

Human Rights Act impact on everyday life – some examples

- **Crown Prosecution Service Inspectorate says sex crime victims are having their human rights breached**

Her Majesty's Crown Prosecution Service Inspectorate (HMCPSI) has said that more material is being disclosed by prosecutors to defence counsel than is legal in some sex crime cases, in breach of the human rights of the victims.¹

- **Inquest under the HRA into the deaths of soldiers undertaking SAS selection test**

Because of the obligation on the state to protect the right to life, the inquest into the deaths of two soldiers who died in Wales whilst undertaking an SAS selection test on one of the hottest days of the year will probe the wider circumstances of the deaths, incorporate failings if any are identified and give relatives the opportunity to participate. The relatives may also make claims under the HRA that the Ministry of Defence failed in its obligation to protect the soldiers' right to life.²

- **Soldiers in Iraq are protected by the HRA:**

- **On military bases**

A British soldier serving in Iraq who died from hyperthermia in a UK military base after complaining that he couldn't cope with the heat, was subject to the jurisdiction of the HRA. The circumstances of this soldier's death gave rise to concerns that there might have been a failure by the army to provide an adequate system to protect his life (Article 2). An inquest was necessary to establish by what means and in what circumstances he met his death.³

- **Outside of military bases**

Three British servicemen were killed in Iraq and two seriously injured, some as a result of "friendly fire" incidents and others as a result of alleged negligence on the part of the Ministry of Defence (MoD). The Supreme Court allowed claims against the MoD to proceed, holding that Article 2 (the right to life) in the HRA imposes positive obligations on the UK to prevent deaths of its own soldiers in active operations.⁴

- **Liberty use the HRA to argue Morrisons employee was constructively dismissed for wearing a Help for Heroes wrist band and small poppy badge**

Human rights organisation Liberty will use the Human Rights Act to argue that supermarket employee, Adam Austin, was constructively dismissed and had his free expression rights violated in light of the treatment he received for wearing a Help for Heroes wrist band and small poppy badge following the murder of soldier Lee Rigby last month.⁵

- **Elderly residents use HRA in fight to stay in mobile homes**

Elderly mobile home residents in Beverley, Yorkshire, are using the Human Rights Act to challenge their local council's refusal to grant retrospective planning consent for permanent

¹ Belfast Telegraph, *Sex crimes victims' rights breached*, <http://www.belfasttelegraph.co.uk/news/local-national/uk/sex-crime-victims-rights-breached-29461126.html> 31 July 2013

² The Daily Telegraph, *Brecon Beacons deaths: MoD may face legal action under human rights legislation* <http://www.telegraph.co.uk/news/uknews/defence/10200203/Brecon-Beacons-deaths-MoD-may-face-legal-action-under-human-rights-legislation.html> 24 July 2013.

³ *R (Smith) v Oxfordshire Assistant Deputy Coroner and Secretary of State for Defence* [2010] UKSC 29.

⁴ *Smith and others (Appellants) v The Ministry of Defence (Respondent) Ellis (Respondent) v The Ministry of Defence (Appellant) Allbutt and others (Respondents) v The Ministry of Defence (Appellant)* [2013] UKSC 41 19 June 2013.

⁵ *Liberty represents supermarket worker suspended for tribute to murdered soldier* press release <http://www.liberty-human-rights.org.uk/media/press/2013/liberty-represents-supermarket-worker-suspended-for-trib.php> 5 June 2013.

homes on the site. The residents will argue that the Council is merely paying lip service to the Act and its articles.⁶

- **Union using the Human Rights Act to challenge a Council's social media code of conduct**

Public sector union Unison is challenging a social media code of conduct imposed by Edinburgh City Council on the basis that it breaches the Human Rights Act since it could be misused "to prevent or undermine campaigning or comment which is reasonable citizenship outwith the work role."⁷

- **Disclosure of details of an allegation made against a teacher in an Enhanced Criminal Records Check constituted a disproportionate interference with his right to respect for private life**

