

# Mental Health, Mental Capacity: Who has duties to uphold my human rights?

**Accessible mini guide**

# Finding your way around our mini guides

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

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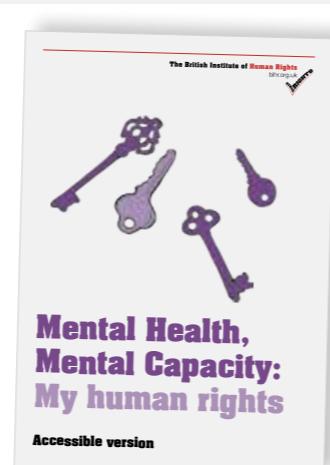
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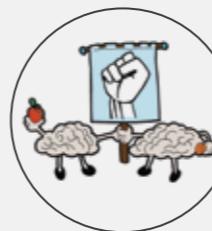
The information in these factsheets is taken from a booklet called 'Mental Health, Mental Capacity: My human rights.'

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

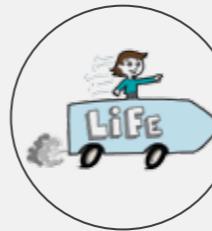
info@bihr.org.uk  
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*This factsheet is to help you understand your rights. It is not legal advice.*

## 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 has duties to uphold my human rights?

Public authorities have a legal duty to respect and protect your rights in everything that they do, including the services you use.

This means that **people working in public services have to uphold your human rights**.

This includes:



NHS staff



Local authority staff e.g. social services, housing etc



Private health and care providers where your care is arranged or paid for (in any part) by the local authority



Police



Prison staff



Courts and tribunals, eg the Mental Health Tribunal, the Court of Protection

**This is not a full list, just examples of who has duties to uphold your rights.**



Sometimes a local authority will pay a private company or a charity to deliver health and care services.



These organisations and the people working for them also have a legal duty to uphold your rights.



If you don't think your human rights are being respected you should contact someone working in a public authority like a social worker, your GP, your council or the Care Quality Commission.



For serious concerns, contact the police.

Once they know your rights are at risk, they will have a duty to act and take steps to protect your rights.

# Why are human rights duties important?

The duty on public officials to respect your human rights is really important in everyday situations because if you are treated badly by services you can:



**Speak up because you have human rights which should be respected and protected**



**Talk to your services about whether they are meeting their legal duty to respect and protect your human rights**



**Work with services to find better solutions without the need to go to court or use a lawyer**

**In real life:** patient challenges not being allowed off ward



Jenny was an informal patient in a hospital (this means she had not been detained under the Mental Health Act).



She was not being allowed to go off the ward to visit the shops or go for a coffee. When Jenny's advocate questioned the hospital staff about this, they said they didn't feel she was well enough to leave the ward.



Jenny's advocate explained to the staff that Jenny was being prevented from leaving unlawfully and that this might be a breach of her right to liberty (protected by Article 5 of the Human Rights Act).



After talking with the staff, Jenny agreed that a staff member could accompany her off the ward. The situation was then discussed with the ward manager and Jenny was allowed off the ward unaccompanied and was safe.

(Real life story from Mind in Brighton and Hove, a partner organisation on BIHR's Care and Support project)



**There are lots more examples of people using human rights in our other mini guides.**





## 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)