



The Human Rights Act – Changing Lives

The British Institute of
HUMAN RIGHTS

About BIHR

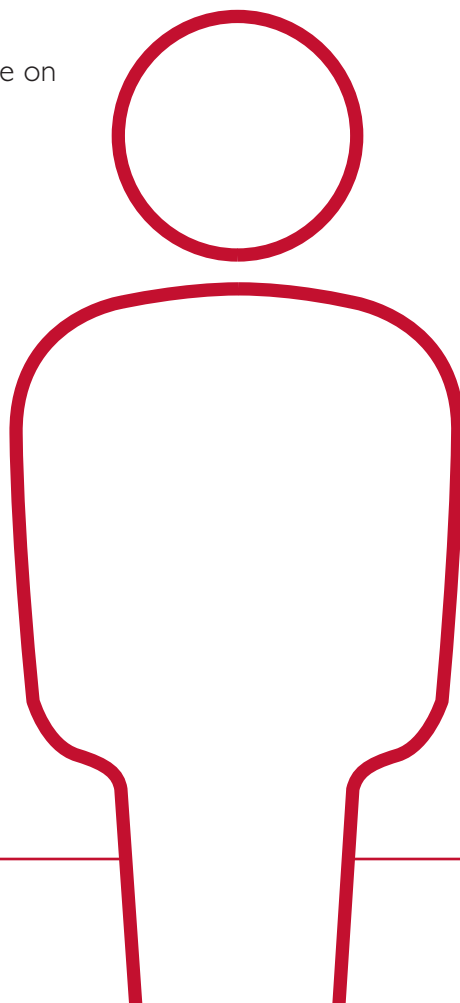
BIHR is a human rights organisation that is committed to challenging inequality and injustice in everyday life here in the UK. We aim to achieve this by bringing human rights to life – supporting people to use human rights principles and standards to improve their own lives and as a tool for organisations to develop more effective public policy and practice.

What we do:

- Provide a range of information and other resources (including briefings and toolkits)
- Develop and deliver consultancy and training for the voluntary and community and public sectors on both practice and policy
- Lead and/or collaborate on demonstration and pilot projects across the voluntary and community and public sectors
- Undertake policy analysis and research
- Lobby national government and Parliament, do media work and occasional strategic legal interventions
- Organise a range of events that stimulate debate on topical human rights issues

For information about our current work please visit our website at www.bihar.org.uk

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Foreword

When the Human Rights Act was passed in 1998, the Government explained that its purpose was to support a culture of respect for everyone's human rights - making human rights a feature of everyday life. The idea was that principles such as dignity, equality, respect, fairness and autonomy would be used by individuals and groups to negotiate improved public services, and by public service providers as a tool to improve the quality of their services. Thus the Human Rights Act would have its greatest impact not in our courts of law, out of the reach of the public at large, but in the wider community, especially in the hands of those who provide public services and those who use them. Through this process, a culture of respect for human rights would take root in the UK.

The British Institute of Human Rights (BIHR) has long argued that human rights are a powerful tool for improving the delivery of public services and for achieving social change more broadly. But to realise their potential, we strongly believe that human rights must shed their legalistic image and be put into practice in everyday life. For this reason, we work with other organisations to build their capacity to use human rights in their own activities to shape a fairer, more equal society.

Sir Geoffrey Bindman
Chair

Contents

Summary	5
Introduction	6
Case studies	7 – 16
Key learning and conclusions	17 – 18
Glossary	19
Rights protected by the Human Rights Act	20



Summary

***'It has made a phenomenal difference to my life. If something similar happened in future, I would have no hesitation in using the [Human Rights Act] again.'*¹**

These are the words of a married woman from Yorkshire who successfully used the Human Rights Act to challenge a decision by her local authority that meant she would have to sleep apart from her husband.

She was a disabled woman who was unable to leave her bed. Her occupational therapy department told her she needed a special ('profile') bed so that carers could give her bed baths. But her request for a double bed that she could share with her husband was refused, even though she offered to pay any extra cost involved.

After an 18 month stalemate, she invoked the Human Rights Act, and in particular her right to respect for private and family life. Within three hours, the authority changed its tune completely and found enough money to pay for the new bed in full.

This is one of 15 case studies compiled in this report that show how the Human Rights Act is being used in practical ways to make a difference to everyday life in the UK.

