

Mental Health Bill Briefing on amendment [149]: human rights obligations of care providers

House of Lords, Committee Stage

23 January 2025

Introduction

1. JUSTICE is a cross-party law reform and human rights organisation working to make the justice system fairer for all. Our vision is of fair, accessible and efficient legal processes in which the individual's rights are protected and which reflect the country's international reputation for upholding and promoting the rule of law.
2. In 2024, JUSTICE published our report '[Beyond the Blame Game: a responsible and rights-centred approach to government contracting](#)'. This report was the result of a Working Party of legal experts chaired by Sir Gary Hickinbottom. The report highlighted concerns around the lack of clarity about who is a public authority when public services are contracted-out to private organisations. We concluded that, where there is uncertainty in particular sectors, there is a strong case to clarify the law.
3. Peers are urged to support **amendment no. 149** proposed by Baroness Keeley and Baroness Barker which would extend the human rights protections of mentally ill individuals who received publicly funded care and/or treatment in private facilities.

Background

4. The Human Rights Act is an essential tool for individuals to hold public bodies to account. It requires "public authorities" to act compatibility the rights set out in the European Convention on Human Rights ('ECHR'). It defines "public authority" as '*a court or tribunal, and any person certain of whose functions are functions of a public nature*'.¹
5. This definition been narrowly interpreted by the courts. In the leading case of *YL v Birmingham City Council*, it was found that a private care home was not a public authority despite YL's placement there

¹ Human Rights Act, [s6\(3\)](#)

being funded by a local authority.²

6. Following this, there has been a large expansion of core government services contracted out to the private sector, leading to an accountability gap in our human rights legislation. In particular in the care sector where, for example, 96% of residential adult social care is now outsourced, up by 20% since 2001.³
7. Successive Governments legislated to attempt to fix this accountability gap in our human rights framework for care provision, most recently section 73 Care Act 2014. The then Coalition government made *'clear that it wishes all providers of publicly arranged care services to consider themselves bound by the Human Rights Act, including private providers under contracts with local authorities'*.⁵ However, the recent case of *Sammut* demonstrates that this was not sufficient, and individuals are slipping through the cracks.

Sammut & Ors v Next Steps Mental Healthcare Ltd & Anor [2024]

Mr Sammut, a man with chronic and treatment resistant schizophrenia, was transferred from a secure hospital to a private nursing facility where he was deprived of his liberty without proper authorisation. He sadly died and an inquest found that his death was caused by the side effects of an atypical anti-psychotic medication. His care and treatment was funded by a combination of Manchester City Council and an NHS Trust.⁴

8. Mr. Sammut's family brought a claim against Next Steps - a private nursing home provider - and the NHS Trust. They sought to argue that Mr. Sammut's death had resulted from the private provider's breaches of the Human Rights Act. However, the High Court struck out the human rights aspects of the claim against the private nursing home. Mr. Sammut's circumstances fell outside the scope of the provisions of section 73 Care Act 2014 and the Court concluded that the principles of *YL* meant that the provider was not a public authority.

Amendment and why it is needed

9. **JUSTICE encourages peers to support amendment no. 149.**
10. The amendment would ensure that people receiving care in private settings in the following three circumstances are able to rely on the protections of the Human Rights Act:
 - (a) those receiving publicly funded after-care under section 117 Mental Health Act 1983 (such as Mr

² *YL v Birmingham City Council and others* [2007] UKHL 27

³ Oxford University Department of Social Policy and Intervention, '[Evidencing the outsourcing of social care provision in England](#)' (October 2024) research

⁴ *Sammut & Ors v Next Steps Mental Healthcare Ltd & Anor* [2024] EWHC 2265

Sammut);

- (b) publicly-funded patients accommodated in private hospitals for treatment for a mental disorder; and
- (c) those deprived of their liberty in health and social care settings because of their mental disorder or disability. This would include privately funded care users, considering the state’s human rights responsibilities in this area.

11. The previous Government set out, in relation to the definition of public authority under the Human Rights Act, that *‘Section 73 of the Care Act put beyond doubt how this definition relates to the adult social care sector’*.⁵ The case of Mr. Sammut shows this sadly not to be the case and so legislative action is required.

12. As the Joint Committee on Human Rights has previously noted in their report on care settings, *‘It is vitally important that care users (or their loved ones or representatives on their behalf) are able to access real and enforceable human rights protections in care settings – irrespective of the particular structural system, or funding system, providing that care.’*⁶

The current law is a further, unnecessary barrier to that accountability which Parliament can immediately rectify by supporting this amendment.

13. The Human Rights Act is a crucial safeguard for individuals up and down this country on a day-to-day basis, especially for those with vulnerabilities who rely on the state such as those in care. As the Care Quality Commission set out, *‘a focus on human rights ensures people receive good care and helps us fulfill our duties and purpose by meeting our legal obligations...it helps us prevent failures in care that are usually related to risks to human rights’*.⁷ The case of Mr. Sammut clearly demonstrates the serious issues at stake.

14. It is no answer that a separate claim may be able to be brought against local authorities. The Joint Committee of Human Rights dealt with this during the passage of the Care Act 2014 making clear that *‘the inadequacy of such indirect protection has long been a matter of consensus in debates and reports around this issue’*.⁸ It has been a cross-party position for many years that those in publicly funded care deserve full human rights protections and that providers must be directly accountable for breaching

⁵ Gillian Keegan MP, then Minister of State for Care and Mental Health, [*‘Letter to Rt Hon Harriet Harman MP, Chair of Joint Committee on Human Rights’*](#) (1 June 2022)

⁶ Joint Committee on Human Rights, [*‘Protecting human rights in care settings’*](#) (22 July 2022), para 90

⁷ Care Quality Commission, [*‘Our updated human rights approach’*](#) (11 December 2023)

⁸ Joint Committee on Human Rights, [*‘Legislative Scrutiny: Care Bill’*](#) (22 January 2014), para 75

human rights.

15. For these reasons, we urge Peers and the Government to support amendment no.149 in the names of Baroness Barker and Baroness Keeley. The amendment is an important opportunity to ensure that all mental health patients in state commissioned care have the same legal protections, irrespective of whether the state or a private company provides that care or treatment.

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