

Equality and Human Rights Commission

Human Rights Review 2012

How fair is Britain? An assessment
of how well public authorities protect
human rights

Executive Summary



**Equality and
Human Rights**
Commission

Contents

Introduction	03
The UK’s human rights framework	04
Britain’s positive accomplishments: human rights are part of our history and underpin our government, judicial system and institutions	06
Ten areas where public authorities can improve human rights protection	09
The future of human rights in Britain	19

© EHRC 2012

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/> or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or e-mail: psi@nationalarchives.gsi.gov.uk.

Any enquiries regarding this publication should be sent to us at: humanrightsreview@equalityhumanrights.com

ISBN 978 1 84206 438 2

 **Equality and
Human Rights**
 Commission

Introduction

Human rights protect everyone in Britain and affect every aspect of our lives. They are about our rights to be treated with dignity, respect and fairness by the government and our public authorities, such as hospitals, care homes, the police or prisons. They are about the freedom to voice ideas openly and to protest if you disagree with government policy or actions. They are about protecting individuals from arbitrary and excessive action by government or public officials that may result in loss of life, liberty, degrading treatment or intrusion into people's personal lives. We take many of these rights for granted, and often do not realise how successfully our legal and institutional systems work to protect and uphold these rights.

The Equality and Human Rights Commission is Britain's statutory and independent body promoting equality and human rights in society. It was set up to challenge discrimination, to protect and promote equality and respect for human rights, and to encourage respect between people of different backgrounds. It has duties to promote awareness, understanding and protection of human rights; and to encourage public authorities to comply with the Human Rights Act. It is also required to review progress in society on equality and human rights, produce indicators to measure that progress and report on progress every three years. The Commission is also a National Human Rights Institution (NHRI) accredited by the United Nations under the Paris Principles. These

require it to monitor, advise and report to the government and parliament on the human rights situation in Britain, including any human rights violations. This review of human rights meets the Commission's statutory duties under the Equality Act 2006, and its requirements as an NHRI.

In this landmark review the Equality and Human Rights Commission assesses how well Britain is meeting its human rights obligations under the European Convention of Human Rights and our own Human Rights Act 1998 (HRA) which gives effect to the Convention. We set out the rights and freedoms protected in the Convention, and assess to what extent each is enjoyed by people living in Britain today. We look at how our laws, institutions and institutional processes support and protect each right. We highlight the many ways in which the protection of human rights in Britain has been strengthened in recent years by law, policy and practice. We also, however, expose some key areas where we believe serious human rights problems could be better tackled and protections ensured.

The UK's human rights framework

The UK's human rights framework is shaped by the European Convention on Human Rights and various United Nations (UN) treaties and conventions.

The Convention obliges Council of Europe states to protect fundamental human rights and freedoms and comply with human rights standards. The European Court of Human Rights is the court established by the Convention to ensure the obligations set out in the Convention are observed. It only considers complaints after individuals or states have exhausted all their domestic remedies. States have a duty to abide by final judgments of the Court, though they have leeway to respond in a way that fits their domestic traditions.

As a member of the UN the UK government has signed and ratified all core UN human rights conventions. It reports periodically to relevant monitoring bodies on its compliance.

The reporting mechanisms and comments influence the UK government's policy and practice and are taken into account by the UK courts. However, the enforcement or compliance mechanisms for these conventions are not as effective as those for the European Convention on Human Rights.

Until the HRA, there was no domestic law that gave effect to the Convention and people

living in the UK had to go to the European Court of Human Rights in Strasbourg to seek redress for violations of their Convention rights. The HRA came into force in 2000 and incorporated most of the Convention rights into our domestic law and constitutional structures for the first time. Its intention was to 'bring rights home' by integrating human rights into the work of the government, parliament and the judiciary. The HRA gave people the opportunity to seek justice for human rights claims in UK courts.

The future of the HRA and the role of the European Court of Human Rights are topical debates. Some critics argue that the HRA allows decisions of domestic courts or the European Court to override parliamentary decisions. However the HRA in fact provides a 'parliamentary model' of human rights protection meaning that only parliament can alter any law and no judicial authority has the right to overrule its legislation. The HRA also requires all public authorities to comply with the Convention, which has improved the transparency and accountability of government. Parliament has the discretion to implement European Court decisions in a way suited to domestic history, culture and traditions, but the Court also plays a valuable

role as a safety net when our government fails to meet its obligations under the Convention, or domestic judges fail to understand its jurisprudence.

