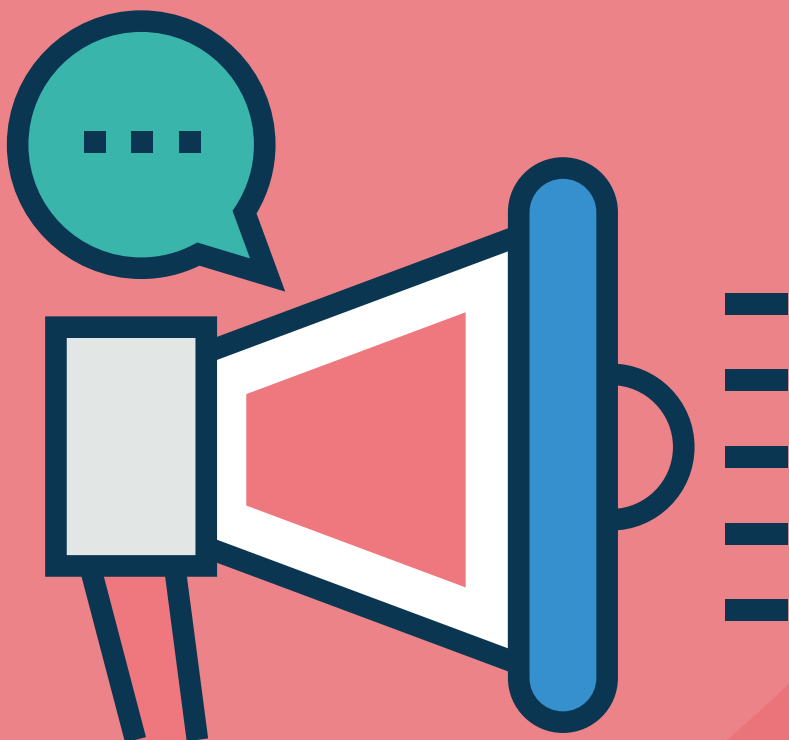


The British Institute of Human Rights

bihr.org.uk



My Human Rights in Mental Health Services



What is this booklet?

- ✓ This booklet is about mental health recovery and human rights.
- ✓ We worked with people who access mental health services from Tees, Esk and Wear Valleys NHS Foundation Trust (TEWV) and their families to create this booklet.
- ✓ This booklet gives 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, in the community or at home.



Who is this booklet for?

This booklet is for anyone who is accessing a TEWV NHS Trust service. It will also be useful for advocates, carers and families of people who are accessing a TEWV NHS Trust service.

This booklet is written by the British Institute of Human Rights (BIHR). TEWV NHS Trust is working with BIHR on a project called, 'A Human Rights Based Approach to Mental Health Recovery'. The project works with people using services, their families, carers and local communities to know and claim their rights. The project also works with staff and leadership to increase their ability to respect, protect and fulfil human rights in their daily practice.



Mental Health

We use the term ‘mental health’ to include anyone who may have a “disorder” or “disability of mind” (definition in the Mental Health Act). This can include depression, dementia, eating disorders, autism-spectrum disorders, behaviour changes caused by brain damage and personality disorders.



Mental Capacity

Capacity is about your everyday ability to make decisions about what happens to you, including decisions about your care and treatment.

Your mental capacity can be reduced for a number of reasons such as mental illness, learning disability, dementia, brain damage or intoxication.

The Mental Capacity Act sets out a test to assess whether you have capacity to make a decision, if you are able to:

- ✓ Understand
- ✓ Remember
- ✓ Weigh up pros and cons and communicate your decision

Finding your way around

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What are Human Rights?

- ✓ Every person has human rights.
- ✓ Human rights are our basic freedoms.

Human rights make sure people are...



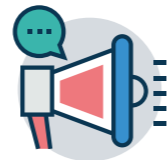
Treated with
dignity



Treated with
respect



Treated fairly



Listened to and
have a say over
their lives



Who has Human Rights?

Human Rights are 'universal' which means they belong to everyone – no matter who you are.

We are all born with human rights and, although they can sometimes be limited or restricted, your rights cannot be taken away from you.

How are my rights protected?

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

These are 3 things you need know about how the Human Rights Act works:



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

You don't need a lawyer to use the Human Rights Act. You can raise the issue about your care or treatment directly with the service.



2. 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.



3. 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 get help. The Human Rights Act brought these rights closer to home. This means you can now ask your local court or tribunal to help with your rights.

Who has duties to uphold your human rights?

This means that people working in public services, called public officials, have to uphold your human rights.

