



**RESPONSE TO THE COMMISSION ON
A BILL OF RIGHTS DISCUSSION
PAPER:
'DO WE NEED A UK BILL OF RIGHTS?'**

Introduction

The Commission on a Bill of Rights is required by its terms of reference to:

- Investigate the creation of a UK Bill of Rights that incorporates and builds on all our obligations under the European Convention on Human Rights, ensures that these rights continue to be enshrined in UK law, and protects and extends our liberties; and
- Examine the operation and implementation of these obligations, and consider ways to promote a better understanding of the true scope of these obligations and liberties.

The Commission seeks public views on the following questions of particular interest to the HRLA:

- Do you think we need a UK Bill of Rights?
- If so, what do you think a UK Bill of Rights should contain?

Summary of response

The Human Rights Lawyers Association (HRLA) sets out in full below its responses to these questions.

In summary, the HRLA wishes to offer the following answers to the Commission's questions:

- For over ten years the UK has reaped the benefits of its very own, existing UK Bill of Rights, the Human Rights Act 1998 (the HRA). It is vital that the UK retains the HRA in order to maintain the effective fusion of common law and fundamental rights that has been entrenched in our legal system since its enactment. The HRA has provided a vital missing link within the UK legal system, protecting those left vulnerable by the common law, building on and expanding the protections of the common law, developing better governance, and providing people with a simple set of standards against which all state action can be judged by an independent judiciary. The HRA helps the UK guarantee the rule of law.
- The HRLA profoundly believes that we do not need a new UK Bill of Rights because we have the HRA. Accordingly, any UK Bill of Rights proposed by the Commission need contain no more but must certainly contain no less than the HRA. The HRA is a strong, subtle and highly effective document. In particular, it successfully establishes the judiciary's role as a protector of fundamental rights without undermining the sovereignty of Parliament. There is no need for its overhaul, merely greater political will to further explain its many virtues and practical benefits. Indeed, such an overhaul in favour of an alternative, new Bill of Rights risks undermining the effectiveness of the HRA and its entrenchment for over a decade in UK law and culture.

Question 1: 'Do you think we need a UK Bill of Rights?'

The UK needs the Bill of Rights it currently benefits from day-in, day-out: the HRA.

The HRLA is strongly of the view that the HRA has provided, and should continue to provide the missing link in the common law/rule of law constitutional settlement of the UK. In particular, the HRA has:

- Re-energised and constitutionalised traditional liberties, re-stated fundamental truths, and developed the law for the benefit of all in ways that the common law was incapable of doing;
- Improved the administration of justice and revitalised the work of the judiciary;
- Ensured the protection of the vulnerable and marginalised and the ordinary man on the street;
- Provided UK citizens with a simple and accessible language of justice;
- Created a UK human rights culture within government, public authorities and the wider population;
- Increased legitimacy and accountability in Westminster and Whitehall;
- Improved governance within UK public authorities.

These submissions are addressed in greater depth below.

(1) The HRA: a ‘constitutional shift’ from common law to an effective rule of law democracy

The HRA has now been in force for over ten years. From the right to life and to free speech, to the right to be free from discrimination, thanks to the HRA we are no longer restricted to what remains of our liberties once the law has finished imposing prohibitions.

The weakness of the pre-HRA common law system was that rights were too ill-defined and elusive to be a practical and meaningful aspect of the rule of law. Cases such as *Smith v UK* (homosexuals in the military) and *Gaskin v UK* (access to social service records) demonstrated the fallibility and limitations of the UK’s rule of law democracy when based solely on the protections offered by the common law. To be effective, the rule of law needs an enforceable rights framework to work within.

Under the HRA, everyone within this country has a set of positive fundamental and essential rights, and the means of obtaining effective remedies where those basic civil rights and freedoms are violated. The HRA has therefore provided an enforceable rights framework and in doing so it has profoundly altered our constitutional framework for the better.

Together with the devolution statutes, it guarantees our human rights against excessive interference by public authorities and private bodies exercising public functions. It brings us into line with the rest of the democratic Commonwealth and Europe. And it provides the missing link in the common law/rule of law constitutional settlement of the UK, offering a sensitive and subtle scheme to guarantee that all the elements of the rule of law can work together in harmony.

