**BHA BRIEFING 2008: Health & Social Care Bill**

The Human Rights Act 1998 (HRA) makes it unlawful for ‘public authorities’ work in ways incompatible with that Act.

There is no express definition of ‘public authority’ but the term includes central and local government, police, courts and tribunals, and any person exercising a ‘public function’.

Who or what is considered a ‘public authority’ has been left to the courts, and following a landmark judgment (YL v Birmingham City Council), the current definition of ‘public authority’ is limited to ‘pure’ public authorities, e.g. central government departments, local authorities, NHS Trusts.

The interpretation of ‘public function’ adopted by the courts is understood by the Joint Committee on Human Rights (JCHR) to be **highly problematic**.

In practice, the narrow interpretation means that organisations working under contract for a local authority, for example, to provide a service on behalf of the local authority, are not considered by law to be exercising a ‘public function’, and therefore are not considered to be a ‘public authority’, and so do not have to work in ways compatible with the HRA.

With government **contracting out more and more public services**, such as care homes, health services and probation services, to private and third sector organisations, including to religious organisations, this means that **more and more people are left without recourse to the HRA**.

There is evidence that it is religious organisations which may be particularly resistant to having public authority status extended to them, since they wish to maintain their religious ethos and hence feel compelled to discriminate in the provision of services against some service users, such as non-religious people and gay people.

For example, this means that religious organisations providing services on behalf of the state may wish to breach service users’ human rights to freedom of belief, through enforcing participation in religious activities or making it compulsory in order to receive a service, or human rights to a private life, by treating the gay partners unequally to married couples.

We think this situation is unacceptable and needs to be rectified through changes to legislation.

**Health and Social Care Bill**

On 27th March, Ivan Lewis, Care Services Minister, this morning committed publicly to **amending the Health and Social Care Bill** to reverse the consequences of YL, and it is likely that the amendment to the Bill will be tabled at Committee (late April) or Report stage in the Lords.

The amendment will bring private and voluntary sector health and social care providers **within the scope of the Human Rights Act**. In practice, this means that private and voluntary organisations contracted to provide health and social care services will be considered to be performing ‘public functions’ and so service users, such as those in residential care homes, will be protected by the HRA. This amendment is desirable and we urge you to support it, even though it is limited to those providing health and social care services and does not cover other public services such as employment and prison services.

The BHA is continuing to campaign for all public service providers to be understood to be exercising a public function, and therefore be bound by the Human Rights Act 1998 as public authorities when they deliver public services.


For further information, contact Naomi Phillips at [naomi@humanism.org.uk](mailto:naomi@humanism.org.uk) or on 020 7079 3585.