

# Using human rights as a practitioner

## Responding to lifestyle decisions considered 'unwise'

This flowchart is for practitioners working in community residential settings considering intervening in a resident's lifestyle choice they might consider unwise. It will help you to identify which rights, protected by the Human Rights Act, might be at risk.

### Which of my Human Rights Act duties are triggered?



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

Articles 2 and 3 in the Human Rights Act



**Duty to protect person's private life (well-being)**

Article 8 in the Human Rights Act



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

Article 8 in the Human Rights Act

### Step 1

Is the person's lifestyle choice putting their own/others' life at immediate risk?  
Or putting the person/others at risk of serious harm?

Protecting life or from inhuman/degrading treatment

YES

**Take immediate action** such as calling emergency services or requesting a MHA assessment

And if you have concerns about the person's capacity to make the decision about their lifestyle, arrange a mental capacity assessment:

- if the person has capacity to decide: provide support and keep under very close review
- if the person has no capacity to decide: arrange a best interests assessment

NO

### Step 2

Is the person's well-being at risk?

Protecting well-being

YES

If the person is at risk of (less serious) harm as a result of their lifestyle choice, you must take reasonable steps to protect the person

NO

### Step 3

Are you considering intervening in the person's life because of their lifestyle choices?

Respecting autonomy

YES

Your duty to respect the person's private life includes respecting their right to be in control of their own life. This is not an absolute right (it can be restricted); you must follow the three stage test to see if your interference would be permissible:

- 1. Lawful:** The Mental Capacity Act will only permit you to interfere with the person's autonomy if they lack capacity to make that decision. If not already done so, arrange a mental capacity assessment. If assessed as not having capacity, arrange a best interests assessment, but that should aim to protect the person's right to autonomy as much as possible. AND
- 2. Legitimate aim:** You must have a legitimate reason for the intervention, such as to protect the rights of others. AND
- 3. Proportionate:** Is the intervention you plan to make proportionate to that aim? You must choose the least restrictive option.

NO

Exit the flowchart

This flowchart is taken from BIHR's toolkit 'Mental Health Accommodation, Support and Human Rights: A practitioner's guide'

The toolkit gives more information on these rights, your duties as a practitioner and covers other key issues for mental health accommodation.

Other toolkits in this series include flowcharts on key issues for dementia, young people and rehab. Get your free copy of the toolkits or posters at:

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