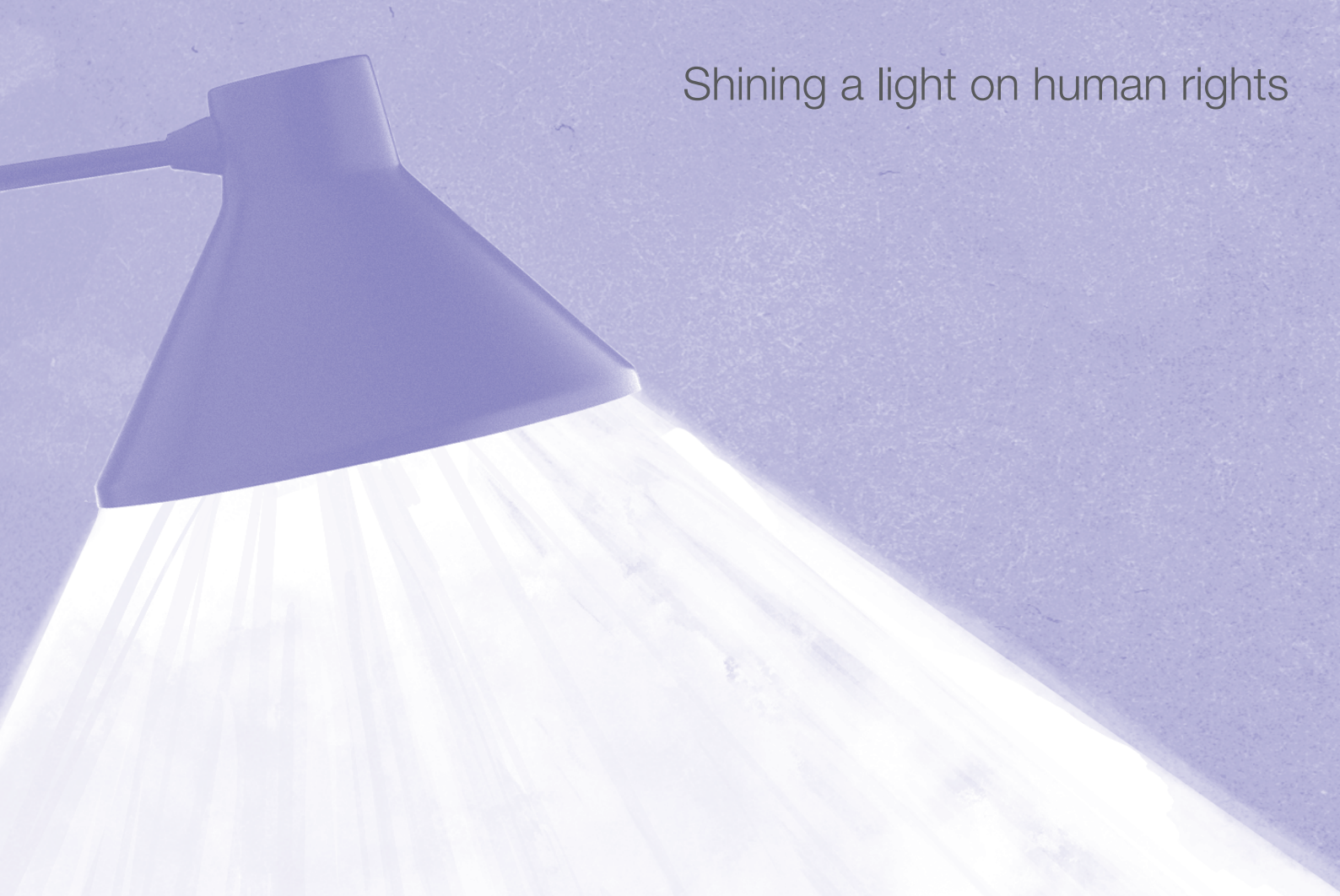
Shining a light on human rights



Rehabilitation and Human Rights:

A practitioner's guide

The British Institute of Human Rights
bihr.org.uk

About this booklet

This booklet is about human rights in mental health rehabilitation settings. It is aimed at professionals working in those settings. We use the term 'practitioner' throughout to include anyone working in mental health rehabilitation (e.g. qualified and unqualified workers). Lots of information in the booklet may also be useful for people using rehabilitation services, their family, carers or advocates (BIHR has also produced a range of resources aimed at people using mental health services, see www.bihr.org.uk).

