

## Independent Human Rights Act Review

### Response from the British Association of Social Workers

The British Association of Social Workers (BASW) is the professional membership organisation for social work and social workers, with just under 22,000 members; we are the independent voice of social work. Statutory social work duties intersect with many key human rights issues, for example: the safeguarding of children and adults (Article 3) the right to family life (Article 8) through children who are in care, and the right to liberty (Article 5) through the mental health legislation and best interests assessments (soon to become Liberty Safeguard Protections).

#### **Call for evidence**

It is our position that the language used in the call for evidence is entirely unsuitable for many audiences who rely on human rights legislation to protect their interests: for example, vulnerable families, people with learning difficulties and people who may face mental health challenges. As an organisation of social workers, we understand the power of language to include or exclude which makes this call for evidence problematic. We raise concerns that the starting point of the consultation with inaccessible language in the call for evidence sets a worrying precedent for how the remainder of the review will go. It is imperative that those who need their human rights defending and protecting can respond to consultations such as these, but many will be frozen out of responding due to the complexity of the document. Effective communication with a range of audiences is key to meaningful consultation. Conversations about the future of human rights should be accessible to all, and not reduced simply to a legal discourse. We urge the review to consider this and make efforts to engage further with those who would be prevented from responding to this call for evidence on grounds of accessibility.

#### **Scope of the review**

The scope of this review is limited and focuses on relationships between UK courts and other courts, and interaction between the UK Parliament and the courts. This review does not consider how the Human Rights Act works in practice and the protection of civil liberties of those who may find them at risk, and we believe this is a fundamental error. Great strides have been made in embedding human rights since the passage of the Human Rights Act in 1998. This is a valuable opportunity to consider how rights can be further embedded and strengthened. We call on the review to widen the scope and consider the substance of the Human Rights Act as well as how it interacts with other institutions.

Our concern is that this review is being conducted to give the Government the justification to prevent the courts from finding Parliament and Government activity unlawful, rather than a necessary review and the opportunity to gather evidence from those with lived experience of how human rights are protected in this country.

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## **The Human Rights Act and Social Work**

Human rights are the foundation of social work practice and at the very heart of the profession, seen in the values, code of ethics, education, training, and professional standards. The act underpins the role of all social workers and there are specialist accredited roles such as Best Interest Assessors and AMHP's developed specifically to safeguard people's Human Rights, promote social justice, and ensure people's voices are heard.

Social workers uphold advocate and champion the human rights of individuals, groups, and communities in their day-to-day work. From the right to freedom from abuse, the right to private and family life and the right to liberty and security, social workers ensure people are aware of their rights and are regularly engaged in upholding those rights for people with additional needs to ensure access to rights respected services and for those whose circumstances mean they may not be able to defend their rights themselves.

A major strength of the Human Rights Act is that it is relatively straightforward for social workers to consider how it is applied in specific areas of practice. For example, considering whether measures are necessary and proportionate regarding the Right to Liberty, and whether they have acted in accordance with the law. It provides a good reference point for social workers in their daily role to make decisions on potentially complex matters. Underpinning legislation in practice helps social workers understand their role, and also the limits of it.

For children and young people subject to custodial sentencing, concerns about access to and support with appropriate care and treatment, Article 3 (prohibition of torture and inhuman or degrading treatment or punishment) provides a necessary safeguard. There are also concerns about the use of practices such as strip-searching, segregation and restraint/'pain compliance' techniques against children in custody, as were raised in the Report of the Carlile Inquiry. Again, Article 3 is engaged and can be used to highlight and challenge overly restrictive and punitive practices.

The Human Rights Act also gives social workers a framework for the understanding and confidence to challenge areas that may be problematic.

### **Article 13 of the ECHR**

We are concerned that if the Government seeks to alter the relationship between Parliament and the courts, preventing the courts from deeming Parliamentary decisions as unlawful, this will negate the absence of Article 13. We fear that if Parliament prevents the courts from finding its decisions unlawful, this will prevent people seeking and accessing effective remedy.

We are a society built on checks and balances between powers, and any removal, or diminishing, of the ability of the courts to challenge a decision made by the UK Parliament is of great concern. The UK Parliament makes the law, but the courts play a highly effective role in ensuring that those laws are fairly implemented and properly upheld. Parliament should not be its own regulator, nor provide its own checks and balances.

We do not believe that the courts should be prevented from challenging Parliamentary decisions as to whether something is lawful or not. For example, Statutory Instrument 445 was brought in to reduce the statutory safeguards that were in place for children looked after by local authorities during COVID-19, which was argued by many organisations as being unlawful and that this would put vulnerable children at risk. This SI expired in September 2020 and was not renewed, but the Secretary of State was still taken to court over this decision – and the courts found that the Government’s lack of consultation on this change was unlawful (C1/2020/1279). Weakening of statutory safeguards undermines the protection of vulnerable children, and compromises their human rights, and this decision by Government should never have been made in the way that it was, without proper consultation of stakeholders and interested parties. If this issue had not been taken to court, the Government could have continued with unlawful behaviour. Courts, through the implementation of the Human Rights Act are a vital ‘check and balance’ against inappropriate or unlawful use of executive powers by the Government.

Removing the ability of the courts to rule government action as unlawful would be dangerous for the many people in this country that need their human rights protected.

## **Conclusion**

It is our position that the current Human Rights Act provides a bulwark against inappropriate or unlawful use of executive powers by the Government which might negatively impact on the most vulnerable. We recommend that the review recommends no suggested changes to the way that the Human Rights Act operates in the balance between the Courts and the Executive.