Too often the Human Rights Act is associated with technical legal arguments or perceived to fuel spurious claims by celebrities and criminals. These case studies reveal a very different picture. They show how groups and people themselves are using not only the letter of the law, but also the language and ideas of human rights to challenge poor treatment and negotiate improvements to services provided by public bodies. Giving people the power to use human rights as a check against the state in this way is precisely what the Government envisaged when it passed the Act in 1998.

Most of the case studies are drawn from one aspect of BIHR's work: providing awareness-raising training about the Human Rights Act directly to voluntary and community sector organisations. A few have come from our work with the public sector and a small number from the work of other organisations. The case studies cover a wide range of people in a variety of situations. They show how human rights can be used by and on behalf of younger people, older people, victims of domestic violence, parents, asylum seekers, people living with mental health problems, disabled people, and others facing discrimination, disadvantage and exclusion.

The case studies focus on use of the Human Rights Act in individual situations, mainly in the context of

health and social care where human rights issues are often very stark. In order to encourage use of the Act in other areas where it may be underused at present, we have supplemented the case studies with a range of other real examples illustrating analogous situations in which similar human rights arguments could have been made.

The following key learning can be distilled from the case studies:

- **The language and ideas of human rights have a dynamic life beyond the courtroom**
- **Human rights are an important practical tool for people facing discrimination, disadvantage or exclusion**
- **Human rights offer a more ambitious vision of equality beyond anti-discrimination and can help people in situations where everyone is being treated equally badly**
- **Human rights principles can help decision-makers and others see seemingly intractable problems in a new light**
- **The language and ideas of human rights can be used to secure changes to policies, procedures and individual decisions**
- **Awareness-raising about human rights empowers people to take action**

These 15 case studies provide a glimpse of how a culture of respect for human rights, supported by the Human Rights Act, might begin to take root. But they only show one part of the story. In most of these examples individuals or those advocating on their behalf had to challenge public bodies to achieve an outcome which respected human rights in their particular situation. Empowering people with knowledge about their rights is essential, as is building the human rights capacity of the voluntary and community sector. Voluntary and community organisations are a vital link to the most excluded people whose rights are most at risk. But this needs to happen in tandem with the Government and all public bodies making human rights part and parcel of the design and delivery of policy, legislation and public services.

There are many areas beyond public service delivery where the potential of the Human Rights Act – and human rights more generally – remains largely untapped in the UK. In partnership with others, BIHR is working to explore this potential by promoting the links between human rights and areas such as civic participation, involvement and community development.

¹ *Disability Now*, June 2006, p. 14.

Introduction

BIHR ran a Community Outreach Programme between 2002 and 2005, with funding from the Big Lottery Fund (previously the Community Fund) and Comic Relief. The programme delivered human rights awareness-raising training to voluntary and community organisations, including a wide range of advocacy and local user-led groups. When the programme came to an end, it was clear that demand remained high. So as one part of our work to give human rights practical meaning for people in the UK, BIHR has continued to deliver training to a wide range of voluntary and community organisations, working at national, regional and local levels.

Over the years, stories have trickled back to us about how those we train, and others, are putting the Human Rights Act into practice. It has become clear that advocates, support groups and individuals are embracing the new language afforded by the Act to challenge bad practice and to negotiate better public services. This was precisely what the Government had hoped would occur when it passed the Act in 1998.

To date, no major research has been conducted into the ways in which the Human Rights Act is being used beyond the courtroom in the UK. This helps to perpetuate the fallacy that it is only for lawyers, or for ‘chancers’ seeking to frustrate our justice system.

The 15 case studies in this report directly challenge this perception. They demonstrate a rich variety of ways in which the Act is being used by groups and people themselves to challenge poor treatment and, through this, to improve their own and others’ quality of life.

Most of the case studies are drawn from one aspect of BIHR’s work: providing awareness-raising training about the Human Rights Act directly to voluntary and community sector organisations. A few have come from our work with the public sector and a small number from the work of other organisations. The case studies focus on use of the Act in individual situations, mainly in the context of health and social care where human rights issues are often very stark. Future BIHR publications will look

at the wider potential of the Act – and human rights more generally. There are many areas where this potential is largely untapped in the UK: in important areas of public service like education or housing, to promote change in policy-making and practice at the institutional as well as the individual level, and, critically, in the areas of civic participation, involvement, and community development.

