



Using Human Rights

A toolkit to advocate for your Human Rights



Co-produced with

The British Institute
of Human Rights 



This resource is dedicated to and inspired by the experiences of Jack Cavanagh, member of All Wales People First.

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About this guide



This guide has been made by All Wales People First and the British Institute of Human Rights.



This guide will tell you about your human rights, and how they work.



The guide will look at rights that are important to you, and what you can do if they are not being respected.



This guide is for people with learning disabilities to be able to use human rights to advocate for themselves.

Human Rights



The guide will tell you how you can use human rights to have a say over your care and treatment.

This guide is for information purposes only. It is not intended, and not be used as, legal advice or guidance. The law referred to in this guide may have changed since it was published.

What are human rights?



Human rights are something everyone has just because we are human.



Our human rights are not gifts from the government. They belong to us and can never be taken away.

Human Rights =



Human rights mean we should be treated with respect, dignity, and fairness.



Sometimes our rights might need to be limited, for example to protect ourselves or others.



Human rights in the UK are protected by a law called the Human Rights Act.



Having human rights means that we can speak up if they are not being thought about properly, like if we do not have a say over our care and treatment.



There are 16 rights in the Human Rights Act. We will look at 3 of those rights in this guide.

You can find Easy Read guides about the rest of the rights on [BIHR's website](#).

Who must look after our human rights?



The Human Rights Act says that public bodies have a legal duty to respect, protect, and fulfil our human rights.



A public body is a person or organisation that does a job for the government.

This includes police, social workers, carers that work for the NHS, and local authorities.



Public bodies can never get rid of our human rights.



Sometimes public bodies can limit our rights, but these must be for good reasons, like keeping us or other people safe.

When can our rights be limited?

X OR ✓

Some rights are absolute and some rights are non-absolute.

X

Absolute rights mean they cannot be limited at all, for any reason.



For example, the right to life is an absolute right, so it can never be limited.



Some of the rights in the Human Rights Act are non-absolute rights. This means they can be limited in some situations.



For example, the right to a family and private life is non-absolute, so it can be limited in some situations.



If staff working in a public body decide to limit one of our non-absolute rights, they have to make sure they have thought about 3 important things.

Staff working in a public body have to decide if the limit is:



1. lawful,
2. if it is for a good reason,
3. and if they have thought about it well enough.

This is sometimes called a 3-stage test.



Lawful means there must be a law that allows a public body to limit your rights.



For example, the Mental Health Act and Code gives public bodies permission to restrain someone in some situations.



For a good reason means for your own safety or the safety of others.



Well thought about means public bodies must make the least limiting decision possible, so that they are still respecting your human rights as much as possible.



Staff working in public bodies use lots of different laws to make decisions, including the Social Services and Wellbeing (Wales) Act.



Staff working in public bodies must think about our human rights when making decisions using other laws.

Article 8 – The Right to Private & Family Life, Home & Correspondence



Article 8 of the Human Rights Act gives us the right to a family, a private life, to enjoy our home, and to communicate with others.



Article 8 is a non-absolute right. This means that public bodies can limit it if it meets the 3-stage test.



That test asks whether the limit is lawful, whether it is for a good reason, and whether that decision is properly thought about.



The private life part of Article 8 means we have a right to privacy. Public authorities must not tell people our private information.



The right to a private life includes a right to wellbeing, which is our physical and mental health.



It also includes a right to make decisions over our own body and life.



The family life part of Article 8 means we have a right to speak to our family members and close friends.



The home part of Article 8 means that we have the right to enjoy the home we are in. Our home can also include hospitals, care homes, and anywhere where we are living.



The correspondence part of Article 8 means that we have a right to contact friends or family.



This right might matter to us if:

1. We are staying in hospital and our wellbeing is at risk



2. We are not being involved in decisions over our treatment



3. A public body is stopping us from having contact with our family or friends.



4. A public body is stopping us from making decisions about the way we look and dress.

Jane and Jon's story



Jane lives in a care home. Jane's boyfriend, Jon, also lives in the care home.



The staff in the care home have told Jane and Jon that they cannot stay overnight in each other's rooms.



The home has a policy that says all residents must sleep in their own beds.



Jon and Jane ask for a meeting with the care home manager and their social workers. They tell the meeting that they want to sleep in the same room sometimes.



They say they have the right to a family life, and this is being ignored by the policy.



The care home manager and social workers argue that Jane does not understand the seriousness of sleeping in the same room and cannot consent to Jon being in her room.



The social workers arrange for a capacity assessment for Jane to see if she can make the decision for Jon to stay overnight in her room.



The capacity assessment agrees that Jane does understand her decision.



The care home changes their policy and Jane and Jon can stay overnight in each others rooms.

Article 5 – The Right to Liberty



The right to liberty

Article 5 means that we have a right to be free from big controls on our movement.



This right might matter to you if you are being restrained for a long time.



It might also matter to you if you are stopped from leaving a place (such as a hospital or care home) and there is no law in place saying this is necessary.



It might also matter to you if you have to wait a long time for your care to be looked at again by a court or tribunal.



Article 5 is a non-absolute right. This means that public bodies can limit it if it meets the 3-stage test.

Ian's story



Ian was unhappy that his support services kept the door locked in his home.



The staff said the door was locked to keep another resident safe.



Ian told the staff that this was ignoring his right to liberty.



He said he knows how to stay safe outside of the home and that they were limiting his right without really thinking about other options.



