



Human Rights in Asylum Accommodation

**Migrants'
Rights
Network**

Co-produced with

The British Institute
of Human Rights 

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ABOUT THIS GUIDE

In the UK, the Human Rights Act places a legal duty on public bodies to respect, protect, and fulfil our human rights. If you are in the UK, regardless of who you are, where you come from, or your citizenship or immigration status, you are protected by the Human Rights Act.

Human rights matter to everyone, but they may be particularly important where you are in care or accommodation that's operated by a public body.

This guide, co-designed by the British Institute of Human Rights and Migrants' Rights Network, will provide you with information about what rights you have, how they may be relevant to you, and how you can challenge treatment which is not rights respecting.



Being aware of my rights as an asylum seeker residing in hotel accommodation not only provides me with a sense of empowerment but also ensures that I am protected regardless of my status. This guide is a much-needed resource which can help many feel more confident in asserting their fundamental rights.

- An asylum seeker in the Migrant Rights' Network community



Collaborating with Migrants' Rights Network has been an incredibly meaningful experience, especially given current concerns around the human rights of asylum seekers in the UK. We hope that this resource will be able to provide valuable information for asylum seekers and case workers on their human rights and how to use them.

- The British Institute of Human Rights

Who is this guide for?

We designed this guide for people seeking asylum who are currently living in temporary accommodation and those supporting them. It may also be useful for those working in these services to ensure decision-making is rights respecting.

Using this guide

Each section in this guide has an easy read version to read alongside. This means the information is available in a shorter, more accessible version. If you see a QR code next to a heading, it means there is an easy read version available if you scan it. Just point your phone camera at the QR code and it will take you to the easy read. There are also links to these at the end of the guide.

This guide is for information purposes only. It is not intended, and should 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 mean that we all should be treated fairly, treated with dignity and respect, and that we should all have a say over our lives and how we are treated. Human rights are the rule book for how we can expect the government to treat us, including public services and their staff. Human rights are more than values; upholding human rights is the law. In the UK, this law is called the Human Rights Act.

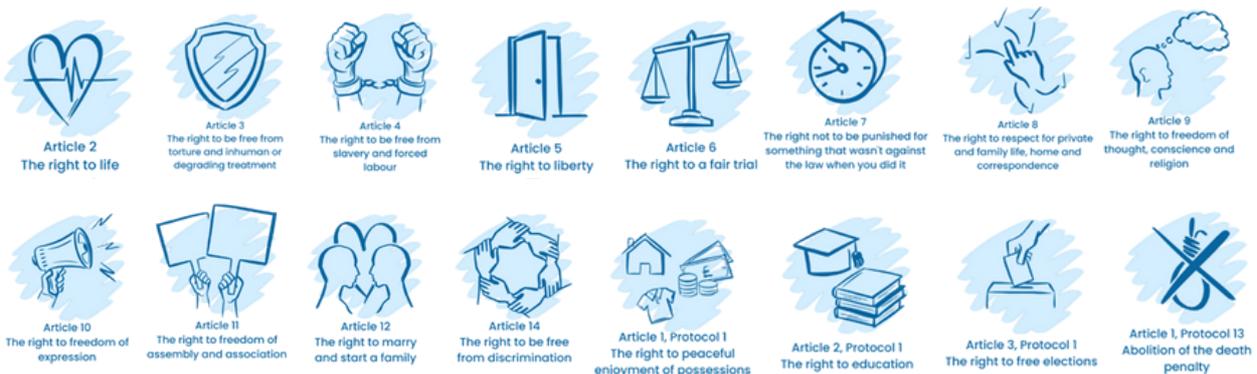
Who has human rights?

Human rights are universal, this means everybody in the UK has them. It doesn't matter who you are, where you were born, what your immigration status is. If you are living in the UK your human rights must be respected.

Human rights are not gifts or rewards from the government. Under the Human Rights Act (sometimes called the HRA), anyone in the UK is legally entitled to human rights and can have a say in how they are treated, and challenge decisions of public bodies if they do not respect your human rights.

Human rights in the UK

There are 16 human rights in the Human Rights Act. They place a legal duty on public bodies to respect, protect, and fulfil our human rights. The rights in the Human Rights Act can never be taken away from people, however they can be limited in some circumstances.



WHAT DUTIES DO PUBLIC BODIES HAVE?



The duty to respect

This duty means that public officials must not do anything to breach our human rights.



