
The British Institute of **Human Rights**

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Mental Health, Mental Capacity: My human rights

Finding your way around

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Where does this booklet come from?

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



These organisations are working with BIHR on a project called 'Care and Support: A Human Rights Approach to Advocacy'. The project aims to ensure people with mental health and capacity issues have increased control and autonomy over treatment decisions, and make sure they are treated with dignity and respect. The project is funded by the Department of Health, therefore the information in this booklet focuses on English law and bodies.

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

BIHR's advocacy resources aim to empower people to have their rights respected. If our materials have helped you use human rights in practice, as an individual or an advocate, we would love to hear your story. You can contact us on info@bihr.org.uk

This booklet is for information purposes only. It is not intended, and should not be used, as legal advice or guidance.

What is this booklet?

This booklet is about mental health, mental capacity and human rights. If you have a mental health or mental capacity issue, 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.

Unlocking your rights

This booklet focuses on your human rights when you are receiving health and care services, e.g. at your GP, in hospital, community care, care homes etc. Most of the information will also apply to other situations like education, housing or involvement with the police, but these areas are not the focus of this booklet.



Who is this booklet for?

This booklet is for anyone with a mental health or mental capacity issue. We also have an accessible version of this booklet, available at www.bih.org.uk/health

Mental Health and Mental Capacity: what we mean

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, autistic-spectrum disorders, 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, including decisions about your care and treatment.

Your mental capacity can be impaired 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 the pros and cons and communicate your decision

What are human rights?

What

Human rights are the basic freedoms and protections that every person has simply because they are human. Human rights are about being treated with dignity, respect and fairness, about having a say over your own life and about participating in decisions that are made about your care and treatment.

Human rights are not privileges to be earned or gifts from government, they are part of what it means to be a human.

Human rights are a set of minimum standards for all people. This idea came out of the horrors of World War II when the world community came together and set some rules for governments about how people should be treated.

Human rights are a set of rules for public officials about how we should be treated.

“Human rights are basic rights to humane dignified treatment and things I should have access to simply because of the fact I am a human being”

Cath, a woman who uses mental health services



Who has human rights?

Everyone has human rights. They 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 (more about this on page 24).



“Human rights are premised on the inherent dignity of all human beings whatever their frailty or flaws.”

Lady Hale, Deputy President of the Supreme Court in the ‘Cheshire West’ case

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').

There are three things you need 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.

This means you can raise issues about your care/treatment directly with service providers, using human rights language to try and resolve issues without needing a lawyer or to go to court. We explain this in more detail on page 10.

two

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

The UK helped write the Convention after WWII to set out the minimum standards we can expect from our government. Before the Human Rights Act made these rights part of our law in the UK, you had to go to the European Court of Human Rights

(in France) to get access to these rights. This is far away and it can take years to get your case heard (because the court protects over 820 million people). So the Human Rights Act brought these rights closer to home, by making them part of our law here. This means you can now ask your local court or tribunal to decide whether your human rights are being breached or are at risk of this.

three

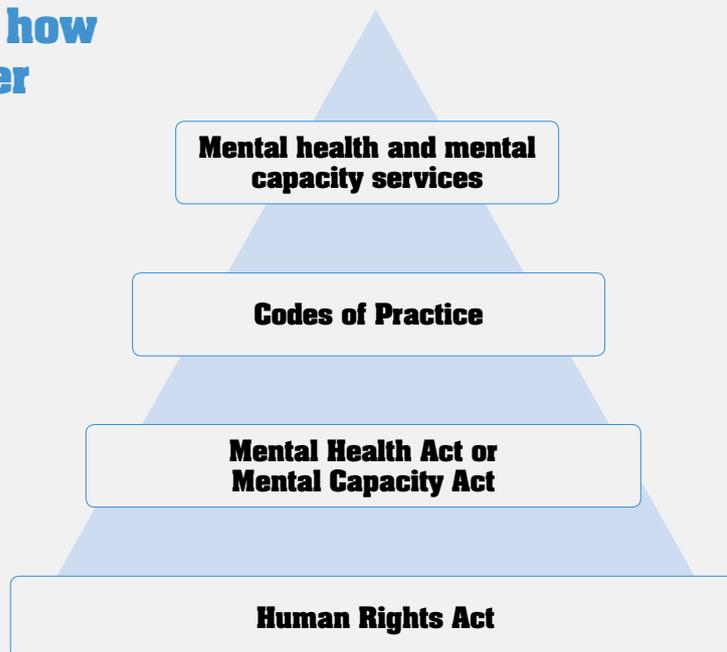
All other laws should be compatible with the rights in the Human Rights Act, including mental health and mental capacity laws.

