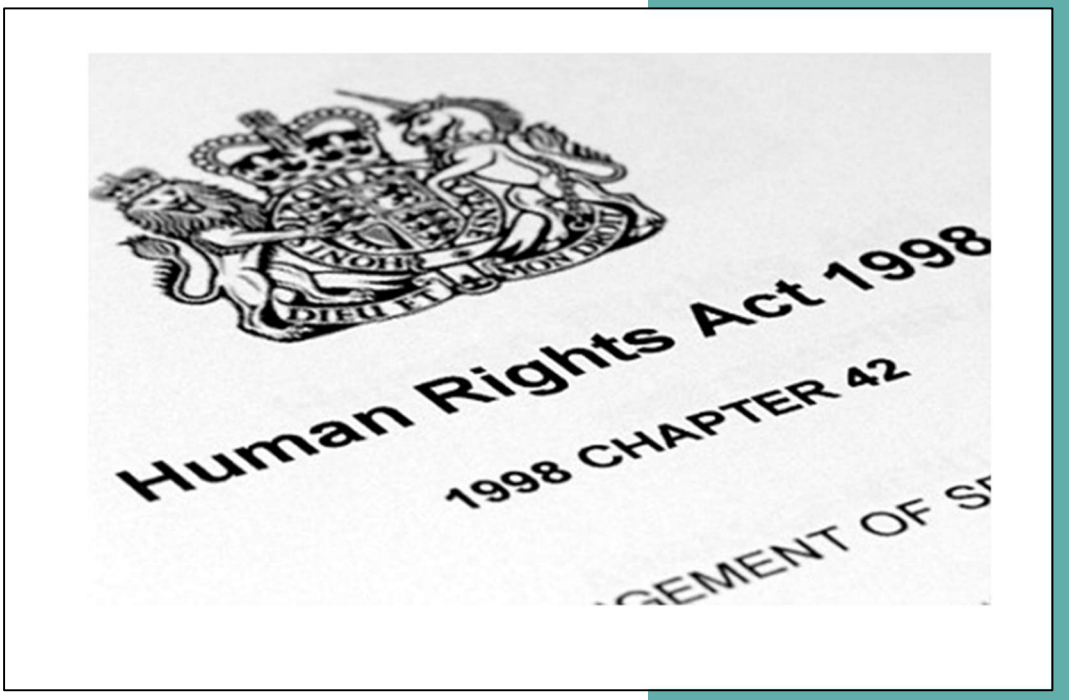
The Human Rights Act: A powerful tool for ensuring rights are made real in the UK.

BIHR's full response to the Joint Committee on Human Right's Call for Evidence.

The Government's Independent Human Rights



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22 March 2021

Executive Summary

> **“Whilst it is essential that this Act exists, I feel like there needs to be more accountability from the government or other places where it is applied. People may know of its existence but this does not always mean that they respect or uphold the Act correctly/without causing harm to individuals.”**
>
> Quote from respondent to our survey, “The Human Rights Act and Me.”

At BIHR (British Institute for Human Rights), we see the value of the Human Rights Act (HRA) every day in our work with people interacting with services, community and advocacy groups and staff working in public services. The Human Rights Act is, in its current form, an incredibly powerful tool which has the power to create a culture of respect for human rights in the UK. Since the passing of the Human Rights Act, for over 20 years, we at BIHR have been supporting the operation of the Act with rights holders and duty bearers. Our experience shows there is still a long way to go until a culture of respect for human rights becomes a reality for all of us, here in the UK.

Our submission makes it clear, however, that the route to making human rights real for everyone is not through more legislative review of our Human Rights Act but through human rights leadership, at all levels, ensuring that the Human Rights Act is understood and implemented every day, in every interaction a person has with public services.

Our expertise

The British Institute of Human Rights (BIHR) is a charity working in communities across the UK to enable positive change through the practical use of human rights law beyond the courts, sharing this evidence of change and people's lived experiences to inform legal and policy debates. We work to support people with the information they need to benefit from their rights; with community groups to advocate for social justice using human rights standards; and with staff across local and national public bodies and services to support them to make rights-respecting decisions. This enables us to call for the development of national law and policy which truly understands people’s experiences of their human rights. Established in 1970, with a focus on supporting a culture of respect for human rights since the passing of the Human Rights Act in 1998, we work with over 2,000 people each year. Our submission, analysis and recommendations are directly informed by our organisation's unique expertise of human rights practice, and people’s real-life experiences of the issues.

We welcome the opportunity to respond to this Inquiry and the Joint Committee on Human Rights’ (JCHR or the Committee) decision to focus on the use of the Human Rights Act over the past 20 years beyond courtrooms and parliament.

We are concerned that the narrow focus of the Government's Independent Review means that not only is it inaccessible to the majority of people who have lived experience of the operation of the Act, but it misses out any reflection of the Act's key aim, to create a culture of respect for human rights in the UK. Therefore, the wider focus of the Committee's inquiry is welcomed.

Our evidence

From the Independent Review's announcement[1] on 13 January 2021 until end February 2021, we engaged in extensive evidence gathering alongside partner organisations including the British Association of Social Workers (BASW), Learning Disability England, The Human Rights Consortium Scotland, All Wales People First, Equally Ours and many more. This evidence gathered from over 400 people UK wide, all of whom have lived experience of our Human Rights Act in its current form, informed our short submission to this inquiry submitted on 19 February 2021, as well as our submission to the Independent Review on 2 March 2021.

These are the individuals whose views should be central to any review of the operation of the Human Rights Act, and which now shape our longer response to this inquiry.

1. People: People accessing (or trying to) access public services, their family members and people who care about them.
2. Advocacy and Community Groups: Formal advocates (e.g., IMCA (Independent Mental Capacity Advocate), IMHA (Independent Mental Health Advocacy) etc.), self-advocates, and other community, campaigning, and advocacy groups.
3. Staff: People with legal duties to respect and protect rights. This includes those working in public services and in private, charitable, or voluntary bodies delivering public services.

Our findings

- 100% of people who responded to our research said that the Human Rights Act was important to them.
- 78% of people who responded to our research said the Human Rights Act is important to them as it helps raise concerns with public bodies/services.
- 88% of people who responded to our research are worried that the Independent Human Rights Act review may lead to less protection of rights.
- 74% of people who responded to our research think the Human Rights Act is important in helping them support people so their rights are respected.

Our answers to the Committee's call for evidence

This submission brings together BIHR's expertise from over 20 years of supporting the operation of the Human Rights Act and our evidence gathered from people with lived experience of using the HRA. It is through this expertise and experience-led data gathering that we answer the questions posed by the Committee. We hope that our findings will

[1] Independent Human Rights Act Review (IHRAR) Call for Evidence (2021) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/962423/Call-for-Evidence.pdf

inform any further work carried out by the JCHR alongside the work of the Independent Review.

- The Human Rights Act in everyday ways has led to individuals being more able to enforce their human rights in the UK. This submission makes clear that there is still a lot of work to be done to ensure human rights are made real for everyone, but that this will not be achieved through more legislative review. This submission contains multiple examples of the Human Rights Act as a tool for advocacy and decision-making which supports individuals to enforce their human rights in the UK. Our research for the Review shows that 76% of people who responded have either used the Human Rights Act in their life or work to help change things for the better or know someone who has.