The duty to protect

This duty means that public officials should step in to protect you if they know that your rights are at risk. It is sometimes known as safeguarding.

Examples of the duty to protect:

Public officials must take positive action to protect asylum seekers from serious harm when they know, or should know, rights are at risk.

MRN was made aware of a family of seven who came to the UK to seek asylum. The family was placed in asylum accommodation; however, the children were placed on a separate floor to the parents. The family tried to complain about the issue and asked to be moved to an apartment where they were not separated from their children. Unfortunately, their safeguarding concerns were not taken seriously by accommodation management. As a result, the family had to cram into a small space and sleep on the floor to avoid being separated from one another.



The duty to fulfil

This duty means that public officials must investigate when something has gone wrong with your human rights to stop this from happening again.

Examples of the duty to fulfil:

When asylum seekers rights are breached, there must be a proper investigation. In temporary asylum accommodation, there is often little to no safe way to complain or report human rights breaches. For example, MRN have received anonymous reports of accommodation staff threatening asylum seekers if they report issues within accommodation (such as lack of fire safety equipment, overcrowding or appliances being turned off) to the Home Office.

WHEN CAN RIGHTS BE LIMITED?

The rights in the Human Rights Act can be divided into absolute, and non-absolute rights.

ABSOLUTE RIGHTS

Absolute rights are rights that can never be restricted, limited, or interfered with for any reason. There is no good reason or justification for interfering with absolute rights. If a decision or situation is affecting someone's absolute rights, this is unlawful, so action needs to be taken by a public body immediately to stop this from continuing.

EXAMPLES OF ABSOLUTE RIGHTS



NON-ABSOLUTE RIGHTS

Non-absolute rights are rights that can be restricted or limited in some situations. Most rights in the Human Rights Act are non-absolute.

However, for a public body to restrict them, they must pass a three-stage test. The decision must be:



Lawful: There must be a law which allows public officials to take that action, for example the Immigration Act 2016.



Legitimate: There must be a good reason for limiting someone's rights such as the protection of a person or others from harm.



Proportionate: The decision taken must be the least restrictive option available. Public officials must have thought about other things they can do that are less restrictive.

EXAMPLES OF NON-ABSOLUTE RIGHTS



Article 5
The right to liberty



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



Article 10
The right to freedom of expression



You can read a plain language or an Easy Read guide of each of the 16 rights and whether they are absolute or non-absolute on BIHR's website section, "What rights do I have?" here.

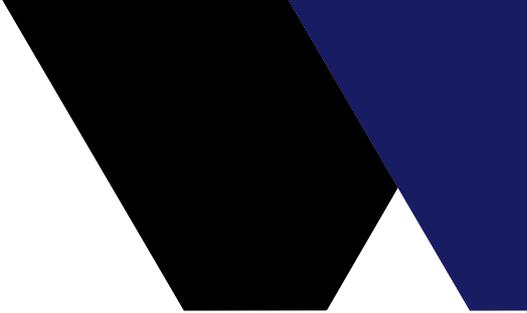
WHO HAS DUTIES?

Because of the Human Rights Act, public bodies have legal duties to respect, protect, and fulfil our human rights. What counts as a public body can be complicated, so we will explain it here.

There are two types of public body – core public bodies and hybrid public bodies.



Core public bodies are people who perform roles that are purely for a public function, this means they are jobs that are paid for and carried out on behalf of the government. .



 **Hybrid public bodies** can be private companies, charities, or non-profit workers that sometimes do work for the government. They only have duties to protect our human rights where they are performing their role in a public capacity. For example, if a private housing association is paid by a local authority to house people, that private housing association will be performing a public function and so they will have human rights duties.



Core public bodies

- Police
- The Home Office
- NHS workers (GPs)
- Local Authority teams
- Courts
- Social workers
- Information Commissioner's Office (ICO)
- Parliamentary and Health Service Ombudsman (PHSO)
- Housing Ombudsman



Hybrid public bodies

- Could include private housing associations providing housing for a local authority.
- A private healthcare worker providing care on behalf of the NHS.
- Private companies providing housing services, specifically for the Home Office.



Article 8

The Right to Family and Private Life, Home and Correspondence

The right to private and family life, home and correspondence is protected by Article 8 of the Human Rights Act. Each part of this right protects many different things.

Article 8 is a non-absolute right, this means it can be limited where it is lawful, legitimate, and proportionate to do so.