The case studies set out below demonstrate the vital functioning of the HRA and its integral role in the UK’s rule of law democracy:

(i) Giving legal recognition to privacy and family life

The **Article 8** guarantee of respect for private life provides a wide range of protections beyond traditional notions of privacy, including physical and moral integrity, personal identity and sexuality and personal autonomy:

- **Article 8’s** protection of physical and moral integrity recognises the right to be treated with dignity, evidenced by the compensation awarded under the HRA to a disabled woman given hopelessly inadequate housing.

- The right not to suffer physical interference is also protected by **Article 8** – the European Court has held this right was violated by the unnecessary strip-searching of visitors to prison.
- Personal autonomy – or the right to have control over one’s own life – has also been recognised. For example, the courts held that a person detained on mental health grounds should be given a say in who can make crucial decisions on her behalf.
- **Article 8** has brought about a fundamental change in the way mercy killing cases are handled by the CPS: although assisted suicide remains a crime, the requirements of the HRA have meant that clearer guidance has had to be produced on whether such cases would be prosecuted.

Article 8 guarantees respect for personal information – which includes access to your own information and its protection from prying eyes.

- Following a legal challenge based on **Article 8**, the police are no longer allowed to retain the DNA and fingerprints of innocent people.
- An MP used **Article 8** to challenge successfully a blanket and arbitrary refusal to disclose whether personal information on him was held by the secret service.
- The introduction of the Regulation of Investigatory Powers Act to govern the activities of the secret services was a direct result of the need for any interference with privacy to have a clear basis in law – a manifestation of the principle of legality that underpins the whole Convention.

Whether we are straight, gay, bisexual or choose to abstain, the European Court of Human Rights has recognised that sexuality is “a most intimate aspect” of our private lives that deserves respect and protection. Human rights law has been instrumental in establishing lesbian, gay and transgender rights in the UK.

The right to privacy also has relevance in the media context:

- Following a number of legal challenges involving celebrities, the right of each of us, even those in the public eye, to have our privacy respected has now been read in to the common law.

Respect for family life is also a crucial part of **Article 8**:

- A primary care trust’s decision to take a severely disabled child from her family and into residential care was ordered to be reconsidered on the basis that the trust had failed to properly consider her right to family life.

- When a foreign national is being deported he may be able to argue that his deportation will interfere with his or her family life. Human rights law does not guarantee a foreigner the right to enter or remain in the UK. In rare and exceptional circumstances in order to keep a British family together, the right to family life might mean that a family member cannot be deported.

Article 12 confirms that marriage is not a privilege but a right, recognised as extending to transgendered people and those seeking asylum in the UK thanks to challenges brought under the HRA.

(ii) Providing smoother and fairer processes

Through **Article 2**, the right to life, the HRA has produced an enhanced inquest procedure – giving families a greater opportunity to learn the truth about their loved one's death and to play an active role in the investigation.

Thanks to **Article 2**, deaths occurring before the HRA came into force of require this same enhanced inquest procedure, thereby ensuring state accountability for all deaths that the state has or may have caused.

Article 2 also requires an enhanced investigation into the deaths of both foreign citizens killed by British soldiers in British-controlled territory and British soldiers who die as a result of inadequate equipment or medical care.

Despite the existence of a right to fairness in common law, **Article 6** has made a significant impact on the conduct of civil and criminal courts and tribunals.

Where decisions makers have appeared to lack impartiality, changes have been made:

- The Parole Board's close ties with and funding from the Ministry of Justice were found to be incompatible with its role as an impartial decision maker.
- The Home Secretary's role in setting various prison sentences has successfully been challenged under **Article 6** – leaving sentencing decisions to the judiciary.

Where individual liberty and national security are both at stake, **Article 6** strikes a balance between the needs of public safety and the importance of ensuring that an accused knows the substance of the case against him/her.

