



Short Response to the JCHR Inquiry into the Independent Review of the Human Rights Act

19 February 2021

“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.”

Summary

This is a short response to raise some key concerns with the current Independent Review of the Human Rights Act. This short response is being submitted so that it can be included in the Joint Committee's own response to the Independent Review. We are currently gathering evidence for a more in-depth response. Focuses on what we know from the past 20 years working with people, community organisations and public bodies. That the HRA can be a powerful practical tool for advocacy, for planning, delivering and securing rights-respecting services, and to support calls to change policy and legislation which is not human rights compliant.

About BIHR

The British Institute of Human Rights (BIHR) is a charity working in communities across the UK to enable positive change through human rights. We work to support people with the information they need to benefit from their rights; with community groups to advocate for better protections in their areas or interest groups; and with staff across public 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. We work with over 2,000 people using public services, community groups and the staff members delivering them; our recommendations are directly informed by people's real-life experiences of the issues.

The JCHR Inquiry

We are currently supporting a range of individuals, groups, organisations, frontline staff in public bodies and professional associations to get to grips with the Independent Review of the Human Rights Act. We have reached over 450 through online meetings, briefings and

Contacts: Sanchita Hosali, Director, shosali@bihr.org and Carlyn Miller, Policy & Programmes Manager, cmiller@bihr.org.uk

workshops since the Review launched. **100% of people who have been involved in our evidence gathering over the past weeks told us that the Human Rights Act is important to them.** Two consistent key themes have been: 1) the Review is unnecessary, focused on “fixing” something that is not broken; and 2) real concern that people’s lived experience of 20 years operation of the Human Rights Act is being excluded in favour for a narrow, legal, technical assessment, without regard to the wider everyday impacts. We therefore welcome the JCHR’s Inquiry into the Review, which is providing those concerned with a public forum in which to share their concerns. You can find more about our work on the Review [here](#); we are encouraging all those we are supporting to ensure they share their evidence with the JCHR, engaging with the wider questions, which seek a more rounded evidence base on the operation of the HRA.

Our Concerns

At BIHR, we see the value of the Human Rights Act every day in our work with people accessing services, community and advocacy groups and staff working in public services. The Human 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.

We are concerned that the current review is badged as looking at the operation of the HRA after 20 years.ⁱ However, we see have three main concerns with the Review:

- The consultation questions are very narrowly formulated. Since the call for evidence has opened have reached over 450 people, voluntary sector groups, and staff working for public authorities that they want to submit evidence to the Review on their experiences of 20 years of the HRA working for them, the people they support and the issues they work on. However, many feel they cannot do that within these limited questions and that their experience will be excluded.
- There is no engagement with the wider elements of the HRA. For example, the questions as formulated do not ask for evidence to be provided:
 - on the success (or otherwise) of the HRA’s original aim around supporting a culture of respect for human rightsⁱⁱ or indeed of making Convention rights enforceable in the UK legal system

“A human rights culture is one that fosters basic respect for human rights and created 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 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 rights considerations.” (JCHR Sixth Report of Session 2002-03, The Case for a Human Rights Commission, HL Paper 67-I/HC 489-I, at para. 2)

- the impact of the duty in section 6 HRA on public authorities (including a national and local bodies and a range of vital services that many of us interact with daily) to essentially uphold human rights, and consequently people's experiences of their rights in everyday life beyond the courts. This is Beth's story, which has been developed from our project in 2020 with women survivors of domestic abuse to co-develop advocacy information on human rightsⁱⁱⁱ:

Beth's Story

Beth recently left her abusive partner and is currently homeless. She has been working with a social worker, Karen, to try to get accommodation. The housing team is refusing to rehouse Beth. Beth is starting to think that her only option is return to living with her ex-partner. Karen attends a BIHR training session and realises she can use a human rights approach. Rather than relying on what was "fair" or "appropriate" or trying to find policy loopholes Karen was able to talk about how not providing safe accommodation could breach Beth's right to be free from inhuman and degrading treatment due to the risk of further abuse from her ex-partner if she returned home. The housing team looked again at their decision and decided to rehouse Beth.

We have an evidence bank of over 50 similar examples of how the Human Rights Act has supported people, community groups and frontline staff in public bodies to make positive changes that ensure dignity and respect, without having to go to court.^{iv}

- how the HRA supports a range of other policy and practice agendas. For example, mental health legislation has been one area where there have been some significant human rights legal challenges (as well as practice-based changes) to make laws more rights-respecting. The new Mental Health Act White Paper is founded upon the very principles at the heart of the HRA, which will support progressive and positive reform of mental health law.
- A very short timeline of 7 weeks to respond to a review of a profoundly important law, with huge constitutional implications that impact people across the UK in their daily lives.