If you are in accommodation provided or funded by the government, this right will be particularly important. Article 8 covers a lot of different areas that may matter to you. This right has been unpacked below:

Private Life

- Wellbeing – this is your physical and mental health.
- Community – this is your right to take part in your community.
- Relationships – this is about your right to form and maintain friendships.
- Autonomy – this is being able to have a say over where you are, how you are treated, and how you live your life.
- Confidentiality – this is about having your personal information kept private.

Family Life

- This includes the right to develop ordinary relationships.
- This right includes having ongoing contact with family.
- Receiving support for your family to work together and have your needs met through services.
- Family includes friends and partners.

Home

- This is not the right to have a home, it is a right to enjoy the home you are living in, free from interruption and intrusion without your permission.
- A home is anywhere you are living, including temporary accommodation, a hotel you have been placed in, or a hospital.

Correspondence

- Right to uncensored communication with others.
- Through a variety of mediums including letters and modern communication.



If you feel like you are being treated in a way where your rights under Article 8 are being limited, you have the right to speak up and challenge this treatment.



In real life: the ability to cook your own food

This real life example has been provided by Migrants' Rights Network

"Asylum seekers in Home Office accommodation had their kitchen cooking appliances disconnected without any notice, or reason for why they were being made inoperable. Residents have now been told they are not allowed to cook their own food or have their own appliances.

We were told that they could only take the issue forward if an individual within the accommodation raised the matter, however asylum seekers have been warned by management that if they complain there is a risk they could be moved to a different accommodation

The ability to cook food in this accommodation is vital for the dietary needs of residents with digestive ailments but importantly for those trying to remove the sense of isolation to build their own communities in these spaces- cooking and eating that food together is an important part of building that community while they wait in limbo for their asylum decisions.

Another factor in why residents focus on cooking food is because much of what is served to the residents by commissioned caterers is inedible for many. While we are aware that the food being served has the appropriate nutritional value, this does not mean it is palatable or appropriate to people's diets e.g., spicy food or it lacks high fibre."

How is the right to private, family life, home and correspondence relevant?

Knowing how an issue you're facing links to human rights law, can help you to advocate for change with those who have legal duties. This section will break down how human rights are relevant to real life scenarios, specifically in relation to the right to private, family life, home and correspondence:

Autonomy

Removing the ability for people in accommodation to be able to cook for themselves is a restriction on their ability to make and prepare their own meals.

Asylum housing accommodation is often challenging because meals are prepared externally and often aren't culturally appropriate or suitable for children. That is one of the reasons why it is important to be able to cook for yourself, as well as to maintain control over your life..

Wellbeing

Having your ability to cook your own meals can have a serious effect on your wellbeing which can affect your right to a private life. Hotel asylum housing accommodation is often challenged because mealtimes are prepared external to the accommodation and often either not culturally appropriate or suitable for children.

Similarly, threatening to move you to another accommodation if you speak up can be very distressing and is a big restriction on your human rights.

Community

Removing the ability to cook with others could be affecting your right to privacy and family life as it prevents your ability to build communities and relationships whilst in accommodation.

Home

Having the ability to cook your own food removed is a restriction on the right to enjoy your home as it means you cannot enjoy your home in a normal way.

As Article 8 is non-absolute, we can look at this scenario and think about whether it passes the three-stage test that public bodies must follow to restrict the right:



Lawful: There must be a law which allows public officials to take that action for example the mental health act.

To consider whether this scenario is lawful, we must ask whether there is a law that permits the restriction on cooking appliances and whether this law is being applied compatibility with the Human Rights Act There is no information about what law the Home Office are using, this is the first question we should ask. If there is legal basis for the removal of the appliances, we must check whether this is for a legitimate aim, is proportionate and make sure that the law isn't being applied in a discriminatory way.



Legitimate: There must be a good reason for limiting someone's rights such as the protection of a person or others from harm.

To decide whether this restriction passes the test, we must decide whether it pursues a legitimate aim. This means that it must be for good reason. There may be a legitimate aim here of protecting the safety and rights of others as it is for preventing fires but you can ask for this to be evidenced. If there is evidence of a legitimate aim, this doesn't mean it is lawful. It must also be proportionate.



Proportionate: The decision taken must be the least restrictive option available. Public officials must have thought about other things they can do but there is no other way to protect the person concerned or other people.

