

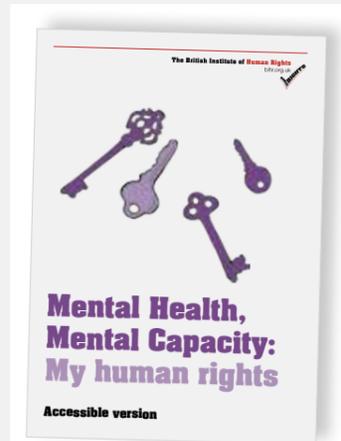
Mental Health, Mental Capacity: My right to be free from inhuman or degrading treatment

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?
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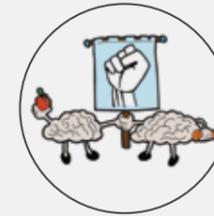
The information in these factsheets is taken from a booklet called 'Mental Health, Mental Capacity: My human rights.'

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

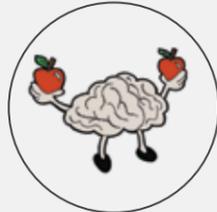


and dealing with the police.

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

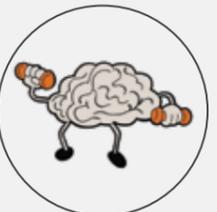
We use the term 'mental health' to include anyone who has a "disorder or disability of mind". This is how 'mental health' is described in law, in the Mental Health Act.



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 inhuman or degrading treatment

This right is protected in law by the Human Rights Act. This right is called 'Article 3'.

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

This right protects against very serious harm, including abuse or neglect, such as:



Use of **excessive force** to restrain you



Physical or mental **abuse**



Lack of care or medication leading to extreme or long periods of pain or suffering



Leaving you in your own **bodily waste** for long periods



Lack of food or fluids leading to malnutrition or dehydration



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

No. This right is called an 'absolute right'. This means that public officials must not treat you in an inhuman or degrading way.

When is treatment 'inhumane or degrading'?

This is treatment which:



Makes you very frightened or worried



Causes you a lot of pain



Makes you feel worthless or hopeless.

This right stops you being treated like this.



To use the Human Rights Act to protect you against inhuman or degrading treatment, **it must be very serious.**

This is when your treatment is **putting you in real danger** or is **seriously hurting you** either physically or mentally.



To make sure public officials are not treating you in an inhuman or degrading, they must think about things like:



What you are able to understand,



Your age,



Whether you are a man or a woman,



Your mental health or mental capacity,



How long your treatment has been going on or will go on.

This will help decide how serious your situation is and if your treatment is 'inhuman and degrading'.

Less severe abuse which has a less serious impact on you is protected by your right to respect for private life – more information on this is in our other mini guide.



This right also protects against torture.

'Torture' is a word people may use to describe bad treatment. But under the law, torture means something very specific and is about someone like a police officer deliberately causing serious physical or mental suffering to a person for a reason (such as getting information out of the person).

This would very rarely apply to health and care services.

What duties do health or care workers have about my right to be free from inhuman or degrading treatment?



To RESPECT your right

This means not treating you in an inhuman or degrading way.



To PROTECT your right

This means if public officials know (or should know) that you are at real risk of inhuman or degrading treatment, they try to protect you.

This risk could be from another public official or other people like your family or a patient, or from yourself (if you are at risk of self-harm whilst in the care of services).



To FULFIL your right

This means investigating when officials may have been involved in inhuman or degrading treatment or failed to act to prevent such treatment whilst you are in the care of services.

In real life: Right to be free from inhuman or degrading treatment



Older woman protected from abuse in care home



Elsie is in her 70s and lives in a care home paid for by the local authority.



Elsie has an advocate called Joshua and he has been supporting Elsie to take back more control over her life.



One day, when Joshua was visiting Elsie, she told him that the staff were forcing her to go to church and that she didn't want to go.



Joshua also noticed bruises on Elsie's arm and he was worried about her. Joshua asked Elsie about the bruises and she told him that the manager of the home was hurting her.



Joshua had been on training by the British Institute of Human Rights and he knew that Elsie had the right to be free from abuse (protected by Article 3 in the Human Rights Act).



Joshua contacted social services, the Care Quality Commission and the police. They are all investigating the case and action may be taken against the home.

(Real life example from BIHR's Care and Support project)

In real life: Right to be free from inhuman or degrading treatment



Mental health patient held in degrading conditions



Mandeep was arrested and detained by the police under the Mental Health Act after assaulting his aunt.



He was held in the cell longer than the maximum allowed by the Mental Health Act (72 hours).



During this time he repeatedly banged his head on the wall. He drank from the toilet and smeared himself with faeces.



When Mandeep was transferred to a clinic to get treatment he was diagnosed as suffering from a mental illness.

He took a human rights case to court challenging the conditions and time in police detention.



The court looked into what Mandeep went through when he was with the police, including the fact that he was in real need of mental health care.



The court decided this breached Mandeep's right to be free from inhuman and degrading treatment.

(MS v UK, 2012. We made up the name.)

The rights protected by our Human Rights Act:



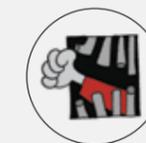
Right to life
(Article 2)



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)