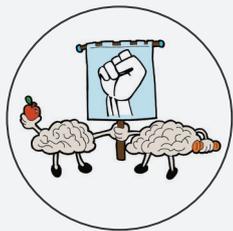


Mental Health, Mental Capacity: My human rights

Accessible version

What is this booklet?



This booklet is about mental health, mental capacity and human rights.



This booklet 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 booklet 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

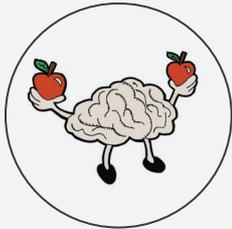


and dealing with the police.

Who is this booklet for?

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

Mental Health and Mental Capacity



Mental Health

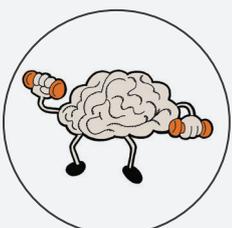
We use the term ‘mental health’ to include anyone who has a “disorder or disability of mind”. This is how ‘mental health’ is described in law, in the Mental Health Act.



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



This booklet 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’.

Finding your way around the booklet

This booklet contains six sections:

| | |
|--|---------|
| What are human rights? | Page 6 |
| Who has human rights? | Page 7 |
| How are my rights protected? | Page 8 |
| Who has duties to uphold my rights? | Page 10 |
| What rights do I have? | |
|  Right to life | Page 15 |
|  Right to be free from inhuman and degrading treatment | Page 19 |
|  Right to liberty | Page 27 |
|  Right to respect for private and family life, home and correspondence | Page 34 |
|  Right to be free from discrimination when using your other rights in the Human Rights Act | Page 45 |
| Getting more help and information | |
| - How can I use human rights? | Page 49 |
| - Where can I get more help? | Page 50 |
| - About The British Institute of Human Rights | Page 51 |
| - About this booklet | Page 53 |

Word list

| | | |
|--------------------------|--|-------------------------------|
| Capacity: | This is about your everyday ability to make decisions about what happens to you | Page 25, 26, 28, 29 |
| Safety: | This is about you feeling safe and not feeling threatened or neglected | Page 15-18, 47 |
| Liberty: | This is about not having unfair limits on being able to move about | Page 13, 27-33 |
| Dignity: | This is about you being treated as a person, not like an object | Page 6, 19, 34 |
| Abuse: | This is about you being safe and not being hurt or neglected by other people | Page 15, 19, 20, 23, 34 |
| Choice: | This is about you having a say over what happens to you | Page 6, 34-44 |
| Control: | This is about you being in charge of your own life | Page 23, 34 |
| Consent: | This is about you being able to agree to your care or treatment | Page 34, 40 |
| Privacy: | This is about the information you want to keep secret, and having your own space | Page 34, 39 |
| Family: | This is about your relatives and close friends | Page 9, 32, 35, 39, 41, 42 |
| Law: | Laws set the rules about how you should be treated | Page 7-9, 25, 28-29, 37 |
| Duties: | These are things the law says someone must do | Page 8, 10-13, 16, 22, 30, 38 |
| Public officials: | These are the people working in public services. The law gives them human rights duties. | Page 8, 10-12 |

What are human rights?

Human rights are our basic freedoms. Human rights make sure people are...



Treated with dignity.



Treated with respect.



Treated fairly.



Listened to and **have a say** over their lives.



Human rights make sure you are **involved in the decisions** that are made about your care and treatment.



Human rights are **not gifts** from the government or rewards that you earn.



They are the **basic rights everyone can expect**.



Terrible things happened to people in World War II.



To try and stop these things happening again, after the war all the governments in the world came together to agree a **set of rules**.



These rules protect our human rights. They **tell governments how people should be treated**.

Who has human rights?

Every person has human rights.



How are my rights protected?



The Human Rights Act is the main way your human rights are protected in the UK.

The Human Rights Act contains a list of 16 rights (called 'Articles'). These rights are listed on the back page of this booklet.

Three things you need to know about how the Human Rights Act works:



one

The Human Rights Act puts a legal duty on public authorities and officials to respect and protect your rights in everything that they do.