Other critics believe that the HRA is being used inappropriately to protect the rights of people convicted or accused of criminal activity. At the heart of this criticism is an understandable uneasiness with protecting the rights of individuals who have broken the law or ignored the rights of others. However the fundamental basis of the Convention is that everyone has human rights and that a government cannot selectively award rights to some people and not to others without creating a system that discriminates against certain groups of people.

Nevertheless the long running debate about the effectiveness of the HRA led the Coalition Government to set up an independent Commission on a Bill of Rights in March 2011 which will report by the end of 2012. In early 2012, the government also announced its views on the need for reform of the European Court of Human Rights.

This review is thus all the more timely in assessing the government and public authorities' compliance with the Convention, and the benefits of doing so for everyone in Britain. The Commission's 2009 Human Rights Inquiry found that a human rights approach could contribute to better service planning and delivery by focusing on the needs of individuals using public services. Evidence to the Inquiry showed that the duty on public authorities to act compatibly with the HRA could influence how public authorities dealt with service users and

assure the quality and effectiveness of their services. This review builds on this approach. It demonstrates that Britain's human rights framework has contributed much to the better working of government and public services, and to the ability of citizens to protect their rights. But it also identifies 10 areas where legislation, institutions, policy or services do not yet fully meet human rights standards.

Britain's positive accomplishments: human rights are part of our history and underpin our government, judicial system and institutions

The review has assessed public authorities' compliance with the Convention and, on the whole, the picture is very positive and there is much to be proud of.

The government largely respects the human rights of people in Britain. Direct abuses by the state against individuals are thankfully rare.

Britain is a democratic society, in which most people have the right to vote and freely elect a government, a right protected in Protocol 1, Article 3. Government allows peaceful public protests reflecting the right to free assembly and association (Article 11). Britain has a vibrant free press and media, and people can express their thoughts and opinions. This fosters public debate and investigations about topical issues – values based on freedom of thought, conscience and religion (Article 9) and the right to freedom of expression (Article 10). We all benefit from having a human rights framework that ensures that government is tolerant of diverse viewpoints and public criticism, and is publically accountable and transparent. As individuals we benefit from having these rights to exercise, and from knowing that our laws seek to balance the interests of individuals so we respect the rights of others, even if we disagree with them.

Britain has a strong legal system with clear civil, criminal and public legal codes and judicial processes to ensure that individuals are not arbitrarily deprived of their liberty (Article 5), and have a right to a fair trial (Article 6). We all benefit from living in a society where offenders, no matter how severe their crimes, have the right to a fair and open trial and, if convicted, face punishment but, if wrongly accused, go free. If two parties dispute a civil matter, they also know their cases will be heard impartially and in a reasonable time.

Government operates through laws, but also through institutions, such as hospitals, prisons and young offenders' institutions. The government recognises its obligation not to take life arbitrarily and to safeguard the lives of people in its care (Article 2, the right to life). It also prohibits torture and inhuman and degrading treatment (Article 3). So our institutions are regulated and inspected, and follow guidelines and codes of practice to prevent arbitrary abuses of power. Britain has numerous independent bodies which

subject institutions to scrutiny should something go wrong, and provide an avenue of redress for individuals. These regulatory and inspection services and independent investigatory bodies are meant to ensure that public services meet minimum standards, abuses do not occur and investigations take place when abuses or deaths occur. They form a valuable part of the infrastructure protecting human rights in Britain.

Most people living in Britain can largely live their lives as they wish, confident that they can create relationships and families without arbitrary interference from government, and their privacy is protected under Article 8. People are free to hold any belief and follow their conscience, as long as this does not harm the rights of other people, as protected by Article 9.

Finally, Britain is based on a free labour market, and the vast majority of people do not have to fear slavery or forced labour which are prohibited under Article 4, and know they have the right to join unions to protect their rights through collective action, as protected by Article 11.

The review also shows that the human rights set out by the Convention and incorporated into domestic law through the HRA, reflect and consolidate traditional British common, civil and criminal law. Human rights principles are part of British history, traditions and culture – the things which make Britain unique and distinctive. So, for example, the Magna Carta, drafted in 1215, introduced the concepts of habeas corpus and trial by jury, and the Petition of Right of 1628 restricted the monarch's right to imprison subjects without cause – rights

which now lie at the heart of Article 5. The 1701 Act of Settlement set out the right to be heard in front of an impartial judiciary, free from government influence – a right which has been refined by Article 6. The Bill of Rights of 1689 and Treason Act of 1709 prohibited cruel and unusual punishment and torture – rights embodied in Article 3.

