Questions on the Human Rights Act campaign

1. **Why do we want to keep the Human Rights Act?**

The Human Rights Act (HRA) brings human rights home. It protects us from abuse by the state. If you are lucky, you might never be directly aware of the protection it gives you, which means it is doing its job and your rights have been protected. But negative press coverage of human rights and calls for the HRA to be scrapped, have placed this key protection at risk.

We must stand up for human rights and protect the HRA - because holding the powerful to account is one of the pillars of our democratic society. The rights protected by the Human Rights Act are the least of what every member of our society is owed simply by virtue of being a human being. If we are being told that these basic, timeless rights are going to be attacked or reduced, then which of them should go? The European Convention on Human Rights protects just a handful of rights but they are fundamental ones and it is the HRA which makes them legal entitlements – it is extremely worrying that people in power are proposing cutting back on our claim to any one of them.

2. **What is the Human Rights Act?**

The HRA is an excellent example of national human rights protection – being effectively the British Bill of Rights and has had a positive impact for many individuals and for UK society generally, in a number of ways. For example a couple who used the HRA to challenge a decision which would have separated them after 65 years together.

It might not seem exciting, but the HRA is a brilliant piece of law, cleverly designed to suit and support the UK democratic system. Often attacked, rarely championed, and surrounded by myths and misconceptions, the HRA is vitally important.

3. **How does the Human Rights Act (HRA) work?**

The Human Rights Act 'incorporates' into English law most of the rights in the European Convention on Human Rights. The Convention was created from the ashes of the Second World War and it was inspired by the desire to protect individuals against those abuses happening again. It drew on a lot of British ideas; in fact, British experts drafted most of it and the UK was the first state to sign up to it in 1951.

The HRA ensures that the UK government must explain how all new laws proposed are compliant with human rights; and brings human rights into all state decisions, improving government and public authority actions and policies. If someone feels their rights are not being respected, they can challenge the state in court. But in the vast majority of HRA cases, the issue is settled out of court i.e. the government/public authority comes to an agreement with the individual about how to ensure its actions do not violate their rights and this can in some cases have a wider positive impact on policies or decisions affecting entire communities or the country as a whole.

The HRA brings human rights home – it allows people to turn to UK courts and UK judges if they feel their rights are not being respected by the government. It gives us power to challenge the decisions made by politicians and Public Authorities **right here in the UK.**

4. Who does the Human Rights Act work for?

Everyone! Hundreds of thousands of ordinary people in the UK use the HRA every year to make sure their rights are protected against the state. Not only does the HRA affect individual cases, it also leads to positive policy changes which can affect thousands of people.

For example the HRA has been used to ensure dignity for the elderly and others receiving care at home; support for a young girl with learning disabilities to get to and from school; improved procedures to avoid disabled individuals falling into a gap between social services and housing departments; protect people who have been victims of trafficking; and put an end to blanket Do Not Resuscitate orders in hospitals.

Individuals have been able to use the Act to protect themselves in numerous ways, in and out of Court. Here are a few examples:

Keeping couples together: A husband and wife had lived together for over 65 years. He was unable to walk unaided and relied on his wife to help him move around. She was blind and used her husband as her eyes. They were separated after he fell ill and was moved into a residential care home. She asked to come with him but was told by the local authority that she did not fit the criteria. After relying on their family rights, the authority agreed to reverse its decision and offered the wife a subsidised place so that she could join her husband in the care home.

Keeping families together: A woman left her partner after discovering that he had been abusing their children. She and the children were placed in temporary bed and breakfast accommodation but were regularly moved. Eventually, the woman was informed by social workers that the children would be removed from her because she was unable to provide stability and was having difficulty getting them to school. The woman challenged the decision citing her and the children's right to respect for private and family life, and the children's right to education; the department decided not to remove the children.

For further examples and information on specific cases, see Appendix 1

5. Why am I told Europe is dictating to us?

The Human Rights Act allows people to pursue justice in the UK courts. There is an idea being put about that having human rights protections in the UK sends power to 'Europe' and that 'Europe' makes us do things we don't want to. Critics of the HRA should be honest- if we scrapped the HRA then instead of cases being heard in UK courts, people would have to go to European courts in Strasbourg if they wished to challenge a decision, as they did before the HRA existed. This is because without the HRA the UK would still be a signatory of the European Convention on Human Rights, which provides the same rights to people across

Europe. Without proper human rights protection at home, people would be forced to apply to the European Court of Human Rights for protection. Far from bringing power home, repealing the HRA would further outsource decision making.