This booklet was written by the British Institute of Human Rights (BIHR), in partnership with **Avon and Wiltshire Rehabilitation Inpatient Care Service (part of Avon and Wiltshire Mental Health Partnership NHS Trust)**. The service is working with BIHR on our project called **Delivering Compassionate Care: Connecting Human Rights to the Frontline**. The project aims to place human rights at the heart of mental health services, helping to ensure frontline staff have the knowledge and skills to fulfil the vital role they can play in upholding the dignity and human rights of people using their service. The project is funded by the Department of Health, therefore the information in this booklet focuses on English law and bodies.

BIHR would like to thank the practitioners at Avon and Wiltshire Rehabilitation Inpatient Care Service for their help in producing this booklet, particularly the Human Rights Leads for their ideas, advice and guidance.

This booklet should be read in conjunction with our other resource **'Mental Health, Mental Capacity and Human Rights: A practitioner's guide'**. That resource contains more information about how UK law protects human rights, key rights for mental health/capacity services and where to find more information/support.

Rehabilitation and human rights

As services helping people to recover from the difficulties of longer-term mental health issues, the aims of rehabilitation align with human rights values. This includes supporting people to:

- take control of their lives, care and treatment
- re-learn life skills and achieve their goals
- re-gain their confidence and independence

Independence, control and autonomy are key human rights values, protected by the **right to respect for private life** (Article 8, Human Rights Act). This booklet aims to give practitioners the knowledge and confidence to use human rights in practice, to design and deliver rights-respecting rehabilitation services. The booklet is arranged around three key issues for rehabilitation services, identified by our partner.

Finding your way around

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

one

Consent to rehabilitation during the transition from hospital

People consenting to take part in rehabilitation (rehab) and being involved in the transition from hospital to rehab services may raise human rights issues. Consent to care and treatment is a key principle in healthcare (and now embedded in the NHS Constitution) as well as in human rights law. **Involving the person in the process for transition to rehab is particularly important to help people regain their independence and control.** This will be particularly relevant when a person has been using mental health services for a long period or has been formally detained under the Mental Health Act 1983 (MHA). The 'contract' entered into by the rehab service and the individual on referral also provides a key opportunity to begin that relationship as a rights-respecting one. This will help respect and promote the person's rights.

Potential human rights issues for practice

- a service failing to support a person to regain their independence after becoming 'institutionalised' after a long period of mental health treatment
- intervening in people's decisions that the service considers unwise (where the person has capacity), for example spending money on alcohol/cigarettes or interacting with others considered to have a negative impact on their life
- preventing a resident from leaving the rehab unit without any legal safeguards in place e.g. detention under the MHA or Deprivation of Liberty (DoL) authorisation under the Mental Capacity Act 2005 (MCA)
- over-restrictive practices which lead to a person not having independence, such as lack of choice and control over medication

A human rights approach to consent to rehabilitation

This could include:

- ✔ ensuring a proper risk assessment has been conducted prior to transition to determine whether rehab is the right setting and appropriate for the person, including whether they pose a risk to themselves or others
- ✔ ensuring the person knows what their status is under the MHA / MCA and setting out what legal restrictions are in place or not, especially where someone's status has recently changed
- ✔ explaining the purpose and aims of rehabilitation including encouraging the person to regain independence and autonomy over their life and treatment
- ✔ encouraging the person to be involved in decisions about their transition, including any decisions about medication, any choices and alternatives, and what recovery means for them
- ✔ setting out what is expected of the person in a rehab setting, but also what they can expect from the service such as support to achieve their own goals
- ✔ agreeing a target timeframe for rehabilitation with the person