- How easy or difficult it is for different people to enforce their rights depends on a range of factors. Our research shows that some of the barriers to enforcing human rights include levels of awareness of human rights law for people, advocacy groups and public officials, equality and discrimination issues, resource issues within public services, and lack of human rights leadership nationally and locally. None of our research points to the law itself creating any issues with how different people enforce their rights in practice.

- The operation of the Human Rights Act has made an incredible difference for public authorities. Far from something which is seen as additional bureaucracy, our experience and evidence contained in our full submission shows that public officials consider the Human Rights Act a useful and practical tool for decision-making. During Covid-19, the Human Rights Act has offered a framework for decision-making for public officials which is absent in subordinate legislation, regulations, guidance and policy. Our research reveals that 63% of staff have used the Human Rights Act to help change decisions or policies so they can better support people.

- The Human Rights Act contains mechanisms that respect the separation of powers between the government (executive), parliament (legislature) and the courts (judiciary). The mechanisms within the Human Rights Act work are intended to ensure that Convention rights are enforceable here at home whilst maintaining the constitutional principles of the UK. This submission makes clear that any review into the operation of the HRA must give full consideration not just to the separation of powers in the UK but to the role of the HRA in devolved administrations.

- The Human Rights Act strikes the right balance in the relationship between the domestic courts and the European Court of Human Rights. This submission shows that this relationship is working well and there is no need to alter the relationship.

- This submission argues that the current provisions within the Human Rights Act relating to the actions of the UK (or its agents) overseas are appropriate. There is no need to change these provisions.

Our position

At BIHR, we echo the voices of the people we work with; and a very clear message is that Review of the Human Rights Act is unnecessary. The HRA is based on universally agreed

principles, set down in international and regional laws, which exist to uphold each person's fundamental rights by placing limits and requirements on governments. Sadly, history, and people's everyday experiences, remind us of the need for human rights laws. The past year reinforces this all too starkly.

That is not to say the UK's protection of human rights is perfect; plainly it is not, and we see people's rights risked and breached far too regularly. The problem that needs addressing is not the HRA. The legal framework is not failing. As this submission will demonstrate, there is ample evidence of the law supporting people to be treated with equal dignity and respect. The HRA can be part of the solutions needed, not the problem. When we strengthen the ability of public bodies to use the HRA and of people and communities to advocate for their rights, we see the difference a culture of respect for human rights makes.

The failure has been one of leadership, from successive UK governments[2] since the passing of the HRA, including investment in resources, education, practical implementation and monitoring to secure a culture of respect for human rights.

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[2] This can be starkly compared to actions of some of the devolved governments focused on securing the HRA and bringing additional international human rights protections into the UK, which builds on our current law rather than questioning or undermining it.

Preamble: The Human Rights Act, Setting the Scene

The passing of the Human Rights Act in 1998 brought the rights within the European Convention on human rights home, with two key aims:

1. To enable people to bring human rights cases in the UK courts; and
2. To help create a culture of respect for human rights.[3]

It is the second, often forgotten aim of the Human Rights Act which BIHR is focused on: supporting a culture of respect for human rights in the UK. This is at the heart of the legal duty in section 6 of the HRA. This section of the HRA, which is not visible in the Independent Review's consultation questions, makes it unlawful for a public authority to act in a way which is incompatible with a Convention right. The only exception to this legal duty is if a piece of primary legislation means that the state could not have acted differently.[4]

Human Rights Act Review Research:

78% of respondents said that the Human Rights Act is important for them and/or the people they care about as it helps to raise concerns with public bodies or services when they feel their rights are not being upheld.

A culture of respect for human rights is fundamental for every person, in their everyday life. The legal duties imposed by our HRA requires that when people are interacting with public bodies and services, as so many of us do in our everyday experiences (e.g., housing healthcare, social care, education, etc.), the officials involved should respect, protect and secure the full enjoyment of human rights. Essentially, human rights should be the reference point for every person's dealings with those who hold public power, as the JCHR has noted:

> "A human rights culture is one that fosters basic respect for human rights and creates a climate in which such respect becomes an integral part of our way of life and a reference point for our dealing with public authorities… in which all our institutional policies and practices are influenced by these ideas… The building of a human rights culture... [depends] not just on courts awarding remedies for violations of individual rights, but on decision-makers internalising the requirements of human rights law, integrating standards into their policy and decision-making

[3] The Secretary of State for the Home Department, Rights Brought Home: The Human Rights Bill, October 1997, at Chapter 2 and 3 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/263526/rights.pdf

[4] Section 6(2), Human Rights Act 1998 [United Kingdom of Great Britain and Northern Ireland], 9 November 1998, available at: https://www.legislation.gov.uk/ukpga/1998/42/section/6

processes, and ensuring that the delivery of public services in all fields is fully informed by human rights considerations."[5]

Human Rights Act Review Research:

63% of staff in public bodies taking part in our research have used the Human Rights Act to help change decisions or policies so they can better support people.

This is what BIHR supports people and organisations to do, using the HRA section 6 duty as the lever for change. However, in national debates, and in the Independent Review, there is little acknowledgment of the importance of section 6 in securing people's rights through everyday advocacy, challenging and changing the decisions public officials make each day. Section 6 means that people can draw on the law when having conversations with public bodies about the fulfilment of their rights. These conversations between people, their loved ones and advocates, and public bodies, which lead to rights-respecting change, appear to have no space in the Independent Review. Yet this represents a key part of the HRA's operation over the last 20 years.

People's Views on the Human Rights Act

We have interacted with over 400 people over the last 8 weeks, discussing the Human Rights Act and the Independent Review of the HRA. Below we share what the people, advocates and staff we spoke to told us. We have included this evidence to the Committee as these are the voices which should be heard in any call for evidence around the operation of the HRA.

Human Rights Act Review Research:

100% of our research respondents said the Human Rights Act was important to them.

Human Rights Act Review Research:

88% of research respondents think the Human Rights Act is important because the UK should have a law which says that governments and public bodies / services should protect our rights, and courts should be able to look at cases about rights.

Human Rights Act Review Research:

76% of research respondents have either used the Human Rights Act in their life or work to help change things for the better or know someone who has.

[5] JCHR Sixth Report of Session 2002-03, The Case for a Human Rights Commission, HL Paper 67-I/HC 489-I, at para. 2

We asked what people thought about the Independent Review into the Human Rights Act:

- Worried
- Potentially dangerous
- Less rights
- Reduction
- Divisive
- And the most common answer "unnecessary"

Human Rights Consortium Scotland Session

Equally Ours Session

Human Rights Act Review Research:

88% of research respondents are worried that the Review of the Human Rights Act may lead to less protection of rights.

This reflects our experience over the last 20 years, where we have seen the HRA recognised as an incredibly important piece of legislation and utilised as such. Over the past 20 years we have gathered numerous examples of people, community and advocacy groups and public services staff using the HRA for positive change. We have included a small number of these examples in our submission. We welcome the Committee requesting further setting or issue specific examples where this would support work alongside the Independent Review.

What needs to be done?