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 and decide if there is an unlawful restriction and whether the Mental Health Act needs to be applied in a different way or changed.

In real life: Sally is in a long-term relationship with another woman and when she was diagnosed with paranoid schizophrenia and depression her local authority made her estranged 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).

Understanding how laws fit together



Who has duties to uphold my human rights?

Public authorities have a legal duty to respect and protect your rights in everything that they do, including designing and delivering services. Importantly, private companies and charities delivering health and care services also have a legal duty to uphold your rights where your care is arranged or paid for (in any part) by the local authority. This duty means public officials – 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 or the Court of Protection

This is not a full list, just examples of who has duties to uphold your rights. This booklet focuses mainly on the duties of those providing health and care services.

If you are receiving your care from a private individual, or you're not sure whether your care provider has duties to uphold your rights, and you are concerned that your rights are being interfered with, you should contact someone working in a public authority like a social worker, your GP, your council, the Care Quality Commission, or for serious concerns the police. Once they know your rights are at risk, they will have a duty to act and take steps to protect your rights.

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.



In real life:

Informal patient challenges not being allowed off ward

Jenny was an informal patient in a hospital. Staff told her that she was not 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 effectively being unlawfully detained and that this might be a breach of her right to liberty (protected by Article 5 in the Human Rights Act).

After discussing staff concern's about her safety, 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 example 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 to resolve issues 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 your human rights most relevant to your mental capacity and mental health care and treatment.

These are:



Right to life



Right to respect for private and family life



Right to be free from inhuman and degrading treatment



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



Right to liberty

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 mental 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 public officials 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.

In real life: Right to life



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 and lives in supported living. He has severe learning disabilities, epilepsy, is non-communicative and blind. Bryn wasn't lying down to go to sleep, but was sleeping sitting up in a chair. As this can be an indication of a heart condition, staff at the home called a GP to visit Bryn.

Bryn had an Independent Mental Capacity Advocate who attended a multiple disciplinary meeting to represent Bryn. At this meeting the GP said he would not be arranging a

heart scan for Bryn as 'he has a learning disability and no quality of life'. Bryn's advocate had attended BIHR training and challenged the doctor's decision using Bryn's right to life (protected by Article 2 in the Human Rights Act) and his right to be free from discrimination (protected by Article 14).

The advocate asked the doctor if he would arrange a heart scan if anyone else in the room was in this situation, and the GP said yes he would.

It was agreed that Bryn would have a heart scan. However, it was not arranged and the advocate had to raise this three times with the GP and other practitioners before the scan eventually took place.

Sadly Bryn passed away as a result of his heart condition before any treatment could take place.

(Real life example from Solent Mind, participants in BIHR's Care and Support project)

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. Public officials must not treat you in an inhuman or degrading way. This right is called an ‘absolute right’, which means it cannot be restricted or interfered with by public officials under any circumstances. This right protects against very serious abuse and neglect. It protects you from treatment that causes intense physical or mental suffering, or causes you to feel fear or anguish or extreme humiliation.

When is treatment ‘inhuman or degrading’?