Other articles reflect Britain's proud tradition of striving for civil liberty which over time persuaded parliament to introduce new laws to embrace the changes in social attitudes. Our laws have protected free speech by MPs in parliament since 1689 and publication of parliamentary proceedings since 1868. Article 4 prohibiting slavery and forced labour is related to the first laws abolishing the slave trade in Britain and its colonies in the 18th century following decades of public protest and parliamentary lobbying by the abolition movement, a forerunner of our human rights NGOs of today. Article 9 protecting religious freedom is related to 19th century laws which emancipated Catholics and later Jews, and allowed them to take public office. And the most recent civil liberty movements for the rights of gay men and lesbians, and the rights of transgender people finally saw their battles for equality and dignity enshrined in Article 8 and protected through a raft of domestic legislation over the past 10 years.

Human rights principles are also protected in the way government designs our laws. At a parliamentary level, one of the roles of the Joint Committee on Human Rights (JCHR), a select committee of the House of Commons and the House of Lords, is to scrutinise all new bills for their human rights implications. The JCHR also looks at government action

to deal with judgments of the UK courts and the European Court of Human Rights where breaches of human rights have been found. As part of this work, the Committee looks at Remedial Orders – the legislative route that allows the government to correct Acts of Parliament in response to these judgments. These scrutiny roles benefit all people living in the UK who are subject to the laws of the land.

Ten areas where public authorities can improve human rights protections

However, this review also appraises evidence which, we believe, shows that public authorities could be doing more to meet their obligations to implement the protections of human rights in full.

The review assessed the compliance of British laws, institutions and institutional processes with each article of the Convention. It identifies 10 areas where legislation, institutions, policy or services could protect human rights more fully.

1. Health and social care commissioners and service providers do not always understand their human rights obligations and the regulator's approach is not always effective in identifying and preventing human rights abuses

Almost everyone in Britain will use health and social care at some point in their lives, and we have the right to expect we will be treated with dignity and respect. However, the evidence shows that some users of health and social care services, such as older or disabled people, experience poor treatment which is undignified and humiliating. At its most extreme, abusive, cruel and degrading treatment is similar to torture. This is in breach of Article 8 and Article 3 rights.

The reason for this may lie partly with the scope of the HRA and agencies' poor understanding of their HRA responsibilities. People who receive health or social care from private or voluntary sector providers do not have the same guaranteed level of direct protection under the HRA as those receiving it from public bodies. However, their rights may be protected indirectly as the public authorities that commission health and social care services from independent providers have positive obligations to promote and protect the human rights of individual service users. Yet the Commission's recent inquiry into home care showed that many local authorities and primary care trusts have a poor understanding of their positive obligations under the HRA and do not include human rights in the commissioning criteria around the quality and delivery of care. Frontline staff also do not always make the link between human rights and the care they provide, and their lack of awareness can lead to abuse and neglect of patients.

Our evidence also questions the effectiveness of inspections by the Care Quality Commission (CQC). As the regulator for the health and social care sector, the CQC has a central role in protecting the human rights of disabled and older people in regulated care settings. However its approach has sometimes failed to identify and prevent abuses of human rights. It is currently reviewing its approach in order to strengthen its regulatory model of monitoring and inspecting providers.

An effective complaints system is also an essential element to protect service users against undignified, abusive and inadequate treatment. However some service users do not know how to make complaints, or do not do so, as they fear this will adversely affect their care.

2. The justice system does not always prioritise the best interests of the child. Children will not receive a fair trial if they do not understand the gravity of charges against them or are unable to participate in court procedures. The juvenile secure estate resorts too easily to control and restraint procedures for discipline

As a signatory to the European Convention on Human Rights and the UN Convention on the Rights of the Child (UNCRC) Britain is obliged to ensure that, in the courts of law, the best interests of the child are a priority. The European Court of Human Rights makes clear that a child must understand and participate in court proceedings to have a fair trial. There have been many positive changes in Britain to ensure that young people tried in court understand the gravity

and consequences of charges against them, and understand the court process to ensure they participate effectively. However, the review found that children with learning or communication difficulties often do not receive sufficient 'special measures', or adaptations to court procedure, to ensure a fair trial. Children who are tried in Crown Courts are also at risk of Article 6 breaches, if insufficient consideration is given to their age and maturity and measures to enable a child to understand and participate are not implemented. The UNCRC has also urged the UK to raise the age of criminal responsibility in England and Wales which is lower than international guidelines to minimise the risks of an unfair trial.