In our evidence gathering, we asked people and public officials, prior to BIHR's support, what they feel are the barriers to achieving a culture of respect for human rights. The word cloud below, from one of our many sessions and answered by 69 people, raises familiar issues of awareness, education, funding and empowerment (note the larger words mean they were repeat answers). Not a single answer said a Review of the HRA is what is needed.

Research question: what are the barriers to achieving a culture of respect for human rights in the UK?

At BIHR, we echo the voices of the people we work with; and a very clear message is that Review of the Human Rights Act is unnecessary. The HRA is based on universally agreed principles, set down in international and regional laws, which exist to uphold each person's fundamental rights by placing limits and requirements on governments. Sadly, history, and people's everyday experiences, remind us of the need for human rights laws. The past year reinforces this all too starkly.

That is not to say the UK's protection of human rights is perfect; plainly it is not, and we see people's rights risked and breached far too regularly. The problem that needs addressing is not the HRA. The legal framework is not failing. As this submission will demonstrate, there is ample evidence of the law supporting people to be treated with equal dignity and respect. The HRA can be part of the solutions needed, not the problem. When we strengthen the ability of public bodies to use the HRA and of people and communities to advocate for their rights, we see the difference a culture of respect for human rights makes.

The failure has been one of leadership, from successive UK governments[6] since the passing of the HRA, including investment in resources, education, practical implementation and monitoring to secure a culture of respect for human rights.

[6] This can be starkly compared to actions of some of the devolved governments focused on securing the HRA and bringing additional international human rights protections into the UK, which builds on our current law rather than questioning or undermining it.

1. The Human Rights Act enabling individuals to enforce their human rights in the UK

Has the Human Rights Act led to individuals being more able to enforce their human rights in the UK?

Our experience, over the last 20 years and our evidence gathered for the Government's Independent Review, is that the Human Rights Act has without question, led to individuals being more able to enforce their human rights in the UK.

Prior to the Human Rights Act, the UK was a signatory to and had ratified the European Convention on Human Rights (ECHR) for nearly fifty years. However, people were unable to raise their human rights directly in UK Courts and the legal duty for public services to act compatibly with convention rights was not part of UK domestic law.

When the Human Rights Act came into force in 2000, it meant that:

1. There is now a legal duty on public authorities to respect and protect human rights across their actions, decisions, policies, services, etc.
2. Other laws should be applied in a way that respects your human rights, as far as possible.
3. People can now bring human rights cases in UK courts and tribunals.

These steps mean that the HRA can be enforced both in domestic courts in the UK and in the everyday interactions with and the decision-making of public bodies. It is the latter which is often harder to see or to evidence. We have included just a small number of these examples below, gathered from those we work with. We welcome the Committee contacting us for further examples of the operation of the HRA in practice to support work alongside the Independent Review.

Human Rights Act Review Research:

78% of the people said that the Human Rights Act is important for them and/or the people they care about as it helps them to raise their concerns with public bodies/services when the feel their rights are not being upheld.

Becca's used the HRA to gain full custody of her children

Becca had recently left an abusive relationship and was rebuilding her life. Becca's children had been removed from her care by social services, which she was incredibly upset about. She had been trying for several months to have the decision looked at again, but no progress had been made. Becca attended a mapping session during a BIHR project to create a new human rights tool where we discussed human rights and how they can apply to the everyday lives of women who are rebuilding their lives after domestic abuse, including the right to private and family life, home and correspondence (Article 8, HRA).

Becca's support worker told us, "Inspired by your session, Becca and I spoke to her solicitor about the situation, using the language of human rights, language she had not known of or felt confident in using before." The solicitor helped Becca challenge the decision using human rights. As a result, the court overruled the decision to have her children removed and said Becca can work with social workers to gain skills and support to have full custody of her children again.

(Source: BIHR's direct work)

Muriel and Robert relied on the HRA to ensure end of life visits

On 21 July, Robert had a serious fall at home and his wife Muriel called an ambulance. The ambulance arrived and Muriel was told she could not accompany Robert, "due to Covid rules".

Robert, who is 79 and has dementia, was in intensive care for 12 weeks. Muriel was not allowed to visit; nurses gave her daily telephone updates. On 25 October, Robert was discharged to residential care. The care home he was moved to was locked down the following morning due to a positive Covid-19 test.

It has now been 4 months since Muriel watched Robert leave in an ambulance. The couple have had no contact as Robert is too distressed to talk on the phone, he is deteriorating mentally and physically. The thought that she might not get to say goodbye keeps Muriel awake at night.

Muriel reaches out to an advocacy organisation who advises her that based on the severe impact this is having on Muriel and Robert's mental and physical wellbeing, the couple's right not to be treated in an inhuman and degrading way (Article 3, HRA) might be at risk. Restricting or risking this right is not lawful because it is an absolute human right. Muriel uses a template letter to raise the care home's legal duty under the HRA. The care home has since arranged for Muriel to be provided with full PPE so that she can visit Robert regularly and will ensure that Muriel is vaccinated together with staff so that she can spend time with Robert as he nears the end of his life.

(Source: Follow up from BIHR's direct work)

Ian is a carer for his disabled son and his wife. In this video Ian shares how he relies on the HRA to support his loved ones and other carers, because too often services and commissioners are making decisions that risk people's dignity and equality.

Amy (not her real name) received mental health treatment as a child, in hospital. She later became an NHS staff member working on a project with staff and people receiving services to better ensure the rights in the HRA are upheld in everyday decision-making. In this blog Amy shares her experience on the importance of the HRA for supporting patients to know they have rights, and for staff to respect and protect people's rights every day.

Human Rights Act Review Research:

"I am using the Human Rights Act right now to defend my daughter in a locked institution about to be sent out of the area, away from home and family."

How easy or difficult is it for different people to enforce their Human Rights?

From our experience we know that people are using the Human Rights Act to enforce their rights. Every day people are using the HRA to challenge poor decisions in their interactions with public bodies, to challenge the lack of basic public services, and to bring legal cases to challenge the decisions of a public body.

Human Rights Act Review Research:

76% of research respondents have either used the Human Rights Act in their life or work to help change things for the better, or know someone who has.

When asked to share how they have used the Human Rights Act to help change things for the better:

- 50% said the Human Rights Act has helped them challenge poor decisions by public bodies/services that affect them (or the people they support).
- 28% said the Human Rights Act has helped them challenge lack of basic public services that they or the people they support should be able to access.
- 16% said the Human Rights Act has helped them or the people they support to bring a legal case to challenge the decisions of a public bodies/services.

However, as noted above, we know from our work over the past 20 years and especially from our work during the pandemic that we still have far to go until we reach a culture of respect for human rights. We know that many people do not have their human rights properly respected, protected or fulfilled during their interactions with public services. We know that people often feel unable to enforce their rights. From our work we know key issues underpinning this are low levels of awareness of human rights, our specific legal framework in the HRA and how that works every day. Human rights education is lacking throughout UK society; most people we come into contact with have very little understanding of their rights (or duties for the staff in public bodies) and how the HRA works.