For treatment to be ‘inhuman or degrading’ and protected by this right, it must have a very serious impact on you. For example, it must have a serious impact on your physical or mental health and things like your age, gender, your mental health condition, your mental capacity issue and how long you are experiencing such treatment will all be relevant in assessing whether it is ‘inhuman and degrading’ treatment.

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 22.

Right to be free from inhuman or degrading treatment



Article 3 in the Human Rights Act also protects against torture. Although 'torture' is a term people may use to describe how we think we are being treated, under the law, torture has a very specific definition and would very rarely apply to health and care services.

Torture is about someone who works for the state deliberately causing severe physical or mental suffering to a person for a purpose (such as getting information out of the person). Inhuman and degrading treatment, on the other hand, doesn't have to be deliberate or for a purpose – it can be caused by neglect.

What duties do public officials 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 taking reasonable steps to protect you when public officials know (or should know) that you are at real risk of inhuman or degrading treatment. 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 has a learning disability and communication difficulties. She is living in an approved care home and her care is funded by the local authority. Elsie has an advocate, Joshua, who has been supporting her to take back control of her finances and open a bank account in her own name. Elsie tells Joshua that the care home was forcing her to go to church, and that she doesn't want to go.

During this visit, Joshua also spots bruises on Elsie's arms. Joshua had human rights training from BIHR and recognised that this was about Elsie's right to be free from abuse. Elsie told Joshua she was being abused by the manager/owner of the care home. Joshua raised this with his manager and social services were alerted, as well as the Care Quality Commission.

The care home was investigated and the CQC are considering taking enforcement action against the home. The police are also investigating the abuse.

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

Mental health patient held in degrading conditions



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.

(MS v UK, 2012. We made up the name.)

What is capacity?

Capacity is about your everyday ability to make decisions about what happens to you, including decisions about your care and treatment. Public officials should assume that people do have capacity to make a decision, but if they are unsure about your capacity because of an impairment of your mind or brain, the Mental Capacity Act sets out a legal test to assess this.

Impairment could be for a number of reasons, such as mental illness, learning disability, dementia, brain damage or intoxication. The public official will have to assess if you are able to understand, remember and weigh up the pros and cons of your choices and communicate a decision.

Capacity is ‘task-specific’.
This means:

- It focuses on the specific decision that needs to be made at the time. If your incapacity is temporary (for example if it’s due to intoxication) you can ask officials to delay a decision until you regain your capacity.
- If you lack capacity to make one decision, it doesn’t mean that you lack capacity to make other decisions.

Capacity can also fluctuate, so things need to be kept under review and your capacity re-assessed at a later stage.

What about my human rights?

If you lack capacity to make a decision then the person who makes it for you should only make decisions that are in your best interest. Thinking about your human rights and how they might be affected should be at the centre of any decisions about your best interests.

Your right to respect for private life protects your ability to have control over your own life and have a say in what happens to you (see page 22 for more information). You still have this right even if you lack capacity to make a decision. This means that the person deciding what is in your best interests should treat you with dignity, consider your wishes and feelings and support you to participate 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:

- Public officials using excessive restraint for long periods.
- An inappropriate place is used to detain you, such as a prison even though you haven't been ordered there by court, because there isn't any room in mental health hospitals.
- Significant delays or cancellations 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. See page 20 for more information about this.

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

Yes. Your right to liberty can be limited where necessary, for example:

- If you have been detained under the Mental Health Act. Your detention must be justified by the authority detaining you because you have a specific and recognised mental disorder and your detention must be necessary for your health or safety, or for the protection of others.

- If you have been assessed as lacking capacity to consent to treatment for a mental health issue or to make a decision about leaving a care arrangement and there is a concern about your safety or wellbeing. Restricting your liberty may be necessary but there is a formal process that needs to be followed by those providing your care, called a 'Deprivation of Liberty Authorisation'. More information on this is on the next page.