The case studies show how human rights language is being used by and on behalf of a wide range of people, including young people, older people, victims of domestic violence, parents, asylum seekers, people living with mental health problems, and disabled people, in the following areas:

- **Protecting human dignity**
- **Challenging discrimination**
- **Promoting participation**
- **Challenging brutality**
- **Taking positive steps to protect human rights**
- **Using human rights where resources are an issue**
- **Using human rights to challenge blanket policies**
- **Protecting human rights in the context of contracted out services**

Each set of case studies is accompanied by a brief note explaining their background in terms of the Human Rights Act, and a selection of other real examples, all drawn from BIHR’s capacity building work or from the media, illustrating analogous situations in which similar human rights arguments could have been made. These other examples are provided partly to encourage use of human rights in areas where they may be underused at present. A short analysis section follows in which a number of key learning points from the case studies are presented.

These case studies are not legal cases, and they should not be treated as legal precedents. However we do hope they will inspire further practical use of human rights by individuals and organisations across the country. Anyone who would like to use these examples in their own work is welcome to do so, provided BIHR and other organisations showcased are credited as appropriate.

A glossary and a list of the rights protected by the Human Rights Act are provided at the back of the report.

Protecting human dignity

Case study 1 – Staff refuse to clean up a man’s bodily waste

A man detained in a maximum security mental health hospital was placed in seclusion where he repeatedly soiled himself. Staff declined to clean up the faeces and urine or to move the man to another room, claiming that he would simply make the same mess again, and any intervention was therefore pointless. The man’s advocate, having attended a BIHR training session, invoked human rights arguments to challenge this practice. He argued that this treatment breached the man’s right not to be treated in an inhuman and degrading way, and his right to respect for private life. These arguments were successful and the next time he soiled himself, the man was cleaned and moved to a new room.

Case study 2 – Man supervised by female carers in the bath

A learning disabled man in a care home became very anxious about bathing after slipping in the bath and injuring himself. Afterwards, in order to reassure him and to build his confidence once again, a carer, usually female, would sit in the room with him as he bathed. His female carers felt uncomfortable with the arrangement. One carer commented during a BIHR training session: ‘I knew in my heart he was being treated without dignity, and now I recognise that his human rights are perhaps being violated.’ A discussion of the human rights principle of dignity had served as a ‘trigger’ for her and together with co-workers she was able to develop solutions that would both protect the man’s dignity, whilst also providing him with the support he needed. She indicated that she would use the language of human rights, specifically the right not to be treated in an inhuman and degrading way and the right to respect for private life, to seek a new care assessment for the man who, in her view, required manual lifting. In the meantime she resolved to erect a screen in the bathroom for herself and other carers to sit behind while the man bathed.

Background: The concept of human dignity is central to the Human Rights Act 1998. Dignity is protected by specific human rights including the prohibition of inhuman and degrading treatment (Article 3 of the European Convention on Human Rights – see glossary for explanation of the term ‘Article’ in this context) and the right to respect for private life (Article 8). It is important to remember that, unlike the right to respect for private life (key features of this right are discussed below in the background to case studies 8-11), the prohibition of inhuman and degrading treatment is absolute, meaning that financial constraints cannot be used by public authorities as a justification for interfering with the right. The difference between absolute and other types of rights is discussed in the glossary on page 19.

Other real examples where human rights could have made a difference:

- An older woman being left completely naked on a mixed ward by workers who were training her to dress herself as part of a rehabilitation programme
- Muslim men in detention being told they cannot shower before going to a mosque because it interferes with the prison’s bathing schedules
- Disabled children not being able to go to the toilet at school because of a blanket ban on manual handling
- A six year old girl who took too long to get changed after PE being made to sing in assembly in her pants and vest as punishment
- Older people who do not have incontinence being forced to wear incontinence pads because staff say they do not have time to take them to the toilet

Challenging discrimination

Case study 3 – Non-English speakers sectioned without an interpreter

A mental health hospital had a practice of sectioning asylum seekers who spoke little or no English without the use of an interpreter. After participating in a BIHR session, members of a user-led mental health befriending scheme used human rights language to successfully challenge this practice. They argued that it breached the asylum seekers' right not to be discriminated against on the basis of language and their right to liberty.

Background: Equality is a fundamental human right. The Human Rights Act says that people cannot be discriminated against in the enjoyment of their Convention rights (Article 14). This human rights prohibition of discrimination extends way beyond the six equality 'strands' of sex, race, disability, age, religion or belief, and sexual orientation to be covered by the new Commission for Equality and Human Rights. It protects as well against discrimination on grounds including language, property, marital status, illegitimacy, trade union membership, and imprisonment. In this sense, the Human Rights Act 'plugs gaps' in other anti-discrimination laws. In case study 3, the right not to be discriminated against on the basis of language has been linked with enjoyment of the right to liberty (Article 5).

