

Joint written evidence submitted by the British Institute of Human Rights and the National Care Forum for the House of Commons Public Bill Committee on the Mental Health Bill (MHB22)

We support amending the Mental Health Bill to ensure people receiving care have the same human rights protections irrespective of whether that care is outsourced to independent providers.

We welcome **Amendment Gov NC10's** moves to do this, addressing a loophole regarding care arranged under S117 of the Mental Health Act. However, we also note that this amendment takes a slightly narrower approach than the (now-withdrawn) [Amendment 54, put forward by Baroness Keeley in the House of Lords](#).

- Amendment 54 addressed both the immediate issue of aftercare under S117 of the Mental Health Act and the broader issue of outsourced mental healthcare for all people detained in hospitals or **subject to deprivations of liberty as part of their mental health care and treatment**.
- Amendment Gov NC10 addresses specifically **registered providers** delivering aftercare under S117 of the Mental Health Act; Local Authority-arranged community care and support services under S25 of the Mental Health Care and Treatment (Scotland) Act; and **in-patient** mental health care **arranged or paid for by an NHS body**.

The loophole exposed by [Sammut v Next Steps \(discussed below as Paul's story\)](#) demonstrates the difficulty with attempting to differentiate people's human rights protections based on the law their care is arranged under or how it is funded rather than looking at the nature and substance of that care. If the Mental Health Bill takes a narrow approach, it risks similar loopholes being exposed in the future.

Applying different human rights protections to people in substantially the same situation also makes it difficult for care providers to understand their duties and people accessing services to understand their rights.

Closing the gap in human rights protection for people receiving aftercare under the Mental Health Act is an important step and we urge the Bill Committee to actively support **Amendment Gov NC10**. Additionally, we encourage the Bill Committee to take this opportunity to consider, more broadly, the approach to human rights in mental health care ensuring it is logical, accessible and workable.

Key points

- The Human Rights Act provides important protections for people in vulnerable situations, such as when in receipt of care.
- Parliament clearly intended, in passing both the Human Rights Act and the Care Act, to ensure equal human rights protections for people accessing care services, whether outsourced or delivered directly by the State.
- This is even more relevant now than ever; according to a 2024 study by the Department of Social Policy and Intervention at Oxford University, ["in adult social care, 96% of residential services are now outsourced"](#).
- Making sure the law is clear and consistent is also important to care providers; the Human Rights Act is not a burden but a tool for public body workers to help them support the rights and dignity of the people they work.
- However, the recent legal case of a man called Paul has exposed a loophole in the law that leaves people whose care has been arranged under the Mental Health Act without direct human rights protections.
- Aftercare arranged under S117 of the Mental Health Act is not a purely private arrangement; it is care arranged and paid for by the NHS and local authorities.
- Care, including mental health care, is much wider than just care home or hospital services. For many people, the most effective and rights-respecting care will be provided in the community but equal human rights protections must be in place.
- **Care providers do not alter their care based on the law or funding model used to arrange someone's care. To do so would be both unethical and nonsensical – not least because many people transition between private and State funding during their time accessing services. It therefore would not be an additional burden on care providers to embed equal protections in the law and many care providers support this approach.**

Support from care providers and the health and care sector

Exclusive Secure Care Services:

"As a company we believe that **as a third party provider to the NHS and local authority that human rights protections should include companies like ours.** Our reasons for this are that the authorities have requested us to provide the same service they would have done if not outsourced to a private provider. Even those that are independent care providers supporting individuals in a caring environment should also support individuals' human rights as a standard duty of care. We believe that **human rights protections should be in place to protect everyone who is receiving any care or support.** It should be seen as the normal practice and not an additional burden. The transparency in all of this should surely bring standards into to line with human rights and companies should not see this as a burden but should have staff champions to ensure that each individual is treated ethically and in a dignified manner."

Daisy, Approved Mental Health Professional:

"If private providers weren't there, we wouldn't have a system. If they're taking on contracts that support people where statutory duties are in place and they're fulfilling some of those statutory duties, they absolutely should be public authorities. Particularly in mental health where we've got really key [Article 2 \[right to life\]](#) and [Article 3 \[right to be free from inhuman or degrading treatment\]](#) duties, **for them not to be [public authorities] is a really bad plan.**"

Dr Donald Macaskill, Chief Executive of Scottish Care

"Those working in social care and support in Scotland recognise that human rights are at the heart of all quality care provision. **This is not solely about technical knowledge of the law but about ensuring that the relationships which are at the heart of all care and support are established and maintained in ways which respect, uphold and fulfil the human rights and dignity of individuals** in their own homes, their local communities and where they choose to live. Scottish Care supports all efforts to ensure that the obligations and responsibilities of duty holders are clear and accessible".