To see whether the restriction was the least restrictive option available in this scenario, we should think about what else the accommodation managers could have done to prevent further fires. Were there options that weren't as restrictive as turning off electricity or depriving people of their possessions? It seems likely that there are other less restrictive steps the accommodation managers could have taken, such as introducing compulsory fire safety training for all residents and management staff.

In addition, fire extinguishers and fire blankets are an absolute necessity in all provided accommodation. However, this is not the case, and several accommodation providers are failing in these basic duties.



Remember: Public bodies have legal duties under the Human Rights Act. That means that if your human rights are being affected, you can challenge this with a public body. Public bodies must listen to your concerns and if your human rights are not being respected, they either need to take steps to stop this, or explain to you why the restriction is lawful, for a good reason, and proportionate.

If the manager of your accommodation is employed by the Home Office, this means they are a public body. Therefore, they have a duty to respect your human rights. If they are not taking your complaints seriously, you can seek legal advice, make a formal complaint, or go to the ombudsman.

OTHER RIGHTS RELEVANT TO THIS SCENARIO



Article 5
The right to liberty



Article 14
The right to be free from discrimination



Article 10
The right to freedom of expression



Article 1, Protocol 1
The right to peaceful enjoyment of possessions



Important to know: Under asylum housing policies, asylum seekers still have the right to privacy within their own home, even if it is only temporary. This includes the right to privacy and correspondence, protected by Article 8 of the HRA, which means that asylum seekers are entitled to private letter writing or other communications.

IN REAL LIFE

This section will explore real life situations provided by Migrants' Rights Network that migrants experience in accommodation. It will then show how human rights are relevant to these situations.



The temperature in our rooms can go beyond 28 degrees in summer/hot weather. The temperature is unbearable and there is no relief from the sweltering heat. Like many issues that occur in Home Office accommodation, we don't feel like we can safely complain about the temperature.



This situation can engage your right to be private, family life, home and correspondence.

The right to enjoyment of your current home means that the place you are living in should not be interfered with as far as possible. If the public body in charge of the accommodation is not taking steps to address poor living conditions, this may unlawfully limit your right to enjoy your home.

Poor living conditions can also affect your wellbeing, which is covered by the right to a private life under Article 8 of the HRA.

Where this right is being restricted because of discriminatory attitudes around immigration status this could also impact the right to be free from discrimination (Article 14).



There have been incidents where staff turn off the electricity when there are fires due to incorrect use of microwaves or kitchen equipment. How does this affect my rights?



This situation can engage your rights to autonomy, privacy, and wellbeing.

These are non-absolute rights so any restrictions would need to follow the legal test that public bodies must follow of legality, legitimacy, and proportionality. It is unlikely that it is proportionate to the aim of the safety of others to turn off electricity for a long time.

Less restrictive measures, such as appropriate risk assessments, fire safety checks and other steps could be put in place instead. Turning off electricity is a blanket restriction which is rarely rights respecting, and punishing people for making mistakes can also be a limit on your human rights.

Being left without electricity, where this causes serious harm, can leave people in an inhuman and degrading situation or potentially risk life. Especially in situations where someone is already in a vulnerable situation. This raises concerns about the right to be free from inhuman and degrading treatment protected by Article 3 of the HRA. This is an absolute which can never be lawfully restricted.



What happens if there are regular and unannounced visits from staff in the accommodation?



Article 8 protects our right to privacy and our right to enjoy our home.

This means that regular and unannounced intrusions on your privacy may be against your human rights. If you are not allowed your own private time or space, or if public bodies enter your home without warning, your right to a private life under Article 8 may be at risk.



Article 3

The Right to be Free from Inhuman and Degrading Treatment

Article 3 protects us from being treated in a way that causes serious mental or physical harm or humiliation, including deliberate (abuse) and unintentional (neglect) harm.

Examples of inhuman or degrading treatment include treatment that:

- Makes you very frightened or worried.
- Causes you a lot of pain.
- Makes you feel worthless, hopeless, or lesser than other people.
- Treatment which fails to account for past trauma.

It is about the level of harm and suffering someone experiences.

This means that any treatment in accommodation should be person-centred, considering that individuals needs and past experiences.



Remember: Just because something doesn't seem inhuman or degrading to someone else doesn't mean it isn't inhuman or degrading to you. People have different experiences so something that may not seriously impact one person could be deeply distressing to someone else. Public services must consider your individual needs and experiences when considering this right.



