Written evidence from Southall Black Sisters (HRA0062)

Southall Black Sisters

1. Since 1979, Southall Black Sisters ('SBS') has operated a specialist advice, advocacy and campaigning centre for black and minority ethnic (BME) women fleeing gender-based violence and related matters such as poverty, homelessness, mental health and immigration. The bulk of our work is directed at assisting women and children to obtain effective protection and assert their fundamental human rights.

This Submission

2. We are deeply concerned about the government's review of the Human Rights Act (HRA) 1998. It purports to examine the framework and operation of the HRA, but the extremely technical and narrow terms of reference (focussing on the relationship between domestic courts and the European Convention on Human Rights - ECHR - and the boundaries between judicial and executive power) fails to give any consideration to the positive impact that the HRA has had for the most vulnerable in our society.

3. In our day-to-day work, the HRA has proved vital for two key reasons: a) it has helped to foster a culture of rights in BME communities in contexts where rising conservative and fundamentalist religious values are generating violence against women and children, limiting their freedoms and removing them from the shadow of the law; and b) it has helped to hold public bodies to account when they fail to protect women and other vulnerable sub groups or facilitate access to equality and justice. In this submission, we address the following specific questions:

    a. **Has the Human Rights Act led to individuals being more able to enforce their human rights in the UK? How easy or difficult is it for different people to enforce their Human Rights?**

    b. **How has the operation of the Human Rights Act made a difference in practice for public authorities? Has this change been for better or worse?**

4. We have used the HRA to bring legal cases, or support our users to bring cases against public bodies where they have breached the fundamental rights of women and children. We have also invoked the HRA when intervening in cases that are of wider public significance with the aim of improving everyday policies and practices. The cause of action created by s7 of the Human Rights Act 1998 means that we are able to focus the minds of public bodies and local authorities on the possibility of legal action, in order to persuade them to act in lawful and proportionate ways and to adopt good practice that is compatible with human rights law and principles. This means that more often than not we have not had to resort to the courts. The HRA has made an immense difference to the lives of our users. The following are some examples:

Day-to-day Advocacy

5. We frequently rely on the HRA in written and verbal representations to local authorities to compel them to adhere to their safeguarding duties under s17 of the Children Act 1989. We also constantly have to remind social services that a failure to provide accommodation and assistance to both a child in need and their mother, resulting in the mother and child becoming destitute or street homeless, would involve a breach of Article 3 ECHR. In the face of social services' attempts to use s20 to 'accommodate' children with the 'consent' of their parents, we have argued that it would entail an unjustified and disproportionate interference with Article 8 ECHR. In our experience, in far too many cases, local authorities often fail to apply the relevant law correctly or to have sufficient regard to the material facts when assessing needs. Many of our cases are usually settled in favour of our users just prior to the commencement of legal proceedings. Between July and September 2019, we had to challenge local authorities on 18 occasions for refusing to provide assistance to abused migrant women with children.

6. In December 2018, SBS and Liberty jointly submitted the first ever police super-complaint which raised serious concerns regarding the policies and practices of all police forces in England and Wales with respect to the treatment of victims of crime who have insecure immigration status. Our particular focus was on the sharing of victims' data with the Home Office, for the purpose of immigration enforcement. We argued that the practice undermined the confidence of victims and witnesses in the police and the wider criminal justice system and deterred them from reporting crimes such as domestic abuse. We submitted the need for significant and meaningful safeguards to prevent data sharing from being used in a way that leads to breaches in a victim's right to report the types of crimes to the police which engage Articles 2, 3 and 4 ECHR. Our super-complaint was upheld on the grounds that data-sharing between the police and Home Office causes 'significant harm to the public interest.' The super complaint can be found here:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/767396/Super-complaint_181218.pdf
The Inspectorate's report, ('Safe to Share?') is available here:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945314/safe-to-share-liberty-southall-black-sisters-super-complaint-policing-immigration-status.pdf

Legal Proceedings and Third-Party Interventions

7. On 22 November 2013, University UK (UUK), the governing body for universities, published guidance on external speakers who requested gender segregated spaces. The guidance was aimed at ensuring that the 'freedom of speech' of speakers with 'genuinely held religious beliefs, was not 'curtailed unlawfully'. In effect, the guidance endorsed sex discrimination. UUK refused to withdraw the guidance,

compelling SBS to issue a Pre-Action Protocol letter, setting out how it had failed to undertake a balancing exercise between Articles 9 and 10 ECHR and Article 14 ECHR. We submitted that the UUK guidance also breached the public sector equality duty under the Equality Act 2010 insofar as the guidance failed to give due regard to the need to eliminate the discrimination and harassment of women, or the need to advance equality of opportunity. Eventually, UUK withdrew the guidance and subsequently drafted new guidance in consultation with the Equality and Human Rights Council that made clear that gender segregation in university events that are not acts of religious worships is unlawful on the grounds of sex discrimination.