The disclosure of the details of an allegation of a sexual nature made against a teacher (L) by an 18 year old pupil was a disproportionate infringement of L's right to respect for his private life (Article 8) given that he was not prosecuted, the General Teaching Council found there to be 'no case to answer', the Independent Safeguarding Authority decided not to include L on any of its barred lists and the risk posed was limited as compared the "killer blow" the disclosure would deliver to his career.⁸

- **The victim of libellous "paedophile" allegations made online is granted anonymity to protect his reputation**

The court granted a permanent anonymity order to the victim of libellous "paedophile" allegations that were made on the Internet. The protection of reputation provided under Article 8 (the right to respect for private and family life) under the HRA was used to support the claimant's case.⁹

- **Gay rights groups to use the Human Rights Act to challenge Northern Ireland exclusions to the same-sex marriage bill**

Amnesty International and gay rights groups will use the Human Rights Act to challenge the decision of the Northern Ireland Assembly to exclude lesbian, gay, bisexual and transgender (LGBT) people from the same-sex marriage bill passed in the House of Commons in February 2013.¹⁰

- **Compensation claims made under the Human Rights Act by relatives of those who died in Council-owned properties following fire due to poor building conditions and inadequate fire authority response**

The families of residents who perished in council-owned properties following a fire have made claims for damages under the Human Rights Act following an inquest finding that the fire brigade made insufficient efforts to deploy fire-fighters to the 11th floor flat where five of the victims were attempting to shelter. The inquest verdict also revealed that the fire spread from below one of the flats "due to a serious failure on the part of the council, its contractors and its subcontractors". The family members argue that the council and fire authority breached their deceased relatives' right to life.¹¹

⁶ *Human rights appeal by elderly fighting to stay in mobile homes*, Yorkshire Post <http://www.yorkshirepost.co.uk/news/at-a-glance/general-news/human-rights-appeal-by-elderly-fighting-to-stay-in-mobile-homes-1-5735813> 5 June 2013.

⁷ *Council's online code "breaches" human rights*, The Scotsman, 12 April 2013 <http://www.scotsman.com/the-scotsman/politics/council-s-online-code-breaches-human-rights-1-2892934>

⁸ *L, R (on the application of) v Cumbria Constabulary* [2013] EWHC 869 (Admin) 19 April 2013.

⁹ *ZAM v CFW & Anor* [2013] EWHC 662 (QB) 26 March 2013.

¹⁰ *Northern Ireland's ban on gay marriage to be challenged by Amnesty in court*, Guardian, 29 March 2013 <http://www.guardian.co.uk/society/2013/mar/29/amnesty-northern-ireland-gay-marriage>

¹¹ *Camberwell flats blaze families fight for payouts*, standard.co.uk 3 April 2013 <http://www.standard.co.uk/news/london/camberwell-flats-blaze-families-fight-for-payouts-8557923.html>

- Disclosure of exaggerated and/or false allegations made against a nurse as part of Enhanced Criminal Records Check is human rights violation**

Police disclosure of information about allegations made against the nurse – of ill treatment of elderly and vulnerable patients – did not strike a balance between protecting the rights of the patients and protecting respect for the private life of the nurse. Given the evidence behind the allegations was not reliable, the police had adopted a flawed decision-making process when deciding whether to disclose the information.¹²
- Police retention of a non-violent protestor's information constitutes an unjustified interference with his right to respect for his private life**

The retention of information about a non-violent protester and a police 'warning' letter sent to an individual following an allegation made by her neighbour were found to constitute disproportionate interferences with the applicants' right to respect for their private lives.¹³
- A Trade Union collective agreement must cover bargaining rights for at least pay, hours and holidays to constitute the formally recognised agreement**

Members of the independent Pharmacists Defence Association Union (PDAC) successfully argued that the statutory prohibition on their recognition, where no other union (whether independent or otherwise) had collective bargaining rights for at least pay, hours and holidays, was an infringement of Article 11, the right to freedom of assembly and association.¹⁴
- It is a disproportionate interference with the right to respect for private life to require all criminal convictions, cautions and warnings (including spent ones) to be disclosed in an Enhanced Criminal Record Check for particular types of employment**