Key rights for consent to rehab

Right to respect for private life (protected by Article 8 in the Human Rights Act)

This right protects people's **autonomy** (choice, control and independence) including:

- having control over their own life, care and treatment
- participating in decisions about their care or treatment, including consent to rehabilitation

Relevant practitioners' duties:

- to respect this right: not interfering where possible unless it is lawful, for a legitimate reason and proportionate
- to protect this right: taking action to protect where necessary

See our other booklet **'Mental Health, Mental Capacity and Human Rights: A practitioner's guide' page 17** for more information, including your other duties.

Right to liberty (protected by Article 5 in the Human Rights Act)

This right prevents extreme restrictions being placed on people's movement, except in specific circumstances (such as detention under the MHA or a DoL authorisation). Even if a restriction on liberty is for a lawful reason, there are still human rights safeguards which must be in place. In rehab settings, restrictions on liberty may include:

- practitioners stopping a person leaving rehab who is not formally detained under the MHA
- a person being under constant supervision or control of rehab staff and not free to come and go from the rehab unit

These will amount to a deprivation of liberty requiring a DoL authorisation ('Cheshire West' case, 2014).

Relevant practitioners' duties:

- to respect this right: not interfering where possible
- to protect this right: applying the procedural safeguards written into the right

See our other booklet **'Mental Health, Mental Capacity and Human Rights: A Practitioner's guide' page 15** for more information.

Right to life (protected by Article 2 in the Human Rights Act)

This right may be relevant when determining if a rehab service is appropriate for the person where:

- a person has suicidal thoughts
- a person poses a risk to other people's lives, including other residents or staff

Relevant practitioners' duties:

- to protect this right: taking action to protect life where necessary, including when you know someone's life is at immediate risk (either from themselves or others)

See our other booklet **'Mental Health, Mental Capacity and Human Rights: A practitioner's guide' page 10** for more information, including your other duties.

Right to be free from inhuman or degrading treatment

(protected by Article 3 in the Human Rights Act)

This right may be relevant when determining if a rehab service is appropriate for the person where:

- a person in rehab is at risk of self-harm
- a person poses a risk of harming others, including other residents or staff

Relevant practitioners' duties:

- to protect this right: taking action to protect someone from a known and immediate risk of serious harm, often called **safeguarding**

See our other booklet **'Mental Health, Mental Capacity and Human Rights: A practitioner's guide' page 12** for more information, including your other duties.

Worked example: consent to rehab

Donna is 26 years old and was diagnosed with schizophrenia at the age of 13. After being removed from her mother at a young age due to abuse, she's been in and out of care. Donna has lived in mental health hospitals since the age of 15 as a formal and informal patient. She arrives at the rehab unit lethargic and shows no interest in her surroundings, saying she just wants to take her medication and stay in her room.

Geoff, a support worker at the rehab unit, recognises that Donna seems to have become 'institutionalised' and sits down with Donna to talk her through why she's been transferred here. Geoff explains that the staff are there to support her to become more independent. He also explains that Donna is no longer detained and can come and go as she pleases, and sets out that there are other types of treatment available, as well as or instead of her medication. Geoff spends a few minutes with Donna each day encouraging her to get involved in groups and activities at the unit. Eventually Donna starts to gain confidence and discuss her options with Geoff.

"Human rights have been a really useful lens through which to view things and is as important as the recovery model in mental health settings. It is an extremely important additional perspective. It reminds us that human rights are crucial for people and we have a role in protecting dignity even when recovery is far from certain."

