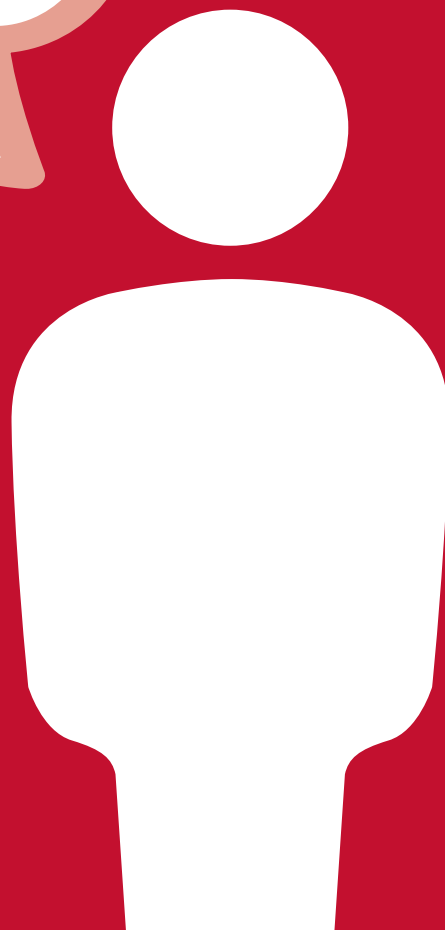


Your Human Rights

A guide for people living
with mental health problems



Please note that this guide is not legal advice. If you need advice please see the Useful contacts section for sources of information and advice. The information in this guide is correct at the time of printing in June 2006. The law may have changed since this was printed, so information in it may be incorrect or out of date.

Please also note that this guide focuses only on the rights contained in the European Convention on Human Rights and the UK Human Rights Act. There are a range of other human rights contained in various international agreements. Information about these can be found on our website or via its links.

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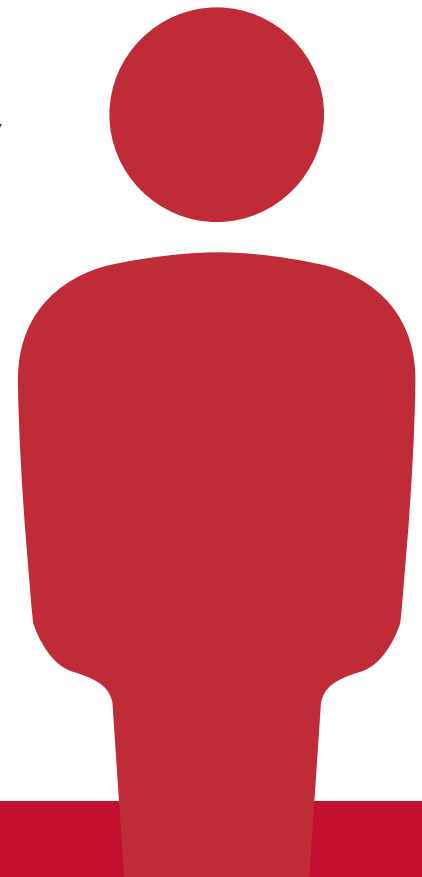
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Introduction

Many situations experienced by people living with mental health problems involve human rights. However, there is little information available about human rights and how they relate to mental health. Too often a person may not realise that they are able to do something about their situation, or even that there is something wrong with the way they are being treated. It is therefore vital that people living with mental health problems are able to access information about their human rights and challenge bad treatment.

This guide provides practical information about human rights, and their relevance to mental health. It is written directly for people living with mental health problems. The guide will also be useful for people working in the mental health sector or those wanting to learn more about the impact of human rights on mental health.

Using this guide

This guide aims to give you an idea of situations that may involve your human rights. This will give you – or someone who can speak on your behalf – the knowledge to be able to recognise and challenge human rights abuses. Please note that this guide is not legal advice. If you think that someone is abusing your human rights, or you are unsure about anything in this guide, you should talk with an experienced adviser. Advice lines are listed in the Useful contacts section at the end of this guide.

The guide is designed so that you can either read it straight through, or pick areas that are most relevant for you. We have avoided using legal terms wherever possible, and have provided clear definitions where legal terms are used. We have used a number of examples to illustrate the information provided in the guide. Many of these are real life cases that have gone to court. These cases are important as they show how human rights arguments can make a real difference for individuals. However taking your case to court is a last resort. We hope that you will be able to use the information in this guide to resolve any human rights issues that you may face without having to go to court.

Section I

Introducing human rights



Why are human rights relevant for me?

Human rights belong to everyone, and they provide a very important means of protection for people living with mental health problems. Human rights place authorities in the UK – including the Government, hospitals and social services – under an obligation to treat you with **fairness, equality, dignity and respect**.

Many people think that human rights are only significant for overseas countries, or that they are a complex legal topic. But human rights are relevant to many of the decisions people make and the situations people experience on a daily basis. They are not just about the law and taking cases to court. Very often you can resolve a problem that involves human rights by talking it through and reaching a solution, without needing to go to court. To be able to understand how human rights can protect you, it is important to have a basic knowledge of how human rights work in practice. This first section therefore gives a brief introduction to your human rights and how they are protected by law in the UK.

Things you need to know about human rights

- they belong to everyone
- they are based on principles of fairness, equality, dignity and respect
- they are about how public authorities – including the Government, hospitals and social services – must treat you
- they prevent authorities from doing certain things to you, like treating you in a degrading way
- they also sometimes force authorities to take certain actions, like taking steps to protect your life
- they were first legally defined by international agreement after the horrors of the Second World War
- since the Second World War there have been many different international human rights agreements
- one of the most important human rights agreements is the European Convention on Human Rights

How are my human rights protected in the UK?

In the UK, your human rights are protected by the European Convention on Human Rights and the UK Human Rights Act.

The European Convention on Human Rights (we shall call it the European Convention from now on) is a human rights agreement (or treaty) made after the Second World War by countries which belong to the Council of Europe, in order to protect the human rights and freedoms of everyone within their borders. The Council of Europe is not to be confused with the European Union. The Council of Europe represents 'Greater Europe' and includes countries such as Russia, Turkey and the Ukraine.

