

Consultation Response

The Joint Committee on Human Rights examination of the Human Rights Act: has it been effective and have rights been “brought home” with a greater understanding of the UK-specific context (than the Strasbourg Court).

September 13 2018

Reference No. 3818

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About this consultation

On 9 November 2018 it will be 20 years since the Human Rights Act was given Royal Assent. The aims of the Act were to:

- make it easier for individuals to assert their rights through the UK legal system
- allow the British Courts to influence the development of Strasbourg jurisprudence
- improve compliance with Convention rights.

In 1998 those who opposed the Human Rights Bill feared that it would weaken effective political democracy; that it would undermine the principle of separation of powers and therefore lead to a further increase in the power of the executive (through Remedial Orders), the diminution of Parliament, and the politicisation of the judiciary.

In the 20 years since the Act was given Royal Assent, there have been radical changes in the context in which it operates including:

- changing family structures
- global migration
- intensified security concerns
- technology
- increased concerns about privacy.

The Committee seeks evidence on:

- the effectiveness of the Act in securing individual rights at UK rather than at Strasbourg level
- the effectiveness of the Act in enabling UK Courts to apply human rights with a greater understanding of the UK-specific context (than the Strasbourg Court)
- the effects of the Act on the relationship between the judiciary, the executive and Parliament
- the use of remedial orders; as the HRA improved individual rights in the UK, rather than requiring litigants to go to the ECtHR for justice? And, if so, has this improved citizens' lives?
- the influence of British jurisprudence on the European Court of Human Rights been capable of adapting to changing times? (e.g. rise of internet etc.)

Introduction

Age UK is a national charity that works with a network of partners, including Age Scotland, Age Cymru, Age NI and local Age UKs across England, to help everyone make the most of later life, whatever their circumstances. In the UK, the Charity helps more than seven million older people each year by providing advice and support. It also researches and campaigns on the issues that matter most to older people. Its work focuses on ensuring that older people: have enough money; enjoy life and feel well; receive high quality health and care; are comfortable, safe and secure at home; and feel valued and able to participate.

Key points and recommendations

- The HRA has greatly benefited older people in the UK. Evidence shows that it helps to safeguard the dignity and safety of older people at times when they may be at their most vulnerable and more reliant on the services of public bodies. The HRA has expanded legal protection for the rights of older people and reinforced the remedies that exist when these rights are breached.
- However, there are many older people who are not in a position to hold public authorities to account as they face multiple barriers including mental and physical ill health, and fear of repercussions, to realising their rights under the HRA.
- Public authorities could be doing much more to realise the positive obligations arising from the HRA for public authorities to act preventatively and to adopt human rights frameworks and ensure that the right systems are in place.
- Not all older people are accorded the protections of the HRA because the Act only applies to the provision of public services and so therefore the users of care services who are paying for their own care (unless their care has been arranged by a local authority) are not afforded the protection of the HRA.
- Finally, the debate on human rights in the UK should be reframed to emphasise the valuable protection it provides to people when they are at their most vulnerable.

Has the HRA improved individual rights in the UK, rather than requiring litigants to go to the ECHR for justice? And, if so, has this improved citizens' lives?

The HRA has greatly benefited older people in the UK. Evidence shows that it helps to safeguard the dignity and safety of older people at times when they may be at their most vulnerable and more reliant on the services of public bodies. The HRA has expanded legal protection for the rights of older people and reinforced the remedies that exist when these rights are breached. The HRA has also led to training in care and health settings which make a much wider positive difference.

One of the most important benefits of the HRA is that it is legally enforceable in the UK. If the HRA had not been incorporated into domestic law, it would have been much harder for those cases involving older people and the abuse of their rights under the ECHR to have been brought in the UK courts. The individuals affected by the breaches in question would have had to bring a case to the European Court of Human Rights in Strasbourg, a long, costly and time-consuming process for anyone but even more difficult for older people who are likely to experience particular challenges, including lack of mental and physical capacity as well as limited financial means, to bringing such a case.

One of the Act's purposes has been to grant a power to service users to hold public authorities accountable to respect Convention rights. Examples of how older people have used the HRA include:

- Families of those who died at Mid Staffordshire hospital were able to use human rights arguments to secure compensation for horrific treatment suffered by their relatives, such as not being given support to eat or drink or being left in soiled sheeting for hours. In many cases they were able to argue that poor treatment and neglect caused the death of their loved ones and that this was a breach of their right to life. They were also able to use the investigative duty included within the right to life, to secure a public inquiry into their relatives' deaths.
- 77-year-old Simon had a heart attack while he was in prison awaiting sentence for breaching health and safety regulations. He was rushed to hospital and for the next 14 days he was kept in handcuffs. Even while he was using the toilet and shower, Simon was chained to a prison officer. He took action against this treatment and a judge ruled that it violated his human right not to be subjected to inhuman and degrading treatment. The judge said that being handcuffed while in his own room in a hospital ward with only one door was humiliating and an affront to Simon's dignity.¹
- A 79-year-old man with dementia, who was unable to make decisions about his care, lived at home with his partner and her son. He was admitted to hospital for a mental health assessment and when he was ready for discharge, a dispute emerged between his partner who wanted him to return home, and health authorities who believed he should be admitted permanently to a care home. A judge ruled that forcing the man to be sent to an institution would be depriving him of his human right to family life with his partner. Though he recognised the man's physical and medical needs might be better served in a care home, the judge emphasised that there is more to human life than just physical needs. The judge said the man's emotional needs had to be taken into account in order to serve his best interests, and that meant going home to his family.²
- When 72-year-old Mr S heard that the HMRC (Her Majesty's Revenue and Customs) was moving to online only VAT returns he applied for an exemption even before they'd sent the letter. Mr S knows how to use a computer, but his arthritis makes it very tricky for him – the impact on his hands means he can't use even his adapted large keyboard easily and his poor eyesight makes seeing the screen very difficult. When the VAT office refused to exempt Mr S and two other taxpayers in a similar position from online filing they felt that their rights were being undermined and decided to challenge the decision. It was the inflexibility of the new rules which led to them winning the challenge – in a tax court, the judge found that the HMRC should have made provision for people who would find it difficult to comply with the new rules and their failure to do so was a breach of human rights.³

¹ Source: [Equally Ours](#)

² Source: [Equally Ours](#)

³ Source: [Equally Ours](#)

Could the HRA be improved?