Ian suggested he could have his own key so he could leave the home whenever he wanted.



He agreed to always lock the door after he had used it so the other resident remained safe.



The staff had a meeting and decided Ian could have a key.

Article 14 – The Right to be Treated Fairly



Article 14 is the right to be treated fairly. This is sometimes called the right to be free from discrimination.



This means that public bodies cannot treat you differently to others because of your age, race, sex, disability, health status, for receiving benefits, or other reasons.



This right means that you are protected if a public body does not treat you differently when you are in a different situation to others.



This right means you should not be asked to follow rules which have a worse impact on you because of a characteristic you have.



The right to be treated fairly can sometimes be limited if a public official can show that it is right and fair for everyone.



For example, having a service which only supports people with a learning disability would be treating someone differently for a good reason.



You can talk to staff in a public body about what they decided or did. You can ask them to tell you how this was right and fair for everyone.



But they can never take the right away.

Bryn's story



Bryn was an older man with severe learning disabilities and epilepsy, was not able to talk, and was blind.



Bryn's advocate noticed that Bryn was unwell and falling asleep more often than usual.



Bryn's symptoms were those of a heart condition, so staff in his residential home called a doctor.



The doctor said he would not give Bryn a heart scan as Bryn has no quality of life.



Bryn's advocate said that the decision not to give Bryn a heart scan was discrimination against Bryn.



Bryn was being treated unfairly because the doctor said they would arrange a heart scan for anyone else in that situation.



Based on this, the doctor then agreed that Bryn would have a heart scan.



This story brings up both the right to life (Article 2) and the right to be treated fairly (Article 14).



The right to life is relevant to this story because, if Bryn does not get the care he needs, his heart condition could lead to him losing his life.



The right to be treated fairly is relevant to this story as the doctor is treating Bryn differently because of one or more of his characteristics.

Making sure your rights are respected



If you think your rights are not being respected by a public official, there are steps you can take.



Step 1: Firstly, you can talk to the public official by saying “I do not think you thought about my rights.”



You can ask: “When you made this decision, did you think if it was lawful and the least restrictive for my life? Did you think about all the other options?”



You can also say “I have another idea about how this can work. I would prefer...”



Step 2: If they do not listen to you, you can ask “I would like a meeting to talk about my rights.”



You can ask someone you trust to help you with step 1 and step 2.



If you need more help, you can talk to Mencap which is a helpline for people with a learning disability. You can call them on 0808 808 1111.



Step 3: If you are still not being listened to, you can ask "How do I make a complaint? I would like to see your complaints policy and process."

Parliamentary
and Health Service
Ombudsman



Step 4: If your complaint doesn't work, you could go to the ombudsman.



An ombudsman is someone who deals with complaints about organisations. It is free to talk to an ombudsman.



You can click here to go to the website for the ombudsman which is right for you.



You could also contact the Healthcare Inspectorate Wales and ask them to investigate.



The Healthcare Inspectorate Wales can investigate any concerns you have about your care or treatment.



You can click here to go to the care quality commission's website.



If you think a crime has been committed, or if you are in immediate danger, call the police using 999.



Before taking further action, you should talk to a solicitor who can tell you what the best next step is.

Going to court to talk about your human rights



Step 5: One of the steps you can take to have your rights protected is to apply to the court for judicial review. You will need the help of a solicitor to do this.



Judicial review is where a court looks at a decision made by a public official over your treatment.



The court will decide whether the public official made the right decision over your treatment.



Sometimes the court may say that the public official did make the right decision. In these cases, nothing else will happen.



But if the court finds the public official didn't make the decision in the right way, they will be told to make the decision again.



Sometimes they may come to the same decision as before, but they will have to show it respects your rights.



The court may also order that the breach of your rights is put right.



This could mean you are paid money to make up for your rights not being respected.



It could also mean that actions that are affecting your rights must be stopped, including letting you go home if you are staying in hospital for too long or for no good reason.

Top tips



Write down how decisions about your care and treatment are making you feel.



Use human rights language when talking to staff about your care and treatment.



Suggest different ways of doing things which better support your rights.

Where can I find more information?



Human Rights Easy
Read Postcards



Parliamentary and
Health Service
Ombudsman



Public Services
Ombudsman



Healthcare
Inspectorate Wales



Care Inspectorate
Wales



Llais Wales



Mencap Helpline Website



Mencap Cymru
Helpline number: 0800
8000 300



Mencap Helpline
number: 0808 808 1111



Mencap Helpline email
address:
helpline@mencap.org.uk



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Glossary

Public body

Public bodies (sometimes known as public authorities) provide services by the government for the public e.g. the police, the NHS, social services. All public bodies have a legal duty under the Human Rights Act to respect, protect and fulfil human rights. Sometimes private organisations that are performing public functions are described as a 'hybrid public body' and will also have this legal duty to respect, protect and fulfil human rights

Public official

This is a person who employed by a public authority or for an organisation that is carrying out an act of public function (for example a housing association that has taken over social housing contracts) If you are a public official then you have a legal duty under the Human Rights Act to respect, protect and fulfil human rights.

Restrict Human Rights

This means limiting or interfering with someone's human rights. Absolute human rights can never be restricted. Non absolute rights can sometimes be restricted but this must always be lawful, legitimate and proportionate.

Breach Human Rights

This means taking away or not looking after someone's human rights. Absolute human rights can never lawfully be breached. Non absolute rights can sometimes be restricted but this must always be lawful, legitimate and proportionate.

Capacity

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