You don't need a lawyer to use the Human Rights Act. You can raise issues about your care or treatment directly with service providers. We explain this in more detail on page 12.



two

All other laws should respect your human rights

For example, if you are worried about how a part of the Mental Health Act is affecting your human rights, you can ask a court to look at this.

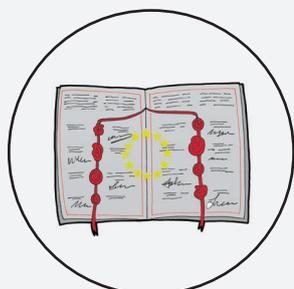


In real life: Sally is in a long-term relationship with another woman. She was diagnosed with paranoid schizophrenia and depression. Sally didn't get on with her mother and didn't see her.



Sally's local authority made her mother her "nearest relative", not her partner. Sally challenged this in court and it was decided that the word "relative" under the Mental Health Act should include same sex partners

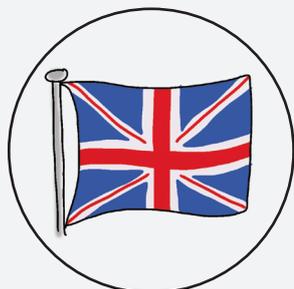
(R (SG) v Liverpool City Council, 2002. We made up the name).



three

The rights in the Human Rights Act are taken from the European Convention on Human Rights.

The UK helped write the Convention.



Before we had the Human Rights Act in the UK, you had to go to the European Court of Human Rights (in France) to help. This is far away and it can take years to get your case heard.

So the Human Rights Act brought these rights closer to home.



This means you can now ask your local court or tribunal to help you with your rights.

Who has duties to uphold my human rights?

Who

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 the next section.

What rights do I have?



There are 16 rights in the Human Rights Act – a full list is on the back page of this booklet.

The rights in the Human Rights Act are called 'Articles'.

In this part of the booklet we explain some of your human rights.

These are the most important human rights to do with your mental capacity and mental health care and treatment:



Right to life



Right to be free from inhuman and degrading treatment



Right to liberty



Right to respect for private and family life, home and correspondence



Right not to be discriminated against when relying on your other rights in the Human Rights Act

Right to life



This right is protected by Article 2 in the Human Rights Act.

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

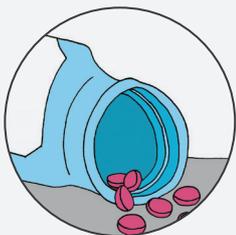
Some examples include:



If you are having **suicidal thoughts** or want to take your own life whilst in hospital or in detention and public officials know you are at risk of suicide but don't protect you.



Abuse or neglect in detention or care which leads to death



Healthcare professionals **refusing to give you life-saving treatment** because of your mental health or capacity issue



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

No. A health or care professional cannot deliberately take away your right to life.

What duties do health or care workers have about my right to life?



To **RESPECT** your right

This means not deliberately taking away your life.



To **PROTECT** your right

This means taking reasonable steps to protect your life when public officials know (or should know) that your life is at real and immediate risk. This risk could be from another official or other people like your family or a patient, or from yourself (if you have suicidal thoughts whilst in the care of services).



To **FULFIL** your right

This means investigating when officials may have been involved in a death or failed to act, for example if a person staying on a mental health ward takes their life whilst in hospital.



Protecting patients at risk of suicide



Melanie Rabone was 24 years old and voluntarily admitted herself to a mental health hospital after she had attempted to take her own life.

She was assessed as being at high risk of suicide, and whilst on leave from the hospital took her own life.



Her family took a human rights case to court, and the court ruled that the hospital had failed in their duty to protect Melanie's right to life.



The hospital had a duty to take reasonable steps to protect Melanie's life, including by detaining her under the Mental Health Act to try and prevent her suicide.

(Rabone v Pennine Care NHS Foundation Trust, 2012).



Treatment withheld from man with learning disabilities



Bryn is 60 years old and lives in supported living. Bryn has complex learning disabilities and people can find it really difficult to understand what Bryn is telling them.



Staff noticed that Bryn started sitting in his chair to go to sleep. They were worried that he might have problems with his heart, so they called in Bryn's doctor.