Support from people accessing services and civil society

Charlie McMillan, Director of Human Rights Consortium Scotland

"The provisions of the Human Rights Act are essential to ensure that people in receipt of care and support across the health and social care system are safeguarded to the highest possible standard, whether in Scotland or the rest of the United Kingdom. Everyone must have their human rights respected, protected and fulfilled at all times. **It therefore seems extraordinary that private health and care providers are not routinely considered 'public bodies' with regard to the Human Rights Act in the provision of publicly commissioned care and support.** The Human Rights Consortium Scotland is fully supportive of the work being done by BIHR and its partners to ensure this loophole is closed for once and for all and would urge the UK Government to take immediate action on this reserved matter."

Care Rights UK

"We know from our work supporting older people needing care how vital human rights protections are across care and health services. Every day our national advice line supports people to use their rights to push for decent care. The protection gap for people arranging or funding their own care creates confusion and is a barrier for people to access their rights. It leaves people in the most vulnerable of situations at greater risk. **It is deeply unfair that someone drawing on care services can have weaker human rights protections than someone in the next room, simply due to differences in how their care was arranged or funded.** This creates unnecessary stress for people already experiencing poor care such as abuse or neglect. Without legislative change to close this gap, there will continue to be a huge injustice for people whose care is delivered privately. Everyone deserves their rights to be protected in the same way when receiving care and support.

Timeline

1998: The Human Rights Act

[The Human Rights Act confirms that all bodies carrying out a public function have a duty to uphold human rights](#). Parliament said the Act “had to have a definition of a public authority that ... took account of the fact that ... an increasingly large number of private bodies, such as companies or charities, have come to exercise public functions ... previously exercised by public authorities.”

2006: YL’s Story

[84-year-old YL was placed in an independent care home by Birmingham City Council](#). When YL was told she had to leave the home within 28 days, she brought a court case arguing this interfered with her [human right to private life and home](#). However, the Court said that the care home was not carrying out a public function and so did not have a legal duty to protect YL’s human rights.

2014: The Care Act

Parliament introduced the [Care Act](#), which intended to close this loophole in human rights protections. This Act says a registered care provider, when providing personal care at home or residential accommodation with nursing or personal care, is carrying out a public function for the purposes of the Human Rights Act if the care is arranged or paid for by a local authority, in part or in full, under [a specific set of powers](#).

2024: Paul’s story

[Paul was detained in hospital under the Mental Health Act](#). The hospital and local authority then arranged and paid for aftercare for him in an independent care home under [S117 of the Mental Health Act](#). In the care home, Paul was [deprived of his liberty](#). He later died in the care home from pneumonia and intestinal issues related to a medication side effect. Paul’s family brought a human rights case. The Court said that S117 of the Mental Health Act is not one of the specific powers covered by the Care Act and decided the care home was not carrying out a public function so didn’t have a duty to protect Paul’s human rights.

2025: The Mental Health Bill

Baroness Keeley put forward [an amendment to the Mental Health Bill](#) to include a clause that ensures human rights protections apply when people receive outsourced mental health treatment or aftercare or are deprived of their liberty in connection with mental health care. This was withdrawn to allow for the UK Government to address the issue at Commons stage. On 4th July 2025, the Government introduced [Amendment Gov NC10](#).

Annex

About BIHR

The [British Institute of Human Rights \(BIHR\)](#) is a UK-wide charity working with individuals, community groups, public bodies and policymakers to enable positive change through the practical use of human rights law. Over the last 10 years we have trained over 10,000 staff including frontline health and care staff, senior leaders commissioners and regulators on human rights law.

About NCF

The [National Care Forum \(NCF\)](#) brings together more than 170 of the UK's leading not-for-profit care and support organisations. Collectively, these organisations deliver more than £4.4 billion of social care and support to over 268,495 people. They employ more than 146,652 people.

Further information

- [The 16 rights in the Human Rights Act](#)
- [The Mental Health Bill: a human rights explainer](#)
- [The Human Rights Act & Outsourcing Public Services](#)
- [Hybrid public bodies: What is a “public authority” under the Human Rights Act?](#)
- [Organisations’ duties under the Human Rights Act: Health, Care & Social Work](#)
- [Legislative Scrutiny: Mental Health Bill](#)



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