Children detained in young offenders' institutions, secure training centres or secure children's homes are under the full control of the authorities, so the responsibilities of the state are enhanced. However the review found that authorised control and restraint procedures were used extensively, and sometimes for disciplinary purposes (rather than for safety, or when absolutely necessary) and were a means to intentionally cause pain. This risked breaching Article 3's prohibition on inhuman or degrading treatment or punishment. The use of some restraint techniques has led to the deaths of young people in young offenders' institutions in breach of Article 2's obligation on the state to safeguard the lives of people in its care.

3. Police custody and prisons do not always have sufficient safeguards and support when dealing with vulnerable adults

The review examined the treatment of vulnerable adults in police custody, prisons and immigration removal centres. It found that the government risked not complying with its Article 2 obligation to safeguard the lives of those in its care. Some police forces lack safe facilities to look after people who are drunk, intoxicated by drugs or have mental health problems who are admitted to police custody. Police officers also sometimes fail to identify individuals at risk or to share this information. In some cases this has contributed to deaths in custody.

Some prisons did not meet the mental health needs of prisoners as policies to prevent suicide and self-harm are not consistently implemented, and care plans are poorly co-ordinated. Immigration removal centres can detain people suffering from serious mental illness as long as their condition can be satisfactorily managed within detention. However provision of mental health services is not always adequate given some individuals' high level of need.

Unsafe use of restraint remains a problem across all forms of detention and there have been cases where restraint has led to the death of a prisoner or detainee. Article 2 is violated when deliberate or negligent acts of restraint by police or prison officers, or private contractors, lead to the death of a detainee, and when failings in management, instruction and training combine to produce an unnecessary or excessive use of force because it has not been tailored to minimise

the risk to life. Custodial authorities do not appear to share information about restraint and fatalities, with the result that techniques deemed unsafe in one environment may continue to be used in another.

4. Investigations into deaths of people under protection of the state are not always independent, prompt or public, potentially breaching right to life investigative requirements

Britain has a strong investigative framework to meet its Article 2 obligation to investigate deaths and near deaths of children and adults resulting from the use of force by police, prison or other officers. The government regards the inquest system as the principal means for meeting its obligation under Article 2 to investigate deaths in custody and failures by the state to protect lives. Depending on the circumstances of the death, other organisations may also conduct an investigation. The Independent Police Complaints Commission (IPCC) conducts independent investigations of deaths following contact with the police and inquiries into the serious complaints and allegations of police misconduct in England and Wales. The Prisons and Probation Ombudsman (PPO) is responsible for investigating all deaths in prison, probation service approved premises, secure training centres, young offenders' institutes, and of immigration detainees.

To be effective, investigations should be independent, open to public scrutiny and involve the family of the deceased. However, the review found that Britain's investigative frameworks did not always meet these requirements. Inquests are not as

effective as they could be as lengthy delays diminish the relevance of any learning, and also mean that investigations may not be completed promptly enough to satisfy Article 2 requirements. The PPO is not formally independent of government and this could lead to a challenge of its compliance with Article 2. The review suggested that investigative powers were not sufficiently far-reaching. For example, the IPCC has limited authority to investigate deaths of people which occur in the custody of private contractors who carry out ‘police-like’ functions.

When a child or young person dies in the youth justice system the obligation to carry out an Article 2 compliant investigation is mainly met through the inquest procedure. The PPO has responsibility for investigating the death of a young person in a young offenders’ institution or secure training centre, but not in secure children’s homes. Ofsted and local safeguarding children boards are obliged to carry out a review following any unexpected death of a child or young person in a secure children’s home. Such a review does not meet Article 2 requirements as it does not establish the cause of death, involve the family, is not carried out in public and is not institutionally independent.