The European Convention sets out a number of fundamental human rights including the right to life, the right to liberty and the right to free expression. Each right is referred to as a separate 'Article' – for example Article 5 refers to the right to liberty. A list of rights included in the European Convention is given at the end of this guide.

The UK signed up to the European Convention in 1951. This means that since that time the UK is breaking international law if it does not respect the rights in the European Convention.

The European Convention provides a special level of protection compared with other human rights agreements. The European Convention established a European Court of Human Rights, based in Strasbourg, France. You can complain to this Court if you think your rights as set out in the European Convention have been breached. However, you must have taken your case through the UK court system first (please see the Practical advice and information section for information on taking cases to court).

The Human Rights Act became effective on 2 October 2000.

The purpose of the Human Rights Act is to bring most of the rights contained in the European Convention into UK law. The Human Rights Act does this by placing a duty on all **public authorities** in the UK to act in a way that respects and fits with the rights in the European Convention.

What is a public authority?

‘Public authority’ is not fully defined in the Human Rights Act, but it should be interpreted broadly. It includes all central and local Government agencies, as well as courts and tribunals. The National Health Service, social services departments and prisons are included and, more generally, any person or organisation ‘whose functions are of a public nature’. The term also covers private organisations such as companies or charities, but only when carrying out a public function, for example a private hospital detaining someone under the Mental Health Act.

If public authorities fail to respect your rights, you can bring a case against them in the UK courts without having to go to the European Court of Human Rights. The Human Rights Act therefore provides you with an extra level of protection, and makes your rights more accessible. It is generally quicker, cheaper and more practical to bring your case before the UK courts. You do not have to be a British citizen to do this – the Human Rights Act protects everyone within the UK.

You can still take your complaint to the European Court of Human Rights if you do not agree with the outcome of your case in the UK courts.

Can my human rights ever be limited or restricted?

Some rights are so fundamental that they must never be limited or restricted in any way. These rights are known as **absolute rights**.

- For example, public authorities must never torture you or treat you in an inhuman or degrading way under any circumstances, not even during a war or national emergency.

However, it is important to know that the European Convention does allow for some rights to be limited or restricted in some circumstances.

For some rights – known as **limited rights** – the European Convention sets out specific circumstances in which the right can be limited.

- For example, public authorities may limit your right to liberty if you are convicted of a criminal offence and you are sent to prison, or if you are legally detained because you have mental health issues.

Some, but not all, rights may be restricted under more general conditions in order to protect the rights of others or the interests of the wider community. These rights are known as **qualified rights**.

- For example, the Government may restrict your right to freedom of expression if you are inciting racial hatred or if you are publishing lies about another person.

We will look at the different ways in which rights may be limited or restricted in more detail in the next section.

Why is the Human Rights Act important for people living with mental health problems?

The Human Rights Act protects people living with mental health problems in two main ways:

I. The law must comply with human rights

The Human Rights Act says that every law must, as far as possible, be interpreted to fit with the human rights contained in the European Convention. This includes the UK Mental Health Act 1983 (we will call it the MHA), which allows for the detention and compulsory treatment of people with a ‘mental disorder’ (please see the next section for more detail on these issues).

When a Court decides that part of a law such as the MHA does not fit with the human rights contained in the European Convention, it makes what is known as a ‘declaration of incompatibility’. This sends a clear message to Parliament that they need to change the law. Although not very many declarations of incompatibility have been made overall, more of them have been made in the area of mental health services than any other.

Declarations of incompatibility

If you were detained under the Mental Health Act and wanted to be discharged, you used to have to prove that you were no longer suffering from a mental health problem that required further detention. In 2001 the UK Court of Appeal declared that this did not fit with the right to liberty and made a 'declaration of incompatibility'. The UK Government then amended the law so that now it is the hospital which has to prove that you should remain in detention. If they cannot do this then the Mental Health Review Tribunal will release you.

2. Mental health practice must also comply with human rights

But human rights are not just about the law. The human rights contained in the European Convention also have an impact on day to day staff and carer practice in the mental health sector. Staff and providers of services in the mental health field must make sure that they do not breach your human rights.

Section 2

Human rights and mental health



In the UK, there is specific legislation – the Mental Health Act 1983 (we will call it the MHA) – which allows for the detention and compulsory treatment of people with a ‘mental disorder’. The fact that the MHA allows for detention and compulsory treatment means that it may affect your human rights in significant ways. The Human Rights Act therefore provides an important system of protection for you if you are receiving mental health services.

What is detention?

If you are detained under the Mental Health Act this means you are admitted to hospital against your will. Issues surrounding detention are looked at in more detail on pages 26–30. Detention under the Mental Health Act is commonly known as ‘being sectioned’.

Detention can also refer to other situations, such as if you are detained because you have been convicted of a crime. However, for the purposes of this guide, detention specifically refers to detention under the Mental Health Act.

Which human rights are relevant for people living with mental health problems?

All of the human rights protected by the European Convention belong to and may be relevant for people living with mental health problems. However this guide will concentrate on the three human rights that are most relevant:

- the right not to be tortured or treated in an inhuman or degrading way;
- the right to respect for private and family life, home and correspondence; and
- the right to liberty.

These three rights raise a range of issues that can be relevant for people living with mental health problems, which are discussed below. However, the relevance of human rights for people living with mental health problems is not limited to these issues. The Human Rights Act is still a relatively new law and has great potential to empower and protect people living with mental health problems in many areas of life.



Your right not to be treated in an inhuman or degrading way

Article 3 of the European Convention says that no one shall be tortured or treated in an inhuman or degrading way. This right is an **absolute right** (see page 8). This means that you should not be tortured or treated in an inhuman or degrading way in any circumstances, as this right may never be breached, restricted or limited.

This Article is not just about torture. The ban on inhuman or degrading treatment can be very relevant to mental health.

- inhuman treatment means treatment causing severe mental or physical harm
- degrading treatment means treatment that is grossly humiliating and undignified

Situations in which people living with mental health problems may experience inhuman or degrading treatment are considered below. However, only the most serious kinds of ill treatment are covered by this Article. Whether the treatment is serious enough to be inhuman or degrading will always depend on the particular circumstances of your case, taking into account factors such as your age, whether you are male or female, your state of health, and the length of time you were subjected to the treatment.