What happens if the police are called when I am having a mental health crisis in asylum accommodation?



If someone is having a mental health crisis, calling the police may make the incident worse.

The right to a private life (Article 8, HRA) could be at risk as this can cause distress, affecting someone's wellbeing, and their autonomy. Similarly, repeatedly calling the police for mental health issues could potentially be degrading for the individual as their needs are not being dealt with properly in a medical setting and could be seen as a form of punishment.

There are some cases where the police themselves can cause serious harm or distress, impacting on Article 3 of our Human Rights Act. In one Home Office accommodation facility, an asylum seeker was in a state of clear mental distress as a result of the trauma they had endured in their origin country and on the way to the UK. Rather than offer compassionate support in this time of crisis, the response of accommodation staff was to call the police.

In some situations, especially where there is a threat to life or that a crime has been committed where it may be necessary to call the police to ensure people's rights to not be treated in an inhuman or degrading way are respected and protected.



IN THE LAW: MS v UK

MS 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. He drank from the toilet and smeared himself with faeces. When MS was transferred to a clinic to get treatment he was diagnosed as suffering from a mental illness. He took a human rights case to court challenging the conditions and time in police detention. The court looked into what MS experienced when he was with the police, including the fact that he was in real need of mental health care. The court decided the way he was treated breached MS's right to be free from inhuman and degrading treatment.



As of July 2023, a new Government agreement has been introduced that means police will no longer respond to calls about mental health concerns unless there is a risk to life or if a crime is being committed.



The availability of support services or community engagement for asylum seekers in temporary accommodation is something of a postcode lottery in the UK. Asylum seekers in MRN's network have reported widespread feelings of isolation and loneliness along with high rates of depression, anxiety, and suicidal thoughts.



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An LGBTQ+ asylum seeker in hotel accommodation faced a distressing situation as their roommate held homophobic views - reminding them of the oppressors they fled from in their country of origin. Not having the ability to choose a roommate or secure a single private room triggered past trauma and resulted in them falling into a deep state of depression. It is the duty of the hotel accommodation staff to safeguard and intervene to prevent harm to asylum seekers when potential risk is identified. At MRN, we believe that protecting human rights in hotel accommodation involves the establishment of clear and robust safeguarding mechanisms to protect every resident.

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When public officials make decisions about our lives and do not involve us in them, this engages their duties to uphold our human rights. Where the consequences of those decisions have a serious negative impact on us this may be inhuman and degrading treatment.

A member of the LGBTQ+ community being placed in accommodation with a homophobic roommate does not consider their needs, and there is a clear risk that they could face harm.

The fact that the individual was left in a room that caused them a great deal of distress and trauma, and that steps were not taken to protect them from this harm, could pose a risk to their right to be free from inhuman and degrading treatment. Public officials need to consider the individual, and placing someone who is fleeing homophobia in a room with someone who is homophobic can be deeply distressing



Article 14

The Right to be Free from Discrimination

The right to be free from discrimination means that you cannot have your rights restricted because of one or more of your characteristics. This includes race, nationality, sex, gender, or religious and non-religious beliefs.

The Human Rights Act says that we cannot be discriminated against on the grounds of sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

The right to be free from discrimination is not a stand-alone right, this means it works slightly differently from other rights in the Human Rights Act. It's a right not to be discriminated against when you are relying on your other rights in the Human Rights Act. The right to be free from discrimination is sometimes called a 'piggy-back' right because when one of your other rights is at risk, you can also raise your right to non-discrimination if you think that is an issue.

When you are using the Human Rights Act, you must be treated the same as everyone else. Examples of this not happening include:

- The state treating you worse than other people in the same situation because of your race, age, religion, gender identity, immigration status etc.
- The state not treating you differently when you are in a very different situation to others, such as race, age, religion, gender identity, immigration status etc. For example not providing a translator when you might need it.

While discrimination is always unlawful, not all differential treatment (or failure to treat people differently when they're in different situations) will be classed as discrimination. If a public official is treating you differently (or failing to treat you differently) for some reason, they must be able to show that it can be **objectively and reasonably justified**.



Some asylum seekers have raised incidents of verbal abuse from accommodation staff including circumstances where residents have been called 'stupid'. Attacks of this nature can exacerbate existing trauma and mental health issues and reinforce feelings that asylum seekers are not safe or welcome in the UK. No one should be subjected to racist or discriminatory attacks based on their immigration status, race, or nationality, especially those who are seeking protection.