There is no single person or agency automatically responsible for investigating deaths of patients in mental health settings. To meet Article 2 requirements, an inquest may need information that is obtained from an independent investigation immediately after the death. Investigations by strategic health authorities may not meet this

requirement and the coronial system is not sufficiently responsive or properly resourced to undertake effective investigations. The Article 2 safeguarding duty should also cover mental health patients who are not formally detained.

5. Providing a system of legal aid is a significant part of how Britain meets its obligations to protect the right to a free trial and the right to liberty and security. Changes to legal aid provision run the risk of weakening this

Article 6 of the European Convention on Human Rights includes the provision that anyone charged with a criminal offence should be given free legal assistance if they do not have sufficient means to pay for it themselves, when this is required in the interests of justice. This aims to ensure that defendants have a fair trial, even if they do not have the financial means to defend themselves. For civil cases, the right to a fair hearing may require the state to provide legal aid for complex matters or where someone would have difficulty representing themselves. The Legal Services Commission provides means-tested funding for advice and representation. However, the current ‘fixed fees’ system – a standard payment regardless of time taken for social welfare cases – creates incentives for lawyers and advisers to choose more straightforward cases. This means that people with complicated or unusual cases may be less likely to receive high quality advice.

Access to legal advice and assistance is a particular difficulty for immigration detainees. Under Article 5, anyone deprived

of their liberty must have the opportunity to challenge their detention. For most immigration detainees, an application for release on bail is the simplest way to seek their release. Most people held in immigration detention rely on legal aid to access a lawyer. However, some detainees find it difficult to find an available legal representative offering quality advice.

Proposed changes to legal aid could limit many people's access to legal advice and services in areas of civil law and for criminal cases. This means that some people, if forced to represent themselves, may not have access to a fair trial. The impacts of these changes will need to be assessed and tracked.

6. The legislative and regulatory framework does not offer sufficient protection of the right to a private life and for balancing the right to a private life with other rights

The HRA introduced a free standing right to privacy into UK law and increased protection for the right to private and family life and obligations on the state to protect and promote Article 8. However, the two key statutes, the Data Protection Act 1998 (DPA) and the Regulation of Investigatory Powers Act 2000 (RIPA) provide patchy protection. Definitions of 'personal data' which are central to DPA are not clear; and RIPA has not responded effectively to technological changes which enable more extensive surveillance of individuals.

Regulatory safeguards to protect against breaches of the right to private life are also not effective. The Information Commissioner's Office does not have

adequate resources to carry out its functions effectively and there is insufficient independent judicial oversight of RIPA and surveillance regulations.

The current Leveson Inquiry into media standards and surveillance has made the balance between individual's rights to a private life and freedom of expression in the media an issue for public debate. Article 8 rights to a private life are not always adequately protected against press intrusion by injunctions and improper reporting of criminal investigations by the media may prejudice the right to a fair trial. The Press Complaints Commission has faced extensive criticism following its failure to investigate the phone hacking scandal effectively, and its future regulatory role is under scrutiny.

There are also problems with libel and defamation law which individuals may use to protect their reputations. The legal defences available to journalists, commentators and other defendants in defamation cases are complex and hard to use, and this may create a 'chilling effect' and encourage self-censorship. The internet makes publication instantaneous and harder to control. Personal information and false allegations can be circulated very quickly. Our evidence shows that libel laws are out of date and do not address issues arising from publication on the internet, and injunctions can also be difficult to enforce. The proposed changes in the Defamation Bill will need to be monitored to assess that people who are defamed can take action to protect their reputation where appropriate, without impeding free speech unjustifiably.

The high legal costs in cases related to privacy and freedom of expression make it difficult for individuals to protect themselves and may also have a ‘chilling effect’ on freedom of expression. The proposed abolition of conditional fee agreements will undermine access to justice for claimants and defendants of limited means, potentially breaching Articles 8 and 10.

Police rely on information and intelligence to plan for large-scale protest events and to identify the potential for disorder or violence. Inappropriate and disproportionate use of surveillance of protestors who have not committed any criminal offence can violate their right to a private life.

7. The human rights of some groups are not always fully protected

Human rights are universal and apply to everyone. However, the review showed that some groups which are socially marginalised or particularly vulnerable do not enjoy full protection of their rights.

The review looked at how local authorities, police or social services had sometimes failed to fulfil their positive obligation to intervene in cases of serious ill-treatment of children, disabled people, and women at risk of domestic violence. Police sometimes failed to take seriously allegations of repeated violence that were so severe the allegations reached the threshold for inhuman and degrading treatment under Article 3. Local agencies sometimes failed to work together effectively, and in some cases this had led to the death of a child or disabled person.