To illustrate this, compare the difference between making a frail, older person stand against a wall for eight hours with making a young healthy person stand against a wall for eight hours. Neither situation is acceptable, but the frail, older person is likely to be more severely affected.

The treatment does not need to be deliberate – it is the impact it has on you that matters. For example, if staff in a care home unintentionally leave patients in soiled bed sheets for long periods of time because they are understaffed, this may still amount to inhuman or degrading treatment.

At the core of this right is **human dignity**.

In mental health services, this right may be relevant in a number of situations:

Conditions and practices in mental health settings

Situations that may involve inhuman or degrading treatment include:

- unchanged sheets
- excessive force used to restrain you
- your calls for help being routinely ignored
- washing or dressing you without regard to your dignity
- neglect or abusive treatment
- other forms of bad practice

Unacceptable practices such as leaving you for a long period in your own bodily waste, tying you to a commode and then feeding you, or physical or verbal abuse may be serious enough to be inhuman or degrading treatment. On each occasion this will depend on the particular circumstances of your case including how severe the treatment is and the impact it has had on you. If you are unsure about whether you have been treated in an inhuman or degrading way you can speak with an experienced adviser – advice lines are given in the Useful contacts section at the end of this guide.

In some instances, the use of **restraint** – physical or otherwise – may also amount to inhuman or degrading treatment. Examples include tying you to a chair to prevent you from moving, or continually giving you medication to keep you sedated because there is a lack of staff. However, restraint is not necessarily in itself a breach of your human rights. Again, whether the treatment is serious enough to be inhuman or degrading will always depend on your specific circumstances.

Extremely **poor conditions** in care homes or hospitals or other settings, such as overcrowding, lack of ventilation, lack of privacy or inadequate sanitary facilities, may also amount to inhuman or degrading treatment.

Medical treatment without your consent

If you are an adult with the **capacity** to make decisions for yourself, and you are not detained under the MHA, you cannot be treated against your wishes. However, if you are detained under the MHA, you can be given medical treatment without your consent as long as it is appropriate treatment for the mental disorder that you are suffering.

What does capacity mean?

If you are unable to make a decision for yourself about a particular issue, for example about treatment, this means that you lack capacity in relation to this decision. The law uses a test to decide whether or not you have capacity. This will look at whether you are able to understand, remember and believe information about your options, weigh up the pros and cons of your available choices, and make and communicate a decision based on that.

Treatment without consent may in some circumstances amount to inhuman or degrading treatment. However, if treatment without consent can be demonstrated to be medically necessary, it will not be inhuman or degrading.

Therefore, it is important that proper procedures are in place to define what is medically necessary. The procedure followed to decide whether to treat you without your consent must be fair. Doctors may be asked to present their evidence in a hearing and you should be given the reasons of the Second Opinion Appointed Doctor (this is an independent doctor who is authorised to give treatment under the MHA) for authorising the treatment.

Case example

A man sectioned with a mental illness, who also had a heart condition, was given a particular drug as part of a medical trial. He objected and had to be held down to have the drug injected. A court said that this type of situation could give rise to a breach of the right not to be treated in an inhuman or degrading way. The court also said that a patient in these circumstances should have the opportunity to challenge the decision at a hearing where the specialists could be cross-examined. This hearing may occur before or after the treatment takes place.

If you lack the capacity to make decisions for yourself, your best interests should be considered when giving you treatment. Any treatment you are given should be the least intrusive option for you.

Failure to act by public authorities

Public authorities must sometimes take positive steps to protect you from inhuman or degrading treatment, even if the harm is caused by private individuals rather than staff or carers of a public authority. For example, if a public authority is aware of evidence that a relative or friend who is caring for you at home may be abusing you, they have a duty under the Human Rights Act to investigate or intervene. If you are subjected to inhuman or degrading treatment and public authorities fail to protect you, this failure to act may breach your right not to suffer this kind of treatment.

This also applies when there is evidence of abuse or neglect within a setting such as a hospital or residential home. Public authorities have a duty not to treat you in an inhuman or degrading way. But they also have a positive duty to take proactive steps to protect you from this kind of treatment even where it is not directly caused by their staff members, for example if it is caused by relatives visiting you in hospital. Public authorities must investigate where there is evidence that you have been treated in an inhuman or degrading way.

In extreme situations, abuse or neglect could lead to a person's death. This will bring in another important human right – the **right to life**, which is protected by Article 2 of the European Convention. This requires public authorities to take proactive steps to protect your life in some circumstances. This includes deaths through suicides. Public authorities are under a duty to take all reasonable steps to prevent suicides of those in their care.

The right to life may also place the authorities under a positive duty to carry out full **inquests** into deaths in suspicious circumstances, including suicides. Public authorities will need to make sure that families are involved in the inquest process and have access to the information they need in order to find out what happened to their family members.

Your right to respect for your private and family life, home and correspondence

Article 8 of the European Convention protects the right to respect for private and family life, home and correspondence. It also sets out, in general terms, circumstances when an interference (also known as a restriction) with this right is acceptable – in other words when an interference is justified.

This means that this right is not an absolute right, but a **qualified right** (see page 9). Your right to respect for your private and family life, home and correspondence may have to be interfered with in order to take account of the rights of other individuals and/or the wider community.

However, for any interference with this right to be justified, it must be lawful, necessary and **proportionate**. A proportionate response to a problem is one that is appropriate and not excessive in the circumstances.

Explaining proportionality

Certain questions can be asked to help decide if an action is proportionate, such as whether alternative solutions to the problem were considered that were less drastic.

For example suppose a son is taken away from his mother because the local authority suspects she is neglecting him, and the mother is not allowed to have any contact with her son. Depending on the circumstances this may not be proportionate, for example if the authorities have not considered other less restrictive options such as providing support for the family so they can live together, or allowing supervised visits.

Sometimes, however, public authorities will act in a proportionate way and an interference with your right will be justified. For example if the local authority has clear evidence that the mother is abusing her son, they may separate him from his mother. This is likely to be an appropriate response in the circumstances, in order to protect the child.

A straightforward way of thinking about proportionality is that authorities **must not use a sledgehammer to crack a nut**.

If public authorities cannot show that they have acted in a proportionate way when interfering with a right, then the interference is not acceptable, and the right will have been breached.

