



News release
20 May 2008

Older and disabled people win human rights victory

Hundreds of thousands of vulnerable older and disabled people in care homes across the country will secure a vital safety net against abuse, neglect and unfair evictions, *says an NGO coalition*,⁽¹⁾ if Parliament accepts a Government amendment to the Health and Social Care Bill currently passing through the House of Lords⁽²⁾.

In a controversial test case last year (*YL v Birmingham City Council*)⁽³⁾, the Law Lords confirmed that care homes run by the private or voluntary sector, but contracted by public authorities to provide residential care, are not covered by the Human Rights Act 1998.

This loophole is effectively being closed by the Government's amendment. A move that is strongly welcomed by a coalition of leading human rights and age organisations, including the British Institute of Human Rights, Age Concern, Help the Aged, Liberty and Justice, which have been demanding this change.

Katie Ghose, Director of the British Institute of Human Rights (BIHR), said:

“It is intolerable that people are left malnourished or unwashed, without privacy or proper access to their families, when what they really need is additional care and support in their last years of life. The Human Rights Act was set up precisely to stop these types of abuses.

“We warmly welcome the changes the Government wants to make to the Health and Social Care Bill, which restores human rights protection to hundreds of thousands of vulnerable older and disabled people under Human Rights Act, and therefore we call on Parliament to accept this amendment.”

This coalition of organisations remains concerned that some vulnerable people – notably older people who arrange and pay for their own care – will still not be covered by the Human Rights Act, and calls on the Government to prevent abuse of this group, by ensuring the Human Rights Act applies to all.

Gordon Lishman, Director General of Age Concern, said:

“We are delighted that the Government has listened to the calls from Age Concern and others to end the unfairness the human rights loophole has caused. This amendment should help thousands of

vulnerable older people living in independent care homes who have been denied human rights protection from ill treatment and abuse. However, we remain concerned that self-funding residents who arrange their own residential care will still not be protected by the Human Rights Act. We want the Government to look further into protecting this group.”

Eric Metcalfe, Policy Director of Justice said:

“For too long local authorities have been able to dodge their responsibilities under the Human Rights Act by outsourcing care to private homes. This amendment is an important step but only the first one. We look forward to further governmental action to protect the rights of all who receive public services at the hands of private companies.”

Kate Jopling, Head of Public Affairs at Help the Aged said:

"Older care users are some of the most vulnerable people in our society - the loophole on the Human Rights Act which has left them without protection against violations of their most basic rights has been a scar on our society. It is therefore fantastic to see the Government taking action to restore older people's right to redress.

"However unfortunately this welcome amendment will not extend to all residents of care homes - and yet all are vulnerable to neglect and abuse. To try to distinguish between the rights of one group of older people and another is false and unfair. The Government now has a real obligation to work towards further clarification of the law - to strengthen protection for hundreds of thousands of older people."

Shami Chakrabarti, Director of Liberty, said:

“The Human Rights Act was always intended to put people above profit or politics and protect the most vulnerable in society from abuse. It is fantastic news that the Government has now agreed to ensure this protection is not denied to Britain’s elderly, just because their care is contracted-out.”

A recent report by the Joint Committee on Human Rights describes the following types of abuses in residential care homes:

- Eviction from care homes and fear of making complaints;
- Malnutrition and dehydration, including meals being taken away before a patient can eat them, or insufficient help with eating and drinking;
- Lack of privacy, dignity and confidentiality including individuals being left in their own urine or excrement;
- Neglect and carelessness, such as poor hygiene and rough handling of patients; and
- Bullying, patronising and infantilising attitudes towards older people.⁽⁴⁾

Ends

For more information please contact:

British Institute of Human Rights:

Jean Candler: 020 7848 1839 (out of hours: 07985 982103); Sonya Sceats: 020 7848 1817;
Switchboard: 020 7848 1818

Notes to editors:

1. A coalition of organisations have worked together to bring about a change in the law to ensure vulnerable older and disabled people are protected by the Human Rights Act. These include Age Concern, the British Institute of Human Rights, Help the Aged, Justice and Liberty.
2. The Government amendment on provision of certain social care to be a public function is to be debated in the House of Lords, Committee Stage (provisionally 21-22 May 2008).

