

## **Comment**

By Paul Lewis

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If the Human Rights Act has any purpose at all it is to check the power of Government to pass laws which are unfair or wrong. The High Court case brought by Annette Carson was a perfect example of what the Act should be used for - to strike down a bad law which even the Government admits is "illogical". By rejecting Mrs Carson's case, Mr Justice Stanley Burnton showed how feeble the courts are when it comes to using the Act to challenge the power of Parliament. He stated in his judgment that "the judicial arm must give the greatest deference to the legislature" both in deciding how resources are allocated and in foreign relations. So the cost of change and the fact that it involved foreign countries meant the Government was entitled to decide its own policy on uprating pensions "on a country by country basis".

When Labour first proposed incorporating the European Convention on Human Rights into UK law, some lawyers opposed it. Not because they wanted us to have fewer rights but because they feared that the English (and Scottish) courts would be more reluctant to use human rights to defy the intention of Parliament or the decisions of Government than the European Court of Human Rights had proved itself to be. So having the convention as part of our law, decided by our courts, would weaken, not strengthen, those rights. Mr Justice Brunton's judgement illustrates those fears perfectly. And the fact that he gave permission to appeal his judgment before Mrs Carson's barrister had even asked for it could be seen as illustrating his own fear of making a challenging decision - let more senior judges do that if they want to; he was not going to.

But if the judiciary comes out of this as supine, the Government appears simply vindictive. No-one doubts that this was an important test case of a law which has been campaigned on, in Parliament and outside, for 15 years. To demand that Mrs Carson, a willing guinea pig with few assets, should pay the costs of the expensive legal team fielded by the DWP to defend itself, is as appalling as it is unprecedented. The only slight credit the

judge gets is that no sooner had he made this order on costs than he said he would allow an appeal on that too "so the Court of Appeal can see if that order is a reasonable order." Kick this one upstairs too.

Paying her own lawyers has already required fundraising around the world. By making Mrs Carson pay the Government's costs as well has upped the stakes and made the decision on appealing even more difficult. Let us hope she does find the money to take on the judges and ministers and show them to be the petty people they are. If she cannot do that, the Human Rights Act has no purpose but to give spurious credibility to whatever unfair and illogical laws the Government forces through a hapless Parliament.

Paul Lewis is the presenter of BBC Radio's Money Box programme.

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