The review looked at how ethnic minority groups were more likely to be subject to stop and search and counter-terrorism legislation, undermining their Article 5 rights to liberty and security. They are also more likely to have their details recorded on the National DNA Database, which interfered with their Article 8 rights to privacy. These incursions on Article 5 and 8 rights affected everyone, but ethnic minority groups were disproportionately affected compared to their population size. This discrimination also engaged their Article 14 rights, which prohibit discrimination in the enjoyment of the rights contained in the Convention.

The right to a home protected by Article 8 is something we take for granted, but the review found that the rights of Gypsies and Travellers were sometimes overlooked. Gypsy and Traveller communities face a shortage of caravan sites as some local authorities have failed to invest in site development. The lack of sufficient sites means it is difficult for Gypsies and Travellers to practice their traditional way of life.

The right to respect for a private life also protects our right to develop our personalities and relationships with others. Individuals who are transsexual and whose gender identity does not match their birth gender are not protected by current laws around marriage and civil partnership. The dual system of civil partnership for same sex couples and marriage for different sex couples means married transgender people are forced to choose between ending their marriage and having their acquired gender officially recognised by law. The review finds that the current options either to end the marriage and enter into a civil

partnership, or remain in a marriage but not be recognised in one's acquired gender, means that transgender people cannot enjoy their right to a private identity and personal relationships, such as marriage.

Britain has a positive record in developing the legal and administrative infrastructure to monitor, investigate and prosecute instances of slavery, servitude, forced labour and trafficking, however the protective mechanisms may not work as well as intended. Our evidence shows that victims of trafficking may be criminalised or sent to immigration detention centres. In some cases trafficked children have been sent to adult prisons when charged with offences, or incorrect age assessments have meant they have not been offered the support and protection due to every child.

Our evidence also suggests that measures to curb the activities of gangmasters are not adequate to protect migrant workers, and proposed changes to the visa requirements for migrant domestic workers may lead to Article 4 breaches. The number of prosecutions and convictions for slavery, trafficking and forced labour are low.

8. Counter-terrorism and public order legislation designed to protect everyone can risk undermining several human rights

Since the 9/11 attacks, governments around the world have needed to take additional measures to protect their citizens from the threat of terrorism. While it is crucial for government to protect public safety, it has to balance this with its obligations to protect the rights of all individuals. The review

identified problems with the interpretation and implementation of counter-terrorism legislation domestically, and with Britain's international counter-terrorism activities.

The review is critical of the impact of counter-terrorism legislation on legitimate expression of political views and gatherings. It found that the definition of terrorism is still too broad and criminalises lawful protests and political expression, as well as the terrorist acts which parliament intended.

Stop and search powers under the Terrorism Act 2000 have been widely criticised by the JCHR and human rights organisations for risking breaches to Articles 5, 8 and 14. Stop and search without reasonable suspicion may sometimes be necessary to prevent an immediate act of terrorism, or to search for perpetrators or weapons following a serious incident. But police have used stop and search powers against peaceful protestors and disproportionately against black and Asian people. The European Court of Human Rights has found the powers to stop and search under sections 44-47 of the Terrorism Act 2000 powers to be unlawful. The Protection of Freedoms Bill proposes changes to stop and search powers and it will be important these create a regime which respects human rights.

The review also finds problems with counter-terror measures against individuals suspected of terrorist offences. Over the past decade governments have tried to increase the maximum period for pre-charge detention with judicial authorisation for suspected terrorism-related offences. The current 14 day detention period is considerably less than the government's 2008 proposal for

42 days, but considerably longer than the four days permitted for individuals charged with a criminal offence. Extended periods of pre-charge detention risk breaching Article 5, the right to security and liberty, as people who have not been charged with an offence should not be deprived of their liberty for an excessive length of time. The UN Human Rights Committee and UN Human Rights Council have recommended strict time limits for pre-charge detention and that any terrorist suspect arrested should be promptly informed of any charge against him or her and tried in court within a reasonable time, or released.