It is true that Section 2 of the HRA says the UK Courts have to 'take into account' relevant decisions from the European Court of Human Rights (ECHR) in Strasbourg. That is because the HRA incorporates the rights of the European Convention on Human Rights and the ECHR is the overall overseer of the Convention.

This makes sense, and for the most part works uncontroversially, given the ECHR decides what the meaning of the Convention rights are; and as the HRA incorporates the Convention rights, they have to mean the same thing at their core in the UK as everywhere else. We need the same minimum standards even though each country will then adapt those to their own society.

To say "Europe" is dictating to us is inaccurate because:

- The ECHR rulings are nothing to do with the EU – **the Convention is not an EU law – it is a regional treaty overseen by a regional court made up of independent judges from all member states, including the UK**
- Sometimes the UK courts will go further than the ECHR and provide higher protection
- On rare occasions, with good reason, the UK will take into account but decide **not to follow clear and consistent guidance from the ECHR**. This can sometimes lead to a positive dialogue with the ECHR where the two Courts affect each other and improve each other's rulings.

6. So is the ECHR constantly ruling against the UK courts?

No.

Only a tiny proportion of cases pending at the Strasbourg Court are against the UK

- Only 1.5% of cases pending at the Strasbourg Court as of 27 August 2014 were against the UK. Most are against Italy, Ukraine, Russia and Turkey (60% between them).

Of the cases which are brought against the UK, only a tiny number even get over the first hurdle and get looked at in detail

- The vast majority of cases lodged against the UK are ruled inadmissible or struck out, without the need for a full court judgment. In 2014 up to 27 August, 1,673 cases were lodged against the UK, but 1,657 were declared inadmissible or struck out - the vast majority.
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When it does look at UK cases in detail, the Court does not always rule against the UK

- Of those cases brought against the UK which are admissible, Strasbourg often will find there has been no violation. In 2013, 19 full cases against the UK were considered, and only 11 decided against it.
- Overall, in 2012, only 0.6% of cases lodged against the UK led to a judgment that there had been a violation, and just 1% in 2011.

- An example is the UK Court martial system: Strasbourg found in 2002 that this breached article 6 fair trial rights (as, in essence, those judging were not independent). The House of Lords declined to follow that in a subsequent case, saying Strasbourg had not been given enough information by counsel and thus did not properly understand the protections in the UK system. Strasbourg then amended its own case law to take into account that information and adopt the domestic approach in 2004 in another case (*Cooper v UK*) on army court martials (while still finding some problems to naval court martials).
    - Strasbourg is cautious about departing from national courts itself and finding a violation. In 2006 it recalled in a judgment (Roche v UK) that:

    - "*Where … the superior national courts have analysed in a comprehensive and convincing manner the precise nature of the impugned restriction, on the basis of the relevant Convention case-law and principles drawn therefrom, this Court would need strong reasons to differ from the conclusion reached by those courts by substituting its own views for those of the national courts on a question of interpretation of domestic law*."

It is particularly unusual for the Strasbourg Court to stop people being expelled from the UK

- Of applications to Strasbourg seeking to stop expulsions from the UK (on human rights grounds) in 2013, 252 were found inadmissible, 112 struck out and only 4 actually received a full judgment.
- Of those 4, only 1 found a violation. So just 0.3% of applications made on this basis were successful

12. What about Abu Qatada and prisoner voting?

The controversial cases that are often quoted as proving that Europe is dictating to us and that the Human Rights Act must go, are those which many people find uncomfortable.

While we understand that, we have to remember that the human rights cases seen as controversial, either here in the UK or at the ECtHR, are the tiny minority. The cases that are likely to make the news are the ones which the government has challenged (the majority of cases are resolved out of court or are thrown out), which by definition are likely to involve less clear cut violations and/or particularly unpopular people or causes. Otherwise the government would likely have settled.

What we don't hear about are the hundreds of thousands of ordinary people who use the HRA in the UK – people who use it make sure they are not separated from their children if they are fleeing an abusive relationship, people who use it to make sure elderly relatives are treated with dignity.

Prisoner voting

Even the specifics of the controversial cases are often misrepresented – on prisoner voting the ECtHR said that a blanket ban on **all** prisoners being able to cast a vote was unfair and the UK parliament should revisit the policy. Parliament would likely be able to rule that just people convicted of driving offences could vote, or just people in custody for less than a month or some other more nuanced approach without violating human rights law. It is up to the UK Parliament to decide what that should look like.