A large focus of our work at BIHR is responding to this need, empowering people with practical human rights resources to support them to make change in their lives. We see how even after a short session where people are provided with practical information and tips can help people feel more confident to use thee HRA in their everyday lives. For example, a woman survivor of domestic abuse who was involved in BIHR project, and attended a Human Rights Act upskilling session said:

> "Given my past experiences I have really struggled with standing up for myself and my rights, I haven't had any confidence. But now I know that it is the law for me to have my rights upheld, I feel like I can use human rights when I want to challenge a decision or try to get a better solution."

The Human Rights Act is an essential check on power and accountability mechanism. Its very reason for being is to protect the individual in their interactions with the state and its public authorities, due to the inherent power imbalance. This in turn creates better public authorities, that the public can trust and have faith in. Everyone interacting with public authorities should be supported to understand and feel confident in the fact that their human rights being upheld is not best practice or special treatment, instead it is the law and the basic standard we should all expect.

2. The operation of the Human Rights Act and the practice of public authorities

Our response to question 2 of the Committee's call for evidence.

How has the operation of the Human Rights Act made a difference in practice for public authorities? Has this change been for better or worse?

In our experience, the operation of the Human Rights Act has had an incredibly positive impact on public authorities. Far from something which is seen as additional bureaucracy, our experience and evidence contained in this submission show that public officials consider the Human Rights Act to be a useful and practical tool for decision-making.

Human Rights Act Review Research:

44% of our research respondents said the Human Rights Act is important to them as a staff member in a public body or service, as it helps them to uphold the rights of people accessing the support they provide.

Over the past 20 year we have worked closely with public authorities and the staff working within them, supporting them to increase the accountability of public bodies to respect and protect human rights in everything they do, every day. This work includes supporting human rights-based decision-making with frontline staff and local policy decisions, to using a human rights approach to commissioning and changing laws and national policies to ensure they are human rights compliant.

We have seen that, when properly used and understood, the Human Rights Act can support better public authorities - not just for the people accessing them, but for the staff working in them too.

Human Rights Act Review Research:

"As a representative of the state (social worker) I can say that the Human Rights Act has almost always been a positive thing, even if it has sometimes meant more work or more effort. The result - ensuring that the rights of patients and service users are respected - is always worth it."

"I am a social worker and find that the rights in the Human Rights Act - liberty, privacy, freedom from inhuman treatment - are vital and should be central when decisions are made affecting vulnerable people. Ensuring that decision-makers MUST take these rights into account ensures better, fairer decision-making."

"As a social worker, the rights in the HRA are - and should be - central to our decision-making. … Without the requirements of the HRA I can guarantee that unfair and unjust policies would be in place, affecting some of the most vulnerable in society."

Children and Adolescent Mental Health inpatient service

Young people were admitted to the Tier 4 service from all over the country, potentially separating them from their family and friends for many weeks. An ongoing issue, common to many mental health in-patient services, has been managing access to mobile phones and the internet. There are additional concerns with young people around internet grooming, exploitation and inappropriate usage. This made staff fearful of being blamed for allowing such access and potentially placing a young person in a vulnerable position whilst in their care. This resulted in young people not having access to phones and the internet.

Following their involvement in BIHR's project (2011-2014), the centre applied a human rights approach and individualised care planning and have made the following changes:

Mobile phones: previously the service policy banned young people's use of mobile phones due to safety concerns (both harm to the young person or them using the phones for harm). The policy was reviewed and now all young people have access to their mobile phones, with safety concerns being managed on an individual basis, giving more responsibility to the young person. This has improved young people's ability to maintain contact with their family and friends and provided staff with a framework for managing access issues.

Internet access: this had also been restricted due to safety concerns. The service drafted a new policy, allowing young people access to the internet, with safety concerns being addressed by staff on an individual basis. The aim is to further improve young people's contact with their family and friends and give staff a clear framework to respect rights and uphold their duties to protect against harm.

(Source: BIHR's work)

Sarah works in an NHS Trust. In this video she shares how the HRA provides an important practical framework for frontline staff to make daily decisions about health care treatment.

Martin headed operations at a voluntary sector housing association that supports people with mental health issues. In this blog he explains how their integration of the HRA into daily operations helped challenge their own policies and practice, with a reduction of violent incidents by 50% and reduce evictions. Using the HRA also helped the organisation to challenge a proposal for staff to

wear high visibility jackets when supervising residents in the neighbourhood, in order to mark them out.

Sarah, the then Director of the National Survivor User Network (NSUN). In this blog she talks about how they have used the HRA to secure changes to mental health policy and to support people who are detained.

The often-used rhetoric that staff working in public services see the Human Rights Act as a hindrance to decision-making has, in our experience, not been the case. Indeed, when decision makers are supported to understand and apply the HRA they see it as an incredibly helpful and practical tool for policy and practice.

Human Rights Act Review Research:

64% of those attending our staff-focused research workshop said the HRA has helped them to change decisions or policies so they can better support people.

36% said the HRA has helped them to change decisions or policies to better support staff and the organisation.

The examples above show the difference made when decision-makers internalise the requirements of human rights law and integrate those into their policies and decision-making processes. The Human Rights Act is an incredibly powerful tool when it is understood and used. However, the challenge is that this is often misunderstood and underused. Reviews and inquiries that focus on the operation of the HRA solely in the context of a courtroom do little to support the move to a culture of respect for human rights.

- For every person and their family whose detention under the Mental Health Act has been rights-respecting, least restrictive and of therapeutic benefit because that Approved Mental Health Professional or Independent Mental Health Advocate was Human Rights Act trained.

- For every individual whose social care assessment or review happened despite easements because that social worker knew it could breach their human rights if easements aren't applied compatibly.

- For every care home resident who has been supported to see their loved ones during the pandemic because that care home manager did a human rights impact assessment.

- And crucially, for every person for whom these things have not happened but who have found the tool they needed to challenge power in the Human Rights Act.

This is the kind of impact of the operation of the HRA in practice, every day in the lives of people and public officials, which risks being missed by the Independent Review and any subsequent recommendations to the UK government. Yet any such recommendations could lead to change that would profoundly impact people's everyday experiences of having their human upheld in the UK.

3. The Human Rights Act and the relationship between the Courts, Government and Parliament

Our response to question 4 of the Committee's call for evidence.

What has been the impact of the Human Rights Act on the relationship between the Courts, Government and Parliament?

The Human Rights Act (HRA) exists to ensure that everyone's rights here in the UK are respected, protected and fulfilled. It is a carefully considered piece of legislation which respects universal human rights principles and the constitutional conditions of the UK (including parliamentary sovereignty). The HRA provides a necessary and practical legal framework for upholding people's fundamental rights domestically and importantly, for holding the state to account.

Our UK HRA, and indeed all human rights laws, are about putting limits on state power, recognising that in modern democracies, governments must have some checks and balances. Some level of government frustration with human rights laws is therefore to be expected. When this shifts to the reason for review, dilution or repeal of those human rights laws, removing them from their primary purpose of accountability based on internationally agreed standards, that is a worry in any country. It is a real worry that this has been the direction of travel in the UK for over decade. In our work, this concern has been all too evident since the announcement of the Independent HRA Review on 13 January 2021.