Other real examples where human rights could have made a difference:

- Welsh speaking farmers missing out on agricultural grants because land registration forms that had to be filed as part of the application process were only available in English
- A woman being told she could not volunteer at a local school because she is a transgender person
- A carer who is also a public sector employee being harassed at work because colleagues feel she takes too much time off on account of her caring responsibilities
- Medical treatment being denied to older people on the sole basis of their age
- Homeless people being excluded from council consultation events because they do not have a stable address in the vicinity

Promoting participation

Case study 4 – Disabled man denied support to attend gay pub

A physical disabilities team at a local authority had a policy of providing support to service users who wanted to participate in social activities. A gay man asked if a support worker could accompany him to a gay pub. His request was denied even though other heterosexual service users were regularly supported to attend pubs and clubs of their choice. During a BIHR training session, the man's advocate realised that the man could invoke his right to respect for private life and his right not to be discriminated against on grounds of sexual orientation to challenge this decision.

Background: Participation in public life is a human right. The Human Rights Act recognises that the ability to develop one's personality by participating in the life of the community is an important aspect of the right to respect for private life (Article 8). As a consequence, unreasonable barriers to accessing essential economic, social, cultural and recreational activities can be challenged. In case study 4, the advocate has combined arguments about participation with the prohibition of discrimination in the enjoyment of Convention rights (Article 14 – see background to case study 3 above).

Other real examples where human rights could have made a difference:

- A day care centre deciding that certain older people cannot go on day trips because they are too frail or too heavy, even though they have said they would like to participate
- A carer who can never leave the house for more than two hours at a time because of caring responsibilities at home
- Children in hospital not having any other form of structured interaction with each other beyond one hour of teaching per week

Challenging brutality

Case study 5 – Parents banned from visiting their son after complaining about bruising on his body

A young man with mental health problems was placed in residential care on a short-term basis. During a visit one day, his parents noticed unexplained bruising on his body. They raised the issue with managers at the home but their concerns were dismissed. They were also told that they were no longer permitted to visit their son. After participating in a BIHR training session the parents approached the care home once again and invoked their son's right not to be treated in an inhuman and degrading way and their right to respect for family life. As a result, the ban on their visits was revoked and an investigation was conducted into the bruising on their son's body.

Background: The Human Rights Act protects against brutality. Both the prohibition of inhuman and degrading treatment (Article 3) and the right to respect for private life, including the right to physical and psychological integrity (Article 8), can be used to challenge physical and emotional abuse. In case study 5, the young man's parents have combined arguments about suspected brutal treatment with an assertion of their right to visit their son as part of their right to respect for family life (Article 8).

Other real examples where human rights could have made a difference:

- Institutional abuse of learning disabled people receiving services from an NHS Trust, including a man being tied to his bed or wheelchair for 16 hours each day to prevent him from hitting his head and face
- An asylum seeker who was tortured and raped in Uganda being subjected to homophobic and racial abuse by guards at a UK removal centre. On one occasion he was strip searched by staff and forced to undertake an unwarranted and highly painful anal examination that he felt replicated his earlier rape
- An older person being slapped by a staff member after refusing tea

Taking positive steps to protect human rights

Case study 6 – Securing accommodation for domestic violence victims

A social worker from a domestic violence team at a local authority realised during a BIHR training session that human rights language could be used to secure new accommodation for a woman and her children at risk of serious harm from a violent ex-partner. Previously, when she had approached the housing department seeking emergency accommodation for the family, she had been told there was nothing available. During the training session she explained her view that the authority had overriding positive obligations to protect the right of the woman and her children not to be treated in an inhuman and degrading way and, given the extreme risk in this case, their right to life.

Case study 7 – Transport assistance secured for man with mental health problems

An asylum seeker with post-traumatic stress disorder needed to travel from South London, where he lived, to North London, where he accessed medical treatment and support networks. He was very fragile and highly anxious about his pending asylum application and the threat of removal. Because of his disorder, he panicked if he was on a bus for more than 10 minutes. He would alight, calm himself down and then wait for the next bus. Sometimes it would take him several hours to reach North London. His social services case worker successfully invoked the local authority's positive obligation to protect the man's right to respect for private life, including his right to respect for psychological integrity, and as a result a bus pass was issued to him.