The case of **Abu Qatada**

On Abu Qatada, the bottom line is that human rights are for those we may dislike, as well as the rest of us. The ECtHR ruled that Qatada couldn't be deported to a country where he wouldn't be able to receive a fair trial and that evidence obtained through torture might be used against him. The right to a fair trial and the absolute prohibition against torture are both long-standing British principles.

Importantly, even without the Human Rights Act, the ECtHR rulings on Abu Qatada and Prisoner Voting, for example, would likely remain the same. Since the UK would still be a signatory to the European Convention on Human Rights, he would (like every individual) still be able to seek a judgment there for violations of the European Convention itself by the UK. So unless the UK left the European Convention altogether, which would be an unprecedented move for a democratic country, the rulings would remain the same.

13. Doesn't the Human Rights Act entitle people to ridiculous things?

Quite simply, contrary to some untrue press stories, the Human Rights Act has never been used to force police to give criminal suspects KFC during a siege, or to provide prisoners with access to hard-core pornography in prison. None of those things are sensible interpretations of what rights are meant to protect, and the Courts have never said differently, here or in Strasbourg.

Appendix 1

Selection of sympathetic HRA challenges that did not go to court

1. Most cases where the HRA is used do not involve going to court, but are either settled in advance, or resolved with support from NGOs, lawyers, or even well informed individuals, using the HRA and rights it protects to pressure public authorities to change their behaviour. Some examples of cases where human rights act was used without need to go to court, thus showing why section 6 encourages institutions to change their behaviour and gives individuals a language and route to challenge violations (courtesy of BIHR reports):

2. **Keeping elderly couples together**

By Counsel and Care **On** 08/06/2011

Mr V contacted Counsel and Care when social services threatened to move his wife into a care home which was some distance from the family. Mrs V has Alzheimer's and is blind. Mrs V had temporarily moved into a local nursing home after being hurt in a fall. Mr V was also injured in the fall, and unable to care for his wife at home. Social services decided Mrs V should be moved to a permanent care home but Mr V disagreed with the home social services chose, because it was too far for him and other family members to travel to see Mrs V. Counsel and Care helped Mr V to challenge this decision, by providing information on community care laws, and combining this with the argument that social services needed to consider Mr V's right to private and family life under the HRA (Article 8). This helped Mr V persuade social services to allow Mrs V to remain in the nursing home close to her family.

3. **Human rights stopping blanket use of Do Not Resuscitate Orders**

By POhWER **On** 17/11/2010

An older man with dementia was admitted to hospital. He was placed on a ward in which every patient had a 'do not resuscitate' order placed on their file.

His advocate came to visit him and noticed the DNR, which wasn't signed by a doctor. She queried it and was told that everyone on the ward had a DNR automatically.

The client was not aware of the DNR and his advocate believed him to have some level of capacity to take the information on board. In addition he had two estranged daughters who had visited but were not consulted or informed. She challenged this using the right to life and the right not to be discriminated against.

The DNR was withdrawn.

4. **Family life protected**

By POhWER **On** 17/11/2010

A man in his early 30s with severe autism had been in the care of his foster mum since the age of two. She also fostered babies with learning difficulties. A baby died in her care and this was investigated by the authorities.

During the investigation the man was placed in respite care, without any formal procedures being followed. His foster mum was prevented from visiting him. After a number of calls she was told she could bring him a present on his birthday, but when she turned up she was not permitted to see him. He began to get very unwell due to stress and 5 months after being separated from his foster mum he was admitted to hospital.

The man wouldn't let the doctors treat him and an advocate became involved. She argued that his right to respect for family life was not being respected as his foster mum was to all intents and purposes his mum. She also raised concerns about his right to liberty given the

informal nature of the separation. A social worker told her 'well, now he's out we might as well keep him out as he'd have to move sometime' referring to the fact that his foster mum was in her 60s. After being supported by his advocate he was returned to the care of his foster mum and the authorities admitted that there had never been any concerns regarding her treatment of him. They admitted he'd been forgotten in the system and the service manager went to his home to apologise and learnt to say sorry in Makaton.

His advocate said that the positive outcome was a direct result of her heavily using the Human Rights Act in advocating for him, 'human rights absolutely made a difference.'