Unlike many other countries, we do not have a codified written constitution. Crucially, the HRA contains mechanisms that respect the separation of powers between the government (executive), parliament (legislature) and the courts (judiciary). The mechanisms within the HRA work as intended to ensure that Convention rights are enforceable here at home whilst maintaining the constitutional principles of the UK.

These mechanisms are explained below.

3.1 The duty to apply other laws to be rights respecting in practice

Section 3 of the HRA means that primary legislation (Acts of Parliament) and subordinate legislation (e.g., Regulations) must be read and applied in a way which is compatible with the Convention rights as far as it is possible to do so. You can read our views on how section 3 works in the courtroom here.

Beyond the courts, which is the primary focus of this submission, this means when public bodies and services are applying other laws, they should do so in a way that is compatible with our human rights, e.g., the Mental Health Act, the Children's Act, the Social Work Scotland Act or the Coronavirus Act etc. Every day at BIHR, we support public officials to apply legislation and policy compatibly with the HRA, leading to better outcomes for the individuals they support. We know from our work, including change programmes over the last 20 years, that there are many public officials using the HRA every day and ensuring all

subordinate legislation is applied compatibly. When assessing whether changes to section 3 are necessary, it is fundamental that we consider how this section of the HRA is being used beyond the courts.

Spotlight: Ensuring human rights protection for people during the pandemic

After the Coronavirus Act (CVA) was passed in March 2020, we were inundated with human rights capacity building requests from public bodies and those delivering public functions. The ask from public bodies, most notably Adult Social Care Teams (initially), across the UK was to support teams of staff to apply the CVA compatibly with the ECHR and through this, the HRA. We believe the reason for this increase in demand for our support was a direct result of Schedule 12 of the CVA which, when setting out the powers of local authorities in England, stated:

"A local authority must meet an adult's needs for care and support if— (b) the authority considers that it is necessary to meet those needs for the purpose of avoiding a breach of the adult's Convention rights."[7]

The guidance which followed on social care easements produced by the Department of Health and Social Care also made clear:

"Local authorities will remain under a duty to meet needs where failure to do so would breach an individual's human rights under the European Convention on Human Rights (ECHR). These include, for example, the right to life under Article 2 of the ECHR, the right to freedom from inhuman and degrading treatment under Article 3 and the right to private and family life under Article 8."[8]

As did the Scottish Government statutory guidance for local authorities on sections 16 and 17 of the Coronavirus Act 2020:

"When using these provisions, all decisions made on an individual's social care needs should be considered alongside their individual wellbeing and fundamental human rights."[9]

As a human rights organisation, we know that Section 3 of the HRA, together with section 6 of the HRA, means that public officials across the UK should apply both primary and subordinate legislation compatibly with human rights, unless there is an explicit provision which prevents this, creating a statutory defence. However, the CVA and the succeeding guidance which made this duty explicit led to the increase in awareness of this part of the Human Rights Act for public bodies.

Since March 2020 over 40 public bodies across the UK reached out to us for practical human rights support. We have provided support to over 2,000 public officials to understand how to apply coronavirus legislation compatibly with the HRA. This includes:

[7] https://www.legislation.gov.uk/ukpga/2020/7/section/17/enacted
[8] https://www.gov.uk/government/publications/coronavirus-covid-19-changes-to-the-care-act-2014/care-act-easements-guidance-for-local-authorities
[9] https://www.gov.scot/publications/coronavirus-covid-19-changes-social-care-assessments-statutory-guidance-local-authorities-sections-16-17-coronavirus-act-2020-updated-6-nov/

Somerset County Council, Leicestershire County Council, South Gloucestershire Council, the Nursing & Midwifery Council, Lincolnshire Council, Rutland County Council, Lancashire Council, Gloucestershire Council, Blaenau Gwent County Borough Council, West Berkshire Council, Telford & Wrekin Council, Worcestershire County Council, NHS Torbay & South Devin, Suffolk Safeguarding Partnership, Derbyshire City Council, NHS Dumfries & Galloway, Midlothian Health and Social Care Partnership, Norfolk and Suffolk Foundation Trust, TEWV NHS Foundation Trust, Trafford CCG.

Staff and leaders who attended our human rights capacity building sessions on the HRA and the pandemic have shared:

"I will integrate this into decision making in Dementia Care."

"I will make sure that if the Care Act Easements are switched on where I work, I will ensure not to apply them if they breach human rights."

"Knowing that I can disapply a provision of the mental health law if it breaches the rights of an individual has changed so much about how I will practice."

"How COVID is having an impact and what to consider – lawful, legitimate, proportionate when making decisions."

"This approach to decision making demystified a lot, it has given us the answers we need at a difficult time."

3.2: No strike down power for courts

Section 4 of the HRA means that if a higher UK court considers that a law, or more specifically, part of a law, is incompatible with human rights, it can make a declaration of incompatibility (DOI). Parliamentary sovereignty means that the law will not automatically change following a DOI. Rather, the law remains in force until parliament approves change (if it decides to do so). It is up to the government and parliament to resolve the problem with the law, thus maintaining the separation of powers in the operation of our HRA. The situation is different for devolved and subordinate or secondary laws; but this is because those forms of legislation do not have primacy, as only Acts of parliament are sovereign. Respect for the UK's constitutional principle of parliamentary sovereignty is woven throughout the HRA, in a highly innovative and nuanced piece of legal drafting. You can read our views on how section 4 works here.

3.3: Our Human Rights Act and Devolution Arrangements

The rights within the HRA, brought into UK law from the ECHR, are interwoven into the devolution arrangements in Northern Ireland, Scotland and Wales. The Scotland Act 1998, the Wales Act 1998 and the Northern Ireland Act 1998 (which is part of an international peace process) established devolved legislatures and administrations. Each devolved nation has a range of issues for which it is responsible, many of which impact on human rights. Importantly, all the devolution arrangements prevent the parliaments/assemblies from passing laws which may be incompatible with Convention rights, as set out in the HRA. If a court in the devolved nations finds such a law to be incompatible it can be

disapplied, because such a law would be outside the powers delegated to those bodies ("ultra vires") (this is not the same for the UK parliament which is sovereign, as explained above). The mechanisms in the HRA and its position in devolution arrangements are part of what makes the HRA such an innovative, distinct piece of legislation. Any move to change the HRA or any Review into its operation must give full consideration to the HRA's distinct role in each devolved nation. In devolved nations, the HRA is a crucial building block for increased rights protections; removing that block or changing its contents could be hugely detrimental.

3.3.1: The Human Rights Act in Scotland

The Human Rights Consortium Scotland, a civil society network of 110 member organisations who work together to protect human rights, have raised grave concerns about the impact of the Review on the human rights trajectory there. The Consortium, in their response to the Independent Review,[10] share that, "Scotland is on the precipice of major human rights law reform... **any amendments to the HRA and how it operates could have highly regrettable, detrimental impacts on these very positive and welcome human rights advances in Scotland."**

Professor Nicole Busby, in a briefing paper for the Civil Society Brexit Project,[11] flags:

> "Whilst the scope of the Review appears to preclude repeal of the HRA, it is not known how extensive its recommendations for reform will be. If adopted by the UK Parliament, the current devolution arrangements could prove to be problematic for any such reform, in the most extreme case requiring amendments to be made to the relevant statutes including the Scotland Act. Perhaps more likely, even in the case of relatively minor amendment, is the potential for any proposed reform to disturb the progressive and ongoing development of a human rights-based approach and corresponding culture within Scotland's political institutions with resulting impacts felt by its wider society."

