

Bill of Rights Bill Second Reading

The Rights Removal Bill in practice: Real life stories of the Bill's dangerous and discriminatory impact



Annex to "Bill of Rights Bill Second Reading: Stand firm on our Human Rights Act and oppose the Rights Removal Bill"

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We ask MPs to amplify these voices at Second Reading and beyond.



Bryn's story: Challenging discriminatory treatment decisions towards a learning-disabled man which put his right to life at risk

Bryn was 60 years old and lived in supported living. He had learning disabilities, epilepsy, was non-communicative and blind. Staff at the home became concerned that Bryn had a heart condition and called a doctor from the local NHS surgery who came to visit. Bryn had an Independent Mental Capacity Advocate who was supporting him. The advocate attended a multi-disciplinary meeting to represent Bryn. At this meeting the GP stated that he would not be arranging a heart scan for Bryn as "he has a learning disability and no quality of life."

Bryn's advocate challenged this by raising Bryn's right to life (Article 2, HRA) and his right to be free from discrimination (Article 14, HRA). The advocate asked the doctor if he would arrange a heart scan if anyone else in the room was in this situation, and the GP said yes, and agreed to arrange a scan. The Human Rights Act gave the advocate the legal grounds to challenge the discrimination and take steps to protect Bryn's life. Sadly, Bryn passed away because of his heart condition before any treatment could take place.

Clause 5 of The Rights Removal Bill destroys positive obligations, which is the positive duty on public officials to protect people from harm. The new Bill allows public bodies to refuse to act to safeguard people like Bryn, and to raise financial resources or operational priorities as the reasoning behind not taking action. Disability rights groups across the UK are gravely concerned that public officials won't take proactive steps to protect disabled people from harm, due to discriminatory attitudes or the resources required to protect that person and that the Rights Removal Bill removes accountability for this. This is very dangerous and increases the likelihood of more awful stories like Bryn's occurring.



Kirsten's story: a parent who advocated for improved practice and protection of rights in mental health settings

Kirsten is a single parent of an autistic son who, from the ages of 14-18, was held in mental health hospitals under the Mental Health Act. He was subjected to restrictive practices, including mechanical restraint, such as handcuffs, leg belts, and being transported in a cage, and long periods in seclusion.

It was the duty to interpret other legislation compatibly with our human rights (s.3 HRA), combined with the duty on public bodies to act compatibly with human rights and the human right of her son to be free from inhuman and degrading treatment, that meant Kirsten could challenge how her son was treated and secure his release.

Kirsten: "The Mental Health Act gave legal powers to put my child in a seclusion cell for weeks at a time. It gave powers to put my child in metal handcuffs, leg belts and other forms of mechanical restraints. It gave powers to transport him in a cage from one hospital to another....As a parent, the Human Rights Act gave me the legal framework to challenge decisions. This was so important for me as a parent facing the weight of professionals who seemed to have so much power over mine and my son's lives. I used the Human Rights Act to make timely and meaningful change to my own son's care and treatment."

Under the Rights Removal Bill, Kirsten would not be able to use Section 3 HRA to challenge her son's treatment under the Mental Health Act because there is no equivalent of Section 3 in the new Bill. This will lead to a situation where public officials no longer apply other legislation through the lens of human rights. This is a crucial way our current Human Rights Act protects us when we are at our most vulnerable and provides clarity to public officials who are navigating a complex maze of different legislation. That clarity being that human rights must be the foundation of all decision making.



Steven's story: Getting justice after being unlawfully deprived of his liberty.

Steven has autism and a severe learning disability and Mark is his carer. When Mark fell ill with the flu Steven went for some respite care for a few days to allow Mark to recuperate. The next day Mark got a call from the social worker telling him that Steven had had a difficult night and needed to stay in the unit for longer. Steven was then kept in the unit for a year against his and his father's wishes. Mark was told that Steven's behaviour was deteriorating, with no recognition that the unexpected move and prolonged stay was causing this. A 'Deprivation of Liberty Authorisation' was made to keep Steven at the unit and Mark was then told that Steven wouldn't be returned home and they were looking for a long-term placement for him in Wales.

When Steven escaped from the unit for the third time, he was appointed an Independent Mental Capacity Advocate, who helped Mark to get a lawyer and they started a legal challenge (with Steven's interests represented by the Official Solicitor). The court decided that Steven's right to liberty (protected by Article 5) had been breached and that Mark and Steven's right to respect for family life (protected by Article 8) had also been breached.

The council were ordered to pay damages to Steven and his . The damages awarded could not undo the rights breach, but they did contribute to Steven being able to live independently following the case and to the council acknowledging that they needed to review their practices and staff training to ensure what happened to Steven will not happen again.

Under the Rights Removal Bill, the court would have had to consider Steven's past conduct in determining what damages he should receive, even if this conduct was not relevant to the case. For example, an autistic person acting against staff who regularly restrain them in an inhuman manner. This could have resulted in Steven not getting the damages that reflected the breach of his human rights because it was deemed that he had acted against staff and was therefore less deserving of damages.



The St Aubyn's Centre: Using human rights to improve young people's experience in mental health settings

The St Aubyn Centre is a Tier 4 mental health service. Young people are admitted from all over the country, potentially separating them from their family and friends for many weeks. An ongoing problem for staff, 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. Following human rights training, the service reviewed its policies and young people were given access to the internet and their mobile phones with safety concerns managed on an individual basis.