The statutory requirement that criminal convictions and cautions must be disclosed in an enhanced criminal record check ("ECRC") in the context of particular types of employment interfered with the two of the applicants' right to respect for private life under Article 8. T had received two warnings in respect of two stolen bicycles when he was 11 years old and later enrolled on a sports studies course at a University, which involved teaching and contact with children. The ECRC revealed the warnings. JB had received a caution in respect of a pack of false nails she hadn't paid for (she had paid for her other items) and was not put forward for job opportunities in the care sector as a result, following the ECRC.¹⁵
- HRA claims made by victims of undercover police officers who pretended to be fellow political activists and entered into long term sexual relationships with the women**

Two groups of women complained that their rights under Article 3 (right not to be tortured or subject to inhuman or degrading treatment) and Article 8 (right to respect for family and private life) had been violated in an undercover police operation, when two undercover police officers pretended to be fellow political activists and entered into a long term sexual relationship with the women.¹⁶
- Police restraint of a severely autistic and epileptic teenager at a swimming pool breached his human rights**

¹² *R (on the application of A) v the Chief Constable of Kent Constabulary* [2013] EWHC 424 (Admin) 8 March 2013.

¹³ *Catt, R (on the application of) v The Association of Chief Police Officers of England, Wales and Northern Ireland & Ors* [2013] EWCA Civ 192 (14 March 2013).

¹⁴ *Pharmacists Defence Association Union v Boots Management Services Ltd* TUR1/823/ 2012 Central Arbitration Committee 29 January 2013.

¹⁵ *T, R (on the application of) v Chief Constable of Greater Manchester, Secretary of State for the Home Department and Secretary of State for Justice; AW, R (on the application of) v Secretary of State for Justice and JB, R (on the application of) v Secretary of State for Justice* [2013] EWCA Civ 25 Court of Appeal, 29 January 2013

¹⁶ Jurisdiction issue decided in *AKJ and others -v- Commissioner of Police for the Metropolis and others* 17 January 2013 [2013] EWHC 32 (QB)

The police did not make reasonable adjustment to their usual restraining practice or procedure when dealing with a person with disabilities. Accordingly, the teenager's right to liberty (Article 5), his right not to be subject to inhuman or degrading treatment (Article 3) and his right to respect for his private life (Article 8) were violated when he was forced by police officers to lie on the floor in handcuffs and leg restraints and subsequently detained in the back cage of a police car for about 40 minutes.

- **Cases settled under the HRA by relatives of those whose deaths were hastened in the 'Stafford Hospital Scandal'**

The Stafford Hospital Scandal refers to the unusually high mortality rates at Stafford Hospital, England where it was estimated that between 400 and 1200 more patients died between 2005 and 2008 than would be expected for the type of hospital because of the sub-standard of care. In December 2011, at least 100 claims were made by family members of those who had experienced ill-treatment at the hospital, all of which were argued under the Human Rights Act. They alleged that the poor treatment that the mostly elderly people received at Stafford Hospital directly caused, or hastened their deaths, or hastened their deaths through gross and degrading treatment.

- **Odour from sewerage facility breached right to respect for private life¹⁷**

A water utility company was liable to local residents for its negligent failure to control odour from its sewerage facility. It had committed unlawful acts in breach of the right to respect for private and family life under the HRA.

- **HRA secures inquest into murder**

The human rights organisation Liberty used Article 2 (right to life) arguments to secure the re-opening of the inquest into the death of Naomi Bryant, who was killed in 2005 by convicted sex offender Anthony Rice.¹⁸

- **Prohibition on naming a deceased father on birth certificate constitutes human rights violation**

Dianne Blood successfully challenged the provision of the Human Fertilisation and Embryology Act 1990 which prevented her from registering her deceased husband as the father of her two children conceived by IVF on the children's birth certificates. The provision was declared to be incompatible with the right to respect for private and family life under Article 8 and the right to be free from discrimination under Article 14.¹⁹ The law was amended by the Human Fertilisation and Embryology (Deceased Fathers) Act 2003.