They had a meeting with the people involved with Bryn's care to work out what needed to be done. At this meeting Bryn's doctor said because Bryn had a learning disability and had no quality of life he would not organise a heart scan for Bryn.



Bryn's Mental Capacity Advocate was also at this meeting. She had been to a workshop on human rights run by the British Institute on Human Rights. She didn't think that Bryn's rights were being respected. She knew that Bryn had:

- the right to life (protected by Article 2 in the Human Rights Act)
- the right to be free from discrimination (protected by Article 14 in the Human Rights Act)



At the meeting Bryn's advocate asked the doctor if he would have arranged a heart scan if anyone else in the room was in this situation. The doctor said he would. The people at the meeting then agreed that Bryn should get his scan.



The advocate had to keep asking the doctor to organise the scan and eventually it was arranged for Bryn to have a heart scan. However, it had taken so long to organise it was too late to treat his heart condition and sadly Bryn died.

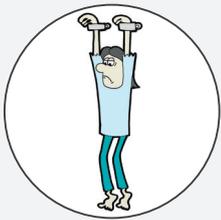
(Real life example from Solent Mind, participants in BIHR's project Care and Support: A Human Rights Approach to Advocacy)

Right to be free from inhuman or degrading treatment

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

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:



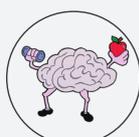
What you are able to understand,



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 on page 34.



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

Harm



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.)

What is capacity?

Capacity is about how able you are to make decisions.

This includes making decisions about your care and treatment.



The Mental Capacity Act has a legal test to check this.

A number of things can affect your capacity, such as mental illness, learning disability, dementia, brain damage or if you have taken drugs or drunk too much alcohol.

The public official will have to assess if you are able to:



understand,



remember what you are being asked,



weigh up the pros and cons of your choices and



let people know your decisions.

Capacity is 'task-specific'. This means:

- It focuses on the decision that needs to be made at the time.
- If your incapacity is temporary (for example if it's due to being drunk) you can ask officials to wait until you are able to make a decision.
- If you lack capacity to make one decision it doesn't mean that you lack capacity to make other decisions
- Capacity can also change, so things need to be kept under review and your capacity re-assessed later on.

Capacity: What about my human rights?



A public official should first think that you do have capacity to make a decision and, if they are not sure, they should do an assessment.



This is because of your human rights.



If it is decided that you do not have capacity to make a decision, a public official will make the decision for you. That person must make the decision in your best interest. This means the decision must be what is best for you, not for anyone else.

They should:



Think about your human rights



Consider your wishes and feelings and



Support you to be involved in decisions as much as possible.

Right to liberty



This right is protected by Article 5 in the Human Rights Act

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

Examples include:



Being **restrained** for long periods



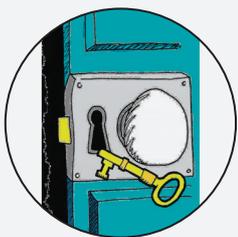
Being kept somewhere that isn't right for you because of lack of space in mental health hospitals. E.g. being sent to prison when a court hasn't ordered that you serve a prison sentence.



Significant **delays or cancellations of hearings** allowing you to challenge your detention.



Being told you are not allowed to leave or being stopped from leaving a place (like a care home or hospital).



Sometimes you can be detained. This would be done through the Mental Health Act or the Mental Capacity Act. We tell you more about this on the next page.

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

Yes. Your right to liberty can be limited where necessary.

Here are 2 examples:



1. If you have been detained under the Mental Health Act.

This can only be used if:

You have a recognised 'mental disorder'

AND

Your detention is necessary to keep you or others safe.

The authority detaining you would need to be able to prove this.



2. If you have been assessed as lacking capacity (See page 25 to find out more about what we mean about capacity).

That means you are unable to make a decision or unable to agree to treatment for a mental health issue.

It may be you are living somewhere that people think you may be in danger or at risk and you are unable to make a decision about leaving. **To keep you safe your right to liberty may need to be restricted.**



Before this can happen there is a formal process that needs to be followed by those providing your care.



This is called a 'Deprivation of Liberty Authorisation'. There is more information about this on the next page.

Mental capacity and restricting your liberty



The 'Deprivation of Liberty Safeguards' are part of the Mental Capacity Act.