This includes:

- ✓ NHS staff
- ✓ Local authority staff (such as social services or housing officers)
- ✓ 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, for example, the Mental Health Tribunal or the Court of Protection

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

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

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

- ✓ For serious concerns, contact the police. In an emergency call 999, for other police queries contact 101.

This duty 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.

What rights do I have?

There are 16 rights in the Human Rights Act – these are on the back on your booklet.

The rights in the Human Rights Act are called ‘Articles’. In this part of the booklet we explain your human rights.

Some of these rights are what we call “absolute” human rights which means they can never be taken away.

Others are “non-absolute” human rights which means that sometimes they might be restricted but this must be done according to a 3-stage test. Under each right in this booklet, we explain whether they are absolute or non-absolute.

The 6 rights in this booklet are the ones people accessing TEWV services and involved in the project told us were most important to them when accessing mental health services.



Right to Life
Article 2



Right not to be tortured or treated in an inhuman or degrading way
Article 3



Right to liberty
Article 5



Right to respect for private and family life, home and correspondence
Article 8



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 Life
Article 2

Right to life

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

When might my right to life be at risk when accessing mental health services?

- ✓ If you are having suicidal thoughts or want to take your own life whilst in hospital or in detention and public officials know 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/capacity issue.

Can my right to life be restricted by mental health/capacity services?

- ✗ No. A health or care professional cannot deliberately take away your right to life. This right is called an 'absolute right', which means it must always be protected by health and care professionals.



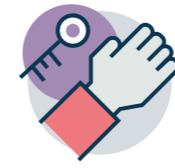
Human Rights in real life: **Melanie's story**

Melanie Rabone was 24 years old and voluntarily admitted herself to a mental health hospital after she'd attempted to take her own life. She was assessed as being at high risk of suicide and the doctor advised ward staff that if Melanie asked to leave, she should be re-assessed and if necessary detained under the MHA to try and protect her right to life.

At the weekend, Melanie left the hospital and whilst on leave from the ward took her own life.

Her family took a human rights case to court, 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 right to life, including by re-assessing her and detaining her under the MHA if required to try and prevent suicide.

(Real life Court example from Rabone v Penine Care NHS Foundation Trust, 2012)



**Right not to be
tortured or treated
in an inhuman or
degrading way**
Article 3

Right to be free from inhuman and degrading treatment

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

How does this right protect me when I am receiving mental health recovery services?

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

- ✓ Use of excessive force to restrain you.
- ✓ Physical or mental abuse.
- ✓ Lack of care or medication which means you are in pain or suffer for a long time.
- ✓ Leaving you in your own bodily waste for long periods of time.
- ✓ Not getting enough to eat or drink to keep you well.

When is treatment 'inhuman or degrading'?

This is treatment which:

- ✓ Makes you very frightened or worried.
- ✓ Causes you a lot of pain.
- ✓ Makes you feel worthless or hopeless.
- ✓ Causes extreme humiliation.

To use the Human Rights Act to protect you against inhuman or degrading treatment, the treatment must be very serious. Less severe abuse which has a less serious impact on you is protected by your right to respect for private life.

Because everybody is different, what is inhuman and degrading treatment for one person might not be inhuman and degrading for another person. It all depends on each person and how treatment affects them. So, public officials must think about things like:

- ✓ Your age
- ✓ Your gender
- ✓ Your mental health
- ✓ Your mental capacity issue
- ✓ How long you are experiencing such treatment

Can my right be restricted by health and social care services?

- ✗ No. Public officials must not treat you in an inhuman or degrading way. This right is called an 'absolute right', which means it can never be lawfully taken away.



Real Life Human Rights Case from the Courts: Mandeep's Story

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, 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 manic episode with psychotic features.

He took a human rights case to court challenging the conditions and time in police detention. The court took into account the impact the detention conditions had on Mandeep, including the fact that he was in real need of appropriate psychiatric treatment. The court decided this breached Mandeep's right to be free from inhuman and degrading treatment.

*(Real life Court example from MS v UK, 2012.
We made up the name.)*



Right to liberty

Right to liberty
Article 5

This right is protected by Article 5 of the Human Rights Act.

When might my right to liberty be at risk when accessing mental health services?

- ✓ Being excessively restrained for long periods of time.
- ✓ An inappropriate place being used to detain you, such as a prison even though you haven't been ordered there by a court, because there isn't any room in mental health hospitals.
- ✓ Significant delays or cancellation of hearings allowing you to challenge your detention.
- ✓ Being told you are not allowed to leave or being physically prevented from leaving a place (like a care home or hospital) when you are not formally detained under the Mental Health Act, or have not had your deprivation of liberty authorised under the Mental Capacity Act.