Practitioner on BIHR's Delivering Compassionate Care project

one: Decision-making flowchart

Introducing people to an inpatient rehabilitation unit

The British Institute of Human Rights
bihr.org.uk

This flowchart is for practitioners working in inpatient rehabilitation units to help you use a human rights approach when introducing people to the unit

Which of my Human Rights Act duties are triggered?

- Duty to protect right to life and from inhuman or degrading treatment
- Duty to respect right to liberty
- Duty to protect right to private life

Step 1. Is the person's mental health issue putting their own/others' life at immediate risk? Or putting the person or others at risk of serious harm?

YES

Take immediate action.
If you have concerns that the rehab unit is not the appropriate setting for this person due to the serious risk posed by their mental health issue, you should take reasonable steps to protect life/from inhuman treatment. Speak to the care coordinator and ask for a review of their decision to refer the person to the unit.

If, after listening to your reasons, the care coordinator agrees and refers the person back to hospital, **exit flowchart.**

If the person stays on the unit, consider how to support them in this setting (see overleaf).

Move to step 2

NO

Move to step 2

Step 2. Is the person formally detained under the Mental Health Act?

YES

Their right to liberty is being restricted. You will need to make sure this restriction is justified and ensure the person knows about the procedural safeguards, including:

- a right to an advocate
- to challenge the restriction on their liberty
- knowing when the restriction will end

Move to step 3

NO

You will need to make sure their right to liberty is not being unlawfully restricted and ensure the person knows they are no longer detained under the MHA.

Move to step 3

Step 3. Has the person been involved in the decision to move them to the rehab unit?

(Your duty to protect the person's private life includes ensuring they are able to participate in decisions about their care and be in control of their own life.)

NO

Support the person to make an informed choice about taking part in rehabilitation and how it will help their recovery and well-being. Explain about their right to autonomy and to participate in the rehab contract. Then…

Move to step 4.

YES

Step 4: Discuss the rehab contract with the person to agree shared objectives. A rights-respecting contract needs to take into account the person's particular needs and wishes and could include:

- giving the person choice over the different care/treatment options
- respecting the person's right to family life and forming/maintaining relationships
- respecting the person's right to private life, including personal possessions
- agree the least restrictive options for the person
- agree a timeframe for rehabilitation

Duty to **protect** person's life or from inhuman or degrading treatment

Duty to **respect** person's right to liberty

Duty to **protect** person's right to a private life (autonomy)

Explaining the steps in the flowchart

Step 1. Is the person's mental health issue putting their own/others' life at immediate risk or at risk of serious harm?

If you know the person's mental health issue is putting their own/others' life at immediate risk or putting the person/others at risk of serious harm, you will need to take immediate action. Under the right to life and the right to be free from inhuman/degrading treatment, you have a duty to take reasonable steps to protect these rights where you know (or ought to know) a person may be at immediate risk.

Reasonable steps could include speaking to the person's care coordinator, or whoever made the referral to the unit, explaining why you think the rehab unit is not an appropriate setting for this person given these risks and asking for a review of the decision. Where this doesn't lead to the person being placed elsewhere, you should consider how to support the person in the rehab unit. For example, could you provide the person with extra support, ask for more visits from the care coordinator or regular medical reviews, or consider a CTO?

Step 2. Is the person detained under Mental Health Act?

If the person is formally detained under the MHA, their right to liberty will be restricted. This is not an absolute right and can be limited where necessary, including detention under the MHA. But the right to liberty includes procedural safeguards, such as ensuring people can challenge their detention. You should let the person know about their right to liberty and about these safeguards, as well as their rights under the MHA, including to get support from an advocate where necessary.

If the person is not detained under the MHA, you will need to ensure you are not unlawfully restricting their right to liberty. For example, are they able to leave the unit unaccompanied? (If you have concerns about their mental capacity to leave unaccompanied, you should arrange a mental capacity assessment under the Mental Capacity Act). You should let the person know about their right to liberty and what this means for residents who are not formally detained, especially if they have been detained in the past.

one

Step 3. Has the person been involved in the decision to move them to the rehab unit?