Background: The Human Rights Act imposes positive obligations on public authorities to protect people from inhuman and degrading treatment (Article 3) and threats to their lives (Article 2). This means that authorities must take proactive steps to protect a person when they are aware that they are at risk in these ways, no matter who or what is the source of the harm. Authorities also have positive obligations to promote the right to respect for private and family life (Article 8) in some circumstances.

Other real examples where human rights could have made a difference:

- A young Asian man forced to share a prison cell with a known racist who attacked him with a table leg the night before his release, leading to his death a week later
- An authority becoming aware that an older woman living with her daughter is sometimes punished by being left outside on a chair overnight and is too frightened to tell her daughter when she is ill
- A residential care home becoming aware that a male resident is trading cigarettes for sex with a female resident who has a long history of mental health problems
- A school becoming aware that Traveller children are being verbally abused and ostracised by classmates
- A range of authorities becoming aware of the poor health of a young girl living with her aunt and her aunt's partner. Despite evidence of abuse no intervention was made and the child died in hospital. The doctor who performed the post-mortem claimed that it was the worst case of child abuse he had ever seen
- A couple, both with learning disabilities, who were expecting their first child being told the child would be removed because they could not relate to or successfully care for a robotic baby provided by the local authority to 'test' their parenting skills



Using human rights where resources are an issue

Case study 8 – Older woman to be moved from hospital to a residential care home against her wishes

Source: Independent Living Advocacy (Essex)

An older woman was staying in hospital following a number of strokes. She had been interned as a Japanese prisoner of war during the Second World War and suffered a range of trauma related mental health problems. She was observed re-enacting various behaviours from this period including washing her clothes with rocks and hanging them to dry on the hospital fences. Against her wishes, the hospital sought to discharge her and move her into residential care on cost grounds. Her advocate was concerned that being in an institution was what was causing this regression. After receiving BIHR training, he used human rights language to argue that she should not be placed in residential care and that she should instead be allowed to return home in accordance with her wishes. As a result, funding was secured to support her care at home.

Case study 9 – Children denied visits to their mother

A woman with mental health problems increasingly struggled following the death of her husband. She was placed in 24 hour supported care and her children were fostered. It was agreed that the children could visit their mother three times each week, but these visits were gradually reduced to one per week on the basis that the authority did not have enough staff to supervise the visits. Both the children and their mother were greatly distressed by this. The mother's advocate noticed that the local children's services department was not present during a care programme approach meeting and that the children's interests were not being properly represented. After attending a BIHR training session, he invoked the children's right to respect for family life and convinced the mental health team to invite children's services to the next meeting. The three visits each week were restored as a result. From this point onwards, the manager of the children's care team personally saw to it that each visit occurred. The mother and her children have remained very close and recently secured funding to enjoy an overseas holiday together.

Case study 10 – Married woman denied a double bed

Source: Disability Now, June 2006, p 14.

A disabled woman was told by her occupational therapy department that she needed a special ('profile') bed. She was unable to leave her bed and this new arrangement would allow carers to give her bed baths. She requested a double bed so that she could continue to sleep next to her husband. The authority refused her request, even though she offered to pay the difference in cost between a single and double bed. A stalemate ensued for 18 months until the woman was advised by the Disability Law Centre to invoke her right to respect for private and family life. Within three hours of putting this argument to the authority, it found enough money to buy the whole of her double profile bed. Writing to *Disability Now*, the woman explained that 'It has made a phenomenal difference to my life. If something similar happened in future, I would have no hesitation in using the [Human Rights Act] again'.

Case study 11 – Older couple split up by local authority after 65 years of marriage

A husband and wife had lived together for over 65 years. He was unable to walk unaided and relied on his wife to help him move around. She was blind and used her husband as her eyes. They were separated after he fell ill and was moved into a residential care home. She asked to come with him but was told by the local authority that she did not fit the criteria. Speaking to the media, she said ‘We have never been separated in all our years and for it to happen now, when we need each other so much, is so upsetting. I am lost without him – we were a partnership’. A public campaign launched by the family, supported by the media and various human rights experts and older people’s organisations, argued that the local authority had breached the couple’s right to respect for family life (Article 8). The authority agreed to reverse its decision and offered the wife a subsidised place so that she could join her husband in the care home.