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

Yes, your right to liberty can be limited where necessary but there is a test the people who provide your care must go through if they are going to restrict this right. They must be able to show that it is:

- ✓ **Lawful** – there must be a law which allows public officials to take that action (such as the Mental Health Act or Mental Capacity Act) and this information must be made accessible to you.
- ✓ **Legitimate** – there must be a good reason (for example to protect you or other patients/residents/staff from harm, this is known as public safety). Your liberty cannot be restricted if the only reason is lack of resources (such as not enough available staff).
- ✓ **Proportionate** – they have thought about other things they could do, but there is no other way to protect you or other people. Sometimes people use the phrase, “least restrictive option” to describe this.



Human Rights in real life: **Peter's story**

Peter was admitted to a London mental health hospital. He is an informal patient, so he has not been “sectioned” under the Mental Health Act. This means he is entitled to leave the hospital whenever he likes. If staff have concerns about Peter’s health or safety they could use powers under the Mental Health Act to detain him.

Peter wants to leave the ward to visit his sister and his friends. On the three occasions he tries to do this the nurses tell him it was not in his best interests to leave. So even though Peter was not detained and free to leave, in practice he was not able to.

Peter had access to an advocate, Rana, who had received human rights training from BIHR. After discussing the issue with Peter, Rana wrote to the hospital on his behalf flagging up concerns that this situation was breaching Peter’s right to liberty, protected by Article 5 in the Human Rights Act. Rana explained that although Peter is an informal patient, he was being treated as though the procedures for detaining him had been used. Rana raised that officials were not meeting the 3 stage test. The detention was not lawful or proportionate.

Following this Peter’s relationship with the nurses greatly improved, and he was permitted to leave when he wanted to. Peter’s mental health improved greatly, and he was discharged shortly after.

(Real life example from our Know Your Human Rights Project, 2019.)



Right to respect for private and family life, home and correspondence Article 8

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

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

What does my right to respect for private and family life, home and correspondence mean when accessing mental health services?

Some examples of what this right protects:

- ✓ Having control over your own body and life and being able to participate in decisions about your care and treatment.
- ✓ Your private information.
- ✓ Your wellbeing, which means being free from abuse or neglect.
- ✓ Being able to participate in the life of your community. For example, being able to socialise with others and not be secluded without good reason.
- ✓ Developing family or other relationships and maintaining contact.
- ✓ Respect for the home you already have (not a right to housing).
- ✓ Being able to communicate with people (including by letter, email etc.).

Can my right to private and family life, home and correspondence be restricted by mental health/capacity services?

Yes. As we said above, there is a test the people who provide your care must go through if they are going to restrict this right. They must be able to show that it is:

- ✓ **Lawful** – there must be a law which allows public officials to take that action (such as the Mental Health Act or Mental Capacity Act).
- ✓ **Legitimate** – there is a good reason (for example public safety or protecting the rights of other people, including other patients/residents and staff). Your right cannot be restricted if the only reason is lack of resources (such as not enough available staff).
- ✓ **Proportionate** – they have thought about other things they could do, but there is no other way to protect you or other people. It is the least restrictive option.



Human Rights in real life: Erin's story

Erin was in her late 70s and affected by dementia. She lived in a care home. Her partner, Patrick, visited her regularly. During a visit Patrick was seen touching Erin in a sexual way. Staff were concerned and raised it with the local authority, who began a safeguarding enquiry.

Erin was assessed as having capacity to decide if she wanted to have contact with Patrick (including kissing and hugging) but not sexual contact. Erin's friend was pressing the local authority to restrict Patrick's visits.

Erin's Care Act Advocate, Laticia, supported her through the enquiry. Laticia had been trained by BIHR and knew this was about Erin's right to family life. Laticia had seen the positive impact the relationship with Patrick appeared to have on Erin.

Laticia met the social worker conducting the enquiry. The social worker agreed that Erin's right to family life was engaged and took this into account during her enquiry. It concluded that the local authority would not prevent Patrick from visiting Erin and that the care home staff would not intervene if they kiss and hug.

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



Right to peaceful enjoyment of possessions

Right to peaceful enjoyment of possessions
Article 1, Protocol 1

This right is protected by Article 1, Protocol 1.

What does my right to peaceful enjoyment of possessions mean when accessing mental health services?