A key part of the right to private life is protecting a person's autonomy / independence. This includes people having control over their own lives, participating in decisions about their care and treatment and making the choices they want to make, based on what they think is right for themselves (not on what others believe is best for them). Your duty to protect a person's autonomy includes supporting them to make an informed choice about taking part in rehabilitation and how it will help their recovery and well-being.

Even if the person is formally detained under the MHA, or under a DoL authorisation, you still have a duty to protect their autonomy as far as possible and you should still support them to participate in decisions about their care and treatment. Restrictions on the right to private life should only be put in place if they are lawful, for a legitimate reason (set out in the right, such as protection of the person or others), and proportionate – this means taking the least restrictive option.

Step 4. Participating in the rehab contract

As part of your duty to protect the person's autonomy, you should let the person know about their rights and encourage them to participate in agreeing the rehab contract. This will help them to know what kind of support they will get from the unit to help with their well-being, but also to know what is expected of them, to ensure the rights of others are respected. This can help encourage independence and to take back control over their lives and their own recovery, particularly if the person has been living in institutions for a significant period.

Respecting the person's other rights will be relevant, particularly their right to form and maintain relationships (right to family life) and to make their residence as home-like as possible (right to private life and right to peaceful enjoyment of possessions).

Neglect of self-care in an inpatient rehabilitation unit

A person neglecting their self-care in a rehabilitation setting could raise human rights considerations. An aim of rehab is to encourage people to take control over their own lives and care. Respecting people's choices and autonomy is key to achieving that aim. Physical interventions will also engage human rights. In extreme cases, someone's lack of personal care could have an impact on the rights of others, including staff and other residents. A careful balancing of human rights will be necessary to ensure any response is proportionate.

Potential human rights issues for practice

- using physical intervention or restraint techniques to force the person to wash where the impact on the person is degrading or humiliating
- decreases in care standards or access to certain aspects of rehab or facilities to punish the person for neglecting their personal care
- interfering with the person's autonomy to make their own choices about personal care because staff think those choices are unwise
- bullying from other residents or staff about lack of personal care
- a person's lack of personal care having an impact on other residents, such as refusing to eat due to unpleasant dining experience

A human rights approach to lack of self-care

This could include:

- ✔ empowering the person about their right to autonomy and to make their own choices about personal care
- ✔ sensitively letting the person know about the impact on other residents, explaining that as it's a shared living space residents need to be respectful of each other's needs and interests
- ✔ revisiting the person's care plan to ensure they are happy with it and to explore whether their lack of personal care has been triggered by a lack of control in other areas, such as their medication, or by something in their past which could be improved by therapy or other treatment
- ✔ encouraging them to regain their independence by taking ownership over their treatment and personal care
- ✔ suggesting other aspects of their care/ treatment that they might take more control over, to encourage them to take control of their personal care

Key rights for neglect of self-care

Right to respect for private life and home

(protected by Article 8 in the Human Rights Act)

The right to **private life** protects people's **autonomy** and **well-being**, including:

- people having control over their own life, care and treatment, including making choices about their personal care, even if those choices might appear unwise
- people living free from abuse or neglect, including self-neglect

Other residents also have a right to respect for their **home**, which can include a rehab setting if someone has been living there as their home for a significant period.

These rights will need to be carefully balanced to ensure any intervention is necessary and proportionate.

Relevant practitioners' duties:

- to respect this right: not interfering where possible unless it is lawful, for a legitimate reason and proportionate
- to protect this right: taking action to protect where necessary

See our other booklet **'Mental Health, Mental Capacity and Human Rights: A practitioner's guide' page 17** for more information, including your other duties.