From our work directly with over 2000 people, community groups, frontline public bodies and commissioners each year, we know that the HRA can be a powerful practical tool for advocacy, for planning, delivering and securing rights-respecting services, and to support calls to change policy and legislation which is not human rights compliant. These voices likely to be lost in this Review.

But more than this, without considering the wider operation of the Act, the Review's narrow focus could very well result in unforeseen or ill-thought through recommendations for change to the Government. For example, changes to the interpretation duty in section 3 HRA, impact the ways public bodies interpret and apply legislative frameworks and policies to be rights-respecting (and avoid court action where the courts have to apply this duty). Or indeed the ability of individuals and community and advocacy groups to call on public bodies to do this and be rights-respecting without recourse to litigation. Ultimately improve

people's everyday experiences of their interactions with government power, founded upon the operation of the HRA. Recommendations to change legal technicalities of the HRA will have consequences for the lives of people across the UK, yet this experience is not being sought to inform the Review.

We are currently gathering evidence for our own response to the Review (which will also be submitted to the JCHR inquiry). The views and evidence that will inform our submissions come directly from:

1. People: People accessing (or trying to) access public services, their family members and people who care about them.

"The Human Rights Act is vital to my survival and that of many others I know. It must remain. We need enhanced human rights protections ...Removing or weakening any of it would be wrong." ^v

2. Advocacy and Community Groups: Formal advocates (e.g., IMCA, IMHA etc.), self-advocates, and other community, campaigning, and advocacy groups.

"The Human Rights Act helps us all live our lives as equal citizens. It is the foundation of a forward looking and fair society that believes that all lives matter and that everyone has a part to play." ^{vi}

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.

"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." ^{vii}

This evidence that we have gathered in response to this review will be bolstered by BIHR's over 20 years' experience in supporting people, community and advocacy groups and staff working in public services to use the Human Rights Act as a powerful tool to facilitate rights respecting decision making and enable better outcomes for people, staff and services. We will submit our full evidence to the JCHR and the Review Panel in March 2021.

Conclusion

This is a short response has raised some key concerns with the current Independent Review of the Human Rights Act. We are concerned that the narrowly formulated questions, will not enable the full story to be told on how the Human Rights Act has been used over the last 20 years. There is no engagement with the wider elements of the HRA, on how the HRA has been used outside of the courtroom. There very short timeline will also limit the number of individuals, groups and organisations that are able to respond. Our main response, which will be submitted both the Independent Review and the Joint Committee on Human Right Inquiry will focus on the importance of the HRA as a powerful practical tool for

advocacy, for planning, delivering and securing rights-respecting services, and to support calls to change policy and legislation which is not human rights compliant. We believe it is vital that any review of how the Human Rights Act has worked over the last 20 years should do this; recommendations reviewing a law which has such profound significance for every single person in the UK should not be made in absence of evidence of lived experience.

ⁱ UK Government, Guidance: Independent Human Rights Act Review, 7 December 2020

<https://www.gov.uk/guidance/independent-human-rights-act-review>

ⁱⁱ 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

ⁱⁱⁱ For more information on this project visit <https://www.knowyourhumanrights-domesticabusesurvivors.co.uk/>

^{iv} See for example:

VIDEOS

[Sarah talks about the positive use of the HRA in health services.](#)

[Joe talks about using the HRA to challenge forced and unnecessary isolation of a person with learning disabilities during the pandemic.](#)

[Ian talks about how he uses the HRA as a carer for his son and wife, and to support other carers.](#)

[Leo talks about how she uses to the HRA to challenge the poor treatment of her son who has learning disabilities.](#)

[Alexis shares her experience of being Autistic and detained in mental health hospitals and the need for the HRA to be used day to day.](#)

[Debartri's story, a domestic abuse survivor, who needed to HRA to secure safe housing.](#)

[Lorraine's story, who used the HRA to change a situation where she was given a bucket to use as a toilet in hospital.](#)

[Jerry and Barbara, an older couple, and daughter Susan, who used the HRA to get additional caring support.](#)

BLOGS

[Paul \(St Martin of Tours\): the HRA helping his housing service to reduce violent incidents and challenging calls for clients to wear high vis jackets when out.](#)

[Sarah \(NSUN\): how a survivor network uses the HRA in mental health policy work.](#)

[Human rights in mental health services](#)

[Jodie \(Local Mind\): using the HRA to support independent advocacy,](#) and [Sophie \(Alzheimer Society Northern Ireland\): on human rights and advocacy.](#)

[Rosalie \(NAT\): using the HRA in HIV policy and campaigning work.](#)

[BIHR: the HRA plugging gaps in Special Education and Disability law.](#)

[BIHR: working with domestic abuse survivors and support groups to use the HRA.](#)

^v Quote from a person who accesses public services who responded to our survey.

^{vi} Quote from an advocate who responded to our survey.

^{vii} Quote from a staff member working for a public service who responded to our survey.