In addition to public authorities not breaching your right to respect for your private and family life, home and correspondence by their own actions, they must also, in some situations, take positive steps to make sure that your right is fulfilled. This may include providing extra resources, for example providing support to enable your family to stay together.

What is meant by family life?

Family life is defined broadly to include close and personal ties of a family kind. It does not just cover blood relatives. Your right to respect for your family life includes being able to live together with your family and, where this is not possible, having regular contact.

Your right to respect for your family life will be relevant if you are in danger of being separated from your children, partner or other family members, or of having very limited contact with them. Public authorities will need to consider whether any actions they take that interfere with your family life are necessary, and whether they could follow a less restrictive course of action – in other words, whether their actions are **proportionate**.

Case example

A couple in Germany, both with learning difficulties, had two young children. The children were removed from their parents some years after their birth as a German court decided that the parents were incapable of bringing up the children, despite there being no evidence of neglect or bad treatment. The children were separated from each other and eventually fostered. They had no contact with their parents for the first six months and after this they had contact for only one hour a month. The European Court of Human Rights said the right to respect for family life was breached in this case. This was because the separation of the family was not proportionate. The authorities could have provided educational or financial support to enable the family to stay together.

Case example

A mother in the UK, alleged to have ‘Munchausen syndrome by proxy’ (where it is suspected that a parent intentionally makes their child ill), was separated from her newborn baby immediately after birth. The European Court of Human Rights said this was an extremely harsh measure and there must be extraordinarily compelling reasons for it to be justified. In this case the Court said that there was no explanation given as to why a less restrictive course of action was not taken, such as allowing the mother and baby to stay together in hospital with supervision. This was therefore a breach of the mother’s right to respect for family life.

Your right to respect for your family life will also apply to hospital visits by family members. Guidance on this topic is provided in a Code of Practice which relates to the MHA. The guidance states that decisions to refuse visits should only be taken exceptionally. When making such decisions, public authorities will need to give clear evidence of concerns and legitimate reasons why they think that providing support and/or supervising visits would not be suitable options.

If decisions are being taken that will affect your family life or your privacy, for example access to your children, you should be involved in the decision-making process. This may mean that you are entitled to proper representation or to have somebody **advocate** for you during the decision-making process.

What is an advocate?

An advocate is someone who can represent and defend your views, needs, wishes, worries and rights if you do not feel able to do this yourself. Advocates can also help you to participate in and make decisions. They are wholly independent – they will represent you without taking a view about your best interests. They are not to be confused with legal advocates who are people with specialist legal knowledge and training, such as lawyers. Legal advocates represent people in formal settings such as courts or tribunals.

You can find out more about advocates by calling any of the mental health advice lines listed in the Useful contacts section.

What is meant by private life?

Private life is defined broadly. It means more than just ‘privacy’ and includes issues such as:

- being able to live your personal life as you choose;
- being able to establish relationships with others as you wish;
- having access to information about your own private life which might be in the possession of others;
- having personal information which is part of your private life kept confidential; and
- being able to access medical treatment.

Private life: personal choices and dignity

Your right to respect for your private life includes a right to personal autonomy (making choices about your life) and human dignity. This right is relevant to the decisions you make, the way you are treated and the conditions in which you are held if you are detained. The kinds of issues covered include:

- sexual relationships;
- who sees or touches your body;
- forcing you to stay on a mixed sex ward if you are particularly distressed by this;
- your diet while you are at hospital or in a residential home; and
- cultural or language differences.

Public authorities should make sure that your needs and wishes are central to all decisions about your private life. You should be supported as far as possible to make your own choices about how you live your life. If public authorities interfere with your private life in any way they need to have a legitimate reason for doing so, and any actions they take must be lawful, necessary and **proportionate** (see pages 17–18). They must not be excessive in the circumstances.

The use of **seclusion** – keeping and supervising a patient alone in a room that may be locked – usually involves an interference with the right to respect for private life. Therefore if you are placed in seclusion, this must be justified as being lawful, necessary and **proportionate**.

Private life: nearest relative

Your ‘nearest relative’ is someone who has important powers, responsibilities and rights and who will be involved in decisions about whether you should be detained. The MHA currently gives you no choice about who can be your ‘nearest relative’ – this is determined by the MHA – and you cannot apply for your nearest relative to be replaced. This means that your nearest relative may be someone who does not know you very well, or someone who you dislike or distrust. Not being able to replace your nearest relative may in some circumstances breach your right to respect for your private and/or family life.

Case example

A woman alleged that her step-father had abused her when she was a child, and her mother sided with her step-father. However, despite this her mother was appointed as her 'nearest relative', as this is what the fixed approach of the Mental Health Act required. The Court found that this was a breach of her right to respect for private life.

Case example

A woman challenged a decision that her same sex partner could not be her 'nearest relative'. The Court decided that a same sex partner should have the same rights as any unmarried heterosexual partner. The Court said that the words 'husband and wife' in the section of the Mental Health Act which determines who can be the 'nearest relative' should be read to mean anyone, including same sex or unmarried heterosexual partners, living with the patient as 'husband and wife'. This was to avoid discrimination between heterosexual and same sex partners.

The Government has indicated that it will amend the MHA to give you more say in this area in the near future. Therefore please consult an experienced adviser for more information about your nearest relative.

Private life: access to your personal information

Information about you and your life is part of your private life. Therefore you should have access to information about you that is held by public authorities. This includes your medical records, and information about medical treatment you are given. Public authorities should only withhold information if there is a reason for this – such as if giving you the information could cause significant harm to you or someone else. This reason must be lawful, necessary and **proportionate**.

Case example

A young man, having reached 18, wanted access to his personal file held by the local authority. He had been in care since a young age and wanted to find out about his past. The local authority refused. The European Court of Human Rights found that this breached his right to respect for private life. The Court said that people should have access to information about themselves unless there is a specific justification for withholding the information.

Private life: sharing information about you

As noted above, information about you and your life is part of your private life. Whether sharing such private information with others without your permission amounts to a breach of your right to respect for your private life will depend on the circumstances of your case. Public authorities must have a proper reason for sharing the information, such as if it is to prevent a crime or protect someone's health. This reason must be lawful, necessary and **proportionate**.