Right to be free from inhuman or degrading treatment

(protected by Article 3 in the Human Rights Act)

This right protects against very serious abuse or neglect. Where a person is neglecting their own personal care in rehab this could cover:

- interventions which might cause serious harm or degrade/humiliate the person
- your positive obligation to take reasonable steps to protect someone at risk of severe self-neglect which might become degrading – this could include working with the person to encourage them to take control of their personal care needs, but is unlikely to include forced bathing

Relevant practitioners' duties:

- to respect this right: not breaching in any circumstances
- to protect this right: taking action to protect someone from a known and immediate risk of serious harm/neglect, often called **safeguarding**

See our other booklet **'Mental Health, Mental Capacity and Human Rights: A practitioner's guide' page 12** for more information, including your other duties.

Right to liberty

(protected by Article 5 in the Human Rights Act)

This right prevents extreme restrictions being placed on people's movement, except in specific circumstances (such as detention under the Mental Health Act or a Deprivation of Liberty authorisation). This could cover restraint techniques used to force a person to wash.

Relevant practitioners' duties:

- to respect this right: not interfering where possible
- to protect this right: applying the procedural safeguards written into the right

See our other booklet **'Mental Health, Mental Capacity and Human Rights: A Practitioner's guide' page 15** for more information.

Worked example: neglect of self-care

Lucy is in her 40s and has been living in a rehabilitation unit informally for 3 years after years as a formal patient in hospital. When she was referred to the unit she was not washing very often but she now refuses to wash at all. The other residents now avoid Lucy and some are missing meals as they refuse to eat in the dining room with her as they say the unpleasant odour is putting them off their food. The care staff are concerned about the impact on both the other residents and on Lucy who is becoming isolated and withdrawn.

The team have a meeting to discuss what to do. They want to balance Lucy's right to make her own personal care choices against the impact on the other residents and Lucy's continued isolation which they fear might impact on her mental health recovery. They agree that John, one of the support workers whom Lucy gets on well with, will talk to her privately to sensitively raise it. The staff team also agree that as a temporary measure meal times will be extended to allow people to access the dining room at different times so as not to miss meals.

During the meeting John goes through Lucy's care plan and asks if there is anything she is unhappy with or would like to change. John asks how she is getting on with the other residents and says he has noticed she doesn't socialise with them as much as she used to.

John sensitively brings up her personal care, asking if there is any more support the staff can give her, and whether she would like to move to a room with its own bath to see if this will help. Lucy tells John she's 'tired of being told what to do by doctors'.

John continues to have weekly meetings with Lucy, each time reminding her that she is no longer detained as a formal patient and what this means for her rights. John reminds her that she has a right to be in control of her own personal care but that they are worried about her being isolated, about her well-being and the impact on her mental health recovery. John knows Lucy would like to move back into her own home eventually and encourages her to take control of her personal care as a way to increase her independence. Lucy begins to feel more in control of her life and begins washing more often.

> "Human rights have provided us a different focus which helps support our service users live independently with dignity, respect and pride."
>
> **Practitioner on BIHR's Delivering Compassionate Care project**

Respecting people's possessions in rehab

Respect for people's possessions in rehab units can raise human rights issues. An aim of rehab is to encourage the person to regain their independence and move back into the community. Making their personal space in rehab as homely as possible and enjoying their own possessions and private space will be key to achieving this aim.

Potential human rights issues for practice

- residents not being allowed access to their own possessions
- overly risk-adverse policies about, or blanket bans on possessions
- overly restrictive policies about room privacy due to cleaning schedules etc.
- restricting access to personal items important to the person which impacts on their well-being or identity, such as photos, family jewellery etc.
- not supporting people to create a homely private space which would help them to regain their independence
- lack of systems for storing people's possessions whilst they are in rehab, or insensitive storage (e.g. placing personal possessions in bin bags), leading to items being lost or taken by other residents which could result in a lack of trust or suspicion of the service

A human rights approach to personal possessions

This could include:

- ✔ reviewing policies about personal possessions to ensure the starting point is full access to items of personal importance to residents (particularly about identity) and assessing on an individual basis to allow for safety concerns to be met
- ✔ reviewing policies and schedules for cleaning/safety inspections of rooms to ensure they allow residents as much privacy as possible, with full privacy as the starting point and assessing on an individual basis to allow for safety concerns to be met
- ✔ reviewing systems for storing residents' possessions to ensure safe and secure storage, to avoid items being lost/stolen and no insensitive storage (such as in bin bags)
- ✔ making sure residents are made aware of these policies and practices when they enter rehab to ensure they know their possessions are respected by the service, that any limitations are due to practical or safety concerns only (i.e. lack of space for large items) and that storage of their possessions is safe and arranged sensitively
- ✔ discussing with residents which possessions are of a personal nature and important for their well-being/identity and avoiding restrictions of these items where possible
- ✔ applying policies flexibly, discussing with the resident any items restricted due to safety concerns and keeping them under review

Key rights for possessions in rehab

Right to peaceful enjoyment of possessions

(protected by Article 1, Protocol 1 in the Human Rights Act)

This right covers people's access to, and enjoyment of, their personal possessions.

Relevant practitioners' duties:

- to respect this right: not interfering where possible, any interferences would have to be lawful, for a legitimate reason and proportionate (the least restrictive option)

See our other booklet **'Mental Health, Mental Capacity and Human Rights: A Practitioner's guide' page 21** for more information.

Right to respect for private life and home

(protected by Article 8 in the Human Rights Act)

This covers:

- **privacy**, and people in rehab having their own private space
- private life also protects a person's **identity** and access to personal possessions which might be important for this (such as family photos)
- respect for **home**, which could include a rehab unit if someone has been there for a considerable period of time and considers it their home

Relevant practitioners' duties:

- to respect this right: not interfering where possible unless it is lawful, for a legitimate reason and proportionate
- to protect this right: taking action to protect where necessary

See our other booklet **'Mental Health, Mental Capacity and Human Rights: A Practitioner's guide' page 17** for more information.

"Although we are a values based service, I really needed to know how to put human rights into practice. We needed that integrity."

Practitioner on BIHR's Delivering Compassionate Care project

three

Worked example: respecting possessions in rehab

Roberto is in his 60s and has just arrived at a rehab unit after being detained under the Mental Health Act in hospital for 2 years. Barry, a support worker, carries out an initial assessment and inducts Roberto to the unit.

During this meeting it becomes clear to Barry that Roberto has a lot of furniture and personal items that were confiscated during his time at the hospital which he found very distressing. He used to own a large house and had to put his furniture in storage when he went into hospital. He is originally from Italy and has lots of family photos and smaller items that have been passed down to him from his parents who died before he was detained. He would like to have these in his room.

Barry explains to Roberto that the unit's policy is not to allow large items of furniture to be brought into the rooms as they are already fully furnished, but that he will be able to bring in the smaller items and the photos. Barry explains to Roberto that as he has a history of self-harm, they will need to restrict some items for the time being (including the photo frames and his mother's brooches). Barry also explains they will keep this under review and that the photos can be taken out of the frames for now.

Barry tells Roberto that they want him to feel 'at home' in the unit and Roberto says he wants to go back to live at his house as soon as possible. They agree a care plan which includes reviewing the restrictions on the personal items at their weekly meetings.

"We are reviewing our policies about various forms of treatment which may impact on rights and having a human rights perspective inputted into this process is extremely important. It ensures we think through all the rights involved and how to reach the right balance."

Practitioner on BIHR's Delivering Compassionate Care project

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
(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 rights contained in the Human Rights Act
(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)

This booklet has been produced for staff delivering health and care services. If it has helped you to deliver rights-respecting care BIHR would love to hear your examples. You can email your real life examples of positive changes to your practice on info@bihr.org.uk.

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