Mental capacity and restricting your liberty

The 'Deprivation of Liberty Safeguards' (DoLS) are part of the Mental Capacity Act. This law was created because there were concerns that some adults with mental capacity issues were not having their human rights protected.

DoLS are intended to offer safeguards to ensure you don't have your freedom restricted more than is absolutely necessary in hospitals and care homes.

Public officials wanting to put a DoLS in place have a duty to do this in a way that respects your human rights. In practice, this is how DoLS should be used. See page 18 for more information on mental capacity.

What duties do public officials have about my right to liberty?



To RESPECT your right

This means not placing extreme restrictions on your movement (for example, being locked in a room or being strapped to a chair) unless it is absolutely necessary and can be justified (as explained above).



To PROTECT your right

There are lots of safeguards which apply if your right to liberty is restricted. These safeguards are set out in Article 5 in the Human Rights Act and 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 told at the hearing, either by you or your representative.
- You must have a 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



Making sure assessments consider a person's wishes



Steven was a young man with a severe learning disability. He lived at home with his father Mark, but went into a local authority support unit for a couple of weeks when Mark was ill. The local authority then kept Steven there for over a year against his and his father's wishes. When Steven tried to leave the unit after several months, the local authority

signed a Deprivation of Liberty Authorisation (see page 20 for more info) and later said they were looking for a long term residential placement for Steven miles away from his father. Steven and Mark took a human rights case through the courts to challenge this. The court decided that Steven's right to liberty had been breached because the Deprivation of

Liberty assessment had not taken into account Steven's and Mark's wishes, and because of the delay in making the assessment. The court also decided that Steven's and Mark's right to family life had been unlawfully interfered with (more on this right on page 22).

(Hillingdon London Borough Council v Neary, 2011)

Preventing people with mental capacity issues from leaving services



Meg was 17 years old, had a learning disability and sometimes exhibited challenging behaviour. She was removed from her mother due to concerns about abuse and lived in an NHS residential unit. Meg was accompanied by staff whenever she left the unit.

The court was asked to decide whether Meg's right to liberty was being restricted and decided that it was, because she was not free to leave the unit on her own and she was constantly supervised and controlled by the staff. In these types of situations a '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. (See page 20 for more info)

(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 respect for private life relevant in mental health or mental capacity settings?

Some examples of what this right protects:

- Your private information, including access to your personal information and to have that information kept confidential.
- Your wellbeing, which means being free from abuse or neglect (protection from very serious abuse or neglect is covered by your right to be free from inhuman and degrading treatment, see page 15).

- Having control over your own body and life and to be able to participate in decisions about your care and treatment. This is sometimes called having autonomy. This also includes consent 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).
- Being able to participate in the life of your community. For example, preventing you from socialising with others by keeping you secluded without good reason.

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

Some examples of what this right protects:

- Developing family relationships. For example, if you have been detained or live in care and you are prevented from developing relationships with people, or having a say over your choice of partner.
- Contact with your family. For example, being detained or placed in care which means you cannot see your family.

How is my right to respect for 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:

- Places you consider to be your home, such as a care home or hospital ward, if you've been living there for a long time and have established a connection to that place.

- Being removed from somewhere you live to receive care or health services 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 respect for correspondence relevant in mental health or mental capacity settings?

Some examples of what this right protects:

- Being able to communicate with people (including by letter, email etc.)
- Having private communication

However, the Mental Health Act allows your mail to be withheld and inspected during detention, but only if the authorities can show it meets the test for restricting this right.

We explain this test in the next question. This test requires the authorities to have a legitimate reason (e.g. for your safety or hospital security) and for them to act in a proportionate way.

What duties do public officials have about my right to respect for private life, family life, home and correspondence?



To RESPECT your right

This means not interfering with your right as far as possible.



To PROTECT your right

This means public officials sometimes have to take steps to protect your right where they know it is at risk, for example supporting you to make sure you can participate in decisions about your care. The legal term for this is a 'positive obligation'.



To FULFIL your right

This means when decisions are being made about your care and treatment that these are done fairly.