The right of vulnerable defendants to participate effectively in their trials is recognised explicitly:

For example, section 33A of the Youth Justice and Criminal Evidence Act 1999 now permits certain accused persons to use a live link where their ability to participate effectively in the proceedings is compromised by their level of intellectual ability or social functioning.

- The influence of **Article 6** has led to more detailed reasons being given for decisions from magistrates:

“It's the Human Rights Act which has brought greater transparency and accountability into the process. There wasn't a case about this. We looked ourselves at the long-standing policy in the light of the Act and came to a new conclusion. It was a question not only of giving people a fair trial but also showing them what had happened to them and why.”

Lord Falconer, Lord Chancellor (speaking in 2003)

The right to liberty, the right to a fair trial and the right to privacy and family life have been used to ensure that the government's counter-terrorism measures are applied in a human rights compliant way, thus making them more effective.

(iii) Defending – and extending – political freedoms

Article 10 of the Convention protects the right to free speech. The European Court of Human Rights has placed particular value on political free speech and freedom of the press. The importance of our free press to British democracy has been emphasised by section 12 of the HRA.

When the right to privacy is invoked, the right to free expression, and to receive and disseminate information, is generally the flip side of the coin. The right to respect for privacy has often been outweighed in this careful balancing exercise, for example, concerning the publication of the identity of a mother who poisoned her son, the importance of naming litigants so that justice remains a public process, and press access to the family courts to promote and ensure transparency and public scrutiny. However, where there is no compelling need for publicity, the right to privacy will be protected.

Article 10 has also led to changes in laws that threaten freedom of speech – recognition that legal aid may be necessary for defendants in defamation claims and hastening the abolition of the common law offence of blasphemy.

A right that has traditionally received far less respect in Britain is the right to engage in active political protest. The reluctance of the common law to recognise any right to engage in political protest led Lord Justice Sedley to

describe the incorporation of **Articles 10 and 11** (peaceful assembly) as a “constitutional shift”.

- The use of anti-terrorism powers to stop and search people protesting peacefully against the arms trade was held by the European Court of Human Rights to be a disproportionate interference with protestors’ right to a private life.
- The role of peaceful protest in a democracy has now been given explicit legal recognition. It has been relied upon by many activists, from those petitioning on the roadside to groups prevented by the police from reaching an anti-war demonstration.
- Perhaps more importantly, the role of the police at demonstrations has become more positive and cooperative - as their duty to prevent crime and disorder has been supplemented by a positive duty to facilitate peaceful protest.

(iv) Extending protection beyond traditional civil and political rights

The right to education in the first Protocol to the Convention is a crucial reminder that the HRA extends beyond traditional civil and political rights and embraces important social and economic rights too.

Likewise the right to property, which has a particular relevancy at this time of economic uncertainty:

- The HRA helped the courts to conclude that Customs’ seizing a car and its contents would be a disproportionate response where someone has simply brought some cigarettes from France to give to a family member.
- Landowners can no longer lose all rights over their property through nothing more than another’s unlawful occupation.
- State benefits are now recognised as a form of property, so discrimination in their provision is not permitted.

Perhaps the most significant issue to face the world over the coming years will be the deterioration of the environment, and the need to have a human rights compliant response to the growing crisis.

The European Court of Human rights has established that states are under a responsibility to protect and provide information to people who are at risk of serious environmental hazards – showing that the Convention provides tools for dealing with an environmental problem as a matter of human rights protection.

(2) Re-energising, and constitutionalising, traditional liberties

- **Habeas corpus** – recognised since Magna Carta in 1215, this right is given new expression and protection via the right to liberty provided for in **Article 5** of the ECHR.
- **Freedom of the press** – this bulwark of British democracy is not only recognised and provided greater protection in the guarantee to free speech under **Article 10**, but is also given particular emphasis and protection in section 12 of the HRA.
- **Universal suffrage** – the right to vote in free elections is protected by the first Protocol to the Convention, which means that individuals, including prisoners, cannot be arbitrarily denied the right to vote.
- **Fair trial** – one of the basic principles of the rule of law - protecting the right to a fair criminal and civil trial - is guaranteed by **Article 6**, and long-standing principles of British trials, such as the presumption of innocence and the right to cross-examine, are given the force of law.
- **Prohibition of slavery** – the slave trade was abolished throughout the empire in 1807, and now slavery and forced labour are expressly prohibited in **Article 4**.
- **“An Englishman’s home is his castle”** is now formally recognised in **Article 8**’s right to respect for privacy and the home, which applies to anyone and everyone within the UK’s jurisdiction.