This right prevents mental health services from depriving people of their property, from interfering with people's property or putting restrictions on what people do with their property, unless the three stage test is met.

- ✓ **Lawful** – there must be a law which allows public officials to interfere with your property (such as the Mental Health Act or Mental Capacity Act).
- ✓ **Legitimate** – there is a good reason (for example public safety or protecting the rights of other people, including other patients/residents and staff).
- ✓ **Proportionate** – they have thought about other things they could do, but there is no other way to protect you or other people. It is the least restrictive option and the decision is reviewed appropriately.



Human Rights in real life: Josh's story

Josh was an inpatient in a mental health hospital for children and young people. One Friday afternoon, Josh was told he must hand over his notebook, a new ward policy as there had been an incident on another ward that day. Josh was distraught, his notebook was where he wrote down how he felt, a way of managing day to day feelings. It was also where he liked to draw, something which contributed hugely to his health and wellbeing.

Josh's mum arrived to visit Josh later that day and found him in tears. She had been involved in a BIHR training course and asked ward staff whether there was a legitimate aim for taking away Josh's journal? Staff explained it was a new ward policy. Josh's mum told staff this was not the least restrictive response and it must be reviewed immediately.

The following day Josh's journal was returned and a less restrictive process was put in place. Staff should from now on manage and review possessions on an individual basis and only when the person or others is at risk of harm.



Right not to be discriminated against in relation to any of the human rights listed here
Article 14

Right to be free from discrimination

This right is protected by Article 14.

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 must be treated the same as everyone else. If you think you are being treated differently you can bring this up.

You can think of it as a ‘piggy-back’ right.



Human Rights in real life: **Alice’s story**

Alice was 18 years old and getting treatment for a mental health problem by her GP. Alice needed surgery on an injury after self-harming but a doctor decided not to perform the operation. Her GP and psychiatrist believed the surgery was in her best interest and the delay was making Alice very upset and in a lot of pain.

Joe, who worked for an advocacy charity, supported Alice and her family 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 Alice received the surgery.

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

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/other public officials.

What might my right to free from discrimination be at risk when accessing mental health services?

- ✓ 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 deciding you should live in an institution like a hospital or unit, just because of you mental capacity or mental health.
- ✓ Bullying or harassment.

Can my right to be free from discrimination be restricted by mental health/capacity services?

Yes, sometimes. Not all discrimination is against the law. Sometimes you may be treated differently, but this is not discrimination. This may be for a good reason.

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/capacity issue).

With thanks

BIHR would like to thank everyone involved in helping us to create this resource. Special thanks to every individual who shared their experience of accessing mental health services. Without these people's stories we could not have created this resource which will help others know and claim their human rights.

“The project was very informative, I feel enlightened about my human rights.”

“It was so helpful. We need more time and more human rights workshops to go through all of the rights in the Human Rights Act.”

“Thank you for this learning opportunity.”

“Why has this not been done before it seems so obvious.”

“Knowledge is power.”

“Extremely informative workshop. My understanding has grown.”

“Human rights information like this should be included in appointment letters when invited to an appointment.”

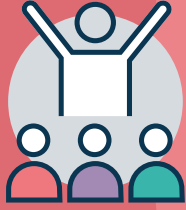
Find out more

As well as our “Know Your Human Rights” website (<https://knowyourhumanrights.co.uk>) we have a range of free resources you can order or download at www.bihr.org.uk.

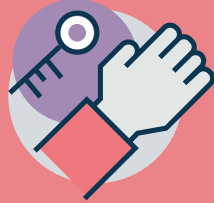
If you need human rights help or advice you can call a human rights helpline run by Liberty on **0203 145 0461**.

If you need help or support with your human rights within TEWV NHS Foundation Trust contact: **The Patient Advice and Liaison Service (PALS)** helpline.

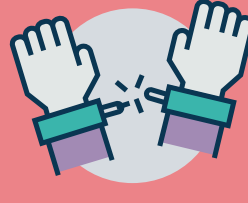
The helpline is available Monday to Friday, 9 am – 4 pm with a free phone service: **0800 052 0219** or by email: tewv.pals@nhs.net.



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



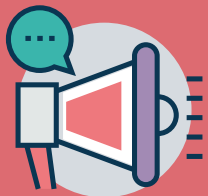
Right not to be punished for something which wasn't against the law when you did it
Article 7



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



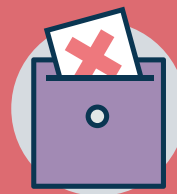
Right not to be discriminated against in relation to any of the human rights listed here
Article 14



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