Case example

A mother was her son's 'nearest relative' under the Mental Health Act. He was learning disabled. She wanted to see some papers relating to her son. The son did not have capacity and so was not able to consent. The Court said that, in keeping with the right to respect for private life, she should be entitled to see these papers, but she would not be given access to his entire social services file.

Case example

A man with depression attempted to commit suicide on the street. He was caught by CCTV cameras walking down the street carrying a knife. The local council issued a press release promoting its CCTV system using photographs of the incident. The footage was subsequently released to various press organisations, and was shown in newspaper articles and television broadcasts around the country. The European Court of Human Rights said that this was a serious breach of his right to respect for private life. There were no relevant reasons for the footage to be disclosed without his consent, or without the council making sure that his identity was properly shielded or disguised.

Private life: your right to treatment and resources

Not being able to access medical treatment and other services that you need may affect your physical and/or psychological welfare, and may therefore have a strong impact on your private life. However, the courts have been very clear in saying that your right to respect for your private life does not give you a specific right to treatment. Some treatment or services may require substantial resources and also may have little chance of success and/or may cause you considerable distress, and the courts are careful not to place an unreasonable burden on public authorities. It is therefore generally up to public authorities such as the NHS to decide whether to give you treatment or services where they are not under a legal duty to provide it.

In some circumstances however, public authorities will be under a legal duty to provide you with medical care or other services. Where there is a duty to provide you with medical care or services, a delay in providing this could breach your right to respect for your private life, especially where too much delay has a serious impact on your health.

In addition, the courts have recognised that decisions to refuse treatment or services may have serious implications for the right to respect for private life. Therefore, public authorities cannot simply decide to withhold treatment without any justification. They

need to consider each case carefully, and while they can take resources into account, they cannot justify their decisions solely on the basis of a lack of resources. The stronger the impact a decision not to treat you has on your rights, the greater the need for public authorities to be able to justify their decision.

What is meant by my right to respect for my home?

Your right to respect for your home is not a right to housing, but a right to respect for the home you already have. Your home may be a setting such as a hospital or residential home if you have been living there for a significant period of time. If the authorities decide to close a hospital or residential home without taking your and other residents' needs into account, this may therefore interfere with your right to respect for your home. Any closure decisions which interfere with your right to respect for your home will need to be lawful, necessary and **proportionate**.



Your right to liberty

The vast majority of people receiving treatment in a mental hospital or psychiatric unit are there on a voluntary basis. They are known as 'informal patients'. Informal mental health patients have exactly the same rights as people in hospital for a physical illness.

Only about 15% of mental health hospital patients are compulsorily detained under the Mental Health Act. If you are detained, you are known as a 'formal patient'.

Article 5 of the European Convention contains a right to liberty. This is not a right to be free to do whatever you want. The right to liberty means you have a right not to be locked in a cell or a room, or have your movement restricted in any other extreme way. However this is a **limited right** (see page 8). The Article sets out specific circumstances in which the right to liberty can be limited.

One of the circumstances in which your liberty can be limited is where you are suffering from a serious mental illness. Exactly how mental illness is defined changes according to

psychiatric research and society's attitudes towards mental health issues. However, your liberty cannot be limited just because you have eccentric or unusual views or behaviour. You must have a specific and recognised mental disorder.

This means that compulsory detention under the MHA (as experienced by 'formal patients') does not in itself breach the right to liberty, unless it is unlawful. The different types of detention under the MHA include:

- admission for assessment under section 2 of the MHA. This may only last up to 28 days and cannot be renewed.
- admission for treatment under section 3 of the MHA. This may last for up to 6 months. The detention can be renewed for six months and after that for periods of up to 12 months at a time.
- admission for assessment in case of emergency under section 4 of the MHA. This may only last up to 72 hours.
- removal by the police to a 'place of safety' under section 136 of the MHA. This occurs when a person found in a public place appears to be suffering from a mental disorder and is in 'immediate need of care or control'. The place of safety will usually be in a hospital, but may also be in a police station. This detention may only last up to 72 hours.

Detention may only take place where:

- you are suffering from a mental disorder; and
- detention is necessary in the interests of your own health or safety or for the protection of others.

You may only be detained under section 3 of the MHA if this is necessary in order to treat you. If you are suffering from a psychopathic disorder or mental impairment, the treatment must be likely to improve your condition or stop it getting worse.

What about people who cannot make decisions for themselves?

Some patients do not have the **capacity** (see page 15) to decide whether they would like to be admitted into hospital to receive care and treatment for a mental disorder. Many such people are informally admitted into hospital without using the powers of detention contained in the MHA, as set out above. The European Court of Human Rights has ruled that this kind of admission is detention and that it breaches a person's right to liberty. This is because there are no clear rules about who decides that someone should be detained, and for what reasons. The Government is currently exploring ways of protecting people who are admitted informally in this way.

How and where you are detained

If you are detained under the MHA, this must usually be in a hospital or other appropriate place. There must be a connection between the reason you are detained and the place where you are detained. If there is not, your right to liberty may have been breached. For example if you are not serving a prison term but are nevertheless detained in a prison because local mental health hospitals are overcrowded, this may breach your right to liberty.

The way in which you are detained, for example use of excessive restraint techniques or the use of threats, may breach other human rights standards such as your right not to be treated in an inhuman or degrading way or your right to respect for private and family life (see earlier in this section for details of these rights).

Detention procedures

The Article which sets out the right to liberty establishes minimum safeguards and states that certain procedures must be in place to make sure that detention is lawful and not unfair. You should not be detained at random. The Article says that:

- if you are detained, you must be able to test whether the decision to detain is lawful; and
- you must be released if the detention is found not to be lawful.

Case example

One local authority used to have a practice of routinely arranging hearings regarding detentions for 8 weeks after the application for the hearing was made. This often meant that patients were detained for longer than was necessary. The Court found that this was a breach of the right to liberty, as cases should be heard as soon as is possible in the particular circumstances.

Case example

The hearing for a case before the Mental Health Review Tribunal was delayed by 8½ months, because the Tribunal failed to manage the case properly. The Court found that this was not speedy enough, and therefore this was a breach of the right to liberty.

How can you test whether the decision to detain is lawful?