8. On 13 March 2014, the Law Society issued a Practice Note for solicitors on how to draft 'Sharia' compliant wills. The Note, purporting to provide guidance on Sharia principles, manifestly discriminated against minority women and children born outside of marriage. We sent a Pre-Action Protocol letter stating that the Note breached the Public Sector Equality Duty under section 149, Equality Act 2010 and violated Articles 8 and 14 ECHR. We also stated that there was a real and significant risk that solicitors following the Note would find themselves acting in violation of section 29 of the Equality Act 2010. The Law Society eventually publicly apologised for the ill-advised Practice Note and withdrew it. The outcome sent a clear warning to other public bodies contemplating instituting profoundly regressive 'Sharia compliant' measures in contravention of equality and human rights law.

9. In our day-to-day casework, we have also supported countless women to invoke their human rights in family law and immigration cases, where for example, there have been serious incidents of domestic abuse related abductions and abandonment of mothers and their children. Such cases often involve the interplay of family and immigration laws that engage Articles 6 and 8 ECHR.

10. The HRA is also fundamental to the working of the Exceptional Case Funding (ECF) regime in respect of legal aid. Without the HRA there would be no ECF and without the ECF, some of the most vulnerable and at-risk women and children would have no access to the formal justice system.

Third Party Interventions

11. SBS intervened in the case of ***R (Quila and another) v Secretary of State for Home Department [2011] UKSC 45*** at the Supreme Court, regarding the government's prohibition on non-EU spouses entering the UK if they or their sponsor were under the age of 21. In our intervention, which was accepted by the Supreme Court, we argued that the 21 year 'age policy' was an unjustified and disproportionate interference with Article 8 ECHR regarding genuine couples who wish to live together, whilst simply driving the problem of forced marriage 'underground'. The

Supreme Court agreed that the 'age policy' was a disproportionate interference with Article 8 ECHR rights. See: https://www.bailii.org/uk/cases/UKSC/2011/45.html

12. In 2018, SBS and others intervened in the case of ***DSD and another v Commissioner of Police of the Metropolis*** **[2015] EWCA Civ 6**. The appeal concerned the scope and content of the investigative obligation imposed on the police by Article 3 ECHR in circumstances where a victim of a crime that constitutes inhuman and degrading treatment is perpetrated by a non-State actor. The police argued that they had no actionable legal duty to investigate serious crimes of violence against women. We submitted that gendered forms of violence, such as domestic and sexual violence, will engage Article 2, 3, 8 and 14, imposing positive equality obligations on the State. The Supreme Court unanimously accepted that under the HRA there is an actionable duty on the police to investigate serious crimes of serious violence. See: https://www.bailii.org/uk/cases/UKSC/2018/11.html

13. In 2020, SBS intervened in the case of **Re K (Forced Marriage: Passport Order) [2020] EWCA Civ 190** at the Court of Appeal to assist the court in determining the correct approach to take when granting forced marriage protection orders (FMPOs). The final judgment recognised the contribution of SBS' intervention and the need to accommodate Article 3 and Article 8 rights as they are likely to be at the centre of most, if not all, FMPO cases. The Court handed down guidance on how family courts should approach the granting of FMPOs. See: https://www.bailii.org/ew/cases/EWCA/Civ/2020/190.html

14. SBS has also made third party interventions in inquest hearings involving South Asian women who commit suicide or die in suspicious circumstances against a background of domestic abuse. Our aim is to obtain appropriate public policy recommendations from coroners to prevent such deaths from occurring in the future. We have often made submissions stating that the Coroners Act has to be read compatibly with Articles 2, 3, 8 and 14 ECHR. We have argued that Article 2 in particular, means that investigations into suspected deprivations of life must be thorough, effective, impartial and careful and where there is prima facie evidence of torture or inhuman or degrading treatment or punishment that relates to the circumstances of death, then a failure by an inquest to effectively investigate that will be a breach of Article 3 ECHR and s6 of the HRA.

Conclusion

15. For further details on the above and other examples of how we have used the HRA see our submission to the government's Independent Human Rights Act Review: https://www.gov.uk/guidance/independent-human-rights-act-review. It is critical that the rights that we should all enjoy are not dependent on the capriciousness of elected politicians.