Sometimes, people who couldn't understand what was happening to them, people who had mental capacity issues, didn't have their human rights protected.



To stop this happening, the government passed a set of laws in the Mental Capacity Act called the Deprivation of Liberty Safeguards or 'DOLS' for short.



DOLS are a set of rules that must happen to protect your rights if you are in hospital or in a care home.



These are called safeguards and are there to protect you.

These safeguards make sure your freedom is only restricted when it is really necessary.

What duties do health or care workers have about my right to liberty?



To **RESPECT** your right

This means they must not do extreme things to stop you moving (for example, being locked in a room or being strapped to a chair) unless it is absolutely necessary and can they can give good reason why you need to be stopped.



To **PROTECT** your right

There are lots of safeguards which apply if your right to liberty is restricted.

The safeguards set out in the right to liberty in the Human Rights Act include:



You must be able to **challenge** the restriction of your liberty through an independent court or tribunal (in England you can do this through a Mental Health Tribunal for mental health issues or the Court of Protection for mental capacity issues).



This review of your detention must be carried out '**speedily**' and delays or cancellations of hearings can be challenged using your right to liberty.



You must have a **chance to have your side of the story heard** at the hearing, either by you or your representative.



You must have chance to **see and challenge a report about you** or any other evidence about the decision to restrict your liberty.

In real life: Right to liberty



Young man with learning disability returned home to live with father



Steven was a young man with a severe learning disability. He lived at home with his dad. When his dad was ill he went for a short break at the local authority support unit.

The local authority kept Steven there for over a year. He and his dad didn't want this.



When Steven tried to leave, the local authority signed a Deprivation of Liberty Authorisation. They wanted Steven to stay in a care home miles away from his father.



Steven and his dad took a human rights case through the courts to challenge this. The court decided that Steven's right to liberty had been breached.



This was because the Deprivation of Liberty assessment had not asked what Steven and his dad wanted and it had taken too long.



The court also decided that the local authority hadn't protected Steven and his dad's right to family life (more on this right on page 35).

(Hillingdon London Borough Council v Neary, 2011)

In real life: Right to liberty



Preventing people with mental capacity issues from leaving services



Meg was 17 years old. Meg had a learning disability and sometimes behaved in a way some people found difficult.



She had been living with her mum. People were worried that there was abuse, so Meg was moved to an NHS residential unit.

Meg had staff with her whenever she left the unit.



The court was asked to decide whether Meg's right to liberty was being restricted.



The court said everyone has human rights and the right to liberty applies to people with a learning disability in the same way.



The court decided that Meg's right to liberty was being restricted because she was not allowed to leave on her own and was always controlled by staff.



When things like Meg's story happen 'Deprivation of Liberty Authorisation' needs to be made so that checks and safeguards are put in place to make sure the restriction of liberty is necessary and justified.

(P and Q v Surrey County Council, 2014, better known as the 'Cheshire West Case'. We made up the name.)



Right to respect for private and family life, home and correspondence

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

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:

Choice



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**.

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.

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.

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 (see page 28) 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.



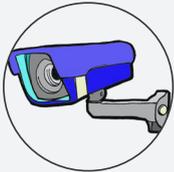
Privacy for learning disabled couple in residential unit



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 page 19) 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 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)

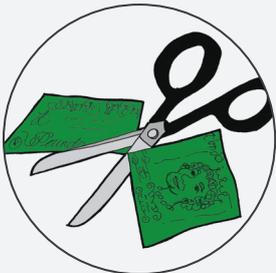
Choice



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)

Choice

Right to be free from discrimination



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

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.

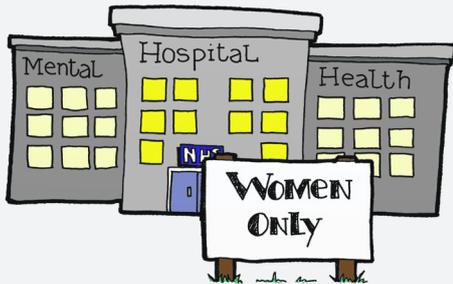


Bullying or harassment.

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.





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.