- **Local authority snooping on family held to be intrusion of private life**

A council's surveillance of a mother and her children to determine whether they lived within a school catchment area was ruled unlawful and a breach of their right to respect for private life under the HRA. The Council used surveillance powers given to it by the Regulation of Investigatory Powers Act 2000 but a tribunal found their use of the powers was improper and unnecessary.²⁰

- **HRA provides protection against discrimination on grounds of sexual orientation**

The courts have used their powers under the HRA to eliminate the discriminatory effect of the Rent Act 1977 which meant that the survivor of a heterosexual couple could become a statutory tenant by succession but the survivor of a homosexual couple could not.²¹

¹⁷ *Hanifa Dobson and Others v Thames Water Utilities Limited* [2011] EWHC 3253 (TCC).

¹⁸ See <http://www.liberty-human-rights.org.uk/news-and-events/1-press-releases/2010/bryantinquest-abandoned.shtml>

¹⁹ *Blood and Tarbuck v Secretary of State for Health*, 2003, unreported.

²⁰ *Paton v Poole Borough Council*, decided by the Investigatory Powers Tribunal, 2 August 2010.

²¹ *Ghaidan v Godin-Mendoza* [2004] UKHL 30. Para 2, Schedule 1 of the Rent Act.

- **Unjustified intrusion into right to freedom of assembly to prevent access to a demonstration because of association with other individuals**

The police stopped a coach of demonstrators reaching an anti-war demonstration in RAF Fairford in 2003 and decided to send the coaches home with a police escort to prevent a breach of the peace occurring at the demonstration when the passengers arrived. The court said that the police must take no more intrusive action than appeared necessary to prevent the breach of the peace. It was wholly disproportionate to restrict a person's exercise of these rights because she was in the company of others, some of whom might, at some time in the future, breach the peace. The House of Lords referred to the "constitutional shift" brought about by the Human Rights Act, so that is no longer necessary to debate whether we have a right to freedom of assembly.²²

- **Family wins compensation following suicide of relative in custody**

AB died in custody at Reading Young Offender Institution on 3 July 2005 after taking his own life. The Ministry of Justice admitted that relevant acts or omissions of the Institution amounted to a breach of Article 2, AB's right to life. The Ministry of Justice agreed to pay £10,000 compensation to AB's mother for the breach of her rights under Article 2 of the ECHR and offered to provide the relatives of AB an apology in open letter.²³

- **Court holds kettling to be used only as last resort**

To be lawful, crowd control measures by the police, such as kettling, must be resorted to in good faith, be proportionate and enforced for no longer than is reasonably necessary.²⁴ The police must have a reasonable apprehension of an imminent breach of the peace, i.e. that it is "likely to happen". Kettling may only be used when no less intrusive crowd control measure will prevent a breach of peace. Kettling a group of protesters at the G20 summit whose behaviour did not in itself justify containment was justifiable as there was an imminent risk of seriously violent demonstrators joining the group: containment was the least drastic way of preventing what police reasonably thought would be an imminent and serious breach of the peace.²⁵

- **Responsibly written articles on matters of public interest are protected under the HRA**

The common law defence of qualified privilege in libel cases includes a public interest defence for the media.²⁶ Although this was developed in a case just before the HRA had come into force, but after it was passed, the court referred to the need for the common law to be developed and applied in a manner consistent with Article 10 (freedom of expression). As a result, the media have much more freedom when reporting matters of public interest, where it may not be possible to subsequently prove the truth of the allegations, provided that they act responsibly and in the public interest.

- **Before closing a care home, the effect on the residents must be considered**

Where a local authority residential care home was being closed, the authority had to ensure that any consultation investigates the effect of the closure on the residents' emotional, psychological and physical health and comply with its obligations under the HRA.²⁷

- **A Local Authority is under a duty to take positive action to secure physical integrity and dignity where it is aware that a severely disabled tenant is being prevented from having a normal family life**

Where a local authority knew that a severely disabled tenant's housing was inappropriate and prevented her from having a normal family life but did not move her to suitably adapted

²² *R (Laporte) v Chief Constable of Gloucestershire* [2006] UKHL 55

²³ Claim settled before trial. Contact Sophie Khan on 020 3551 8263 and sophie.khan@mwsolicitors.co.uk.

