



# SESSION PLAN

## ACTIVITY 2: THE HRA & PRIVATE COMPANIES

*An activity designed for students aged 14-18.*

### INTRODUCTION

This activity examines the extent of the application of the Human Rights Act and its limits in terms of the organisations it covers, using the case study of an elderly woman being abused in a care home.

### LEARNING OBJECTIVES

- To understand what is meant by a 'public authority'.
- To discuss who should be entitled to the protection of the Human Rights Act and when that protection should apply.
- To recognise Article 3 (prohibition of torture).
- To evaluate a Supreme Court Judgement and explore the difficulties the State faces in guaranteeing human rights protection.

### RESOURCES

- Copies of the character role sheet



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### STARTER

Explain the relevant sections of the legislation to the students as outlined on page 3. Explain that public authorities must not breach human rights; this means any public service must be run in a way which respects human rights e.g. schools, health service, the police and the courts service. Explain that these UK public authorities must respect the rights of everyone within their jurisdiction. Explain that the ordinary meaning of this word means anyone who is in the country, however, the courts have interpreted this to include parts of other countries where the UK has a certain element of control of land or people.

### MAIN

Split the students into smaller groups of approximately 6. Hand out the character role sheet to one student in each group. Explain that the nominated student should explain the role they are playing and the situation their character finds themselves in.

The group then have 15 minutes to discuss the following questions before presenting back to the class:

- Are you entitled to human rights protection? On what basis?
- Which human right(s) may have been breached?
- What steps could the UK Government have taken to ensure that your rights were not violated?

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### DISCUSSION

Ask each group to feedback to the class on their discussions.

What were their conclusions in relation to each of the questions? Why did they come to those conclusions?

Using the answer sheet, provide them with further information on the real life scenario on which the character role is based and the conclusions that the court came to in deciding whether the character was entitled to human rights protection and whether their human rights had been breached. You may wish to ask the class if they agree with the court's decision, its reasoning and the practical issues arising from the case.



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### FURTHER DISCUSSION POINTS

- What factors should the court consider when deciding whether an organisation is exercising functions of a public nature? [In deciding this, a court will take into account any public funding, any exercise of statutory powers by the organisation, whether the organisation is taking the place of central or local government and whether it is providing a public service.]
- Should public authorities be able to contract out of their human rights responsibilities by contracting out services they must provide to the private sector?
- How can public authorities ensure that private companies exercising functions of a public nature respect human rights?
- Should private companies also be required by law to respect the rights provided in the human rights act?
- How severe should treatment be to constitute a violation of Article 3? What should be the threshold test? Should the personal characteristics of the victim be taken into account?
- Is there a difference between degrading or inhuman treatment and torture? How should courts decide which category certain treatment falls into?



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### THE LEGISLATION

If there are available resources, it may be useful to write the following on a board at the front of the class to enable students to refer to the relevant provisions during the class.

*"It is unlawful for a public authority to act in a way which is incompatible with a Convention right. The term 'public authority' includes any person certain of 'whose functions are functions of a public nature'."*

### Relevant Sections of The Human Rights Act

**Section 6:** It is unlawful for a *public authority* to act in a way which is incompatible with a Convention right. In this context the term 'public authority' includes any person certain of *'whose functions are functions of a public nature'*.

### Relevant Articles of The European Convention On Human Rights

**Article 3:** *"No one shall be subjected to torture or to inhuman or degrading treatment or punishment"*.

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## ANSWER SHEET

The jurisdiction issue is whether the care home can be considered to be exercising functions of a public nature and therefore must act in a way which is compatible with human rights. The substantive rights issue is whether the actions of the care worker are severe enough to constitute inhuman or degrading treatment (Article 3, ECHR).

This case study is based on the House of Lords decision in *YL v Birmingham City Council and Ors*<sup>1</sup>. The court had to consider whether a private care home, which was being paid by Birmingham City Council to provide services to an elderly person, should be considered to be exercising functions of a public nature and therefore required to act in a way which was compatible with the Human Rights Act.

### The court held that:

- JURISDICTION:** The care home was not exercising functions of a public nature and therefore its residents were not entitled to the legal protection of the Human Rights Act. The court reasoned that the function of local government was to arrange for the care to be provided, rather than the provision of the care itself.

**Please note:** As a result of this case, the UK Parliament later passed the Health and Social Care Act 2008 which states that, under these types of arrangements, the court should consider private care homes to be exercising functions of a public nature. As a result, residents whose places are funded by the council will now be entitled to the protection of the Human Rights Act. This shows how politics can interact with the law. You might want to ask the students whether they think it was right to pass the legislation or not.

- SUBSTANTIVE HUMAN RIGHT:** Whether the care worker has subjected the elderly woman to inhuman or degrading treatment depends on whether the actions of the care worker are severe enough to violate Article 3. The court will assess this on a case by case basis. In *Ireland v United Kingdom*<sup>2</sup>, the European Court of Human Rights categorised Article 3 terms in the following way:

|  |   |
|--|---|
| <b>Torture</b>                           | Deliberate inhuman treatment causing very serious and cruel suffering.  |
| <b>Inhuman</b>                           | The infliction of intense physical and mental suffering.  |
| <b>Degrading treatment or punishment</b> | Designed to arouse in the victim feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance. |

In deciding whether the treatment falls into any of these categories, the court will take into account the degree and intensity of suffering of the victim. It will also consider individual features of the victim which may aggravate the treatment; for example, that the victim was elderly and frail. The threat of inhuman or degrading treatment (in this case, the threat to slap) may be enough to breach Article 3 as long as the threat is sufficiently real and immediate.

<sup>1</sup> *YL v Birmingham City Council and Ors* [2007] UKHL 27

<sup>2</sup> *Ireland v United Kingdom* (1978) A 25