

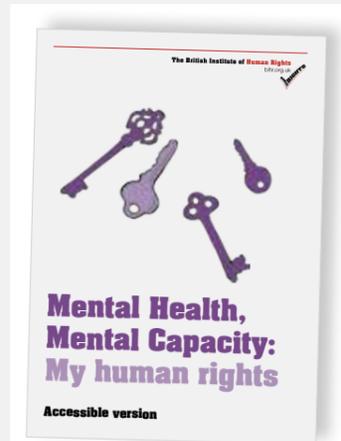
# **Mental Health, Mental Capacity:** My right to respect for private and family life, home and correspondence

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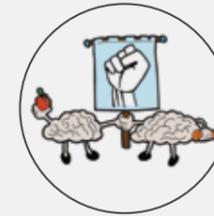
The information in these factsheets is taken from a booklet called 'Mental Health, Mental Capacity: My human rights.'

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

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*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

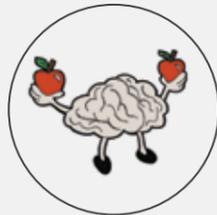


and dealing with the police.

# 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

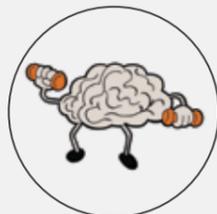
We use the term 'mental health' to include anyone who has a "disorder or disability of mind". This is how 'mental health' is described in law, in the Mental Health Act.



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 respect for private and family life, home and correspondence



This right is protected in law by the Human Rights Act. This right is called 'Article 8'.

An important part of this right is **making sure your choices are respected**. This right will be relevant to your life in lots of ways.

There are four parts, which are each explained below.

## How is my right to private life relevant in mental health or mental capacity settings?

Some examples of what this right protects:



Your **private information**. This includes keeping your personal information confidential.



You having **control** over your own body and life.



You **being asked** about decisions about your care and treatment. This is sometimes called having autonomy. This also includes agreeing to medical treatment (except if you are detained under the Mental Health Act and the hospital can show there is a 'medical necessity' for the treatment).



Your **wellbeing**, which means being free from abuse or neglect.



You **being part of your community**.

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## How is my right to family life relevant in mental health or mental capacity settings?

Some examples of what this right protects:



Making friends, finding a partner and having a family.



Keeping in touch with your family.

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



This is not a right to housing, but a right to respect for the home that you already have.

Some examples of what this right protects:



Living in a place you call home. This could be a place where you have lived a while and have friends there, like a care home or hospital ward.



Being removed from somewhere you live to receive health or care when you've been promised it is your 'home for life', for example if your care home is being closed.

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

Some examples of what this right protects:



Being able to keep in touch with people (including by letter, email etc.)



Keeping correspondence private (these are things like letters and emails).



Sometimes, if you are detained the people providing your care may be able to check or keep your correspondence. This is because of the Mental Health Act.



Before they do this, there is a test they must follow. We explain this on the next page.

## Can my right to respect for private and family life, home and correspondence be restricted by mental health or mental capacity services?

Yes. But there is a test the people who provide your care must go through if they need to restrict your right.

They must be able to show that it is:



### 1. Lawful

There must be a law which allows public officials to take that action (such as the Mental Health Act or Mental Capacity Act).



### 2. Legitimate

There must be a good reason (for example public safety or protecting the rights of other people, including other patients/residents and staff).



### 3. Necessary

Public officials must have thought about other things they could do, but there is no other way to protect you or other people. This means the action taken must be **proportionate**. Sometimes people use the saying “don’t use a sledgehammer to crack a nut”.



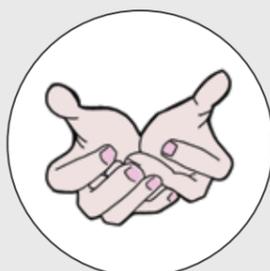
The people providing your care must be able to show all three stages of this test are met.

## What duties do health or care workers have about my right to respect for private and family life, home and correspondence?



### To RESPECT your right

This means, only doing things when they NEED to.



### To PROTECT your right

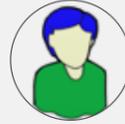
This means doing things to protect you or other people and making sure you are involved in decisions about your care.

The legal term for this is a ‘positive obligation’.



### To FULFIL your right

This means that when decisions are made about your care you are treated fairly.



**Privacy for learning disabled couple in residential unit**



Tim and Sylvia were a couple who both had a learning disability. They had a young child.



Social services placed them in a residential unit for a short time so that could check how they were looking after their child.



There were CCTV cameras in their rooms, including in their bedroom, even though the baby slept in a separate nursery.



Tim and Sylvia were unhappy about the CCTV cameras. They talked to social services about their right to respect for private and family life.

After the discussion, social services agreed to turn the cameras off in their bedroom at night time.