At BIHR's event on Human Rights Day 2020, "70 years of the European Convention on Human Rights, 22 years of the UK's Human Rights Act: Human rights in the UK, Covid-19 response and recovery", Professor Alan Miller, the Independent Co-chair of the Scottish Government's National Taskforce for Human Rights, spoke about the Taskforce's work. He described the situation in Scotland as the opposite of regression; a dynamic movement working together with civil society towards the realisation of rights. The Scottish Government are presenting a Bill to the Scottish Parliament which aims to establish a new human rights framework for Scotland. The Bill includes restating and reinforcing the Human Rights Act and the Equality Act, and to go further by including incorporation of many UN Treaties. Professor Miller highlighted that consent from the Scottish Government and Parliament to agree reforms from Westminster that undermine the HRA would not be forthcoming. The Human Rights Consortium Scotland make the impact of the HRA and their concerns about changes at UK level clear:

> **"The HRA has had significant impact on the courts, law, policy, practice and culture within devolved Scotland, as well as giving vital legal protection for individuals. The**

[10] Human Rights Consortium Scotland response to the IHRAR
[11] Busby, N. Human Rights and Devolution: The Independent Review of the Human Rights Act: Implications for Scotland, for the Civil Society Brexit Project 2020.

> HRA is the underpinning, starting point for the major human rights law reforms in Scotland -any change to this foundational human rights law will detrimentally impact the strengthening of human rights law at devolved level."

3.3.2: The Human Rights Act in Wales

A similar approach to human rights, one of progression rather than regression, can be seen in Wales. One example of this is through the Welsh Government's approach to children's rights and the commitment to the principles of the United Nations Convention on the Rights of the Child (UNCRC). Through the Rights of Children and Young Persons (Wales) Measure 2011, a duty is placed on Ministers to have due regard to the UNCRC when developing or reviewing legislation and policy. This means that Ministers must give the appropriate weight to the requirements of the UNCRC, balancing them against all the other factors that are relevant to the decision in question. The measure also makes Ministers responsible for ensuring that people in Wales know about, understand and respect the rights of children and young people as outlined in Article 42 of the UNCRC. To ensure compliance the Welsh Government also developed the Children's Rights Impact Assessment (CRIA).[12]

At our Human Rights Day Reception in December 2020, we heard from Joe Powell, Chief Executive of All Wales People First, the national umbrella body for self-advocates with learning disabilities in Wales. Joe spoke of the importance of the Human Rights Act in self-advocacy in Wales, stating that, "Without human rights we are never going to be seen as people first." You can listen to an excerpt of Joe's speech here.

3.3.1: The Human Rights Act in Northern Ireland

In Northern Ireland, the Human Rights Act is part of the 1998 Belfast/Good Friday Agreement, part of the international peace process. Any change to the HRA could have a significant impact on Northern Ireland's peace process.

In December 2020, at our Human Rights Day Reception, we heard from Brian Gormally, Director of the Committee on the Administration of Justice (CAJ) in Northern Ireland. CAJ is an NGO which seeks to ensure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its responsibilities in international human rights law. Brian spoke about the human rights landscape as seen from Northern Ireland, explaining the HRA's deep significance in Northern Irish society.

> "It is the main legal means through which dealing with the legacy of the conflict could be addressed. It underpins and legitimates the practice of contemporary policing."[13]

Crucially, following the New Decade, New Approach Agreement in Northern Ireland in early 2020, the Ad Hoc Committee on a Bill of Rights for Northern Ireland was set up. The Committee is tasked with considering the creation of a Bill of Rights for Northern Ireland. The Agreement set out that a new Bill of Rights should be in line with the intentions written in the Belfast/Good Friday Agreement, meaning that a new Bill of Rights for Northern Ireland

[12] Children's rights in Wales | GOV.WALES
[13] #MakingChange Through Human Rights... Brian Gormally - YouTube

would intend to build on the rights set out in the ECHR and HRA.[14] The Human Rights Consortium in Northern Ireland has a clear position on the HRA:

> "For the past 15 years the Human Rights Act has been successful in protecting the rights of people with disabilities, older people in care homes, people's rights to a fair trial, protection of family and private lives."[15]

Northern Ireland is moving towards the creation of their own Bill of Rights, using the HRA as the building block for this. Should the UK Government make changes to the HRA without consideration of the Act's significance in devolved nations, this risks at best undermining the progressive work of devolved nations towards greater protections of rights for everyone in society and at worst destabilising a peace process. This Review must consider all responses raising concerns about the Human Rights Act and devolution.

[14] Have your say: Human Rights in Northern Ireland (niassembly.gov.uk)
[15] Human Rights Act - Human Rights Consortium

4. The Human Rights Act and the relationship between the domestic Courts and the European Court of Human Rights

Our response to question 5 of the Committee's call for evidence.

Has the correct balance been struck in the Human Rights Act in the relationship between the domestic Courts and the European Court of Human Rights? Are there any advantages or disadvantages in altering that relationship?

We believe that the HRA strikes the right balance in the relationship between the domestic courts and the European Court of Human Rights, that this relationship is working well and that there is no cause for altering that relationship. We explain features of this relationship below.

4.1 The duty to take into account" any "judgment, decision, declaration or advisory opinion of the European Court of Human Rights".

When a UK court is deciding a HRA question, it must "take into account" any "judgment, decision, declaration or advisory opinion of the European Court of Human Rights" (section 2, HRA). The "jurisprudence of the ECtHR (European Court of Human Rights)" means all the previous judgments, decisions, declarations and advisory opinions of the ECtHR. The duty in section 2 HRA is to "take into account" does not require UK courts to interpret and apply Convention rights in the exact same way that the ECtHR has done before. As Lord Bingham explained in the UK case *Ullah*:

> "... While [ECtHR]case law is not strictly binding, it has been held that courts **should, in the absence of some special circumstances, follow any clear and constant jurisprudence of the Strasbourg court** ... This reflects the fact that the Convention is an international instrument, the correct interpretation of which can be authoritatively expounded only by the Strasbourg court. From this it follows that a national court subject to a duty such as that imposed by section 2 should not without strong reason dilute or weaken the effect of the Strasbourg case law... The duty of national courts is to keep pace with the Strasbourg jurisprudence as it evolves over time: no more, but certainly no less." (our emphasis)

It is interesting to note that when section 2 of what became the Human Rights Act was debated in parliament, Lord Kingsland (Conservative) proposed an amendment to make UK courts "bound by" ECtHR cases. The then Lord Chancellor (Labour government) stated this would be "strange" and the intention of the "take into account" provision was to allow UK courts "flexibility and discretion".[16]

4.1.1 Application in practice

[16] Klug, F. and Wildbore, H. (2010) 'Follow or Lead? The Human Rights Act and the European Court of Human Rights', European Human Rights Law Review, 6: 621-30.