Despite the above achievements, older people continue to face human rights abuses in their daily lives. In saying this, it is not that the HRA is unfit for purpose: the achievements of the HRA should not be downplayed. Rather it is that the HRA does not fully address the particular issues relating to older people and has been undermined by poor implementation.

Firstly, there are many older people who are not in a position to hold public authorities to account as they face multiple barriers to realising their rights under the HRA. As people become older, they are more likely to experience some sort of ill health and disability, which makes them more dependent on others for care. This makes them more vulnerable, and it is this experience of vulnerability, which lends itself to abuse, neglect and ill-treatment by those around them, as well as presenting as barriers to taking action under the HRA. Older people may feel shame, fear of repercussions, guilty or dependency on the abuser, deterring them from reporting human rights abuses. Many older people also report a sense of powerlessness when they are in health and social care settings and in dealing with public authorities.⁴

Secondly, the rights of service users are just one aspect of the HRA. The other very important aspect is the implementation of best practice which supports the positive obligations arising from the HRA for public authorities to act preventatively and to adopt human rights frameworks and ensure that the right systems are in place. In light of the barriers older people face in realising their rights under the HRA, this is a very important part of the HRA.

For example, in relation to the provision of social care, there is evidence that local authorities take account of the HRA with regard to commissioning and procurement.⁵ However, funding for older people's social care in the UK has suffered devastating cuts in recent years. This under-funding poses a real threat to the implementation of best practice, particularly in the social care setting. Under the Mental Capacity Act, care homes and hospitals have to seek authorisation for a 'Deprivation of Liberty Safeguard' if they consider they are already in, or may have to move a person into, more restrictive care of treatment in that person's 'best interests'. Despite the legislation, underfunded councils are not properly resourced to undertake the assessments of deprivation of liberty, as well as reviewing cases in the necessary timescales. As a result, there are many people whose deprivation of liberty does not have suitable conditions placed on it or should not be occurring at all.⁶

Third, not all older people are accorded the protections of the HRA because the Act only applies to the provision of public services and so therefore the users of care services who are paying for their own care (unless their care has been arranged by a local authority) are

⁴ "Older people were seen as easy targets, because they were largely voiceless and unlikely to resist deportation": <https://www.theguardian.com/uk-news/2018/jul/18/revealed-depth-of-home-office-failures-on-windrush>

⁵ EHRC, *Close to Home: an inquiry into older people and human rights in home care*, November 2011.

⁶ See the Select Committee on the Mental Capacity Act 2005, *Mental Capacity Act 2005: post-legislative scrutiny*, House of Lords, 2014.

not afforded the protection of the HRA. Age UK therefore believes that protection provided by the HRA should be extended to all older people by ensuring that providers of residential and homecare services are regarded as public authorities for the purposes of the HRA, regardless of who is funding the service provided. This was partially achieved in the Care Act 2014 but there remains a protection gap remains for self-funders who pay *and* arrange for their care themselves we continue to push for all regulated care to be included within the scope of the HRA.

Finally, the debate on human rights in the UK should be reframed to emphasise the valuable protection it provides to people when they are at their most vulnerable. Age UK believes that the HRA already embodies a balance of rights and responsibilities and that most rights can already be qualified in order to protect the rights and freedoms of others or for lawful punishment. However, the goal of creating a better awareness of human rights throughout society has not been achieved. There is little understanding of the qualified nature of many rights within the HRA and this is a further area where the provision of public information, education and awareness-raising would help address misunderstandings and misperceptions about how human rights operate in practice. The Government should be taking a lead in providing this type of information and awareness-raising to the wider public.

What other future challenges will need to be addressed through the framework of the Human Rights Act?

There are 11.8 million people aged 65 or over in the UK. The number of people aged 65+ is projected to rise by over 40 per cent (40.77%) in the next 17 years to over 16 million and by 2040, nearly one in four people in the UK (24.2%) will be aged 65 or over.⁷ Age UK believes that the specific needs of older people should be addressed by the HRA.

A case in point is that of social care. Since the HRA came into force in 2000 the provision of social care has changed significantly with far higher numbers of people receiving care provided by private and third sector providers. Furthermore, funding for older people's social care in the UK has suffered devastating cuts in recent years leaving the provision of this care in a state of crisis. This under-funding poses a real threat to older people's human rights as they lose control over daily activities and where and when they receive social care.

Age UK believes the rights set out in the UN Principles for Older Persons could be incorporated into the HRA. This should reflect (and where possible give additional force to) the rights contained within the UN Convention on the Rights of Persons with Disabilities. However, if amending the HRA itself through primary legislation carries any risk of leading to a decrease in protections under the Act, then any additional rights and protections should be set out in parallel legislation.

⁷ National population projections for the UK, 2014-based, Office for National Statistics, 2015