The right to liberty also says that a court or tribunal must have the power to review all decisions to detain someone. This body must be independent. The Mental Health Review Tribunal (we will call it ‘the Tribunal’ from now on) fulfils this function for mental health patients in England and Wales. If you think your detention should be reviewed you can seek advice about applying to the Tribunal from one of the organisations listed in the Useful contacts section.

The review of the decision to detain you should be carried out quickly. Your application to the Tribunal should be considered as soon as is practical in the circumstances. You can challenge delays or cancellations in hearings that are due to take place before the Tribunal.

The right to liberty also means that if you are detained:

- you must have the opportunity to have your side of the story represented at the Tribunal hearing, either by you or by a representative;

- you have a right to have a legal representative at no cost to you; and
- you must have an opportunity to see and challenge reports and other evidence which led to the decision to detain you.

Release from detention

If you are detained and the Tribunal has decided you are no longer suffering from a mental illness, the hospital will have to discharge you. However, in certain circumstances your discharge might be made conditional upon a hostel place or other services in the community being made available for you. There is no set timescale within which these services must be provided. However, too long a delay in providing the service that you need, causing delay in your release, is not acceptable and may breach your right to liberty.

When the Tribunal is considering your case to be discharged, the hospital must prove that your continued detention is justified. Therefore the Tribunal must discharge you if it cannot be shown that you are currently suffering from a mental illness.

Case example

The Mental Health Review Tribunal had ordered that a person detained under the Mental Health Act should be discharged. An Approved Social Worker immediately applied for the person to be compulsorily admitted under section 3 of the Mental Health Act. The House of Lords (the highest court in the country), said this was unlawful, making reference to the right to liberty. An Approved Social Worker cannot apply for you to be re-detained after the Mental Health Review Tribunal has discharged you, unless he or she has information not known to the Tribunal which would make a difference to your case.

Section 3

Practical advice and information



This guide aims to help you understand what your rights are, and to recognise situations in which your rights, or those of someone you know, have been breached. This section gives practical advice about what you can do next if you think this has happened or is happening.

Talking about it

- talk to somebody you can trust
- there are many support groups or advice lines you can talk to
- remember not every problem will be a human rights issue

The first step in dealing with a human rights issue is to talk to someone about it. This might sound like an obvious step; however many people often feel isolated or unable to speak about their situation, feeling scared of the consequences, or that nothing will change if they do tell someone about it.

Talk to someone whom you feel able to confide in – a close friend or relative, a support group, or one of the organisations listed in the Useful contacts section below. It is generally a good idea to seek advice from an experienced adviser before taking action. This should help you understand more clearly what kinds of issues are involved. It could be that your situation, while distressing, does not involve human rights concerns. However, there may be a way of dealing with the problem using other routes.

Taking action

Sometimes situations can be resolved directly with the person or organisation involved. You (or someone who can speak on your behalf) may be able to do this in a less formal way by speaking directly with those involved and/or writing a letter (see **raising the issue initially**).

If you are unable to resolve your situation in this way, all providers of public services are required by law to have a formal procedure for you to complain through (see **complaints procedures**).

However it may be that the situation can only be resolved by a court. Taking a case to court can be a lengthy and expensive process, and therefore it is best to avoid court proceedings where possible. However, there are time **limits for legal proceedings** (see **taking your case to court**) and therefore if it seems unlikely that the situation will be resolved directly with the person or organisation involved you should seek legal advice as soon as possible.

I. Raising the issue initially

- sometimes human rights issues can be resolved quickly by communicating with those involved, without going through any formal procedures
- try to seek advice before raising the problem directly with the person(s) involved
- somebody you can trust may be able to speak up about your problem for you

If you feel you can, you or someone who can **advocate** for you (see page 21) should raise the problem directly with the person or public authority that you feel has breached your rights, either by speaking to them or writing them a letter explaining the issue and mentioning that you think you have a complaint on human rights grounds. An advocate will be able to provide you with support and help you get your views across.

While this may be the simplest way to solve the problem, you should make sure you seek advice before doing this. Sometimes raising the issue directly may place you in a more vulnerable position, as the person(s) concerned may not react well to your complaint. If you have any worries that raising the issue may make things worse for you, you should consider approaching the problem more formally either through a complaints procedure, or – if the complaint fails or the matter is really urgent – by taking your case to court (see below for more details of these options).

If you do decide to raise the problem directly this will hopefully start a negotiation process towards resolving the issue. Public authorities (for a definition of public authorities see page 8) have a legal duty to respect your rights, so if they are failing to do so they have to listen and respond to you.

2. Using complaints procedures

- all registered providers of public services are required by law to have a procedure for you to complain about their service
- if your situation cannot be resolved in this way there are other organisations that you can make a complaint to without having to go to court
- it does not cost anything to make a complaint either through a complaints procedure or through a complaints organisation

Sometimes pointing out the human rights implications of a situation may not change things. The person or organisation concerned may refuse to listen to you, or may disagree that there is a problem. Alternatively, you may decide that the situation is best approached in a more formal way.

Before attempting to take your case to court it is important to try to go through the formal complaints procedure of the public authority. All registered service providers are required by law to have a complaints procedure, setting out how people who use services or those acting on their behalf can complain about the service.

If your situation remains unresolved after having gone through the complaints procedure of the public authority, you can register your complaint with an organisation such as an Ombudsman, the Commission for Social Care Inspection or the Healthcare Commission. Details of how to contact these and other complaints organisations are given in the Useful contacts section below.

Another option is to write a letter to your **MP or locally elected Councillor**, who may be able to take the issue up for you. For details of how to contact your MP or Councillor, please see the Useful contacts section.

3. Taking your case to court

As mentioned previously, taking a case to court can be a lengthy process, and can be expensive if you do not qualify for legal aid (see below). It is therefore best to avoid court proceedings where possible. However, in some cases public authorities will not react appropriately to your complaint, and the only way to resolve the problem may be by taking legal action.