But the HRA is not limited to these traditional liberties, or even to the standards of 1951 when the Convention was drafted. The rights it contains retain sufficient flexibility to take into account society’s evolving values and ideals.

Nevertheless, section 11 of the HRA explicitly safeguards all the rights and freedoms established in our law prior to the Act coming into force.

(3) Restating fundamental truths

- **Article 3** provides that no one shall be subjected to torture or inhuman or degrading treatment.
- Its incorporation through the HRA has given the courts an opportunity to confirm and entrench the proud and long-standing condemnation of torture in UK law.
- It has also provided the courts with a power to protect those within the UK from torturous regimes, by preventing people being sent to a country where they face a real risk of torture or inhuman treatment.
- Various HRA rights, including **Article 3**, have informed the work of parliamentary bodies in their reports on government policy, such as the Joint Committee on Human Rights reports on failings in anti-terrorism policy.
- The incorporation of **Article 2**, the right to life, led to guidelines on the use of lethal force by the police being made public. The Association of Chief Police Officers' guidance on lethal force now includes specific reference to the **Article 2(2)** need for such force to be used only when "absolutely necessary".
- The HRA's incorporation of a prohibition on slavery might appear to have added nothing to our law – but it has led to the introduction of a criminal offence of 'trafficking people for exploitation' in section 4 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004.
- The commitment within the HRA to non-discrimination in the enjoyment of rights has enhanced equality protection.
- Habeas corpus has been a guarantor of freedom for centuries, but without the HRA's recognition of the right not to be subjected to arbitrary and discriminatory detention, terrorist suspects would still be held in high security prisons without any prospect of facing trial.

(4) An essential tool for improving the administration of justice

The rights guaranteed by the HRA are the birthright of us all – they belong as much to the most downtrodden and marginalised members of society as to the most fortunate and privileged.

The HRA provides practical and effective remedies in a wide range of situations:

- It has brought the guarantees of the Convention into the legal mainstream:
 - Giving an opportunity for a remedy in the domestic courts without the expense and delay of taking a case to the European Court of Human Rights; and
 - Giving greater awareness of the European Court of Human Rights to those whose needs are not met by the UK.
- Concepts such as proportionality and necessity, introduced by the ECHR, provide a straightforward, flexible and constructive approach to complex issues by enabling courts to balance the competing rights of different groups in society.
- The HRA provides a meaningful and accessible language for articulating the legal standards expected of those who act in the public good, and an independent yardstick by which to assess the fairness of government policy.
- The right to an effective remedy, fundamental in international human rights law protection, has been woven into the fabric of domestic law.
- The HRA has introduced a new carefully balanced constitutional arrangement in which the UK has a set of rights which all public decision-makers must respect, whilst Parliament maintains its status as the UK's supreme lawmaker.
- Convention rights provide a prism through which the rest of the law can be seen, and against which it can be tested. Since the very inception of the HRA, the development of the common law has been influenced by core ECHR values and thinking.
- Human rights are a common language around the world – increasing the exchange of knowledge and ideas across international borders.

- The HRA has enabled lawyers, to advise their clients in simpler and clearer language, making the law and the process of litigation more accessible, more understandable and more relevant.
- The HRA provides a set of standards for practitioners, but also provides lawyers with the opportunity to be 'upholders of rights' rather than the privileged gatekeepers of confusing laws.