Control orders and Terrorism Prevention and Investigation Measures (TPIMs) are another controversial area of counter-terror legislation which allow the Secretary of State to impose strict conditions on a terrorist suspect's movements and social contacts. Control orders were intended to be used against the small number of people whom the government believed to represent a threat to the security of the country, but for whom it had insufficient evidence to prosecute. These restrictions on liberty were based on reasonable suspicion of what a person might do, rather than as punishment following conviction for a criminal offence, and so take place outside the usual criminal law process. The UN Human Rights Committee and JCHR were critical of control orders that restrict the liberty of an individual who has not been charged with a criminal offence and the orders have been successfully challenged in the domestic and European courts in relation to Articles 5 and 8, the rights to liberty and security and to a private and family life. Courts have also found that the process by which control orders are granted, which

involves the use of closed material, breaches Article 6, the right to a fair trial.

TPIMs replaced control orders, but still allow significant restrictions to be placed on people who are reasonably believed to be involved in terrorism-related activities, but have not been convicted of any offence. The government has stated that these will meet human rights obligations. However, the JCHR is critical of TPIMs and their compliance with human rights. The Commission believes the TPIM approach lacks important safeguards to protect human rights and may still fail to comply with the rights to liberty and security and the right to a fair trial, as well as Article 8 and 14 rights.

'Closed material procedures' have been introduced to deal with cases involving the use of sensitive material which the government fears cannot be made public without damaging national security. This means that some evidence is heard in secret; neither the person involved in the proceedings nor their representatives are told what it is. Instead, a 'special advocate' – appointed by the Attorney General – examines the closed material and represents the interests of the person affected in closed sessions. Any communication between the special advocate and the person whose interests they represent is prohibited without the permission of the court and the government. This means that a case may be decided against someone without that person ever finding out the reasons why. The use of closed material is expanding and is now used across tribunals, civil and criminal courts – and the government is proposing to expand it further. The closed material procedures risks breaching Article 6, the right to a fair trial.

Britain has an extensive legal framework regulating public protest. However the public order legislation is complex and very broad. Police sometimes do not understand their powers and duties and do not always strike the appropriate balance between the rights of different groups involved in peaceful protest. Protests in and around parliament are subject to overly restrictive authorisation rules. Managing modern protest can be difficult and challenging, with the police required to engage directly with protesters in fast-moving and volatile situations which may be provocative, intimidating and sometimes violent. On occasion, the police use force to manage a protest, or to prevent harm to people or damage to property. Criminal and common law require the use of force to be reasonable. Excessive force is unlawful and may violate Articles 2, 3 and 8. However there is no common view among police forces about the meaning of reasonable force and the police do not always use the minimum level of force when policing protests.

The use of surveillance, the infiltration of peaceful protest organisations, pre-emptive arrest or detention of individuals and the use of civil injunctions against protesters by private companies undermines the right to freedom of peaceful assembly and association with others.

9. Allegations of involvement and complicity in torture in overseas territories, and the government's failure so far to carry out an independent inquiry into these allegations, risk breaching Article 3

The government has stated that it condemns the use of torture and inhuman and

degrading treatment, in support of Article 3. However, there are allegations that UK security and intelligence officers were complicit in the ill-treatment of prisoners and civilians in counter-terrorism operations overseas in the aftermath of the 9/11 attacks. There have also been allegations that British military personnel have been involved in the torture and ill-treatment of civilians and detainees in Iraq. Cases have been reported by non-governmental organisations, the UN and British domestic bodies like the JCHR, and some cases have been considered in court. The government denies that there is evidence of security service personnel torturing anyone or being complicit in torture.

Following these allegations, the British government published guidance setting out the approach that British intelligence officers should take when obtaining information from individuals detained overseas. Britain's laws and policy prohibit hooding at all times. However the guidance condoned hooding in very specific circumstances. A recent claim brought against the government was successful, and the guidance has been amended to reflect this.

When serious allegations of ill-treatment are made, the state has an obligation to undertake an effective investigation. However the Commission finds that the allegations of involvement of British military personnel in the torture and ill-treatment of civilians and detainees in Iraq have not been investigated thoroughly enough to meet Article 3 obligations. The Court of Appeal has found that the investigation set up by the government does not meet the requirements of an Article 3 investigation.

10. Immigration procedures can favour administrative convenience over safeguarding individuals' rights to liberty and security. Periods in detention can be unlawful if release or removal is not imminent

Immigration policy regulates the flow of people into Britain and determines who has the legal right to stay and work here and who cannot. Asylum seekers, that is, those who are at risk of persecution in their own countries, have the right to request asylum. Many applicants are assigned to the detained fast track procedure, and detained in an immigration removal centre while their claim is assessed. An asylum applicant can appeal against an unsuccessful decision and, when this is exhausted, will remain in detention until they are removed from the country.