Consistent verbal abuse from staff, can cause serious mental distress, and this could put your right to be free from inhuman and degrading treatment at risk. It can also engage your right to be free from discrimination, where that abuse is based on a particular characteristic.

When you think you are being treated in a discriminatory way, you have to show this relates to one of the other rights ("piggy backs"). In this example, this could be the right to be free from inhuman and degrading treatment in Article 3. This is an absolute right, and it cannot be justified no matter the reason. It includes protecting against harm which is mental (as well as physical) and against treatment intended to humiliate you.

You can then also raise your right to be free from discrimination in Article 14, which is about being treated worse than other people when it cannot be objectively or reasonably justified. In this example, that might be about treating you worse because of your immigration status, race, or nationality together with your mental health status and/or trauma. It is not objectively or reasonably justify abusing an individual in this way, particularly when it could amount to inhuman and degrading treatment.



IN THE LAW: SK and LL v SSWP

SK came to the UK with a three-year-old son and was allowed to stay as a refugee. She then got pregnant and applied for the Sure Start Maternity Grant (a £500 payment to help with the costs of a new baby). She was refused because the grant was only available to people having their first child, on the assumption that people having their second child would already have baby items. There are a few exceptions to this rule, but SK did not fit into any of them. However, SK argued that refugees who had a child before they came to the UK are unlikely to have brought baby items with them. They are in a different situation to most pregnant women, so not making an exception for them was a breach of Article 14 as it was a discriminatory interference with their right to family life (Article 8, HRA). The Court agreed and women in SK's situation can now claim the grant.

Using human rights to empower asylum seekers as hate crime auditors

At MRN we support people to be 'hate crime auditors' within asylum accommodation. This is about identifying hate crimes within the accommodation and the wider community and taking steps to address this. Part of being a hate crime auditor involves identifying when your or someone else's rights are not being respected by an accommodation staff member.

This section will provide practical advice on identifying and challenging decisions which do not respect your human rights. At BIHR and MRN, we believe that knowing your rights is the first step to claiming them. Using human rights language when interacting with public bodies can be a useful tool for challenging public officials to do things differently and creating positive social change. However, we know it is not a magic wand.

Raising human rights issues

If you have raised an issue using the language of human rights with the relevant public authority and are unable to resolve the matter informally, you may want to consider writing a letter. This has many advantages, particularly since the organisation should write you a letter in response. A letter provides a way for you to explain the situation, identify the desired outcome and keep a record of the situation. BIHR co-produced an advocacy tool with Room to Heal in 2022, [this tool includes tips for writing a letter and example letter templates for individuals and case workers which you can access here.](#)

Human Rights Flow Chart

As a first step, you can use this flowchart below to check whether your issues are a human rights issue and take steps to address it.

IDENTIFY THE ISSUE

- What is the issue or decision?
- What happened, when and where?
- Who is affected and what is the impact on them?
- Has a public official made a decision or are they involved in the situation?



IDENTIFY WHICH HUMAN RIGHTS ARE AT RISK

- There may be more than one right.
- Is it an absolute or non-absolute right? Can the right be limited lawfully?
- If the right is absolute, action must be taken as this right can never be lawfully limited.
- If it is non-absolute, think about whether the limitation is lawful, for a good reason, and if it is the least restrictive option available.



IS IT URGENT?

- **If yes, take immediate action such as contacting emergency services by calling 999.**
- If it is not urgent, continue to the next step.



RAISE THE ISSUE WITH THE PUBLIC OFFICIAL

It can be helpful to raise the issue by speaking to the public official who has made the decision, such as a social worker, to let them know they are not considering your rights.



WRITE A LETTER

If you are still unable to resolve the issue after speaking to a public official, you can write a follow-up letter either to the same official or to someone higher up, like a manager. You can say that you might have to take more serious action.



TAKE MORE SERIOUS ACTION

- See if you can make a complaint to the organisation.
- Contact a regulator.
- Contact the Home Office.
- See if someone can help you to get legal advice.

Resources you can use

[Easy Read Postcards](#)

[Write to your MP](#)

[Housing Ombudsman](#)

[Local Government and Social Care Ombudsman](#)

[Independent Case Examiner](#)

[Office of the Immigration Services Commissioner](#)

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