The duty to take into account has been applied in the courts to assist judges in reaching their decisions. It is clear that UK courts use this duty to keep a pace with ECtHR jurisprudence, to ensure the UK's human rights protections do not fall behind, and as a tool to support the development of UK jurisprudence where there is no established ECtHR case law on the specific legal or factual issue in hand. Examples of cases where judges have taken account of the ECtHR jurisprudence to assist them in reaching their conclusions include:

- Ullah: The House of Lords (prior to the Supreme Court) took account of ECtHR jurisprudence extensively. Lord Bingham, in his decision, referred to ECtHR cases to explore "the crucial issue dividing the parties": "whether, in a foreign case, reliance may be placed on any article of the Convention other than article 3, and in particular whether reliance may be placed on article 9". [para 15]

- Cheshire West: Lady Hale (as she was then) took account of Strasbourg jurisprudence in defining 'what is a deprivation of liberty'; assisted in exploring this issue, particularly: (1) whether the concept of physical liberty protected by article 5 is the same for everyone, regardless of whether or not they are mentally or physically disabled; and (2) determining the essential character of a deprivation of liberty. This provided basis for the Supreme Court to develop the UK's jurisprudence on the specific factual situation which had not been before the Strasbourg Court:

  > "The Strasbourg case law, therefore, is clear in some respects but not in others. The court has not so far dealt with a case combining the following features of the cases before us: (a) a person who lacks both legal and factual capacity to decide upon his or her own placement but who has not evinced dissatisfaction with or objection to it; (b) a placement, not in a hospital or social care home, but in a small group or domestic setting which is as close as possible to "normal" home life; and (c) the initial authorisation of that placement by a court as being in the best interests of the person concerned. The issue, of course, is whether that authorisation can continue indefinitely or whether there must be some periodic independent check upon whether the placements made are in the best interests of the people concerned." [para 32]

- McConnell: The Court of Appeal recently noted "The third fundamental feature of the case is that there is no decision of the Strasbourg Court which suggests the interpretation advanced by the Appellants. The approach which the courts take under the Human Rights Act is in general to keep pace with the jurisprudence of the Strasbourg Court but not to go beyond it." [para 72]

4.1.2 No need for amendment

This duty is about consistency and certainty, ensuring that decisions about rights in the UK courts are not completely different from the judgments of ECtHR. Legal certainty is a long-established principle of English law. If a UK court decides a question relating to a human right in a way that is very different to previous decisions and judgments of the ECtHR, it is likely that the decision will be referred to the ECtHR and may result in the decision being overturned.

We welcome the current Government's commitment to staying within the European Convention on Human Rights (ECHR).[17] As a (founding) member of the ECHR our international legal obligations include a commitment to abiding by the judgements of the ECtHR in which the UK is involved (Article 46). The ECHR system recognises that each country's domestic authorities and the ECtHR have shared responsibility for the protection of human rights. The principle of subsidiarity means that it is our own institutions in the UK that have the primary responsibility for protecting human rights. Significant activity in the Council of Europe has stressed the importance of domestic human rights protection, and the need to take account of ECtHR judgements as part of this process, including the Brighton Declaration, established during the UK's presidency of the Council of Europe. The Declaration specifically affirms this approach:

> "Enabling and encouraging national courts and tribunals to take into account the relevant principles of the Convention, having regard to the case law of the Court, in conducting proceedings and formulating judgments; and in particular enabling litigants, within the appropriate parameters of national judicial procedure but without unnecessary impediments, to draw to the attention of national courts and tribunals any relevant provisions of the Convention and jurisprudence of the Court".[18]

Taking into account the wider judgments of the ECtHR enable UK courts to ensure we are keeping pace with developments. It also helps ensure legal consistency and certainty, both key elements of the rule of law, an enduring principle of our domestic law and the European system of human rights protection which the UK helped established, and which the government has committed to remaining within.

4.2 The margin of appreciation

The margin of appreciation is an important legal principle which means that the ECtHR recognises different social, cultural and political values and systems within the 47 countries that are members of the ECHR (and Council of Europe). This enables a level of consistency in protecting human rights across the 47 countries, whilst still respecting the competency domestic authorities to determine key areas, particularly where is not a common or shared approach or there is a delicate balance of competing rights to be made.

4.2.1 Application in practice

The UK has been involved in several cases at the ECtHR where the Court has applied the margin of appreciation and deferred to the judgment of the domestic authorities. For example, there have been a number of UK cases involving an individual person's right to respect for private life (Article 8) and media reporting under the right to freedom of expression (Article 10). As with many human rights cases, these involved delicate balances between a range a rights for different people. When this issue went before the ECtHR in MGN Limited v UK, the Court applied the margin of appreciation and agreed with the balance struck by the UK courts, noting that it would need strong reasons to substitute its view for that of the final decision of the domestic court.

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[17] See Question 223, Page 32, Committee on the Future Relationship with the European Union Oral evidence: Progress of the negotiations on the UK's Future Relationship with the EU, HC 203 Monday 27 April 2020, https://committees.parliament.uk/oralevidence/313/pdf/

[18] Para 9(c)(iv), page 2, High Level Conference on the Future of the European Court of Human Rights Brighton Declaration, https://www.echr.coe.int/Documents/2012_Brighton_FinalDeclaration_ENG.pdf

4.2.2 No need for amendment

The margin of appreciation helps ensure that the protection of human rights under the ECHR system is both principled and practical. This is in line with the principle of subsidiarity and shared responsibility for human rights protection, with an emphasis on the role of domestic authorities. The principle of consistency is upheld, but so too is the need for domestic courts to be able to make judgments where they are best placed to do so.

4.3 Judicial dialogue

Judicial dialogue takes place where judges in different courts interact and address issues when deciding on certain, often similar, situations. This is an ongoing process, primarily done via judgments and judicial reasoning, as well as more informal contact and regular meetings between ECtHR judges and domestic judges, including the UK. Judicial dialogue may take place, for example, when the UK courts are explaining why they are not following the ECtHR previous judgments exactly, or where the ECtHR sets out its reasons for departing from or upholding the UK court's decisions.

4.3.1 Application in practice

There are several examples of judicial dialogue occurring across a range of issues between the UK courts and the ECtHR. For example, in the UK case of R v Horncastle the Supreme Court had to consider the admission of hearsay evidence when a witness could not attend court in person. The Supreme Court declined to follow the ECtHR Chamber decision in Al-Khawaja, which took a limited view of when hearsay evidence could be relied on. The UK's Supreme Court found that the common law and statutory safeguards prevented the trial being unfair and the ECtHR's approach would lead to difficulties for English criminal procedure. Al-Khawaja was later heard in the Grand Chamber of the ECtHR, and the Court reversed the earlier finding, not least in light of the view taken by the Supreme Court in Horncastle and held that in principle English law contains sufficient safeguards to comply with the right to a fair trial (Article 6).