Seeking legal advice

- you may be able to receive free legal advice from a local law centre, Citizens Advice Bureau or an independent advice centre, or they can put you in touch with a suitable solicitor or charity that is able to provide advice
- the local authority's information office at your nearest town hall will give you details of local legal agencies, or you can look on the internet
- you can find out the details of local solicitors and advice agencies through either the Community Legal Service or the Law Society
- details of these and other sources of legal advice are given in the Useful contacts section

If you think this may be the only solution then you should seek legal advice as soon as possible, as your claims have to be made quickly. While exceptions can sometimes be made, you usually have to bring a case within one year of the incident occurring.

You may be able to receive **free legal aid** from a solicitor if you qualify financially. The Community Legal Service website (listed in the Useful contacts section) has a 'legal aid calculator' which you can use to help establish whether you qualify for legal aid. When making an appointment with a solicitor, check with them to see whether you are

eligible for free advice or, if not, how much they will charge for an initial interview. You should also check which areas the solicitor specialises in, as some solicitors may not have experience in mental health or human rights law.

Your next action will depend on the legal advice you receive. Human rights cases are heard in ordinary UK courts, and your legal adviser will recommend the best procedure for your situation. If the case needs to be resolved by a court, you will need to be represented by a solicitor. The solicitor will advise you on whether you would qualify for a full legal aid certificate to cover the costs of representation. If your case is successful, depending on the procedure you go through, you may be awarded damages, and/or an order may be made to prevent the public authority breaching your human rights. If your case is unsuccessful it may be possible to appeal.

If your case goes all the way through the UK court system without success, your last option will be to take your case to the **European Court of Human Rights** in Strasbourg, France (see page 7). They will not hear your case unless it has gone through all possible UK courts, and you need to apply within 6 months of the final decision of the UK courts.

Proceedings before the European Court are free, but it does not grant legal aid to pay for a lawyer to draft your initial complaint. If the Court decides to accept your case you may be able to receive free legal help if you cannot afford to pay for a lawyer. If you are unsure about any of this you can seek advice from one of the organisations in the Useful contacts section below.

Section 4

Useful contacts



Seeking legal/human rights advice

Advice UK www.adviceuk.org.uk

A membership organisation of independent advice centres. They do not give out advice themselves but their website has a directory of advice centres.

Telephone: 020 7407 4070

Email: general@adviceuk.org.uk

Citizens Advice www.citizensadvice.org.uk

Provides free, independent and confidential legal advice, and can help you find a solicitor. To receive advice, contact your local Citizens Advice Bureau, which you can find by visiting the Citizens Advice website or contacting your local authority's information office at your nearest town hall. They also have a separate website giving advice on a range of topics including human rights.

Telephone: 020 7833 2181 (no advice is available on this line, but they will be able to give you details of your local Citizens Advice Bureau that can give you advice)

Advice website: www.adviceguide.org.uk

Community Legal Service www.clsdirect.org.uk

Has an online directory providing details of solicitors, advice agencies and information providers across England and Wales. They also have a helpline giving free initial legal help and advice on benefits, tax credits, debt, education, housing and employment problems.

Helpline: 0845 345 4 345

Law Centres Federation www.lawcentres.org.uk

The coordinating body for Law Centres. Law Centres provide a free and independent professional legal service to people who live or work in their catchment areas. The Federation does not itself provide legal advice, but can provide details of your nearest law centre.

Telephone: 020 7387 8570

Email: info@lawcentres.org.uk

The Law Society www.lawsociety.org.uk

A regulatory and representative body for solicitors. Their website has an online directory of law firms and solicitors. You can also call their enquiry line for help in finding a solicitor. They do not provide legal advice.

Enquiry line: 0870 606 6575

Email: info.services@lawsociety.org.uk

Liberty www.liberty-human-rights.org.uk

An independent human rights organisation, which runs an advice service for members of the public with human rights queries. They also have an advice website which gives comprehensive information on the UK Human Rights Act.

Advice Line: 0845 123 2307

(Monday and Thursday: 6.30–8.30pm; Wednesday: 12.30–2.30pm)

Advice Website: www.yourrights.org.uk

(You can download a written advice request form from this website)

Mind Legal Advice Line

National mental health charity able to provide legal advice and occasionally further casework support.

Telephone: 0208 519 2122 (Monday, Wednesday and Friday: 2–4.30pm)

Email: legal@mind.org.uk

Rights of Women www.rightsofwomen.org.uk

A voluntary organisation dedicated to women's rights. They have an advice line providing free confidential legal advice to women.

Advice Line: 020 7251 6577

Textphone: 020 7490 2562

(Tuesday, Wednesday and Thursday: 2–4pm and 7–9pm; Friday: 12–2pm)

In addition to calling any of the above organisations, if you feel you have a potential claim you could also directly call any other local advice centre or reputable lawyer.

Making a complaint

The complaints bodies listed here do not charge to investigate your complaint. However, they will only investigate your complaint if they believe that it may be valid.

Commission for Social Care Inspection (CSCI) www.csci.gov.uk

CSCI's primary function is to promote improvements in social care. If you have a complaint about a registered care service provider you can contact your local CSCI office, and they will look at your complaint to determine the most appropriate way for the complaint to be investigated.

Customer Services Helpline: 0845 015 0120 (You can call this number to find out the details of your local CSCI office)

Email: enquiries@csci.gsi.gov.uk

Healthcare Commission www.healthcarecommission.org.uk

The Healthcare Commission is responsible for reviewing complaints about the NHS or independent healthcare in England. They will only look at your complaint if it cannot be resolved through the formal complaints procedure of the NHS or healthcare body concerned.

Telephone: 0845 601 3012

Email: complaints@healthcarecommission.org.uk

The Local Government Ombudsman www.lgo.org.uk

Investigates complaints against local authorities and certain other bodies. They investigate complaints about most council matters including social services. You must give the council concerned an opportunity to deal with the complaint against it first. Details of how to make a complaint can be found on the website, or you can call their advice line.

Advice Line: 0845 602 1983

(Weekdays 9am – 4.30pm)

The Mental Health Act Commission www.mhac.org.uk

Investigates complaints in relation to detention that have not been resolved through the NHS complaints procedure. They also provide advice and support for detained patients during the NHS complaint process.

Telephone: 0115 943 7100

(Weekdays 9am – 4.30pm; answerphone service at all other times)

Parliamentary and Health Service Ombudsman www.ombudsman.org.uk

Looks into complaints that Government departments, their agencies and some other public bodies in the UK – and the NHS in England – have not acted properly or fairly or have provided a poor service. Their website contains detailed information about how to make a complaint.