Background: The right to respect for private and family life (Article 8) is not an absolute human right. Instead it is a qualified right, meaning that it may have to be interfered with in order to take account of the rights of other individuals and/or the wider community (qualified rights are explained in the glossary on page 19). This means that financial difficulties are a relevant consideration. However, for any interference with this right to be justified, including on financial grounds, it must be lawful, necessary and proportionate. A proportionate response to a problem is one that is appropriate and not excessive in the circumstances (see glossary on page 19). Other qualified rights include the right to freedom of thought, conscience and religion (Article 9) and freedom of expression (Article 10).

Other real examples where human rights could have made a difference:

- Disabled people being forced into residential care on cost grounds despite their own preference for support to enable them to live independently
- Refusals by schools to cater for the dietary needs of students from different cultural backgrounds on the basis that it is too expensive
- A carer being told by social workers that she should give up work in order to care for her husband while he recovered from a stroke because there was not enough money to provide adequate home help
- A disabled woman’s direct payments being reduced to the point where she could no longer afford a personal assistant to assist her with tasks including toileting, leading to the aggravation of her serious kidney condition

Using human rights to challenge blanket policies

Case study 12 – Mother threatened with eviction whilst giving birth

A failed asylum seeker was living in accommodation provided by the National Asylum Support Service (NASS). NASS issued a 'termination of support' notice to her while she was giving birth in hospital. She was a single mother and this was her second child. The notice period expired whilst she was still in hospital and upon return she and her children faced eviction. After receiving BIHR training, a manager at a voluntary sector organisation suggested to NASS that evicting the family in these circumstances may amount to inhuman and degrading treatment. The manager suggested that they reconsider their decision before taking enforcement action. NASS decided to amend the status of the notice, giving the voluntary sector organisation time to apply for 'hard case' support for the family under section 4 of the Immigration and Asylum Act 1999. The application was successful and alternative accommodation for the family was secured.

Case study 13 – Young learning disabled girl denied school transport

A local authority had a policy of providing school transport for children with special educational needs living more than 3 miles from their school. A young learning disabled girl lived 2.8 miles from the special school she attended. Despite being unable to travel independently, she was advised by the authority that she should instead take two buses to and from school each day. An independent parental supporter who had attended a BIHR training session supported the girl's mother to challenge the decision using human rights language. The mother approached the head teacher of the school and explained that the decision was a disproportionate interference with her daughter's right to respect for private life, given the failure to consider her specific circumstances. The head teacher took the issue to the local authority, and the decision was reversed. Thereafter the young girl was provided with transport to and from school.

Background: The Human Rights Act requires decision-makers to properly consider the full circumstances of a case before making a decision. This reflects the priority placed by human rights on person-centred decision-making generally. Applying blanket policies without proper regard to the particular situation or consequences may lead to decisions that are disproportionate (see above) and therefore a breach of human rights.

Other real examples where human rights could have made a difference:

- A resident attempted suicide by swallowing large quantities of toilet roll. The care home responded with a new policy requiring all residents to keep the door ajar while using the toilet so that carers could dispense toilet paper through the door
- A homeless man with a serious liver condition requiring stable accommodation and medication being denied both of these by the local authority without his special needs being considered
- A blanket policy in a mental health care home stating that patients should not be woken up at mealtimes resulting in heavily medicated patients who slept during the day going for long periods without food
- Local authorities routinely moving patients from hospital straight into residential care in a bid to avoid fines for causing patients to overstay in hospital. Often no care assessment is performed and the individual needs of the patient are not taken into account
- A blind Iranian asylum seeker and his brother who was his carer being sent to different cities under the NASS dispersal scheme. As a result the man was isolated in his flat. Without his brother, he had to rely on the help of a concerned neighbour who taught him to distinguish tins of food according to their size and shape

Protecting human rights in the context of contracted out services

Case study 14 – Learning disabled man searched by care home staff each time he returns from being out unsupervised

A learning disabled man in a privately run residential care home had a history of starting fires. Although this had not occurred for over two years, care home staff were instructed by his psychiatrist to routinely search him each time he returned from being out unsupervised to ensure he did not have matches or a lighter. This practice was challenged by a health commissioner for the NHS Primary Care Trust (PCT) which had contracted the care home to provide the man with residential care. The health commissioner invoked the man's right to respect for private life to argue successfully that the blanket policy should be replaced with a proper decision-making process. The new decision-making process was based on ongoing risk assessment and was communicated to the man to ensure he understood why, when, how and by whom he would be searched and when the practice would be reviewed. It was agreed that routine searching would cease after six months if no matches or lighter were found on the man and if he was not involved in any fire-related incidents.