²⁴ *Austin v Commissioner of Police of the Metropolis* (2009) UKHL 5.

²⁵ *R (Moos and McClure) v Commissioner of Police of the Metropolis* [2012] EWCA Civ 12.

²⁶ *Reynolds v Times Newspaper* (2001) 2 AC 127

²⁷ *Cowl et al v Plymouth City Council* [2001] EWCA Civ 1935 and *R (Madden) v Bury MBC* [2002] EWHC 1882

accommodation, they failed in their duty to take positive steps to enable her and her family to lead as normal a family life as possible and secure her physical integrity and dignity. Damages were due for this failure.²⁸

²⁸ *R (Bernard) v Enfield* [2002] EWHC 2282 Admin

Outside the courtroom:

- **Disabled married woman secures special double bed**

A disabled woman who was unable to leave bed needed a special bed which would allow carers to give her bed baths. Her authority refused her request to have a double bed so that she could continue to sleep next to her husband, even though she offered to pay the difference in cost between a single and double bed. After she invoked her right to respect for private and family life, the authority agreed to pay the whole cost of the double bed.²⁹

- **Woman fleeing domestic violence prevents children being taken into care**

A woman fleeing her violent husband, who moved towns with her children whenever he tracked them down, eventually arrived in London and was referred to the local social services department. Social workers told the mother that she was an 'unfit' parent and that she had made the family intentionally homeless. An advice worker helped the mother challenge this claim using the right to respect for family life and prevented the children being placed in foster care. Instead the mother was offered help to secure accommodation.³⁰

- **Learning disabled couple challenge use of CCTV in their bedroom at night**

A couple with learning disabilities were living in residential care with their child so that their parenting skills could be assessed by social services. CCTV cameras were installed to observe them performing parental duties, including in their bedroom, even though the baby slept in a separate nursery. The couple were distressed by the use of the cameras in the bedroom at night and successfully used their right to private life to get the cameras switched off during the night.³¹

- **Older couple reunited in nursing home**

In 2005, Mr and Mrs Driscoll, both 89, were separated for the first time in over 60 years of marriage when Mr Driscoll needed residential and nursing care. Mrs Driscoll was told that she didn't qualify for a subsidised place in the council-run home and went to live with her son. Human rights experts and older people's organisations pointed out that this was a breach of the couple's right to respect for their private and family life (Article 8). Following publicity and a campaign by the family, Mrs Driscoll's needs were reassessed and Gloucestershire County Council offered her a subsidised place in the same care home as her husband. The media campaign and publicity, fuelled by human rights arguments under Article 8, persuaded the local authority to reconsider.³²

- **Deaf patient challenged lack of interpreter during operation**

Ms J, a profoundly deaf patient, was treated for a heart condition in Manchester in 2001. The hospital consultant refused to allow a British Sign Language interpreter into the operating theatre on health and safety grounds. This meant that during part of the procedure – carried out under local anaesthetic – Ms J was conscious but with no interpreter present was unable to communicate with medical personnel, which she found extremely frightening. She contacted RNID who reminded the hospital that qualified interpreters work to very high standards and follow a Code of Practice. The relevant human rights that the hospital should have considered included: freedom of expression (Article 10), prohibition of discrimination (Article 14), and prohibition of degrading treatment (Article 3). The hospital admitted its error and apologised to Ms J, and has agreed to provide an interpreter for future operations, ensuring the dignity and equal treatment of disabled patients.³³

²⁹ 'The Human Rights Act – Changing Lives', Second Edition, British Institute of Human Rights, 2008.

³⁰ 'The Human Rights Act – Changing Lives', Second Edition, British Institute of Human Rights, 2008.

³¹ 'The Human Rights Act – Changing Lives', Second Edition, British Institute of Human Rights, 2008.

³² 'Human Rights and the Human Rights Act', Equality and Diversity Forum, June 2006.

³³ 'Human Rights and the Human Rights Act', Equality and Diversity Forum, June 2006.