The following are all examples from BIHR research:

5. **When Staff refused to clean up a man's bodily waste**

A man detained in a maximum security mental health hospital was placed in seclusion where he repeatedly soiled himself. Staff declined to clean up the faeces and urine or to move the man to another room, claiming that he would simply make the same mess again, and any intervention was therefore pointless. The man's advocate, having attended a BIHR training session, invoked human rights arguments to challenge this practice. He argued that this treatment breached the man's right not to be treated in an inhuman and degrading way, and his right to respect for private life. These arguments were successful and the next time he soiled himself, the man was cleaned and moved to a new room.

6. **Securing accommodation for domestic violence victims**

A social worker from a domestic violence team at a local authority realised during a BIHR training session that human rights language could be used to secure new accommodation for a woman and her children at risk of serious harm from a violent ex-partner. Previously, when she had approached the housing department seeking emergency accommodation for the family, she had been told there was nothing available. During the training session she explained her view that the authority had overriding positive obligations to protect the right of the woman and her children not to be treated in an inhuman and degrading way and, given the extreme risk in this case, their right to life.

7. **Older couple split up by local authority after 65 years of marriage**

A husband and wife had lived together for over 65 years. He was unable to walk unaided and relied on his wife to help him move around. She was blind and used her husband as her eyes. They were separated after he fell ill and was moved into a residential care home. She asked to come with him but was told by the local authority that she did not fi t the criteria. Speaking to the media, she said 'We have never been separated in all our years and for it to happen now, when we need each other so much, is so upsetting. I am lost without him – we were a partnership'. A public campaign launched by the family, supported by the media and various human rights experts and older people's organisations, argued that the local authority had breached the couple's right to respect for family life (Article 8). The authority agreed to reverse its decision and offered the wife a subsidised place so that she could join her husband in the care home.

8. **Young learning disabled girl denied school transport**

A local authority had a policy of providing school transport for children with special educational needs living more than 3 miles from their school. A young learning disabled girl lived 2.8 miles from the special school she attended. Despite being unable to travel independently, she was advised by the authority that she should instead take two buses to and from school each day. An independent parental supporter who had attended a BIHR training session supported the girl's mother to challenge the decision using human rights language. The mother approached the head teacher of the school and explained that the

decision was a disproportionate interference with her daughter's right to respect for private life, given the failure to consider her specific c circumstances. The head teacher took the issue to the local authority, and the decision was reversed. Thereafter the young girl was provided with transport to and from school

9. **Residential care home refuses to bathe a larger woman**

Source: Independent Living Advocacy (Essex)

A larger woman in residential care had not been showered or bathed for many weeks. The care home, with the agreement of the local authority which funded her care, had been providing her instead with a 'strip' wash so that staff did not have to lift her. The woman was very upset about the situation, especially because warmer weather was causing her to perspire. After receiving BIHR training, her advocate wrote to the care home and the local authority and invoked her right not to be treated in an inhuman and degrading way. Within days a new occupational therapist was brought in to explore options and it was quickly agreed that a hoist could be used. From this point onwards the woman was able to take a bath or shower according to her wishes

10. **Challenging a decision to remove children from a mother living in poverty, who was in temporary accommodation to escape an abusive father.**

A woman living in poverty left her partner after discovering that he had been abusing their children. She and the children were placed in temporary bed and breakfast accommodation but were regularly moved. Over a period of six months, the family was accommodated in three different London boroughs. Eventually, the woman was informed by social workers that the children would be removed from her and taken into care. They claimed that she was an 'unfit' parent because she was unable to provide stability for her children and was having difficulty getting them to school. A local support group helped the woman to prepare for a case conference with the social services department. With help from the group, the woman invoked her children's right to respect for private and family life and their right to education and asked the authority to prove, on the basis of its track record, that it was better placed than her to secure these rights for her children. After being challenged in this way, the department decided not to remove the children, although they remained on the 'children at risk' register. Within three weeks, stable accommodation was found for the family and they were assisted to purchase the furniture and other goods required to set up a home together.

11. **Learning disabled couple challenge the use of CCTV cameras in their bedroom at night**

Source: ATD Fourth World

A learning disabled couple were living in a residential assessment centre so their parenting skills could be assessed by the local social services department. CCTV cameras were installed, including in their bedroom. Social workers explained that the cameras were there to observe them performing their parental duties and for the protection of their baby. The couple were especially distressed by use of the CCTV cameras in their bedroom during the night. With the help of a visiting neighbour, the couple successfully invoked their right to respect for private life. They explained that they did not want their intimacy to be monitored, and that, besides, the baby slept in a separate nursery. As a result, the social services team agreed to switch off the cameras during the night so that the couple could enjoy their evenings together in privacy.

