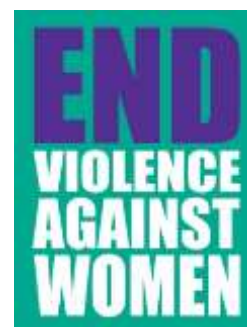


End Violence Against Women (EVAW) Coalition

Written submission to the Independent Human Rights Act Review (IHRAR) Call for Evidence

March 2021



About the End Violence Against Women Coalition

We are a UK-wide coalition of more than 100 specialist women's support services, researchers, activists, survivors and NGOs working to end violence against women and girls (VAWG) in all its forms, including: sexual violence, domestic abuse, forced marriage, sexual exploitation, FGM, stalking and harassment. Established in 2005, we campaign for improved national and local government policy and practice in response to all forms of VAWG, and we challenge the wider cultural attitudes that tolerate and condone this abuse. Our trustees include women who are globally renowned for their pioneering work in setting up the first domestic and sexual violence crisis services, for their academic research in this area, and for having successfully campaigned for considerable legislative and policy change in the UK to end and prevent abuse over the last four decades.

The EVAW Coalition is a company limited by guarantee (no. 7317881) and a registered charity (no. 1161132)

Introduction

This submission is prepared by the End Violence Against Women Coalition for the Independent Human Rights Act Review (IHRAR).

Our response is focused on the operation of the Human Rights Act in securing the rights of victims of violence against women and girls (VAWG). It is our position that that the courts in dealing with claims under the HRA, have been critical in helping women failed by the criminal justice system to hold the State to account. It has been reproduced from a [briefing](#) published by the End Violence Against Women Coalition and Southall Black Sisters: *Violence against women and girls: Protecting women's human rights and holding the state to account* October (2017)

Violence against women as a breach of human rights

Violence against women is unarguably a breach of human rights. The right to live free from fear, injury and exploitation is undeniably fundamental and is reflected within The Convention in a range of articles, namely:

- Article 2 - the right to life

- Article 3 - the right to freedom from inhuman and degrading treatment • Article 4 - the right to freedom from slavery and servitude
- Article 8 - the right to respect for private and family life
- Article 14 - prohibition on discrimination regarding Convention rights

Under The Convention, 'negative obligations' require the State to refrain from inflicting harm, for example death, inhuman or degrading treatment upon citizens. 'Positive obligations', in contrast, require the State to take positive action in response to the infliction of harm by private individuals.

Positive obligations – the State must act to protect women

For over 20 years the European Court of Human Rights has recognised that if the infliction of inhuman and degrading treatment is to be prevented The Convention must apply to the State's action against 'nonstate' individuals. It is particularly apt that its operation extends to addressing violence perpetrated against women by private individuals because such violence emanates from and is tolerated by cultural and social norms.

The European Court developed the concept of positive obligations, which has evolved over the last two decades to become a well established body of principles under The Convention. Positive obligations can take a number of forms.

These include:

- a duty to put in place effective systems of law and law enforcement machinery (known as a 'systemic duty')
- a duty to provide protection by preventing or bringing to an end threatened or on-going human rights breaches (known as the 'operational duty')
- a duty to carry out an adequate investigation after the event capable of leading to the prosecution of those responsible for a human rights breach (known as the 'investigative duty')

These are some of the key rulings of the European Court of Human Rights in Strasbourg which establish the legal precedent for positive obligations:

- The landmark case of *Osman v UK*¹⁵ in 1998 established a positive obligation upon the state to prevent loss of life where the authorities "knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual from the criminal acts of a third party and failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk." The case concerned the shooting of a schoolboy's father by his teacher. This 'operational duty' is clearly highly relevant to the protection of women at risk from violent men.
- The case of *MC v Bulgaria*¹⁶ (2003) involved the state's actions in response to the rape of a 14 year old girl by two men. The European Court found a breach of Articles 3 and 8 arising from investigative and prosecutorial failures.

- In *Opuz v Turkey*¹⁷ (2009) the police and prosecution authorities failed to prevent the applicant's violent ex-husband from assaulting her and eventually killing her mother. The European Court identified inadequacies in the Turkish criminal law system and failures to take practical steps to provide protection, finding breaches of Articles 2 and 3. The Court also found a breach of Article 14 arising from discrimination against women in that the passivity of the authorities created a climate conducive to domestic violence.