(5) Revitalising the work of the judiciary

The introduction of new basic rights into domestic law has energised the work of the judiciary by:

- Providing an ethical and structured framework, approved by Parliament, that assists the courts to make difficult decisions – where necessary striking a fair and proportionate balance between individual rights and the wider public interest.
- Using and contributing to the jurisprudence of the European Court of Human Rights.
- Giving judges, through declarations of incompatibility, a mechanism to encourage the executive and legislative branches of government to give better effect to Convention rights and obligations.
- Fundamentally changing the way judgments are made in the highest courts of the UK: rights under the HRA have been argued in almost half of the cases heard by the House of Lords or Supreme Court in the last ten years.
- Relieving the overburdened Strasbourg Court of cases brought simply because of a lack of effective British legal remedies. Indeed, ‘bringing rights home’ has significantly reduced the number of violations found against the UK.

The Convention principles have reshaped common law rules and equitable principles to give greater protection both to freedom of expression and to respect for personal privacy:

The right to freedom of expression under **Article 10** has softened the rigours of English libel law, and the right to respect for privacy, guaranteed under **Article 8**, has been ‘absorbed’ into the common law tort of breach of confidence.

The courts’ own duties as public authorities under the HRA have also allowed for a limited extension of human rights principles into non-public arenas:

The Court of Appeal has confirmed that the legislation governing unfair dismissal needs to be read compatibly with human rights – even when considering claims against private employers.

Through greater consideration and promotion of human rights, our courts have contributed to international jurisprudence:

Decisions of the House of Lords and Court of Appeal under the HRA have been cited in senior courts around the world including Canada, India, New Zealand, South Africa and Australia.

(6) Making a real difference for the vulnerable and marginalised

The most vulnerable members of society are those with the greatest need for the protection offered by the Human Rights Act. Thanks to the standards, and positive obligations, that the Act imposes, they have also seen some of the greatest results over the last 10 years.

The elderly and residents of care homes

- The HRA assisted residents to challenge a decision to close their care home that had been made without proper consultation.
- An elderly disabled man who had been moved to a care home away from his wife of over 65 years relied on his **Article 8** right to a family life to secure a placement together with his wife.
- Asserting the fundamental right to be treated with dignity has helped put a stop to much casually negligent, even callous treatment of the elderly, for example, being left to eat their meals whilst on the toilet, or being forced to bathe without privacy.

The destitute

- A policy that forced asylum seekers into homelessness and destitution was declared unlawful following a challenge under the HRA.

People with mental health problems

- The HRA ensured that a person detained on mental health grounds is given a say in who can make crucial decisions on his/her behalf and required that they cannot be detained without consultation with their families.
- A law that permitted the continued detention of patients when it could no longer be shown that they were suffering from mental illness was successfully challenged under the HRA.

Disabled people

- A severely disabled woman, who had been left for 20 months in unsuitable council housing in which she was unable properly to care for her own children or access the bathroom, relied upon her rights to a family life under **Article 8** to challenge her accommodation.

- The HRA provided a framework for the court to decide how two sisters with severe profound physical and learning disabilities could be carried around their house by carers in a way that was both safe and dignified.

Victims of crime

- A schizophrenic man who had been assaulted was found to have his **Article 3** rights not to suffer degrading treatment violated when the CPS dropped the prosecution of his assailant on the basis that the victim would not appear to be a credible witness.
- A woman who was the victim of a sexual assault received a personal apology from the Director of Public Prosecutions and damages for her treatment by the Crown Prosecution Service which decided to drop the prosecution of her attacker in a way that breached her rights under **Article 3**.
- The definition of 'violence' in the context of domestic violence has been widened to include non-physical violence.

Children and young people

The rights guaranteed by the HRA belong to us all – no matter how young

- **Articles 3 and 8** were relied upon to end a policy permitting the unnecessary use of force against vulnerable children in Secure Training Centres.
- **Article 2 of Protocol 1** (the right to education) ensures that children are not denied the right of access to effective schooling.
- Greater protection and compassion for unaccompanied minors under asylum and immigration policy has been promoted by the European Court of Human Rights.
- **Article 6** has been relied on to ensure that children and their interests are separately represented in hearings whose outcomes directly affect their lives.
- **Article 8** requires that the best interests of the child should be the prevailing factor when the state is deciding whether to deport a child's parents.
- Children who are identified as being at risk of abuse must be protected.
- Similarly, children and families who are subject to care proceedings must be given a fair hearing.
- Children can no longer be subject to corporal punishment.

