

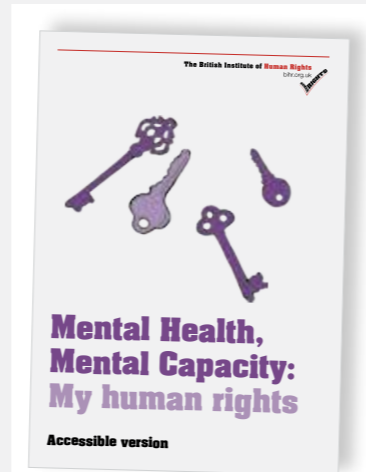
Mental Health, Mental Capacity: My right to be free from discrimination

Accessible mini guide

Finding your way around our mini guides

This factsheet is one of ten mini guides about your human rights.

- 1 Mental Health, Mental Capacity: What are human rights?
- 2 Mental Health, Mental Capacity: How are my human rights protected?
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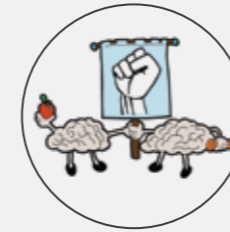
The information in these factsheets is taken from a booklet called 'Mental Health, Mental Capacity: My human rights.'

You can get a copy of the booklet by contacting BIHR or visiting our website: www.bihhr.org.uk/health

info@bihhr.org.uk
0207 882 5850

This factsheet is to help you understand your rights. It is not legal advice.

What is this mini guide?



This mini guide is about mental health, mental capacity and human rights.



This mini guide aims to give you information about how human rights can help you to have **more control over your own life** and be **treated with dignity and respect**.



This mini guide explains your human rights when you are receiving **health and care services**, e.g. at your GP, in hospital, community care, care homes etc.

This information can also help you with



education



housing

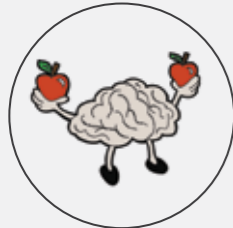


and dealing with the police.

Who is this mini guide for?

This mini guide is for anyone with a mental health or mental capacity issue.

Mental Health and Mental Capacity



Mental Health

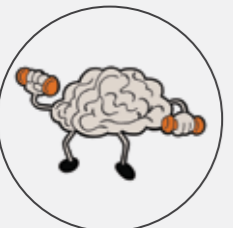
We use the term 'mental health' to include anyone who has a "disorder or disability of mind". This is how 'mental health' is described in law, in the Mental Health Act.



This includes things like depression, dementia, eating disorders, autistic-spectrum disorder, and behaviour changes caused by brain damage and personality disorders.



This mini guide will be useful for anyone receiving care or treatment for a mental health issue.



Mental Capacity

Capacity is about your everyday ability to make decisions about what happens to you.

Under the law, 'having capacity' means when a decision needs to be made (e.g. about what treatment you should have) you are able to

- understand
- remember
- weigh up the pros and cons and
- let people know what you have decided.



Sometimes having a learning disability, dementia or brain damage, drinking alcohol or taking drugs might mean you're not able to do those things. Under the law this is called 'lacking capacity'.

Right to be free from discrimination



This right is protected in law by the Human Rights Act. This right is called 'Article 14'.

This is not a right to equality or a stand-alone right to be free from discrimination.



It means when you are using the Human Rights Act, you should be treated the same as everyone else.

If you think you are being treated differently you can bring this up when using your other rights in the Human Rights Act.



For example, if a doctor makes a decision about not treating your physical health problem because of your mental health issue, your right to wellbeing under Article 8 would be engaged and you can use non-discrimination arguments in your negotiations with the doctor.

How is my right relevant in mental health or mental capacity settings?

Examples include:



Public officials deciding not to treat your physical health problem because of your mental capacity or mental health issue.



Getting worse care than other patients because of your mental capacity or mental health issue.



Public officials making assumptions about whether you should live in an institution like a hospital or unit, just because of your mental capacity or mental health.

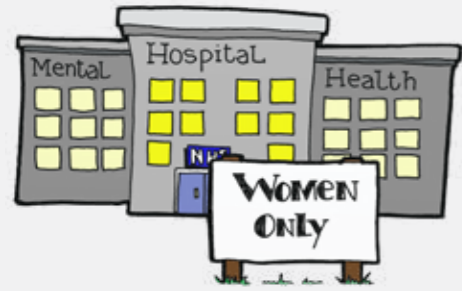


Bullying or harassment.

Can my right be restricted by mental health or mental capacity services?

Yes, sometimes. [Not all discrimination is against the law.](#)

Sometimes you may be treated differently, but this might not be discrimination. There may be a good reason for it.



For example, if a local authority is running a women-only mental health facility, this would be discriminating on the basis of gender.

The good reason would be that this service is necessary to meet the needs of women patients.

[Very strong reasons are needed to justify discrimination on the basis of disability](#) (including your mental health or mental capacity issue).

How might I be discriminated against on the basis of my mental health or mental capacity issue?

If you are [being treated less favourably](#) than other people in the same situation based on your mental health or mental capacity.

[Failing to treat you differently when](#) you are in a very different situation to others, for example because of your mental health or mental capacity issue.

[Applying rules to you that have a worse impact on you](#) because of your mental health or mental capacity issue.



In real life: Right to be free from discrimination



Learning disabled man challenges 'Do Not Resuscitate' order



Laurie was a 51-year old man living with Down's syndrome and dementia.



During a hospital stay he had a 'Do Not Resuscitate' order put on his file without him or his family being consulted. 'Do Not Resuscitate' is an instruction to the medical team not to give medical treatment if he fell unconscious.



The reasons written on the order by the doctor were: "Down's syndrome, unable to swallow... bed bound, learning difficulties".

[As his life was at stake he was able to challenge this as discrimination linked to his right to life.](#)



He started a human rights legal case but it was settled out of court and the NHS Trust apologised.

In real life: Right to be free from discrimination

Mental health patient refused surgery challenges decision as discrimination



Margaret was 18 years old and getting treatment for a mental health issue in an independent hospital.



Margaret needed surgery on an injury after self-harming but a doctor decided not to perform the operation.



Her GP, psychiatrist and other staff believed the surgery was in her best interest and the delay was making Margaret very upset and she was in a lot of pain.



Advocates supported the hospital manager to challenge the doctor's decision as an interference with her human rights and discrimination on the basis of her severe mental health needs. As a result Margaret received the surgery.

(Real life story, taken from our booklet 'Mental Health Advocacy and Human Rights', 2013)

The rights protected by our Human Rights Act:



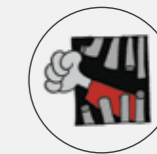
Right to life
(Article 2)



Right not to be tortured or treated in an inhuman or degrading way
(Article 3)



Right to be free from slavery or forced labour
(Article 4)



Right to liberty
(Article 5)



Right to a fair trial
(Article 6)



Right not to be punished for something which wasn't against the law when you did it
(Article 7)



Right to respect for private and family life, home and correspondence
(Article 8)



Right to freedom of thought, conscience and religion
(Article 9)



Right to freedom of expression
(Article 10)



Right to freedom of assembly and association
(Article 11)



Right to marry and found a family
(Article 12)



Right not to be discriminated against in relation to any of the human rights listed here
(Article 14)



Right to peaceful enjoyment of possessions
(Article 1, Protocol 1)



Right to education
(Article 2, Protocol 1)



Right to free elections
(Article 3, Protocol 1)



Abolition of the death penalty
(Article 1, Protocol 13)