Case study 15 – Residential care home refuses to bathe a larger woman

Source: Independent Living Advocacy (Essex)

A larger woman in residential care had not been showered or bathed for many weeks. The care home, with the agreement of the local authority which funded her care, had been providing her instead with a 'strip' wash so that staff did not have to lift her. The woman was very upset about the situation, especially because warmer weather was causing her to perspire. After receiving BIHR training, her advocate wrote to the care home and the local authority and invoked her right not to be treated in an inhuman and degrading way. Within days a new occupational therapist was brought in to explore options and it was quickly agreed that a hoist could be used. From this point onwards the woman was able to take a bath or shower according to her wishes.

Background: The Human Rights Act imposes an obligation to protect human rights on public authorities as well as other bodies performing 'functions of a public nature'. This wide scope of the Act means that bodies delivering public services under contract to public authorities will often assume responsibility for the human rights of their service users. However this does not mean that public authorities who contract out their services lose their human rights obligations. Efforts to ensure that service users are treated in a way that respects their human rights should be integral to the commissioning and contract monitoring processes.

Other real examples where human rights could have made a difference:

- Failure by local authorities to prevent a wide range of human rights abuses in private and voluntary sector residential care homes operating under contract to a local authority including: residents being left in their own waste for long periods, routine over-medication aimed at keeping residents docile, persistent rough handling of fragile residents, and misuse of residents' money
- Failure by the Home Office to prevent a wide range of human rights abuses in privately operated immigration removal centres including: verbal and physical abuse by guards, misuse of detainees' property, and inadequate access to physical and mental health care

- 1. The language and ideas of human rights have a dynamic life beyond the courtroom.** We often associate human rights with lawyers. However, these examples show that a wide range of other individuals and organisations, including advocates, family members, user-led support groups, service users themselves, frontline service providers and managers, and those responsible for commissioning services from the private and voluntary sectors, can use this language to improve people's experience of public services and their quality of life generally.
- 2. Human rights are an important practical tool for people facing discrimination, disadvantage or exclusion.** These case studies and the other examples that accompany them highlight a variety of ways in which the language and ideas of human rights can be used to make a difference to the lives of people from disadvantaged and socially excluded groups including disabled people, people living with mental health problems, older people, children and young people, women, gay, lesbian, bisexual and transgender people, carers, homeless people, people from black and minority ethnic backgrounds, and asylum seekers.
- 3. Human rights offer a more ambitious vision of equality beyond anti-discrimination and can help people in situations where everyone is being treated equally badly.** The human rights vision of equality extends far beyond anti-discrimination to encompass fairness of treatment, dignity, respect and access to the fundamental rights which enable participation in a democratic society. For example, case studies 1, 2, 5, 6, 12, 14, and 15 illustrate how the language of human rights can be used to promote human dignity by challenging treatment that is inhuman or degrading, regardless of whether it is discriminatory. This means that human rights can be used in situations where everyone is being treated equally badly, like in a hospital ward or care home.

The human rights protection against discrimination 'plugs gaps' in our anti-discrimination framework by protecting groups that fall outside the six equality 'strands' of sex, race, disability, age, religion or belief, and sexual orientation (see 'Challenging discrimination' above on page 8). Case study 3 shows how human rights can be used to challenge discrimination on the basis of language.
- 4. Human rights principles can help decision-makers and others see seemingly intractable problems in a new light.** A number of these case studies show how the core principles of human rights – including dignity, equality, respect, fairness and autonomy – can be used to trigger new thinking in difficult situations. For example, case study 2 shows how the concept of dignity galvanised a carer to consider practical solutions to the problem of supervising a learning disabled man while he bathed. In this case, a specific human right was also invoked – the right not to be treated in an inhuman and degrading way – but it was human rights principles, rather than the letter of the law, which resonated with those involved and prompted further thinking leading to change.



- 5. The language and ideas of human rights can be used to secure changes to policies, procedures and individual decisions.** The majority of these case studies demonstrate how human rights can be used to challenge decisions in individual cases. For example, case study 7 shows how the right to respect for private life helped a social worker to secure a bus pass for an asylum seeker suffering from post-traumatic stress disorder; while case study 10 shows how the right to respect for family life helped a disabled woman to secure a special ('profile') bed that she could share with her husband.

