

Human Rights Act Consultation

Ministry of Justice's consultation Human Rights Act Reform: A Modern Bill of Rights.

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(Online)

Introduction

Project 17 works to end destitution among migrant children. We work with families experiencing exceptional poverty as a result of the No recourse to Public Funds policy, to improve their access to local authority support.

On 14th December 2021, the UK Government published the Independent Report on the Human rights Act (IRHRA) written by the Panel of the Independent Human Rights Act Review ('Independent Review'), along with its own consultation, Human Rights Act Reform: a Modern Bill of Rights.

The Independent Review had looked at the relationship between domestic courts in the UK and the European Court of Human Rights, and the impact that the Human Rights Act has had on the relationships between the Judiciary, the Government and Parliament. The IHRAR report found no justification for the 'overhaul' but instead highlighted the need for more education on the Human rights Act to help create a culture of Human Rights . The Joint Committee on Human Rights also conducted a

parallel inquiry and in June 2021 concluded that “there is no case for changing the Human Rights Act.”

The Human Rights Act has played an important role in giving individuals the power to enforce their rights in practice. It has enabled people, such as our clients at Project 17, to challenge unlawful policies and decision making at a local level and to secure justice for themselves and their families.

The Universal basic principle in International human rights law, of equality before the law stands to be undermined by the proposals in the Bill of Rights. This will have the effect of adversely impacting the people that Project 17 represents and who are the most discriminated and marginalised in our society. The proposals will only weaken the protections for clients like ours by weakening the responsibilities of public bodies to uphold individuals human rights.

The aim of our response is to bring a better understanding of the impact the introduction of the new Bill of Rights will have on our clients’ ability to challenge poor public authority decisions and an understanding of the role that the Human Rights Act plays in the decision making process to ensure that our clients’ needs are met.

Destitute families with NRPF are often left to approach local authorities for support under Section 17 of the Children Act 1989. Section 17 imposes a statutory duty on local authorities to safeguard and promote the welfare of ‘children in need’ in their area. Though not its intended purpose, this statutory provision has become an essential safety net for children whose parents are unable to access mainstream welfare support because of their immigration status. The children in such families

grow up in exceptional poverty. They are at high risk of destitution, homelessness, exploitation and abuse.

Home Office policy stipulates that the NRPF condition can only be lifted in cases where individuals are destitute, where there are particularly compelling reasons relating to the welfare of a child on account of very low income, or where there are exceptional circumstances in a person's case relating to their financial circumstances. This means that in most cases a person must first become destitute before they will be given access to public funds.

As part of our work advocating for individuals, our caseworkers experience how difficult it often is for families to access support under Section 17. In our casework experience it is not unusual to argue that the Home Office's policy of applying the NRPF condition is discriminatory, and incompatible with Article 3 of the European Convention on Human Rights (ECHR) because it forces people into destitution. While individuals with leave to remain can apply to the Home Office to have the NRPF condition lifted (this is known as a 'Change of Conditions' application), we find that this is an inadequate protection for this client group.

The Government has failed to provide any evidence of the abuse of the current system and on this basis we would strongly argue that there is no evidence to support the need for a Bill of Rights to replace the Human Rights Act, which we believe will only serve to weaken rights in the UK.

Question 8: Do you consider that a condition that individuals must have suffered a 'significant disadvantage' to bring a claim under the Bill of Rights, as part of a permission stage for such claims, would be an effective way of making sure that courts focus on genuine human rights matters? Please provide reasons.

No, we do not agree with this and believe that this additional hurdle will disproportionately affect our client group. Section 7 of the Human rights Act already provides that in order to bring a legal case against a public authority, an individual will need to demonstrate that they have been a victim of a human rights breach. Furthermore, this condition will have the effect of denying organisations like ourselves the right to bring strategic systemic challenges to policies that disadvantage multiple people. It is not uncommon to see cases brought by individual clients being settled before going to court. It is therefore important for organisations to be able to bring challenges where necessary in order to protect the human rights of multiple people affected by a particular policy.

In addition, we absolutely do not agree with the framing of the question that the courts focus on genuine human rights. Good lawful decision making by public bodies would have the effect of reducing the number of human rights claims, if that is the purpose, without the need for an introduction of another barrier to accessing human rights for our group of clients.

Our clients are destitute families with children. Many of the children in families we work with are not able to regularise their immigration status or access their right to British Citizenship due to the very high immigration fees, lack of documentation, uncooperative fathers and lack of support from local authorities under section 17. The inability to regularise immigration status in the UK will often mean that our clients will remain in a state of limbo and vulnerability for

many years. The effect of this for this group is to feel excluded from society and to be unable to enjoy the privileges that many of us take for granted, for example, access to higher education leading to an opportunity to eventually contribute fully to society.

We already see excessive gate keeping and discriminatory practices by local authorities when it comes to accessing their lawful rights to section 17 support on behalf of our families and children. Section 7 of The Human Rights Act already provides our clients with a right of redress as a consequence of a breach of their human rights (when we see these practices at play). Introducing a permission stage through the requirement that our clients will have to show a 'significant disadvantage' is not only a very high threshold but an additional unnecessary hurdle in this process. This will only serve to frustrate our clients' protection of their human rights from an abuse of power by local authorities. For many of our clients challenging an unlawful decision is accessed by way of judicial review, for which it is already necessary to pass a permission test before a claim can be brought. An extra permission stage serves no purpose other than to create an additional barrier and burden onto our clients. This will have the effect of making it harder for an already marginalised and minoritised group from enforcing their human rights .