(Real life example taken from BIHR's booklet 'The Human Rights Act: Changing Lives'. We changed the names.)



**Forced medication of people detained under the Mental Health Act would have to be shown to be a 'medical necessity'**



Mr Wilkinson was a 69 year old patient at a high-security psychiatric unit.



The psychiatrist wanted to give him medication. Mr Wilkinson said no.



He was held down and given an injection.



Mr Wilkinson took a human rights case to the court to challenge this.

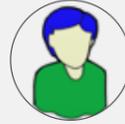


The court said that to make Mr Wilkinson take the medication when he didn't want to could be inhuman or degrading treatment (protected by Article 3, see our other mini guide on this right) or interfere with the right to respect for private life which protects wellbeing.



The court decided that Mr Wilkinson should have a full hearing where the doctor who made the decision would have to show that the treatment was a 'medical necessity'. This means that Mr Wilkinson would really need the medication to make him better.

(R (Wilkinson) v Broadmoor Hospital, 2001)



### Young woman moved closer to family home



Nina is a young woman who has mental health issues. When she was growing up she lived in unit for children. This was very close to her mum, her grandmother and her two young brothers.



When she turned 18, Nina had to move, so social services found somewhere new. However, her new unit was 200 miles away from her family. This made it really hard for her family to visit Nina.



Nina got really upset that she couldn't see her family as often. She especially missed seeing her two brothers who were too young to make the long trip.



Nina got so upset that she started to hurt herself. The new unit had strict rules which meant Nina wasn't allowed visitors for 48 hours after she had hurt herself. This meant that some family visits were cancelled at the last minute.



Nina had an Independent Mental Health Advocate called Donald. Donald had been on training by the British Institute of Human Rights and he knew that Nina had the right to respect for family life, protected by Article 8 in the Human Rights Act.



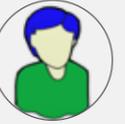
Donald met up with Nina's social worker. Together they wrote a letter to the people who organised Nina's support and told them that it was the law that they must do all they can to make sure Nina had her family life respected and that they were not doing enough.



Because of the letter, a different doctor was sent to meet Nina and two weeks later she was moved to another unit much closer to home.

Now, Nina's family can visit more often and she can even go as visit them. Nina is much happier.

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



### Woman with dementia retains relationship with partner



Erin is in her late 70s. Erin has dementia and lives in a care home.

Erin's partner, Patrick visits her regularly. During a visit the staff saw Patrick touching Erin in a sexual way and were worried Erin might not understand what Patrick is doing. The staff contacted the local authority.



The local authority started a safeguarding enquiry to make sure Erin is safe. A social worker met Erin to find out what she is able to understand and what she was able to agree to.



The social worker decided that Erin was able to agree to have a kiss or hug with Patrick, but that she couldn't agree to have sex with him. Erin's friend was also worried and wanted Patrick's visits limited or stopped.



Erin had a Care Act Advocate supporting her through the safeguarding enquiry. The Advocate had been on training by the British Institute of Human Rights and he knew that Erin had the right to respect for family life, protected by Article 8 in the Human Rights Act.



The Advocate met with Erin and saw how much she enjoyed the visits with Patrick.

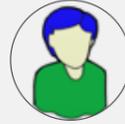
The Advocate told this to the social worker who was carrying out the safeguarding enquiry. The Advocate also told the social worker about Erin's right to family life.



The enquiry agreed that Erin had a right to family life and that Patrick could visit Erin and that care staff would not interfere if they kiss and hug.

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

## In real life: Right to respect for home



### Three adults living in residential accommodation helped to stay together as a family



Sandeep lived in residential accommodation in Newport Pagnell with David and Sally. Sandeep came from Hackney, so Hackney Council paid for his care.



Hackney Council were going through budget cuts and felt it would be cheaper to bring people to units in their area, even though Sandeep had been settled outside of Hackney for several years.



Sandeep was supported by his Independent Mental Health Advocate to argue that making him move might interfere with his right to respect for home and family life as he, David and Sally were living as a community or 'family' together and had a right to be involved in the decision about moving.



After talking to the Council using the right to home and family, the Council decided not to move Sandeep.

(Real life example taken from our booklet called 'The Difference It Makes: Putting Human Rights at the Heart of Health and Social Care')

## In real life: Right to respect for correspondence



### Medical correspondence between patients and doctors kept private.



Edward was 46 years old and in prison. He suffered a brain haemorrhage and had to have an operation.



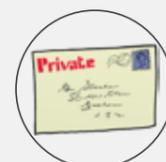
He had to go to hospital every 6 months for a check-up with a specialist.



The prison doctor opened and read the letters between Edward and his specialist.



Edward didn't want this, and took a human rights case to court to challenge this. The court decided that letters between patients and doctors should be private.



The court decided that Edward's letters from his specialist should be kept private by marking them as confidential.

(Szuluk v UK, 2009)

## 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)