When imposing positive obligations under The Convention and the HRA both Strasbourg and the UK courts carefully consider the needs of public authorities. Far from imposing legal obligations which only consider the needs of the individual against the State, judges have stressed that serious failures are required before a breach is established. For example, the 'Osman test' states that: For the Court, and bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities.

The evolution of the doctrine of positive obligations has involved the courts in a balancing act between the rights of victims of crime and realistic expectations of the police. These stories of claims brought under the HRA reflect failings across a broad range of forms of violence against women including rape, sexual harassment, trafficking and murder on the basis of so-called 'honour'. They show what positive obligations mean in practice:

Mandy's story

Mandy Dunford bought a farm in North Yorkshire, where she lived alone. The neighbouring property was owned by a Kenneth Ward, who began to harass her. Over a period of seven years he indecently exposed himself to her on a regular basis, including openly masturbating, until he was finally arrested. Mandy reported the harassment to her local police station, where an officer declined to take her photographic evidence. Ward was not arrested, although indecent exposure is an offence attracting up to two years' imprisonment. A first harassment warning was served by the police, following which Ward began to aim firearms in her direction, and on one occasion he discharged shots. Repeat attempts to report matters to the police resulted in little more than a visit by the police to Ward to warn him not to approach Mandy. On one occasion Mandy took photographs of Ward masturbating to a police station where an Inspector told her that at most he would get an ASBO and that police surveillance would infringe Ward's privacy. Mandy gave up on getting a police response and had to go to live in a caravan away from her property, as she felt unsafe. She tried to sell her farm but her police complaints were disclosable and a buyer pulled out. The farm could only be sold at a substantial loss. Eventually a friend compiled a dossier of evidence, including covert video recordings. After this was submitted to the police Ward was arrested and an arsenal of illegal firearms seized from his home. He pleaded guilty to indecent exposure, harassment and firearms offences and was sentenced to 5 years' imprisonment. Mandy brought a claim against North Yorkshire Police under Articles 2, 3 and 8 of the Convention. Her ordeal had clearly escalated over the seven years as Ward felt he could act with impunity. The police finally apologised and agreed to settle her claim out of court.

Helen's story

Helen reported a sexual assault and attended court to give evidence. On the first day of trial the prosecuting barrister botched an application for her to give evidence behind a screen so that at the last minute she had to face her attacker in court. She was not warned not to mention in front of the jury that the accused had been to prison on another matter, which would reveal that he had 17 previous convictions. When she mentioned this inadvertently the jury had to be discharged. It was open to the prosecutor to apply for a fresh trial, however, without consulting with Helen or even informing her, he offered no evidence, which meant that the accused could not face a retrial. When Helen raised her concerns with the Crown Prosecution Service (CPS) she received a letter blaming her for the collapse of the trial, including on the grounds of lack of credibility of her account. Helen threatened to bring a judicial review against the CPS relying upon Article 3 of the Convention. As a result she was able to secure a meeting with the Director of Public Prosecutions (DPP) at which she received an apology, as well as compensation for the impact of the collapsed trial on her ability to recover psychologically from the sexual assault. The DPP confirmed in writing that the prosecutor was wrong not to request a re-trial, or to consult, inform or support Helen, and that there were no grounds to doubt her credibility. The prosecutor and CPS lawyer would be re-assessed in relation to their suitability to act as sexual offences specialists. The head of the police sexual offences team would review the case to learn lessons regarding joint working with the CPS.

Mary's story

Mary comes from a small village in Nigeria where her family lives in poverty. At the age of 12 she was trafficked to the UK to work for Mrs Okoro, who used a false passport and presented Mary as her stepdaughter. For three years Mary lived in east London in domestic servitude. She attended school but the rest of the day, from early in the morning until late in the evening, she performed unpaid work as nanny, cleaner, cook and generally carried out all household chores. She had no personal autonomy, not being free to come and go and had no money to spend on herself. Mrs Okoro was verbally and physically abusive, regularly assaulting her. Mary was denied sufficient food and other basic needs, she slept on the floor or shared a bed with Mrs Okoro's young children. Several months after her arrival in London Mary reported an assault to the police. They noted a cut to her ear and old scar tissue under the eye but after two days in foster care she was returned to Mrs Okoro's home. Mary's school made a referral to social services that Mary had reported being hit by her step-mother, that she never has money for lunch and goes hungry and that her step-mother uses her as "cheap labour" as she has to get up at 5.30am to do household chores. A police file was opened and closed five days later. A social services assessment was carried out and closed. Over a year later following an anonymous report of child labour and physical abuse another such assessment was conducted but no action taken. At the age of 15 Mary finally fled from Mrs Okoro's home following an assault which led her to contact the police and provide a detailed account of her experiences, and she was permanently taken into foster care. However, even now the police investigation treated the issue as assault rather than trafficking and the criminal case was closed on the basis that it had been a "tit for tat" altercation. A trafficking investigation was eventually opened nine months later after a request by Mary's immigration solicitor. However, this investigation was also closed when the police failed to address the correct elements of the criminal offences associated with trafficking. Only after Mary's solicitors threatened judicial review using Articles 3 and 4 of the Convention did the police re-open

