

# THE HUMAN RIGHTS ACT AND MENTAL HEALTH

## INTRODUCTION

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This paper will analyse the difference human rights legislation has made to the lives of those with mental health problems in the UK and, in doing so, demonstrate that scrapping the Human Rights Act 1998 (HRA) will be detrimental to those with mental health issues.

## THE HUMAN RIGHTS ACT (HRA)

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The HRA is a piece of domestic legislation that incorporates the European Convention on Human Rights (the Convention) into UK law. Before its enactment, anyone whose rights had been violated had to bring a claim to the European Court of Human Rights in Strasbourg which was both a lengthy and expensive process.

The HRA made it possible for claims to be brought to domestic courts. Crucially for mental health patients, the HRA also makes it unlawful for any public body to act in a way which is incompatible with the Convention. The term 'public body' includes traditional public bodies such as the NHS, local government and the police.

The current Government's plan to repeal the HRA puts a lot of this progress at risk. There have been numerous decisions at the European Court of Human Rights in favour of those suffering with mental health issues whose rights have been infringed. The attempts to diminish the link between the national courts and the European Court jeopardise the continued relevance of these judgments.

Until such a time that the government unveils the British Bill of Rights, (the suggested replacement for the HRA), we can only speculate as to whether the protection of mental health sufferers will be maintained, weakened, or strengthened.

## THE HRA IN THE COURTS

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For mental health patients, who are more vulnerable and, therefore, more at risk if their human rights are breached, the HRA is a vital protection. When things go wrong the HRA ensures that there is accountability. It allows individuals to take court action when their human rights have been violated, and it gives them a way of seeking justice.

There are a number of useful Convention rights which, thanks to section 6(1) of the HRA, all public authorities including mental health care providers must consider in their actions. The most relevant of these are: Article 2 (right to life), Article 3 (prohibition on inhuman/degrading treatment), Article 5 (right to liberty), Article 8 (right to family and private life) and Article 14 (prohibition on discrimination).

The best way to demonstrate this is through concrete examples where victims have successfully claimed that their rights have been breached. Below are two such examples:

A severely physically and mentally disabled child was admitted to hospital. There was a disagreement between his doctors and his mother. Without her knowledge, a 'Do Not Resuscitate' (DNR) order was placed on his notes, and he was administered morphine which she objected to. She then withdrew her son from the hospital's care, and he later recovered.

The court ruled that this was a breach of the right to respect for private and family life (Article 8).

He was awarded €10,000 in compensation.

*Glass v UK (2004)*

A man was arrested and detained by the police under the Mental Health Act. He was held for over three days, where he repeatedly banged his head on the wall, drank from the toilet and smeared himself with faeces. He was then transferred to a clinic for treatment.

The court ruled that his treatment had diminished his dignity and breached his Article 3 right (prohibition from torture and degrading treatment). In coming to its decision, the man's vulnerability was taken into account, as was the fact that he was in dire need of psychiatric treatment which was not administered.

He was awarded €3,000 in compensation.

*MS v UK (2012)*

These cases demonstrate how crucial human rights legislation is in achieving justice for those suffering with mental health issues. Thanks to the HRA, both these judgments create binding precedent in UK courts. To repeal the HRA and redefine our relationship with the Strasbourg court would introduce ambiguity over human rights legislation which could negatively affect some of the most vulnerable in society.

## THE DEPRIVATION OF LIBERTY SAFEGUARDS (DOLS)

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The DOLS are one of the success stories of human rights legislation for people suffering with mental health issues. They demonstrate the power of human rights legislation to engineer systematic change for the better and permanently enhance the protection of mental health patients.

They were introduced after the *Bournemouth* case<sup>1</sup> in which HL, an adult male with severe autism and learning difficulties, was unlawfully detained under the Mental Health Act. He was kept at Bournemouth hospital under the influence of a sedative and his carers were prevented from visiting him so that they would not remove him. When the case reached the European Court of Human Rights, it was declared that this was an unlawful deprivation of HL's liberty and, therefore, a breach of his Article 5 right to liberty.

The case highlighted the lack of safeguards not just in this case but in all similar situations. In response, the UK Government initiated a widespread consultation which resulted in the Mental Capacity Act 2005 being amended to include the administrative and judicial safeguards known as the DOLS.

## CONCLUSION

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For people who suffer from mental health issues, human rights legislation in the UK has proved a critical tool in securing justice and developing safeguards for their protection. Government plans to repeal the Human Rights Act and redefine our relationship with the European Court of Human Rights will create a wave of uncertainty which will undermine the protection of mental health sufferers. There is no need to replace the system which has proved so beneficial. The question lingers: if it ain't broke, why fix it?

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<sup>1</sup> R v Bournemouth Community and Mental Health NHS Trust