In addition, it is not clear from the consultation what is meant by significant disadvantage. However, it is clear that this extra test will create an extra burden on our client group to prove their case has merit, before they have received full disclosure from a public authority. Again, this requirement will have a devastating impact on our clients' ability to access their human rights.

We absolutely do not agree with the framing of the question that suggests the courts need additional thresholds in order to focus on 'genuine' human rights

claims. No evidence is provided that the system is currently being abused in any way.

Question 9: Should the permission stage include an ‘overriding public importance’ second limb for exceptional cases that fail to meet the ‘significant disadvantage’ threshold, but where there is a highly compelling reason for the case to be heard nonetheless? Please provide reasons.

As outlined above, we do not believe that a permission stage should be introduced and so it follows that we do not agree with a second limb to this test. The purpose of a human rights protection is to protect individuals from abuse of power by the state. Introducing additional restrictive tests into the process of accessing these rights is to undermine the purpose of the Human Rights Act itself. This would only serve to prevent our client group from gaining access to their human rights, which was never the intention of the Human Rights Act.

Question 11: How can the Bill of Rights address the imposition and expansion of positive obligations to prevent public service priorities from being impacted by costly human rights litigation? Please provide reasons.

‘Positive obligations’ require the State to take positive steps to protect people's rights as part of their human rights obligations. They are a fundamental pillar of our human rights framework and are fundamental to ensuring the appropriate provision of public services to the children and families we represent. We advocate on behalf of ‘children in need’ to safeguard and promote their welfare

and undermining these positive obligations will have a wider impact when it comes to protecting children from neglect and abuse. When these rights are abused, access to the courts allow the public authority's decision to be scrutinised.

To restrict this process would be to deny the fundamental right intended by the ECHR. The protection of these human rights are essential and provided for by the Human Rights Act and should not be derogated from on the basis of a financial argument which is already taken into account by the courts.

Question 20: Should the existing definition of public authorities be maintained, or can more certainty be provided as to which bodies or functions are covered? Please provide reasons

We do not agree that we need to redefine a public authority. We also note that the IHRAR in its review, did not find any evidence to support the need for a reform of the definition.

Our clients are continually failed by local authorities and decision making is routinely challenged. Any redefining and outsourcing of public services could potentially limit our clients' ability to challenge these and will have the effect of denying our client's access to breaches of their human rights. Our clients who are already minoritised and destitute would suffer further discrimination due to the potential for increased litigation as a result of this.

Question 24: How can we make sure deportations that are in the public interest are not frustrated by human rights claims? Which of the options, below, do you believe would be the best way to achieve this objective? Please provide reasons.

Option 1: Provide that certain rights in the Bill of Rights cannot prevent the deportation of a certain category of individual, for example, based on a certain threshold such as length of imprisonment.

Option 2: Provide that certain rights can only prevent deportation where provided for in a legislative scheme expressly designed to balance the strong public interest in deportation against such rights.

Option 3: Provide that a deportation decision cannot be overturned, unless it is obviously flawed, preventing the courts from substituting their view for that of the Secretary of State

Human rights are universal and for all people. We wholly reject the framing of this question that human rights claims frustrate deportations. At Project 17, many of our families come to our attention because they are destitute and subject to the NRPF condition. We see families pushed into this state due to the high cost of immigration application fees to extend or regularize their stay in the UK. This state of financial destitution, once begun, is often difficult to rectify. It leads to a state of precarity for the children of these families who are more often than not born in the UK and will remain here for many years with a restriction on a chance for equality of their rights through access to higher education, work or British Citizenship. The inability to register their Citizenship leaves these children vulnerable for many years and potentially liable to deportation, often to countries where they may never have been if they are convicted of a crime later down the line. This can be despite being born and raised in the UK. As a result many of these children may find themselves later on in their lives on the wrong side of the law simply in order to survive and eke out a living. They may have families of their own and have established strong ties to their communities. Being able to claim their fundamental right to a family life under Article 8 of the Human Rights Act is

paramount to the protection of their rights and was already identified and deliberated in the changes to the law in 2014.

Question 26: We think the Bill of Rights could set out a number of factors in considering when damages are awarded and how much. These include:

a. the impact on the provision of public services;

b. the extent to which the statutory obligation had been discharged;

c. the extent of the breach; and

d. where the public authority was trying to give effect to the express provisions, or clear purpose, of legislation.

Which of the above considerations do you think should be included? Please provide reasons

Section 8 of the Human Rights Act provides for the courts to grant a relief or remedy on the facts before them. We believe that this is the correct place for these decisions to be made in order for individuals to receive effective remedies.

Proposals to reduce or remove damages from this process will have the effect of reducing our client's access to redress. Potential damage awards may provide an incentive to local authorities to pursue lawful practices taking into account human right considerations. Any interference in this process we believe will be detrimental to this outcome.