- Because of the HRA, the UN Convention on the Rights of the Child has been more effectively read into domestic law.

Minority groups

- While sex, race and disability discrimination law have been a part of our legal system for several years, **Article 14** and the HRA have extended anti-discrimination beyond the traditionally recognised categories - most notably in relation to gay and lesbian people, for example in relation to inheriting a housing tenancy, the non-discriminatory provision of public services, and gay and lesbian adoption. A transgendered woman was also found, under the HRA, to have been discriminated against when her marriage could not be legally recognised. While these groups now have specific protection, the recognition of their human right to live free of discrimination remains significant.
- The rights of gypsies and travellers to have their unique ethnic and cultural traditions respected has been confirmed by the European Court of Human Rights and absorbed into UK case law through the HRA.
- Minority and majority religions are given equal protection under the HRA, which brought protection for freedom of belief into UK law.
- Legislation has now provided religion with greater protection as a forbidden ground for discrimination, but it is **Article 9** that has allowed religious dress and other forms of observance to be defended in and out of the courts.

(7) Protecting and advancing the rights of all

Human rights offer protection universally. To some degree, we all rely upon them each day. To focus on the extremes of human rights protection, although important, can underestimate their value to us all.

The ordinary man or woman on the street can, and has, relied on their human rights to get real results:

- Following a decision from the European Court of Human Rights, British police will no longer be permitted to retain fingerprints and DNA taken from innocent people.
- Where a person faces possession proceedings and eviction by a public authority, the HRA allows a court to consider the person's personal circumstances and the reason for seeking possession when deciding whether the eviction is justified.
- A man suffering from persistent noise nuisance resulting from a new road scheme successfully used the HRA to get a remedy from his local authority.
- Under the HRA the police now have a duty in law to take reasonable steps to prevent an immediate threat to the life of an identifiable person.
- Where a person has been killed in circumstances for which the state might have been responsible, bereaved families now have the right to a more wide-ranging investigation, in which they have a greater entitlement to involvement, than that which was available prior to the HRA.
- In addition, the HRA helps parents to secure state-funded legal representation at inquests into the death of their children, even where there is no state involvement in causing the death.
- Protest rights are now guaranteed.
- Improvements inspired by the HRA in the decision-making and problem-solving of public authorities can be felt by all who use their services.

(8) Providing a fresh and accessible language for justice

- The HRA gives legal protection to the human rights which are our birthright. No longer are our civil rights and liberties confined to a confusing hotchpotch of common law and statute.
- The language of rights is simple, clear and comprehensible.
- Most rights can be lawfully interfered with when there is very good reason, or reasons, to do so. These reasons must be objectively justified. The interference must be a proportionate and take into account the impact on that person's rights. This means that when someone's rights are lawfully interfered, they will be able to understand why.
- The HRA creates greater understanding of and access to fundamental rights and freedoms for members of the public – taking rights beyond the courtroom.
- Simple and comprehensible terms that lie at the heart of human rights values, such as 'respect' and 'dignity', can be understood by all.

(9) Creating a human rights culture

The influence of the HRA can be seen in the growing human rights culture in the UK:

- The establishment of the Equality and Human Rights Commission and the Scottish Human Rights Commission provides independent champions to promote and protect human rights across the UK.
- The Northern Ireland Human Rights Commission has been a key outcome of the Good Friday/Belfast Agreement, advising, amongst other things, on the form of the new Northern Irish Police Service and the community-based restorative justice schemes set up in the aftermath of the Troubles.
- The HRA has been followed and complemented by other legislation that recognises and upholds fundamental rights, such as the Equality Acts, the Freedom of Information Act and the Regulation of Investigatory Powers Act.
- Human rights have become central to the policy formulation and decision making of public authorities, as well as central and local government – and the positive obligations flowing from Convention rights have shaped their practice.
- Parliament's Joint Committee on Human Rights ensures that human rights are not neglected in the legislative arm of government.
- Through the new curriculum on citizenship, children are taught about the fundamental rights they possess and share, as well as their international and historical context.