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

Yes, in certain circumstances. If a public official needs to interfere with this right, there is a test they must follow and they must show that the interference 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).

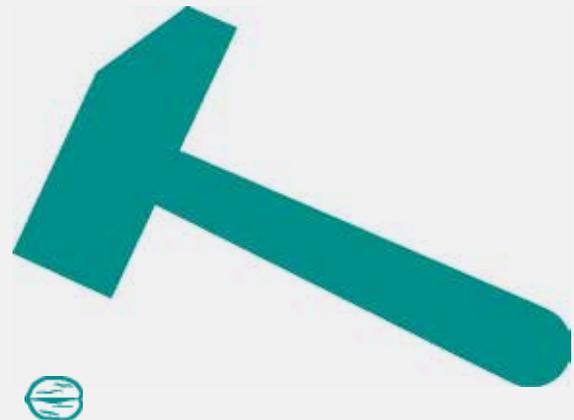
2. Legitimate

There must be a legitimate aim the public official is trying to achieve (for example public safety or protecting the rights of other people, including other patients/residents and staff).

3. Necessary

The public official must have considered all the alternative ways of achieving that aim and pick the one that interferes with your right the least. This means the action taken must be **proportionate**. Sometimes people use the saying “don’t use a sledgehammer to crack a nut”.

All three parts of this test must be met for a public official to justify interfering with your right.



In real life: Right to respect for private life



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 and social services placed them in a residential unit temporarily so that their parenting skills could be assessed.

There were CCTV cameras in their rooms, including in their bedroom, even though the baby slept in a separate nursery. In their conversations with social services Tim and Sylvia challenged this by talking about their right to respect for private and family life

and the impact the CCTV cameras were having on them. After 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 who had been diagnosed as suffering from a psychiatric disorder. His psychiatrist decided he needed to be treated with antipsychotic medication, which Mr Wilkinson vigorously opposed. He was physically restrained and forcibly injected with the drugs.

Mr Wilkinson took a human rights case to the court to challenge this. The court said a decision to impose treatment on a protesting patient without consent could potentially be inhuman or degrading treatment (protected by Article 3, see page 15) 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 it must have a substantial benefit for the patient.

(R (Wilkinson) v Broadmoor Hospital, 2001)

In real life: Right to respect for family life



Young woman moved closer to family home



Nina, a young woman with mental health issues, lived in an adolescent unit close to her family. When she turned 18 Nina was moved to an adult facility, but the only bed available was 200 miles away. Nina's mum and grandma now have to take turns visiting. Nina's two younger brothers are too young to travel so far. Nina doesn't see them for over a year and is very distressed by this. She begins self-harming.

Nina's Independent Mental Health Advocate, Donald, has been trained by BIHR. Donald arranges a meeting with the social worker and explains that this is interfering with Nina's right to family life. The social worker is pleased to hear that she might be able to use Nina's rights to get this resolved.

The social worker and Donald together write to Commissioners to challenge Nina's placement, using her right to family life.

They point out that the CCG aren't doing all they can to protect this right.

Within a few days the CCG send a different doctor to assess Nina. Two weeks later Nina is transferred to a unit within 40 miles of her family. It is close enough for her brothers to visit and for Nina to have home visits so she 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 and affected by dementia. She lives in a care home. Her partner, Patrick, visits her regularly. During a visit Patrick is seen touching Erin in a sexual way. Staff are concerned and raise it with the local authority, who begin a safeguarding enquiry.

Erin is assessed as having capacity to decide if she wants to have contact with Patrick (including kissing and hugging)

but not sexual contact. Erin's friend is pressing the local authority to restrict Patrick's visits.

Erin's Care Act Advocate, Laticia, supports her through the enquiry. Laticia has been trained by BIHR and knows this is about Erin's right to family life. Laticia has seen the positive impact the relationship with Patrick appears to have on Erin.