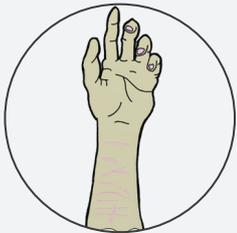
He started a human rights legal case but it was settled out of court and the NHS Trust apologised.



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.

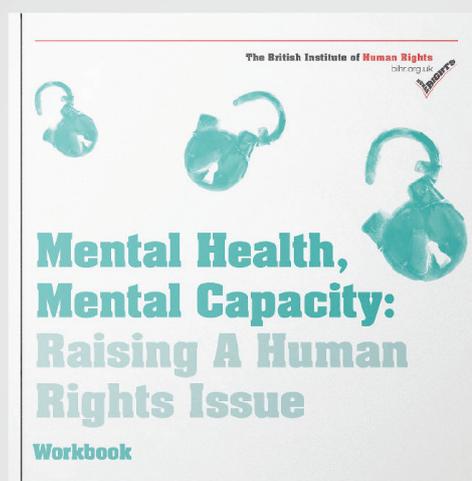
(Real life story, taken from our booklet 'Mental Health Advocacy and Human Rights', 2013)

How can I use human rights?

You can use human rights to challenge decisions about your care or treatment that really affect you.



More information about how to do this in our booklet called 'Mental Health and Mental Capacity: Raising a Human Rights Issue'.



Download your free copy from www.bih.org.uk/health or to request a copy you can email us at info@bihr.org.uk or call 020 7882 5850

Where can I get more help?

If you need some advice or support about your human rights, below are some organisations who can help with this:

Liberty

Human rights and civil liberties organisation Liberty run a public helpline for three afternoons a week. Contact them by phone or online.



www.yourrights.org.uk



0845 123 2307 020 3145 0461



Monday and Thursday 6.30 p.m. to 8.30 p.m., Wednesday 12.30 p.m. to 2.30 p.m.

Citizens Advice

Provide advice in person, over the phone and by web chat.



www.citizensadvice.org.uk

Find your local Citizens Advice



Advice: 03444 111 444

Text phone: 03444 111 445

Advice UK

This is not an advice giving organisation but has a directory of advice services. Find a service on their website.



www.adviceuk.org.uk

Local Healthwatch

Find your Local Healthwatch through Healthwatch England



www.healthwatch.co.uk/find-local-healthwatch



0845 123 2307 03000 683 000



Monday to Friday, 8:30 a.m. to 5:30 p.m.

The British Institute of Human Rights (BIHR) is an independent charity working to bring human rights to life here at home.

We empower people to:



know what human rights are (and often what they are not)



use human rights in practice to achieve positive change in everyday life without going to the courts, and



to make sure those in power **respect** and progress our human rights laws and systems



At the heart of everything we do is a commitment to making sure the international promise of the Universal Declaration of Human Rights, developed after the horrors of World War II, is made real here at home.

We want to achieve a society where:



human rights are respected



human rights are at the heart of our democracy



the communities we live in value the equal dignity of each person



BIHR has been working on human rights in healthcare for over 15 years, training 1000s of people from NHS trusts, social services, and voluntary organisations to use human rights to make a difference.

BIHR would like to thank the Department of Health for their grant which supported the production of this booklet. BIHR would also like to thank all the organisations and individuals who helped to produce this booklet, particularly the Human Rights Leads from our partner organisations for their ideas, advice and guidance.

More information on our partners is on the next page.



BIHR's booklets aim to empower people to have their rights respected. If this booklet has helped you to use human rights, we would love to hear your story. You can contact us by emailing info@bihr.org.uk

About this booklet

The British Institute of Human Rights

bihr.org.uk



This booklet is written by The British Institute of Human Rights (BIHR), in partnership with six other organisations:

BHA Leeds Skyline
for equality in health and social care

healthwatch
Blackburn with Darwen

mind in Brighton and Hove
for better mental health

n|compass Advocacy Service

onsun
network for mental health

WISH
A voice for women's mental health

These organisations are working with BIHR on a project called 'Care and Support: A Human Rights Approach to Advocacy'.



This project aims to make sure people with mental health and capacity issues have more **control over decisions** about their treatment,



and to make sure they are **treated with dignity and respect**.



The project is funded by the Department of Health, so the information in this booklet focuses on English law and bodies.



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

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)