

The Bill of Rights Bill: what do I need to know as a care provider?

What is the Bill of Rights Bill?

The Bill of Rights Bill (BORB) is a new law the Government is asking the UK Parliament to pass. Although the name sounds positive, **there is a lot of concern about the negative impact this Bill would have on people needing care and on care providers.**

Why is the Bill a concern?

The Bill would severely weaken human rights protections. It would:

- repeal the Human Rights Act – see box below for a 2mins guide to this law
- replace it with much weaker rights protection, moving power away from people towards the Government
- make it much more difficult for care staff to encourage public authorities to act to protect people's rights
- make it much more difficult to keep care laws up to date and compatible with rights

This briefing explains in more detail these last **two key concerns** about the detrimental impact this would have on people needing care and on the work of care providers.

I. Destroying duties to protect rights

Under the Human Rights Act, public officials have a duty not to breach rights, but also a duty to *act* to 'protect' rights in certain circumstances, referred to as 'positive obligations'. Where a public official knows, or should know, a person's rights are at risk they must take reasonable steps to protect them. **Positive obligations have been vital for supporting people in vulnerable situations, especially when there is a risk to life or of serious harm. They are the foundation of safeguarding.**

Bryn was 60, living in supported living. He had a learning disability, was non-communicative and blind. Bryn was sitting up to sleep, a sign of a heart condition. Staff called his GP who assessed Bryn but said he would not arrange a heart scan as Bryn 'had a learning disability and no quality of life'. Bryn's advocate used the right to life and to be free from discrimination under the Human Rights Act to challenge the GP's decision. As a result, a heart scan was arranged.

Real life example from '[Mental Health, Mental Capacity: My Human Rights](#)', BIHR, 2017

The BORB would destroy these positive obligations by:

- preventing any new positive obligations being developed
- making it easy for existing positive obligations to be overridden, for example if a public body can show the obligation would have an impact on how they decide to spend their resources

There is grave concern about the detrimental impact this would have on people needing care and support. Particularly for people nearing the end of their lives who rely on public officials acting to protect their rights. Waiting for rights to be breached and then taking steps to resolve this afterwards is not a viable option for many older people.

What does this mean for care providers?

Destroying positive obligations could make it **much more for difficult for care staff to encourage public authorities to take action.** The BORB has a very wide definition of what counts as a positive obligation: "an obligation to do any act". There is concern that this covers a wide range of acts by social workers, hospital staff, GPs etc. to protect people from harm.

Potential impact:

If someone in care is in an inappropriate setting which isn't meeting their needs, their care needs change, or they present a danger to themselves or others, trying to get the local authority, NHS Trust or Commissioner to act could become much more difficult. This will be detrimental for the person and **will leave care staff in a difficult position** trying to support the person as best they can whilst also having to explain to them and their family why their rights are not being protected.

In addition, this **would lead to a postcode lottery of rights protection** where an action may be within the resources of one public body but not another. So, **a care home with residents funded by different local authorities, may find themselves managing very different approaches and priorities** (or lack of) to the obligations to their residents. Likewise, providers with care homes in different local authority areas will no longer be able to rely on a uniform responsibility to their residents. Resources have long been a challenge in the care sector but should not be a trump card for failing to act to protect rights.

“I was able to use human rights to get appropriate care for someone relapsing in our service. There was a delay in getting him transferred to an appropriate setting due to a disagreement between two Trusts about funding. I was able to point out the delay meant he was being left in degrading circumstances. We used human rights to get the matter resolved urgently.”

St Martin of Tours HA Ltd, in [‘Mental Health, Mental Capacity and Human Rights: A Practitioner’s Guide’](#), BIHR, 2016

2. Impact on care laws

At the moment, courts interpret other laws to make them compatible with the rights in the Human Rights Act where possible. This has been incredibly helpful in ensuring health and care laws are brought up to minimum rights standards. Particularly older laws, such as the Mental Health Act.

Removing the discrimination against ‘nearest relatives’

When a woman in a long-term relationship with another woman was diagnosed with mental health issues, her local authority designated her estranged mother, not her partner, as her ‘nearest relative’ under the Mental Health Act. She challenged this and the court used the Human Rights Act to interpret ‘relative’ as including same sex partners.

R (SG) v Liverpool City Council, 2002

The BORB removes this entirely.

What does this mean for care providers?

The Human Rights Act is the bedrock of the Care Act, Mental Capacity Act, Mental Health Act and care regulation. Without the ability for the courts to bring incompatible laws up to date, care providers could find themselves having to apply out of date laws which breach rights and not able to support people in the way they want. We would have to rely on the Government and Parliament to resolve problem laws.

TAKE ACTION: What can providers do?

Speak out to raise your voice against the Bill of Rights Bill. Your voice, as a care manager or care worker, is so powerful and will have a real impact on Members of Parliament who are being asked to pass this Bill. There is already a wide range of organisations and individuals speaking out in defence of the Human Rights Act and against this Bill. How you can add your voice...

Two minute actions:

- Sign a petition against the Bill of Rights Bill [here](#)
- Complete a 2mins survey on the Human Rights Act by Parliament's Joint Committee on Human Rights [here](#)
- Ask your organisation to sign up to a joint statement against the BORB – [contact R&RA](#) about this
- Register for a free event about the impact of the BORB on health and care – [contact R&RA](#) about this
- Ask your organisation to join the coalition working together to resist the BORB – [contact R&RA](#) about this

Fifteen minute actions:

- Write a blog or news piece about your concerns on the Bill – see [here](#) for inspiration
- Share your examples of how the Human Rights Act has helped you in your work to support someone or make a decision – [contact R&RA](#) to share these
- Write to your MP about your concerns with the BORB – see templates [here](#)

Longer action:

- Write a response to the call for evidence from Parliament's Joint Committee on Human Rights on the BORB – respond by 26 August [here](#)

The Human Rights Act – a two minute guide

- Passed in 1998 to bring 16 rights into UK law
- Including the rights to life, liberty, private life, family life and to be free from inhuman or degrading treatment
- Public authorities have a duty to respect and protect rights in all they do – this includes local authorities, NHS, the Care Quality Commission, police
- Private care providers have a duty under the Human Rights Act where the care is arranged or paid for (in any part) by the local authority
- The Human Rights Act provides a framework to help care workers make (often difficult) decisions about care and treatment, ensuring any restrictions on rights are proportionate and the 'least restrictive' option
- It also sets out minimum standards below which care and treatment should never fall, as some rights cannot be restricted (such as the right to life and to be free from inhuman and degrading treatment)

More information [here](#)