Laticia meets 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)

In real life: Right to respect for home and correspondence



Three adults living in residential accommodation helped to stay together



Sandeep lived in residential accommodation in Newport Pagnell with David and Sally, but they were funded by Hackney Council, their home authority. Hackney Council were going through budget cuts and felt it would be cheaper to bring people to units in their area, even

though Sandeep, David and Sally had been settled outside of Hackney for several years. Sandeep was supported by his Independent Mental Health Advocate to argue that their re-location might interfere with their right to respect for home and family life as they were living

as a community or 'family' together and had a right to be consulted about the re-location. Following negotiation using Article 8, the council decided not to move them.

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

Medical correspondence between patients and doctors kept private



Edward was 46 years old and serving a prison sentence. Prior to his imprisonment he suffered a brain haemorrhage and underwent surgery. He needed constant monitoring and 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 on the orders of the prison governor. Edward wanted his medical communications

to remain private, and took a human rights case to court to challenge this. The court decided that communications between patients and doctors deserve special protection because of the risk that might be posed to a patient's life if they do not feel that they can be open with a doctor. As Edward only wanted to correspond with a single doctor, the prison could easily take steps to verify the

identity of the doctor. The court decided that reading Edward's medical correspondence was a disproportionate interference with his right to respect for correspondence. It was agreed that the doctor would clearly mark the envelope of his correspondence with Edward to allow the prison to identify it as private.

(Szuluk v UK, 2009)

Right to be free from discrimination



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

This is not a stand-alone right to be free from discrimination. It's a right not to be discriminated against when you are relying on your other rights in the Human Rights Act. This means that when one of your other rights is engaged, you can also raise your right to non-discrimination if you think that is an issue.

For example, if a doctor decides not to treat your physical health problem because of your mental health issue, your right to wellbeing under Article 8 would be in play 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 health or mental capacity issue

- Giving you a lower standard of care than other patients because of your mental health or mental capacity issue
- Making assumptions about whether you should live in an institution based on discriminatory attitudes about 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 unlawful. And not all differences in the way you are treated will be discrimination. Sometimes differences in treatment can be reasonably justified. For example, if a local authority is running a women-only mental health facility, this would be discriminating on the basis of gender but could be justified as necessary to meet the needs of women patients. But 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 significantly different situation to others
- Applying policies to you that have a disproportionate impact on you because of your mental health or mental capacity issue.

In real life: Right to be free from discrimination



Learning disabled man challenges Do Not Resuscitate Order



Laurie was a 51-year old man with Down's syndrome and dementia. During a hospital stay he had a 'Do Not Resuscitate' order (an instruction to the medical team not to attempt resuscitation if he fell unconscious) put on his file

without him or his family being consulted. 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 (or "piggy-backing" onto) his right to life. He started a human rights legal case but it was settled out of court and the NHS Trust apologised.

(Real-life story)

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. She 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 causing Margaret significant distress and 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)

Where can I get more information and support?

How can I use human rights?

You can use human rights to challenge decisions about your care or treatment that have a significant impact on you. To get more information about how to do this in our booklet called **'Mental Health, Mental Capacity: Raising a Human Rights Issue'**.

Download your free copy from www.bihhr.org.uk/health or to request a copy you can email us at info@bihhr.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 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: 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

03000 683 000

Monday to Friday, 8:30 a.m. to 5 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** them in practice to achieve positive change in everyday life without resorting to the courts,
-  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.

Our innovative work seeks to achieve a society where human rights are respected as the cornerstone of our democracy and enable each of us to live well in communities that value the equal dignity of each person.

BIHR has been working on human rights in healthcare for over 15 years, making the links between human rights and health and **helping organisations in the public and voluntary sectors to use the Human Rights Act to promote better health and social care.**

We have trained thousands of individuals from NHS trusts, social services, and voluntary organisations; raising awareness and building the capacity of individuals and organisations to use human rights to make a difference.

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 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)