Complaints helpline: 0845 015 4033

Email: phso.enquiries@ombudsman.org.uk

Contacting your MP or Councillor

You can find out how to contact your MP through the House of Commons Information Office:

Telephone: 020 7219 4272

Email: hcinfo@parliament.uk

Or on the web at: www.locata.co.uk/commons

You can find contact details for your local Councillor through your local authority, or on the web at: www.councillor.gov.uk

Mental health advice lines and websites

Mind www.mind.org.uk

In addition to a wide range of mental health services, Mind runs a helpline offering advice on mental health issues.

Infoline: 0845 766 0163

(Weekdays 9.15am – 5.15pm)

Deaf or speech impaired enquirers can contact Mind on the same number (if you are using BT Textdirect add the prefix 18001)

Email: info@mind.org.uk

For details of regional and local Mind offices (there are over 200) contact the Infoline or see their website.

No Panic www.nopanic.org.uk

Aims to aid the relief and rehabilitation of those people suffering from Panic Attacks, Phobias, Obsessive Compulsive Disorders and other related Anxiety Disorders. They run a helpline and provide a range of support services.

Helpline: 0808 808 0545

(10am – 10pm every day; answerphone service 10pm – 10am)

Email: ceo@nopanic.org.uk

Rethink www.rethink.org

Runs more than 380 mental health services across England and Northern Ireland, including telephone help lines and advocacy services.

National Advice Service: 020 8974 6814

(Weekdays 10am – 3pm)

Email: advice@rethink.org

They also have region-specific help lines – see website or call National Advice Service for details.

The Samaritans www.samaritans.org.uk

Available 24 hours a day to provide confidential emotional support for people who are experiencing feelings of distress or despair.

Helpline: 08457 90 90 90

Email: jo@samaritans.org

Sane www.sane.org.uk

Runs a helpline – Saneline – which offers practical information, crisis care and emotional support to anybody affected by mental health problems.

Helpline: 0845 767 8000

The Scottish Association for Mental Health (SAMH) www.samh.org.uk

A Scotland-wide mental health charity providing a number of services including an information service for general enquiries on mental health. They also offer free legal advice.

Information line: 0141 568 7000

(Weekdays 2–4.30pm)

Email: info@samh.org.uk

Witness www.witnessagainstabuse.org.uk

Provides a helpline and professional support and advocacy services for victims of abuse by health and social care workers.

Helpline: 08454 500 300

Email: info@witnessagainstabuse.org.uk

Young Minds www.youngminds.org.uk

Runs a free, confidential telephone service providing information and advice for any adult with concerns about the mental health of a child or young person.

Parents Information Service: 0800 018 2138

(Monday and Friday 10–1pm; Tuesday and Thursday 1–4pm; Wednesday 1–4pm and 6–8pm)

The Mental Health Foundation: www.mentalhealth.org.uk

Aims to help people survive, recover from and prevent mental health problems. Its website has a wide range of information on mental health.

Mental Health Resource Centre for England: www.mhrc.cc

A user/carer operated mental health and social care website search directory, with over 1000 links to public and private organisation websites.

Together UK (Formerly Maca): www.together-uk.org

Charity running a range of mental health services across the country, including advocacy services.

Useful websites on human rights/legal issues

Advice Now www.advicenow.org.uk

Website providing accurate, up-to-date information on rights and legal issues.

**The Aire Centre – Advice on Individual Rights in Europe
www.airecentre.org**

Provides information and advice on international human rights law.

The Council of Europe www.coe.int

International organisation which has the defence of human rights as one of its central aims. The home page of the European Court of Human Rights can also be found here.

**Human Rights Division, Department for Constitutional Affairs
www.dca.gov.uk/hract/hramenu.htm**

The Human Rights Division ensures the successful implementation of the Human Rights Act. It promotes human rights inside and outside Government, organising events and publishing information and study guides on human rights.

Justice www.justice.org.uk

An independent legal human rights organisation that aims to promote human rights, influence law and practice and improve the system of justice.

The British Institute of Human Rights

The British Institute of Human Rights (BIHR) is an independent charity based in London which raises awareness and understanding about the importance of human rights in the UK. A major part of our work is providing training on human rights to voluntary and public sector organisations working in a range of areas including mental health. This gives us an insight into the kinds of human rights issues experienced by people living with mental health problems.

Many of the organisations we train have requested practical and accessible information on human rights written directly for people living with mental health problems. This guide is our attempt to fulfil this need.

Thank you

This guide was written by Sarah Cooke in conjunction with Lucy Matthews and project managed by BIHR staff Lucy Matthews and Carolina Gottardo. We would like to thank Chris Wright and Mandy Lawrence of the Experts by Experience Group of the National Institute of Mental Health in England Eastern, Mary Teasdale of Rethink and Henrietta Marriage of Mind for their extensive help in preparing this guide. We would also like to thank Comic Relief for funding this project.

The rights contained in the European Convention on Human Rights include:

- the right to life
- the right not to be tortured or treated in an inhuman or degrading way
- the right to be free from slavery or forced labour
- the right to liberty
- the right to a fair trial
- the right to no punishment without law
- the right to respect for private and family life, home and correspondence
- the right to freedom of thought, conscience and religion
- the right to freedom of expression
- the right to freedom of assembly and association
- the right to marry and found a family
- the right not to be discriminated against in relation to any of the rights contained in the European Convention
- the right to peaceful enjoyment of possessions
- the right to education

Remember that not all of these rights are absolute. Some of these rights may be limited or restricted under certain conditions (see pages 8–9).



Guides available in this series are:

- Your Human Rights – a guide for people living with mental health problems
- Your Human Rights – a guide for disabled people
- Your Human Rights – a guide for older people
- Your Human Rights – a guide for refugees and asylum seekers

The guides are available in single copies for individuals free of charge. They are also available in larger quantities for organisations. Please contact the British Institute of Human Rights for printed copies. You can also download them from www.bihhr.org.

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Please note that the British Institute of Human Rights is a small charity and cannot give advice on individual cases. If individuals feel they need advice they should contact a reputable lawyer or one of the organisations listed in the Useful contacts section of this guide.

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