We have also seen how, when there may be conflicts with domestic case law and ECtHR decisions on a similar issue, the approach of domestic courts is to follow the UK decisions rather than the ECtHR, which is correct. For example, in the UK case of Leeds v Price the Court of Appeal was faced with decision of the UK's superior court (at the time the House of Lords in Qazi) which permitted council eviction actions, in contrast to a later decision by the ECtHR involving the UK (Connors v UK) which meant that Qazi might have to be reconsidered. The Court of Appeal decided it must follow the UK superior court decision and that the ECtHR decision did not over-rule the UK one. They also referred the case to the UK superior court to reconsider it in the light of Connors. The UK superior court confirmed that this was the correct approach; the leading case in English law is binding, and lower courts must follow that to ensure legal certainty. It also recognised that ECtHR decisions are often very fact-specific, and the margin of appreciation may be relevant. The Leeds case itself went to the ECtHR. Kay v UK and was then reconsidered in the UK Supreme Court in the case of Pinnock. The Supreme Court confirmed that it is not bound to follow a decision of the ECtHR where there is a clear and consistent line of authority, that should be followed.

Additionally, we note the evidence of the current President of the ECtHR and the UK judge to the Joint Committee on Human Rights which states:

"Another example of formal judicial dialogue – though much more immediate and within the same proceedings - between the UK courts and Strasbourg is the Charlie Gard case, where the UK Supreme Court in its final judgment/order included two paragraphs which were specifically directed to the Court before whom an application (including for interim measures) was at that time pending … In addition, there is also extensive informal dialogue which takes place through various means. Firstly, there are regular bilateral meetings between small groups of UK judges (from the three domestic UK jurisdictions and the Supreme Court) and judges from the Court. These are held every 18 months or so alternately in Strasbourg or in the UK. Secondly, the UK Judge on the Court, Tim Eicke, frequently visits the UK and engages in informal dialogue with the judiciary in England and Wales as well as in Scotland and Northern Ireland. Another forum for informal dialogue is the Superior Courts Network ("SCN"). This network was established by the Court in 2015 and currently groups 93 superior courts from 40 out of the 47 Council of Europe Member States. In 2019 four jurisdictions joined from the United Kingdom: the UK Supreme Court, the Court of Sessions and Judiciary of Scotland, the Court of Appeal of England and Wales and the Court of Appeal of Northern Ireland. The SCN gives member courts privileged access to case-law information, including updates on important cases which is sent on the day of adoption of the judgment, as well as access to ad hoc case-law information through their own dedicated "focal point". In return, the superior courts provide the Strasbourg Court with information on the relevant domestic law for the purposes of any comparative law analysis required in any particular case notably by the Grand Chamber (in 2020, 4 such contributions were provided, with a maximum of 10 per year)."

4.3.1 No need for change

The opposite of judicial dialogue would be where there is no space for either discussion or exchange between the UK courts and the ECtHR, or for the UK courts to approach the issue in their own way. This is clearly not the case, and in fact we've seen changes to both UK and ECtHR judgments on the basis of dialogue, as well as sustained efforts to ensure dialogue is effective. We agree with the current President of the ECtHR and the UK Judge: "our view is that both the formal and the informal judicial dialogue is going extremely well, and it is rather difficult to identify any particular area for improvement."[19]

[19] Written evidence from Judge Robert Spano, President of the European Court of Human Rights and Judge Tim Eicke (HRA0011) (February 2021) https://committees.parliament.uk/writtenevidence/22906/pdf/

5. The application of the Human Rights Act to the actions of the UK overseas

Our response to question 5 of the Committee's call for evidence.

Are there any advantages or disadvantages in seeking to alter the extent to which the Human Rights Act applies to the actions of the UK (or its agents) overseas?

The Human Rights Act can apply to acts of a UK public authority performed outside its territory only where the victim was within the jurisdiction of the UK for the purposes of Article 1 of the ECHR. One way that courts have said that the HRA might apply outside the UK is when the state, through its representatives (such as a soldier working for the UK army), exercises 'effective control' over an area or a person. This does not apply to active combat. We believe this is appropriate and no advantage in seeking to alter the way in which this applies.

6. Our Recommendations to Support the use of the Human Rights Act and a Move Towards a Culture of Respect for Human Rights in the UK

The HRA is an incredibly powerful tool which has the power to create a culture of respect for human rights in the UK. However, we still have some way to go before rights are made real for all of us, every day. We welcome that the Committee has recognised the importance of the use of the Human Rights Act outside of the courtrooms and is endeavouring for this to be recognised in the Independent Review.

Crucially, the issue which prevents the UK reaching a culture of respect for human rights is not the law itself, but rather the leadership to implement it; changing the law is not the solution. During our research we asked people, community and voluntary groups, and public officials about the barriers to securing a culture of respect for human rights. Not a single person said there was a need to review the law.

What is needed is to focus on the implementation of this law. All staff working for public authorities and those working in public services and in private, charitable or voluntary bodies delivering public services have a legal duty to protect, respect and fulfil human rights. However, human rights training or capacity building is not given as standard. Over the last year we have trained over 2,000 staff working in public authorities, many of whom have never received human rights training before. For example, in a recent survey conducted with local authority staff working with children and young people prior to a BIHR human rights session, only 15% of respondents had attended human rights training before.

During our sessions we have been told countless times by people with a wealth of experience, such as Commissioners of 30 years or nurses of 20 years, that they have never been told about their duty to uphold human rights. This duty has now been law for over 20 years. Likewise, when we do sessions with people who are accessing (or trying to access) services they are able to say "that's against my human rights" but have not had the support to fully understand their rights and to use the rights within the HRA in conversations with services.

None of this is the failure of the law itself. The Care Act, for example, is vastly more complex and lengthier than the HRA, yet practitioners are able to cite sections of the Care Act and integrate these into their work. This is because time and resources have been put into supporting practitioners to use Care Act in their work. Our work over the past 20 years shows that the HRA can be translated into a practical and easily understood tool. However, it continues to be discussed only in reference to courtrooms. The Government's Independent Review exacerbates this problematic narrative, not least because when the Review is discussed, it claims to be looking at how the HRA is working for all of us.

> "It is absolutely within the traditions I have just mentioned for the Government to look at them again to make sure that they are working in a way that benefits the majority of us."

> Rt Hon Robert Buckland QC MP, Lord Chancellor and Secretary of State for Justice[20].

There is a clear failure of leadership to put people's human rights at the heart of all interactions with government and public power, both nationally and locally. Staff working in public authorities need to be trained in using the HRA and supported by leadership to do this. The legal framework of the HRA should be used daily by "decision-makers internalising the requirements of human rights law, integrating to standards into their policy and decision-making processes, and ensuring that the delivery of public services in all fields in fully informed by human."[21]

We need to stop calling for Reviews of the law and start focusing on the actual barriers to the realisation of people's rights in the UK. These barriers are not legal barriers but practice barriers, funding barriers, support barriers, resource barriers... We need to focus our time and energy into strengthening the ability of public bodies to use the law, not reviewing the law.

We welcome the approach taken by the Joint Committee on Human Rights and we hope that our submission provides evidenced answers to each of the Committee's focus areas set out in the call for evidence.

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[20] Rt Hon Robert Buckland QC MP, Lord Chancellor and Secretary of State for Justice. Joint Committee on Human Rights, Oral evidence: 18 November 2020 Ministerial scrutiny: human rights, HC 978
[21] Joint Committee on Human Rights Thirty-Second Report, paragraph 141