(10) Bringing greater legitimacy and accountability to Westminster and Whitehall

Under the HRA respect for human rights has become an integral part of law making.

- A memorandum on human rights compatibility is prepared for the Cabinet Committee to consider before it approves a Bill.
- As a result of section 19 of the HRA, now every single Bill that passes through Parliament is first reviewed for compatibility with the human rights of those it will affect.

The Joint Committee on Human Rights provides another layer of protection for fundamental rights by:

- Scrutinising all Government Bills, focusing on those that raise significant human rights issues, and pressing Government on whether proposed legislation could do more to guarantee rights.
- Checking to make sure that the Government makes the changes required when courts find breaches of human rights.
- Undertaking inquiries on a myriad of serious issues including the rights of older people in healthcare, human trafficking and policing and protest.
- Human rights provide Parliamentarians with a framework for legislative debate.
- Democratic participation, and representative democracy, has been strengthened by human rights judgments.

(11) Changing the approach of public authorities

- Human rights training across the public sector has focused institutions and public servants on their human rights obligations so that changes to policy and practices are made without the need to resort to litigation.
- The positive obligations to promote and facilitate human rights imposed by the HRA have a particular importance.

There is recognition of the benefits that a human rights focused approach can bring for providers and service users, for example:

The Surrey and Borders Partnership NHS Trust reported to the JCHR that embedding human rights “will make them better practitioners and drive what they are there to do – deliver better wellbeing, more respect and dignity”

- Crucially, the legal duty on public authorities to act compatibly with the rights of the public, coupled with a victim’s ability to bring court proceedings, has ensured that respect for human rights is more than just an aspiration:

A legal challenge asserting human rights led Primary Care Trusts to change their policies on the provision of the breast cancer drug Herceptin

As a result, respect for human rights now informs the policy formulation and decision-making of many public authorities:

- In accordance with guidance from the Department for Education, uniform policies in schools across the country now note the need to respect students’ human rights – including their freedom of religion and belief.
- The Natural History Museum’s acknowledgement of aboriginal peoples’ right to respect for their cultural and religious beliefs helped to influence the return of aboriginal human remains to Tasmania after more than a century.
- A council had revised its policy for adult care services ‘working with asylum seekers’ to ensure that asylum seekers who have special needs are treated fairly and without discrimination by the council.
- Southwark Council has adopted a comprehensive programme of human rights training, human rights audits and good practice guides for decision-making.

- Identifying respect for human rights as one its main strategic objectives, Mersey Care NHS Trust recognised that patients and carers should have the right to be involved in the decisions that affect their lives.

(12) Strengthening rights without weakening Parliament

The HRA enhances the judiciary's role as a protector of fundamental rights without undermining the sovereignty of Parliament by:

- Requiring the Courts to read primary legislation compatibly with HRA rights, but not permitting them to strike it down.

Section 3 HRA enabled the courts to interpret the Coroners Act 1988 to allow for a wider form of verdict - strengthening a family's ability to find out the truth of how their loved one came to die.

- Introducing the declaration of incompatibility to indicate to Government the laws that need to be amended, where it is impossible to read legislation in accordance with HRA rights.

Section 23 of the Anti-terrorism, Crime and Security Act 2001, which provided for the indefinite detention of foreign terrorist suspects, was declared by the House of Lords to be incompatible with **Articles 5 and 14** of the Convention.

The legislation was later repealed and replaced.

Similarly, the courts have ruled against inflexible and indiscriminate statutory regimes on a number of occasions, including on the retention of DNA by the police, but have gone on to expressly recognise that the decision on how to rectify the defects is a matter for Parliament.

Question 2: 'If so, what do you think a UK Bill of Rights should contain?'

The HRLA believes that we do not need a UK Bill of Rights because we have the HRA. Any UK Bill of Rights proposed by the Commission needs to contain no more but absolutely no less than the HRA, which is the minimum rights protection necessary to guarantee the rule of law in the UK and to ensure that the UK complies fully with its obligations under the Convention. The HRA is a strong, subtle and highly effective document. There is no need for its overhaul, merely greater political will to further explain its many virtues and practical benefits.

HRLA, 20 November 2011