The Rights Removal Bill seeks to discourage public bodies from taking a human rights approach and subordinates their duty to protect our rights to other priorities, such as finances and resources. This risks public bodies like the St Aubyn's Centre having no legal motivator to consider the human rights of the people accessing their service, and thus to improve their service. At BIHR we know that taking a human rights approach to the delivery of public services improves outcomes not just for those accessing the service but for the staff delivering the service. 20 years of work to embed the Human Rights Act in practice since it's passing in 1998 are at risk by replacing the Act with the Rights Removal Bill.



NHS staff challenging poor practice in a nursing home

A nursing home was using 'tilt-back' chairs to stop residents trying to get up and falling. This meant many people who could walk had to wait for staff to get them out of the chairs so they could, for example, go to the toilet. Residents could no longer make choices about their day and were starting to find walking very difficult. Laura, a visiting consultant, was concerned that by not allowing the residents who could walk the freedom to do so, their dignity and autonomy, protected by the right to private life (Article 8) was at risk. Laura raised her concerns with staff using human rights language and they recognised that it was not appropriate to treat all residents in the same way to protect the few who needed the chairs.

The Rights Removal Bill in its specific clauses (such as undermining positive obligations (clause 5) and removing the section 3 HRA interpretation duty) and when taken as a whole reduces the duty on public authorities to act compatibly with our human rights. This will also undermine the ability for public body staff like Laura to challenge decisions which they can see, working on the ground, put people at risk.



Yolande's story: A woman fleeing domestic violence who used Article 8 to stay with her children

Yolande and her children were fleeing domestic violence, and her husband's attempts to track them down. When they arrived in London, social workers told Yolande that the constant moving of her children meant she was an unfit parent, that she had made the family intentionally homeless, and that the children would be placed in foster care. With a support worker's help, Yolande raised the need to respect her and her children's right to respect for family life. Social services reconsidered the issue. They all agreed that the family would remain together, and that social services would cover some of the costs of securing rented accommodation. This was an essential step for Yolande and her children to rebuild a new life in safety.

Under the Rights Removal Bill Clause 8 seeks to curtail the protections provided by the right to private and family life (Article 8), under the guise of restricting immigration. Aside from the legally highly questionable nature of these restrictions (especially in relation to international refugee law), this fails to recognise that our human rights are there to protect everyone – no matter who you are. Restricting this right for one group of people, weakens it for everyone, every day.

The Bill through Clause 5 is also going to diminish the positive obligations on public bodies to protect our rights. This would mean that social services would no longer have had to do anything, such as helping with some of the accommodation costs, to protect Yolande and her children's right to family life.



Tim & Sylvia's story: Protecting the right to private life of a couple with learning disabilities

Tim and Sylvia, each of whom have learning disabilities, were living in a residential assessment centre so their parenting skills could be assessed by the local social services department. CCTV cameras were installed, including in their bedroom at night. Tim and Sylvia challenged this by talking to social services about their right to respect for private life (Article 8). They did not want their intimacy to be monitored, and the baby slept in a separate nursery in any case. As a result, the social services team realised the use of cameras in every room and at all times was neither justified nor proportionate to the risk and agreed to switch them off during the night.

The Rights Removal Bill, at Clause 7 sets out rules for how courts decide if a restriction on someone's human rights by the Government or a public body is proportionate. The Bill tells courts to find that the human rights restrictions it imposes on people, are proportionate, simply because the UK Parliament passed the law. However, for Tim and Sylvia, had they taken this case to court, the limits on their private life were not proportionate. This will also remove any need for the public body (in this story) or the Government to justify why a human right is being restricted and will prevent any independent evaluation of the proportionality question by the courts.



Balbir's story: Securing adequate housing for a disabled woman to live with dignity

Balbir lived in a small council house with her two teenage sons. She suffered a major stroke, leaving her with severe physical disabilities. She was no longer able to use the stairs to reach her bedroom or bathroom. The local authority said Balbir could strip-wash in the kitchen and use the commode in her living room, which had also become her bedroom. As Balbir had irritable bowel syndrome, she had to rely on carers to come and empty the commode. Also, as a Muslim, she relied on her carers to bring her a bowl to perform ablution so she could pray, Balbir felt embarrassed and distressed. Balbir lived like this for over a year. Balbir was helped by an advocacy service to write a letter to the local authority explaining that her circumstances were in danger of breaching the right to be free from degrading treatment (Article 3). The local authority then carried out an assessment of Balbir's needs, which recommended that an accessible downstairs bathroom with a walk-in shower should be built. The local authority made sure this happened.

Under the Rights Removal Bill through Clause 15 there will be a new permission stage requiring people making human rights claim to show they have suffered a "significant disadvantage" before their claim can be heard by a court. As well as making it much more difficult to bring a case in court when our human rights have been breached, this will greatly diminishes the legal accountability, and thus the motivation, on public bodies to respect people's human rights. In effect, it will mean that rights should only not be breached if this will result in a 'significant disadvantage' – as determined by a court. For Balbir, this could have meant that the local authority decided that there was no significant disadvantage for her, despite her human rights being breached and thus no need to do anything.