

What can human rights law do for occupational therapy?

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British Journal of Occupational Therapy

2023, Vol. 86(5) 333–334

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DOI: 10.1177/03080226221143878

journals.sagepub.com/home/bjot



Received: 9 November 2022; accepted: 16 November 2022

Introduction

Discussion connected to human rights set within the context of occupational therapy has steadily grown over recent years. Indeed, Whalley Hammell (2008) has considered the importance of occupation(s) to people influenced by an understanding of human rights. More widely, a rights-based approach increasingly frames health and social care policy that aims to directly inform and influence practice. For example, in Scotland, ‘Connecting People, Connecting Support’ (Alzheimer Scotland, 2017, 2020) was the first evidence-based allied health professional policy in the United Kingdom (UK) that looked to transform the contribution of these disciplines when working with people living with dementia, from a perspective of rights.

This reflects a growing understanding that people have a right to health; free from discrimination due to, for example race, age, ethnicity, gender and that to translate this right to practice, there must be meaningful participation (WHO, 2017). Such meaningful participation includes people’s lived experience as central to decision making when developing and, crucially, delivering policy priorities in health and social care. However, meaningful participation is more than this. It also infers a set of legal obligations on national stakeholders, which includes Government(s), to set the conditions in which equitable access to health and well-being can be achieved for all (WHO, 2017).

Context of human rights in the UK

For the last 25 years, the Human Rights Act 1998 (HRA) has prescribed the fundamental rights and freedoms to which everyone in our country is entitled. It incorporates the rights set out in the European Convention on Human Rights (ECHR) into UK domestic law. While the rights incorporated by the Act do not explicitly include the right to health, rights such as to private life under Article 8 and the anti-discrimination provision in Article 14 have been cited to support arguments related to healthcare, such as the right of a patient to determine what is in their own best interests (Burke v GMC, 2005) and a duty on hospitals to protect those patients vulnerable to suicide (Rabone v Pennine Care NHS, 2012).

Moreover, the incorporation of a corpus of human rights into domestic law has had a profound effect on policy and culture in the UK generally. The ability of anyone whose human rights have been violated to pursue their case in a domestic court has placed a greater focus on the obligations of public authorities to ensure that those rights are properly respected and protected. Judicial skepticism about the use of international human rights conventions in UK courts (see e.g. *Kaur v Lord Advocate*, 1981) was replaced by an increasing willingness to take human rights into account when interpreting and applying UK statute, even where those rights are not incorporated in the same manner as those in the ECHR (see e.g. *Mathieson v Secretary of State for Work and Pensions*, 2015).

However, recent UK Government policy has indicated a return to a considerably greater skepticism toward the protection of human rights. This has been illustrated by the proposed reform of the Human Rights Act contained in the Bill of Rights Bill placed before Parliament in June 2022. Briefly shelved while Liz Truss was Prime Minister, the Bill has recently resumed its passage through Parliament.

Measures in the Bill demonstrate a startling willingness to row back from what had previously been considered accepted practice across the whole of the UK.

Implications for occupational therapy

This requires the profession of occupational therapy to carefully consider and clarify its understanding of the legal framework protecting human rights in the UK. In part because if as a profession we are to deliver policy emerging from a human rights-based approach to practice, we act as advocates for and on behalf of those we work with. Awareness therefore of the current legal context of debate,

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including the potential implications for those we work with, is the starting point to argue for and protect, for example, the right to rehabilitation, the right of equal access to health and social care, the injustice associated with inequalities of health.

To grow awareness of the legal context of debate associated with rights, the profession can and should broaden its scope of practice to work in partnership with the legal profession. Legal colleagues can help to shape occupational therapy professional awareness of how human rights legislation can be of relevance to practice. Firstly, by informing how we respond and engage with policy consultation and proposed legislation affecting human rights law in the UK. Secondly, by raising therapist awareness through pre- and post-registration education, of how and when law can be effectively applied to address and respond to infringements of human rights.

By coming together, the professions of law and occupational therapy can offer a more effective means of evolving our professional contribution to define and articulate what a human rights-based approach to practice comprises. Specifically, the embedding of a human rights approach in practice that will protect the rights of people, communities and across populations to occupation(s) that can positively influence health and well-being.

Acknowledgements

We would like to thank Prof. Richard Whitecross, Head of Law, Edinburgh Napier University, for his advice and feedback connected to this manuscript.

Declaration of conflicting interests

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The author(s) received no financial support for the research, authorship, and/or publication of this article.

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