However, a number of the case studies demonstrate how human rights can be used to secure changes at the levels of policy and procedure. In some cases, this means that the benefits are shared with others beyond the individual immediately concerned. For example, case study 3 shows how an intervention by a befriending scheme convinced a mental health hospital to revise its policy in relation to interpreters for asylum seekers threatened with detention on mental health grounds. In other cases, decision-makers are made aware that clear procedures need to be in place when human rights are engaged. For example, case study 14 shows how a health commissioner within a PCT advised a residential care home to adopt a proper decision-making process in relation to the searching of a service user.

- 6. Awareness-raising about human rights empowers people to take action.** Many of the examples in these case studies were generated following a single full-day human rights training session provided by BIHR. Case studies 1, 3, 4, 5, 8, 9, 12, 13 and 15 demonstrate the resourcefulness of voluntary and community sector advocates, advisers and others when equipped with basic knowledge of the Human Rights Act and the rights it protects (see the back page for a full list of these rights). Case studies 2, 6, 7, and 14 show how human rights training and other capacity building activities can shift attitudes and lead to changed practice among service providers in both the public and voluntary sectors and those responsible for commissioning public services.

Conclusions

This collection of case studies provides a snapshot of conversations taking place across the UK as individuals and organisations in the public and voluntary sectors awake to the potential of human rights language and ideas to make a difference beyond the courtroom. Of course these examples are anecdotal, but they provide a glimpse of how a culture of respect for human rights, supported by the Human Rights Act, might begin to take root. BIHR is working in partnership with a range of organisations to further explore the potential of human rights as a tool for tackling inequality and disadvantage. We hope that this work, which will include capacity building, awareness-raising and action research, will generate new learning about how human rights can be used to improve public services, promote more meaningful involvement and civic participation, and change lives on a more ambitious scale.

Glossary

- Article** Human rights protected by the European Convention on Human Rights are divided into Articles. An Article is similar to a 'section' of legislation.
- Absolute rights** These rights may never be interfered with, not even in times of war or national emergency. Lack of resources is never an excuse for interfering with an absolute right. Examples are Article 3 (the prohibition of torture, inhuman and degrading treatment) and Article 4 (1) (the prohibition of slavery and forced labour).
- Limited rights** These rights are not absolute. They may be limited in certain strictly defined circumstances. An example is Article 5 (the right to liberty and security). This right may be limited in circumstances including where someone has committed a crime or where someone is suffering from serious mental health problems.
- Qualified rights** These rights are not absolute. They may be interfered with so long as the interference is (1) lawful, (2) for a legitimate purpose, (3) necessary, and (4) proportionate (see 'proportionality' below). Examples are Article 8 (the right to respect for private and family life), Article 9 (freedom of thought, conscience and religion), and Article 10 (freedom of expression).
- Proportionality** A proportionate response to a problem is one that is appropriate in the circumstances i.e. not excessive. An expression commonly used to capture this meaning is *you should not use a sledgehammer to crack a nut*.
- Positive obligations** These obligations require public bodies to take proactive steps to protect human rights, regardless of who or what is causing the harm. They require the organisation to be proactive rather than simply refrain from action that may violate human rights. Positive obligations are created under a range of rights including Article 2 (the right to life), Article 3 (the prohibition of torture, inhuman and degrading treatment), Article 8 (the right to respect for private and family life) and the second part of Article 2 Protocol 1 (the right of parents to respect for their religious and philosophical convictions in the context of their children's education).

Rights protected by the Human Rights Act

The Human Rights Act makes part of UK law the following rights contained in the European Convention on Human Rights:

- The right to life (Article 2)
- The right not to be tortured or treated in an inhuman or degrading way (Article 3)
- The right to be free from slavery or forced labour (Article 4)
- The right to liberty (Article 5)
- The right to a fair trial (Article 6)
- The right to no punishment without law (Article 7)
- The right to respect for private and family life, home and correspondence (Article 8)
- The right to freedom of thought, conscience and religion (Article 9)
- The right to freedom of expression (Article 10)
- The right to freedom of assembly and association (Article 11)
- The right to marry and found a family (Article 12)
- The right not to be discriminated against in relation to any of the rights contained in the European Convention (Article 14)
- The right to peaceful enjoyment of possessions (Article 1 of Protocol 1)
- The right to education (Article 2 of Protocol 1)
- The right to free elections (Article 3 of Protocol 1)

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Do you have an example of how human rights have been used to make a difference beyond the courtroom?
Contact Sonya Sceats, Policy and Research Officer, at ssceats@bihr.org.uk

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