the trafficking case and begin a fresh investigation based on a correct application of the law. A civil claim based on Articles 3 and 4 was settled out of court.

Dersima's story

Dersima was murdered at the age of 21 and her body found in a suitcase buried in a garden three months later. Her father, uncle and three other men were convicted of her murder. Dersima entered into an arranged marriage at the age of 18. She suffered abuse and left the marriage after two years, returning to her family's home. She then began a relationship with a man which was deemed unsuitable by her parents, uncles and male cousins. She was taken to Sheffield and imprisoned in the house of a relative and beaten. Her uncle and other family members resolved to kill her and her boyfriend if they did not cease their relationship. Dersima attended a police station and reported that she believed her life was in danger, explaining that she came from a culture where women may be killed if they brought shame on the family. She later reported threatening phonecalls and wrote a letter to the police providing names of suspects, with details on how to trace them. Later that month Dersima was held down by her father and uncle and forced to drink a large amount of brandy. She became so frightened that she escaped and raised the alarm by breaking a neighbour's window. Police officers who attended did not take her seriously, dismissed her as being unable to hold her drink and an attention seeker and considered arresting her for criminal damage to the broken window. They failed to link her to the earlier reports to the police.

The following month Dersima's boyfriend was approached and threatened by a group of men. Both he and she separately reported this to the police. No steps were taken to investigate. Instead an officer attended Dersima's home and spoke to her parents who provided assurances that all was well. Dersima disappeared the next day. Dersima's sister brought a civil claim against the Metropolitan Police for failure to prevent her murder under Article 2 of the Convention, the right to life. She brought the case in an effort to achieve acknowledgment by the police of their failings in the period leading up to her sister's death. The police agreed to a settlement of the claim a week before trial.

Challenging police failures

A long established legal principle has prevented women from bringing claims of negligence against the police or Crown Prosecution Service for failure to act in response to VAWG. This rule, often referred to by lawyers in legal shorthand as 'core immunity', applies to any alleged failures in the investigation or suppression of crime. 'Core immunity' first arose in 1988 when the mother of Jacqueline Hill, the Yorkshire Ripper's final victim, brought a claim against West Yorkshire Police. She alleged that had the police not been negligent in their investigation, Peter Sutcliffe would have been apprehended before her daughter was murdered. The House of Lords rejected Mrs Hill's claim on the basis of public policy, making the unjustified finding that the right to bring such a claim would cause the police to adopt a "defensive frame of mind". Over the 29 years since the Hill case there have been three unsuccessful attempts to overturn the 'core immunity' principle. In both *Brooks v Commissioner of Police for the Metropolis* and *Smith v Chief Constable of Sussex Police* the House of Lords upheld the prohibition on negligence claims brought by victims of crime or witnesses, denying that the police have a duty of care.

Supreme Court Judgement

In February 2018 the Supreme Court judgment in a landmark case against the Metropolitan Police Service, brought by two women who were victims of John Worboys “Black cab rapist”, provided a conclusive ruling that the Human Rights Act provides a remedy for victims of serious sexual and violent crimes where the police fail.

The historic judgment is hugely important for the future of investigations of rape and other serious crimes of violence. It will require the police to effectively investigate allegations of rape with care and diligence, but also made clear that errors in an investigation that constitute a breach of article 3 must be “egregious and significant.”

Conclusion

Since the evolution of positive obligations and the introduction of the Human Rights Act, women have had a legal route to bring claims in the UK courts. If this legal avenue is destroyed there will be no route to bring claims in UK law, given the bar on negligence claims. Positive obligations, which have been so useful to women challenging poor police practice, are implicit, not explicit, rights in the Convention. They have developed through European Court decisions. This means that positive obligations are particularly vulnerable to being overlooked or deliberately disposed of were the HRA to be altered.

For further information please contact:

Andrea Simon, Director, End Violence Against Women Coalition

M: [REDACTED] W: www.evaw.org.uk