The UN High Commissioner of Refugees (UNHCR) has criticised Britain's use of fast track detention for asylum applicants for administrative convenience rather than last resort, and the lack of adequate safeguards to guarantee fairness of procedure and quality decision making. The length of time in detention for those who have committed no crime risks breaching the right to liberty and security under Article 5.

Immigrants may be detained for long periods without any realistic prospect of removal, breaching their right to liberty. Detention can also have a detrimental impact on a detainee's mental and physical health that may engage the obligation to safeguard vulnerable individuals under Article 2, the prohibition on inhuman and degrading treatment under Article 3, and the right to psychological integrity as an aspect of the

right to a private life under Article 8. The government does not always follow its own procedures around assessing and removing people who are particularly vulnerable, such as survivors of torture and people with serious mental illness which risks breaching Article 5 for unlawful detention. Voluntary sector organisations and the UNHCR have criticised the fast track procedure for not having sufficient safeguards in place to prevent vulnerable individuals entering the fast track process. Article 2 obliges authorities to take reasonable measures to avert risk of self-harm and suicide. Measures in immigration removal centres (IRCs) are based on those in prisons but IRCs do not have access to similar mental health services, and health care staff lack expertise in trauma associated with torture. This inadequate approach means that IRCs may not meet their Article 2 obligation in preventing suicide and self-harm.

The review also showed that despite the government's agreement to end the detention of children for immigration, children and families may still be detained for up to a week pending deportation. Children who enter the country as unaccompanied migrants, and those whose age is disputed may also be detained. The UN Convention on the Rights of the Child provides that detention should only be used as a last resort and for a short time, and the welfare of the child should be given primacy.

The future of human rights in Britain

This review has demonstrated that Britain has strong legislative and institutional structures which protect human rights, but that in certain areas changes to the law, institutional processes or the way services are delivered is required.

It demonstrates the practical impact of the Convention and the HRA on the way we live our daily lives, and the protections they give us all.

These conclusions are all the more pertinent given the changes the government wishes to introduce to the HRA and its views about the need for changes to the European Court of Human Rights. The review demonstrates that Britain's human rights framework has contributed much to the better working of government and the ability of citizens to protect their rights. We believe the HRA is essential for the protection of human rights and is well crafted to balance Britain's international obligations with our constitutional conventions. It preserves parliamentary sovereignty, and allows our domestic courts to interpret Convention rights in a way that takes into account European Court of Human Rights' judgments, but is in keeping with our domestic law and traditions. As all public authorities have to comply with the Convention, it has improved transparency and accountability of government.

The Convention and the HRA are a firm foundation from which government and public authorities can begin to tackle the issues identified in this review. Our message is that government should ensure its legislation, institutions, policy and services meet the human rights obligations outlined by the Convention so that every person living in Britain enjoys all their human rights.

Contacts

England

FREEPOST RRLG-GHUX-CTRZ

Arndale House, Arndale Centre, Manchester M4 3AQ

Helpline:

Telephone 0845 604 6610

Textphone 0845 604 6620

Fax 0845 604 6630

Email englandhelpline@equalityhumanrights.com

Scotland

FREEPOST RRLG-GYLB-UJTA

The Optima Building, 58 Robertson Street, Glasgow G2 8DU

Helpline:

Telephone 0845 604 5510

Textphone 0845 604 5520

Fax 0845 604 5530

Email scotlandhelpline@equalityhumanrights.com

Wales

FREEPOST RRLR-UEYB-UYZL

3rd Floor, 3 Callaghan Square, Cardiff CF10 5BT

Helpline:

Telephone: 0845 604 8810

Textphone: 0845 604 8820

Fax: 0845 604 8830

Email: waleshelpline@equalityhumanrights.com

Helpline opening times: Monday–Friday: 8am–6pm

If you would like this publication in an alternative format and/or language please contact the relevant helpline to discuss your requirements. All publications are also available to download and order in a variety of formats from our website:

www.equalityhumanrights.com



**Equality and
Human Rights
Commission**

© Equality and Human Rights Commission
Published March 2012
ISBN 978 1 84206 438 2