<u>Some sympathetic cases decided in the courts :</u>

1. **Section 6 duty: challenging public authority actions violating the rights of a slavery and trafficking victim: OOO (and others) v Commissioner of Police for the Metropolis [2011] EWHC 1246**

In a landmark judgment the High Court found that the Metropolitan Police Service had violated the human rights of four female victims of trafficking and child slavery by failing to investigate the alleged perpetrators.

The victims were trafficked to the UK from Nigeria when they were 11 to 15 years old. They were forced to work as unpaid servants for families in London and subjected to serious physical and emotional abuse.

The court found that the police had a duty to investigate credible allegations of ongoing or past slavery and that the failure to conduct an investigation was a breach of the claimants' human rights to be free from torture, inhumane and degrading treatment (article 3 of the Convention) as well as a breach of their human rights to be free from slavery (article 4 of the Convention).

The police eventually agreed to undertake an investigation into the claimants' abuse in 2009. This led to the conviction of Lucy Adeniji in February 2011 on charges of trafficking and slavery, and she was sentenced to 11 and a half years imprisonment.

If the Human Rights Act was not in place, the victims would not have been able to bring a claim in this country that their human rights had been breached. Instead, they would have had to wait until they had exhausted any other domestic claims, and then brought a claim in the European Court of Human Rights. This would have not only have been at considerable expense and delay, but also have caused further stress and anxiety. In addition, it is also probable that the police investigation would never have occurred and the convictions secured if the claim under the HRA had not been brought.

The HRA was vital for the victims to secure access to justice in British courts and to secure the prosecution of the perpetrator of the crimes.

2. **Interpreting legislation under s.3 HRA to help a same sex couple' living arrangements match those of heterosexuals: Ghaidan v Godin-Mendoza [2004]**

This was not a case challenging public authority violation, but one which asked the domestic court to interpret a statute compatibly with the HRA or declare it incompatible under s.4

Mr Wallwyn-James was living in a flat in London as a tenant from 1983 until he died in 2001. He was living with Mr Godin-Mendoza at the flat in a long term same-sex couple relationship at the time of Mr Wallwyn-James death. The claimant Mr Ghaidan, who owned the flat, applied to a court for the possession of the flat after Mr Wallwyn-James died.

The key issue in the case was whether Mr Godin-Mendoza's human rights to family life (article 8) and non-discrimination in the enjoyment of that right (article 14) would be breached if he was not entitled to a 'statutory' tenancy to live in the flat.

There are a number of benefits of a statutory tenancy as opposed to an 'assured' tenancy. the rent payable under an assured tenancy is the contractual or market rent, which may be more than the fair rent payable under a statutory tenancy, and an assured tenant may be evicted for non-payment of rent without the court needing to be satisfied, as is essential in the case of a statutory tenancy, that it is reasonable to make a possession order.

The Rent Act 1977 provided only that a *'person who was living with the original tenant as his or her husband or wife' would be eligible to succeed to the tenancy*. The House of Lords used section 3 of the HRA to interpret the provision '*as his or her wife or husband*' in the Rent Act to mean '*as if they were his wife or husband'*. As a result the court decided Mr Godin-Mendoza should have the right to a statutory tenancy in the same way as the survivor of a married couple. This also avoids the court having to make any declaration of incompatibility under section 4 of the HRA which should only be used by the courts as a last resort.

3. **Section 4 declarations: example of how they work: care workers who could not challenge a 'provisional' classification that they were unsuitable to work with vulnerable adults: Wright v secretary of state for health (2009)**

The care standards act 2000 was supposed to stop those who had harmed vulnerable adults working with them again. It said care workers could be put on the list provisionally pending investigation. This often took months. In this case, 3 of 4 workers kept on list for 9 months were then removed from it. They had had no opportunity to defend the allegations in the meantime. This was found to be a breach of article 6 9fair trial) and the House of Lords declared the bit of the Act setting out this procedure to be incompatible with that right. It was thus left to parliament to decide what to do.

The government responded to the declaration by replacing it with a new Act setting up a better system where people are only listed after being able to put their defence forward and the investigation being completed.