New Clause 207A

Human Rights Act 1998: provision of certain social care to be public function

Lord Darzi of Denham

- (1) A person ("P") who provides accommodation, together with nursing or personal care, in a care home for an individual under arrangements made with P under the relevant statutory provisions is to be taken for the purposes of subsection (3)(b) of section 6 of the Human Rights Act 1998 (c.42) (acts of public authorities) to be exercising a function of a public nature in doing so.
- (2) The "relevant statutory provisions" are—
 - (a) in relation to England and Wales, sections 21(1)(a) and 26 of the National Assistance Act 1948 (c.29),
 - (b) in relation to Scotland, section 12 or 13A of the Social Work (Scotland) Act 1968 (c.49), and
 - (c) in relation to Northern Ireland, Articles 15 and 36 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)).
- (3) In subsection (1) "care home"—
 - (a) in relation to England and Wales, has the same meaning as in the Care Standards Act 2000 (c.14), and
 - (b) in relation to Northern Ireland, means a residential care home as defined by Article 10 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (S.I. 2003/431 (N.I. 9)) or a nursing home as defined by Article 11 of that Order.
- (4) In relation to Scotland, the reference in subsection (1) to the provision of accommodation, together with nursing or personal care, in a care home is to be read as a reference to the provision of accommodation, together with nursing, personal care or personal support, as a care home service as defined by section 2(3) of the Regulation of Care (Scotland) Act 2001 (asp 8).
- (5) Subsection (1) does not apply to acts (within the meaning of section 6 of the Human Rights Act 1998 (c.42)) taking place before the coming into force of this section."

3. In June 2007 the House of Lords ruled in the 'YL' case that the Human Rights Act does not apply to private and voluntary sector care homes providing services under contract to local authorities. The 'YL' case involved an 84 year old woman with Alzheimer's disease who was threatened with eviction from her care home after a falling out between the management of the home and her family. Although the care home was private, YL's care was paid for by her local authority, with her family contributing a modest 'top up' fee. By a narrow

majority, the House of Lords ruled that even though it was providing care under contract to a local authority, the care home was not performing 'functions of a public nature' and therefore fell outside the scope of the Human Rights Act.

4. The Joint Committee on Human Rights (JCHR) highlighted in a recent report widespread abuse in care homes: "The Human Rights of Older People in Healthcare", Eighteenth Report of Session 2006-07, Volume 1.
(www.parliament.uk/parliamentary_committees/joint_committee_on_human_rights.cfm)
5. The following examples, which BIHR has learned about via its training and capacity-building activities, demonstrate some of the poor human rights practice that takes place in care homes across the UK:
 - An older woman being placed on a commode, fed Weetabix and washed by a carer, all at the same time;
 - Continent older people being forced to wear incontinence pads because staff say they do not have time to take them to the toilet;
 - Staff advising new recruits not to respond when certain residents call in the middle of the night on the basis that they are 'just looking for attention';
 - Older people being left in their own waste for hours because staff do not change the sheets;
 - Neglect of bed-ridden older people leading to painful pressure sores; and
 - Routine overmedication in order to keep older people docile.

About the coalition:

The British Institute of Human Rights (BIHR) is a human rights organization, which aims to bring human rights to life. It is committed to challenging inequality and injustice in the UK, through supporting people to use human rights to improve their lives, and to develop more effective public policy and practice, through training and awareness-raising. www.bihar.org

Justice is an all-party law reform and human rights organisation whose mission is to advance access to justice, human rights and the rule of law. www.justice.org.uk

Liberty is a human rights and civil liberties organisation. Liberty campaigns through the media, undertakes pioneering legal casework, lobbies Parliament and provides advice and assistance to members of the public, lawyers and other voluntary groups. Liberty is an independent membership organisation. www.liberty.co.uk

Age Concern is the largest organisation in the UK working for older people. Everyday we are in touch with thousands of older people, enabling them to make more of life. We work in the community to support older people through a range of initiatives. These include information and advice, befriending, day centres, lunch clubs, transport services, home visits, and advocacy services. More information can be found on our website: www.ageconcern.org.uk.

Help the Aged is the charity fighting to free disadvantaged older people in the UK and overseas from poverty, isolation, neglect and ageism. It campaigns to raise public awareness of the issues affecting older people and to bring about policy change. The Charity delivers a range of services: information and advice, home support and community living, including international development

work. These are supported by its paid-for services and fundraising activities - which aim to increase funding in the future to respond to the growing unmet needs of disadvantaged older people. Help the Aged also funds vital research into the health issues and experiences of older people to improve the quality of later life. www.helptheaged.org.uk
